

AN ACT relating to expungement.

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

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

- (1) Any person who has been convicted of a Class D felony violation of KRS 17.175, 186.990, 194A.505, 194B.505, 217.181, 217.207, 217.208, 218A.140, 218A.1415, 218A.1416, 218A.1417, 218A.1418, 218A.1423, 218A.1439, 218A.282, 218A.284, 218A.286, 218A.320, 218A.322, 218A.324, 244.165, 286.11-057, 304.47-025, 324.990, 365.241, 434.155, 434.675, 434.850, 434.872, 511.040, 512.020, 514.030, 514.040, 514.050, 514.060, 514.065, 514.070, 514.080, 514.090, 514.100, 514.110, 514.120, 514.140, 514.150, 514.160, 516.030, 516.060, 516.090, 516.108, 517.120, 518.040, 522.040, 524.100, 525.113, 526.020, 526.030, 528.020, 528.040, 528.050, 530.010, or 530.050, or a series of Class D felony violations of one (1) or more statutes enumerated in this section arising from a single incident, or who has been granted a full pardon, may file with the court in which he or she was convicted an application to have the judgment vacated. The application shall be filed as a motion in the original criminal case. The person shall be informed of the right at the time of adjudication.
- (2) A verified application to have the judgment vacated under this section shall be filed no sooner than five (5) years after the completion of the person's sentence, or five (5) years after the successful completion of the person's probation or parole, whichever occurs later. Upon the payment of the filing fee and the filing of the application, the Circuit Court clerk shall serve a notice of filing upon the office of the Commonwealth's attorney or county attorney that prosecuted the case and the county attorney of the county where the judgment was entered. The office of the Commonwealth's attorney or county attorney that prosecuted the case shall file a response within sixty (60) days after being served with the notice of filing. That time period may be extended for good cause, but the hearing on the application to

vacate the judgment shall occur no later than one hundred twenty (120) days following the filing of the application. The inability to determine the location of the crime victim shall constitute good cause for an extension of time. No hearing upon the merits of the application shall be scheduled until the Commonwealth's response has been filed, or if no response is received, no later than one hundred twenty (120) days after the filing of the application.

- (3) Upon the filing of the Commonwealth's response to an application, or if no response is received, no later than one hundred twenty (120) days after the filing of the application, the court shall set a date for a hearing and the Circuit Court clerk shall notify the office of the Commonwealth's attorney or county attorney that prosecuted the case. The office of the Commonwealth's attorney or county attorney that prosecuted the case shall notify the victim of the crime, if there was an identified victim. The Commonwealth's attorney or county attorney shall be authorized to obtain without payment of any fee information from the Transportation Cabinet regarding the crime victim's address on file regarding any vehicle operator's license issued to that person.
- (4) The court may order the judgment vacated, and if the judgment is vacated the court shall dismiss with prejudice any charges which are eligible for expungement under subsection (1) of this section or KRS 431.076 or 431.078, and order expunged all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, if the court finds that:
 - (a) The person had not previously had a felony conviction vacated and the record expunged pursuant to this section;
 - (b) The person had not in the five (5) years prior to the filing of the application to have the judgment vacated been convicted of a felony or a misdemeanor; and
 - (c) No proceeding concerning a felony or misdemeanor is pending or being instituted against the person.

- (5) If the court has received a response from the office of the Commonwealth's attorney or county attorney that prosecuted the case stating no objection to the application to have the judgment vacated, or if one hundred twenty (120) days have elapsed since the filing of the application and no response has been received, the court may, without a hearing, vacate the judgment in the manner established in subsection (4) of this section.
- (6) Upon entry of an order vacating and expunging a conviction, the original conviction shall be vacated and the record shall be expunged. The court and other agencies shall cause records to be deleted or removed from their computer systems so that the matter shall not appear on official state-performed background checks. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application. If the person is not prohibited from voting for any other reason, the person's ability to vote shall be restored and the person may register to vote.
- (7) An order vacating a conviction under this section shall not extend or revive an expired statute of limitations, shall not constitute a finding of legal error regarding the proceedings leading to or resulting in the conviction, shall not nullify any findings of fact or conclusions of law made by the trial court or any appellate court regarding the conviction, and shall not constitute a finding of innocence regarding the conviction.
- (8) The Administrative Office of the Courts shall establish a form application to be used in filing an application to have judgment vacated and records expunged.
- (9) The filing fee for an application to have judgment vacated and records expunged shall be ***two hundred dollars (\$200)***~~five hundred dollars (\$500)~~. The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be deposited into

a trust and agency account for deputy clerks and shall not be refundable. *The remainder of the filing fee shall be deposited into the general fund, and shall be refunded if the application is denied. The court may waive all or any portion of the fee if the court finds that the applicant is indigent or financially unable to pay all or any portion of the fee. No filing fee shall be required as a condition for filing an application relating to an offense for which a full pardon has been granted.*

(10) This section shall be retroactive.

