

1 AN ACT relating to expungement and making an appropriation therefor.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 431.073 is amended to read as follows:

- 4 (1) ***(a)*** Any person who has been convicted of a Class D felony violation of KRS
 5 17.175, 186.990, 194A.505, 194B.505, 217.181, 217.207, 217.208, 218A.140,
 6 218A.1415, 218A.1416, 218A.1417, 218A.1418, 218A.1423, 218A.1439,
 7 218A.282, 218A.284, 218A.286, 218A.320, 218A.322, 218A.324, **218A.500,**
 8 244.165, 286.11-057, 304.47-025, 324.990, 365.241, 434.155, 434.675,
 9 434.850, 434.872, 511.040, 512.020, 514.030, 514.040, 514.050, 514.060,
 10 514.065, 514.070, 514.080, 514.090, 514.100, 514.110, 514.120, 514.140,
 11 514.150, 514.160, 516.030, 516.060, 516.090, 516.108, 517.120, 518.040,
 12 522.040, 524.100, 525.113, 526.020, 526.030, 528.020, 528.040, 528.050,
 13 530.010, or 530.050; **or of complicity to any offense eligible under this**
 14 **paragraph;**~~[-]~~ or ***of*** a series of Class D felony violations of one (1) or more
 15 statutes enumerated in this **paragraph**~~[section]~~ arising from a single
 16 incident;~~[-]~~ or who has been granted a full pardon, may file with the court in
 17 which he or she was convicted an application to have the judgment vacated.
- 18 ***(b)*** **Any person who has been convicted of a Class D felony violation of KRS**
 19 **218A.1421, 218A.1437, 244.170, 329A.015, 434.650, 509.070, or 520.095; or**
 20 **of any offense which would ordinarily be a misdemeanor but is punished as**
 21 **a Class D felony, other than violations of KRS 189A.010 or 508.030; or of**
 22 **complicity to any offense eligible under this paragraph; or of a series of**
 23 **Class D felony violations of one (1) or more statutes eligible under this**
 24 **paragraph arising from a single incident, may file with the court in which**
 25 **he or she was convicted an application to have the judgment vacated.**
- 26 ***(c)*** **Any person who has been convicted of a Class D felony violation of KRS**
 27 **218A.1404, 218A.1405, 218A.1430, 218A.1438, 218A.1444, 218A.180,**

1 218A.200, 218A.350, 218A.450, or 517.060; or of complicity to any offense
2 eligible under this paragraph; or of a series of Class D felony violations of
3 one (1) or more statutes eligible under this paragraph arising from a single
4 incident, may file with the court in which he or she was convicted an
5 application to have the judgment vacated.

6 (d) Any person who has been convicted of an offense prior to January 1, 1975,
7 which was punishable by not more than five (5) years' incarceration, was
8 not a sex offense or an offense committed against a child, and did not result
9 in serious bodily injury or death; or of a series of felony offenses eligible
10 under this paragraph arising from a single incident, may file with the court
11 in which he or she was convicted an application to have the judgment
12 vacated.

13 The application shall be filed as a motion in the original criminal case. The person
14 shall be informed of the right at the time of adjudication.

15 (2) (a) A verified application pursuant to subsection (1)(a) of this section to have
16 the judgment vacated under this section shall be filed no sooner than five (5)
17 years after the completion of the person's sentence, or five (5) years after the
18 successful completion of the person's probation or parole, whichever occurs
19 later.

20 (b) A verified application pursuant to subsection (1)(b) of this section to have
21 the judgment vacated under this section shall be filed no sooner than ten
22 (10) years after the completion of the person's sentence, or ten (10) years
23 after the successful completion of the person's probation or parole,
24 whichever occurs later.

25 (c) A verified application pursuant to subsection (1)(c) of this section to have
26 the judgment vacated under this section shall be filed no sooner than fifteen
27 (15) years after the completion of the person's sentence, or fifteen (15) years

1 after the successful completion of the person's probation or parole,
2 whichever occurs later.

3 (d) A verified application pursuant to subsection (1)(d) of this section to have
4 the judgment vacated under this section shall be filed no sooner than twenty
5 (20) years after the completion of the person's sentence, or twenty (20) years
6 after the successful completion of the person's probation or parole,
7 whichever occurs later.

8 (e) Upon the payment of the filing fee and the filing of the application, the Circuit
9 Court clerk shall serve a notice of filing upon the office of the
10 Commonwealth's attorney or county attorney that prosecuted the case and the
11 county attorney of the county where the judgment was entered. The office of
12 the Commonwealth's attorney or county attorney that prosecuted the case shall
13 file a response within sixty (60) days after being served with the notice of
14 filing. That time period may be extended for good cause, but the hearing on
15 the application to vacate the judgment shall occur no later than one hundred
16 twenty (120) days following the filing of the application. The inability to
17 determine the location of the crime victim shall constitute good cause for an
18 extension of time. No hearing upon the merits of the application shall be
19 scheduled until the Commonwealth's response has been filed, or if no
20 response is received, no later than one hundred twenty (120) days after the
21 filing of the application.

22 (3) Upon the filing of the Commonwealth's response to an application, or if no response
23 is received, no later than one hundred twenty (120) days after the filing of the
24 application, the court shall set a date for a hearing and the Circuit Court clerk shall
25 notify the office of the Commonwealth's attorney or county attorney that prosecuted
26 the case. The office of the Commonwealth's attorney or county attorney that
27 prosecuted the case shall notify the victim of the crime, if there was an identified

1 victim. The Commonwealth's attorney or county attorney shall be authorized to
2 obtain without payment of any fee information from the Transportation Cabinet
3 regarding the crime victim's address on file regarding any vehicle operator's license
4 issued to that person.

5 (4) The court may order the judgment vacated, and if the judgment is vacated the court
6 shall dismiss with prejudice any charges which are eligible for expungement under
7 subsection (1) of this section or KRS 431.076 or 431.078, and order expunged all
8 records in the custody of the court and any records in the custody of any other
9 agency or official, including law enforcement records, if the court finds that:

10 (a) The person had not previously had a felony conviction vacated and the record
11 expunged pursuant to this section;

12 (b) 1. For an application pursuant to subsection (1)(a) of this section, the
13 person had not in the five (5) years prior to the filing of the application
14 to have the judgment vacated been convicted of a felony or a
15 misdemeanor;

16 2. For an application pursuant to subsection (1)(b) of this section, the
17 person had not in the ten (10) years prior to the filing of the
18 application to have the judgment vacated been convicted of a felony or
19 a misdemeanor;

20 3. For an application pursuant to subsection (1)(c) of this section, the
21 person had not in the fifteen (15) years prior to the filing of the
22 application to have the judgment vacated been convicted of a felony or
23 a misdemeanor; or

24 4. For an application pursuant to subsection (1)(d) of this section, the
25 person had not in the twenty (20) years prior to the filing of the
26 application to have the judgment vacated been convicted of a felony or
27 a misdemeanor; and

1 (c) No proceeding concerning a felony or misdemeanor is pending or being
2 instituted against the person.

3 (5) If the court has received a response from the office of the Commonwealth's attorney
4 or county attorney that prosecuted the case stating no objection to the application to
5 have the judgment vacated, or if one hundred twenty (120) days have elapsed since
6 the filing of the application and no response has been received, the court may,
7 without a hearing, vacate the judgment in the manner established in subsection (4)
8 of this section.

9 (6) Upon entry of an order vacating and expunging a conviction, the original conviction
10 shall be vacated and the record shall be expunged. The court and other agencies
11 shall cause records to be deleted or removed from their computer systems so that
12 the matter shall not appear on official state-performed background checks. The
13 court and other agencies shall reply to any inquiry that no record exists on the
14 matter. The person whose record is expunged shall not have to disclose the fact of
15 the record or any matter relating thereto on an application for employment, credit, or
16 other type of application. If the person is not prohibited from voting for any other
17 reason, the person's ability to vote shall be restored and the person may register to
18 vote.

19 (7) An order vacating a conviction under this section shall not extend or revive an
20 expired statute of limitations, shall not constitute a finding of legal error regarding
21 the proceedings leading to or resulting in the conviction, shall not nullify any
22 findings of fact or conclusions of law made by the trial court or any appellate court
23 regarding the conviction, and shall not constitute a finding of innocence regarding
24 the conviction.

25 (8) The Administrative Office of the Courts shall establish a form application to be
26 used in filing an application to have judgment vacated and records expunged.

27 (9) **In any case in which the court finds that the application is grossly incomplete, the**

1 court may return the application to the person or agency originating the
 2 application, and request additional information in order to complete the
 3 application.

4 **(10)** The filing fee for an application to have judgment vacated and records expunged
 5 shall be five hundred dollars (\$500). The first fifty dollars (\$50) of each fee
 6 collected pursuant to this subsection shall be deposited into a trust and agency
 7 account for deputy clerks and shall not be refundable. **Fifty dollars (\$50) of each**
 8 **fee collected pursuant to this subsection shall be appropriated to the Department**
 9 **of Kentucky State Police to process expungements. One hundred dollars (\$100) of**
 10 **each fee collected pursuant to this subsection shall be appropriated to the**
 11 **Commonwealth's attorney's office that prosecuted the case to process**
 12 **expungements.**

13 **(11)**~~(10)~~ This section shall be retroactive.