□ Section 2. KRS 431.078 is amended to read as follows:

(1) Any person who has been convicted of:

(a) A misdemeanor, a violation, or a traffic infraction not otherwise classified as a misdemeanor or violation, or a series of misdemeanors, violations, or traffic infractions arising from a single incident; or

(b) A series of misdemeanors, violations, or traffic infractions not arising from a single incident;

may petition the court in which he was convicted for expungement of his misdemeanor or violation record within that judicial district, including a record of any charges for misdemeanors, violations, or traffic infractions that were dismissed or amended in the criminal action. The person shall be informed of the right at the time of adjudication.

(2) Except as provided in KRS 218A.275(8) and 218A.276(8), the petition shall be filed no sooner than five (5) years after the completion of the person's sentence or five (5) years after the successful completion of the person's probation, whichever occurs later.

(3) Upon the filing of a petition, the court shall set a date for a hearing, no sooner than thirty (30) days after the filing of the petition, and shall notify the county attorney; the victim of the crime, if there was an identified victim; and any other person

whom the person filing the petition has reason to believe may have relevant information related to the expungement of the record. Inability to locate the victim shall not delay the proceedings in the case or preclude the holding of a hearing or the issuance of an order of expungement.

- (4) For a petition brought under subsection (1)(a) of this section, the court shall order expunged all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, if at the hearing the court finds that:
- (a) The offense was not a sex offense or an offense committed against a child;
 - (b) The person had not in the five (5) years prior to the filing of the petition for expungement been convicted of a felony or a misdemeanor;
 - (c) No proceeding concerning a felony or misdemeanor is pending or being instituted against the person; and
 - (d) The offense is not one subject to enhancement for a second or subsequent offense or the time for such an enhancement has expired.
- (5) For a petition brought under subsection (1)(b) of this section, the court may order expunged all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, if at the hearing the court finds that:
- (a) The offense was not a sex offense or an offense committed against a child;
 - (b) The person had not in the five (5) years prior to the filing of the petition for expungement been convicted of a felony or a misdemeanor;
 - (c) No proceeding concerning a felony or misdemeanor is pending or being instituted against the person; and
 - (d) The offense is not one subject to enhancement for a second or subsequent offense or the time for such an enhancement has expired.
- (6) Upon the entry of an order to expunge the records, the proceedings in the case shall

be deemed never to have occurred; the court and other agencies shall cause records to be deleted or removed from their computer systems so that the matter shall not appear on official state-performed background checks; the persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and the person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

- (7) The filing fee for a petition under this section shall be one hundred dollars (\$100). The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be deposited into a trust and agency account for deputy clerks and shall not be refundable. *The remainder of the filing fee shall be deposited into the general fund, and shall be refunded if the application is denied. The court may waive all or any portion of the fee if the court finds that the petitioner is indigent or financially unable to pay all or any portion of the fee.*
- (8) Copies of the order shall be sent to each agency or official named therein.
- (9) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of the records and only to those persons named in the petition.
- (10) This section shall be deemed to be retroactive, and any person who has been convicted of a misdemeanor prior to July 14, 1992, may petition the court in which he was convicted, or if he was convicted prior to the inception of the District Court to the District Court in the county where he now resides, for expungement of the record of one (1) misdemeanor offense or violation or a series of misdemeanor offenses or violations arising from a single incident, provided that the offense was not one specified in subsection (4) and that the offense was not the precursor offense of a felony offense for which he was subsequently convicted. This section shall apply only to offenses against the Commonwealth of Kentucky.

- (11) As used in this section, "violation" has the same meaning as in KRS 500.080.
- (12) Any person denied an expungement prior to June 25, 2013, due to the presence of a traffic infraction on his or her record may file a new petition for expungement of the previously petitioned offenses, which the court shall hear and decide under the terms of this section. No court costs or other fees, from the court or any other agency, shall be required of a person filing a new petition under this subsection.