14 ➔Section 2. KRS 431.076 is amended to read as follows:

15 (1) A person who has been charged with a criminal offense and who has been found not
 16 guilty of the offense, or against whom charges have been dismissed ~~with prejudice~~
 17 ~~and~~ not in exchange for a guilty plea to another offense, or against whom felony
 18 charges originally filed in the District Court have not resulted in an indictment by
 19 the grand jury, may petition the District or Circuit Court in which the charges were
 20 filed to expunge all records.

21 (2) The expungement petition shall be filed no sooner than sixty (60) days following
 22 the order of acquittal or dismissal **with prejudice** by the court, ~~or~~ twelve (12)
 23 months following the date of the District Court decision to hold the matter to the
 24 grand jury, **or five (5) years following the date of the order of dismissal without**
 25 **prejudice.** The petition shall be served upon the office of the Commonwealth's
 26 attorney or county attorney that prosecuted the case.

27 (3) Following the filing of the petition, the court may set a date for a hearing. If the

1 court does so, it shall notify the county or Commonwealth's attorney, as appropriate,
2 of an opportunity for a response to the expungement petition. In addition, if the
3 criminal charge relates to the abuse or neglect of a child, the court shall also notify
4 the Office of General Counsel of the Cabinet for Health and Family Services of an
5 opportunity for a response to the expungement petition. The counsel for the Cabinet
6 for Health and Family Services shall respond to the expungement petition, within
7 twenty (20) days of receipt of the notice, which period of time shall not be extended
8 by the court, if the Cabinet for Health and Family Services has custody of records
9 reflecting that the person charged with the criminal offense has been determined by
10 the cabinet or by a court under KRS Chapter 620 to be a substantiated perpetrator of
11 child abuse or neglect. If the cabinet fails to respond to the expungement petition or
12 if the cabinet fails to prevail, the order of expungement shall extend to the cabinet's
13 records. If the cabinet prevails, the order of expungement shall not extend to the
14 cabinet's records.

15 (4) If the court finds that there are no current charges or proceedings pending relating to
16 the matter for which the expungement is sought, the court may grant the petition
17 and order the expunging of all records in the custody of the court and any records in
18 the custody of any other agency or official, including law enforcement records. If
19 the expungement petition pertains to felony charges originally filed in the District
20 Court which have not resulted in an indictment by the grand jury, and the Circuit
21 Court or District Court grants the motion, it shall dismiss the charges and order the
22 expunging of the records. The court shall order the expunging on a form provided
23 by the Administrative Office of the Courts. Every agency, with records relating to
24 the arrest, charge, or other matters arising out of the arrest or charge, that is ordered
25 to expunge records, shall certify to the court within sixty (60) days of the entry of
26 the expungement order, that the required expunging action has been completed. All
27 orders enforcing the expungement procedure shall also be expunged.

- 1 (5) If an expungement is ordered under this section, an appellate court which issued an
2 opinion in the case may, upon motion of the petitioner in the case, order the
3 appellate case file to be sealed and also direct that the version of the appellate
4 opinion published on the court's Web site be modified to avoid use of the
5 petitioner's name in the case title and body of the opinion.
- 6 (6) After the expungement, the proceedings in the matter shall be deemed never to have
7 occurred. The court and other agencies shall delete or remove the records from their
8 computer systems so that any official state-performed background check will
9 indicate that the records do not exist. The court and other agencies shall reply to any
10 inquiry that no record exists on the matter. The person whose record is expunged
11 shall not have to disclose the fact of the record or any matter relating thereto on an
12 application for employment, credit, or other type of application.
- 13 (7) This section shall be retroactive.
- 14 ➔Section 3. KRS 431.079 is amended to read as follows:
- 15 (1) ~~[Beginning January 1, 2014,]~~Every petition or application filed seeking
16 expungement **of a conviction** shall include a certification of eligibility for
17 expungement. The Department of Kentucky State Police and the Administrative
18 Office of the Courts shall certify that the agencies have conducted a criminal
19 background check on the petitioner and whether or not the petitioner is eligible to
20 have the requested record expunged. The Department of Kentucky State Police shall
21 promulgate administrative regulations to implement this section, in consultation
22 with the Administrative Office of the Courts.
- 23 (2) **Nothing in this section shall be construed to prohibit the expungement of a case**
24 **ordered by a court of competent jurisdiction.**
- 25 (3) For the purposes of this section, KRS 431.073, 431.076, and 431.078,
26 "expungement" means the removal or deletion of records by the court and other
27 agencies which prevents the matter from appearing on official state-performed

1 background checks.