



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2016 REGULAR SESSION

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HOUSE BILL NO. 40

AS ENACTED

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FRIDAY, APRIL 1, 2016

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DATE April 12, 2016  
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ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adler

1 AN ACT relating to criminal records.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO  
4 READ AS FOLLOWS:

- 5 *(1) Any person who has been convicted of a Class D felony violation of KRS 17.175,*  
6 *186.990, 194A.505, 194B.505, 217.181, 217.207, 217.208, 218A.140, 218A.1415,*  
7 *218A.1416, 218A.1417, 218A.1418, 218A.1423, 218A.1439, 218A.282, 218A.284,*  
8 *218A.286, 218A.320, 218A.322, 218A.324, 244.165, 286.11-057, 304.47-025,*  
9 *324.990, 365.241, 434.155, 434.675, 434.850, 434.872, 511.040, 512.020, 514.030,*  
10 *514.040, 514.050, 514.060, 514.065, 514.070, 514.080, 514.090, 514.100, 514.110,*  
11 *514.120, 514.140, 514.150, 514.160, 516.030, 516.060, 516.090, 516.108, 517.120,*  
12 *518.040, 522.040, 524.100, 525.113, 526.020, 526.030, 528.020, 528.040, 528.050,*  
13 *530.010, or 530.050, or a series of Class D felony violations of one (1) or more*  
14 *statutes enumerated in this section arising from a single incident, or who has*  
15 *been granted a full pardon, may file with the court in which he or she was*  
16 *convicted an application to have the judgment vacated. The application shall be*  
17 *filed as a motion in the original criminal case. The person shall be informed of*  
18 *the right at the time of adjudication.*
- 19 *(2) A verified application to have the judgment vacated under this section shall be*  
20 *filed no sooner than five (5) years after the completion of the person's sentence,*  
21 *or five (5) years after the successful completion of the person's probation or*  
22 *parole, whichever occurs later. Upon the payment of the filing fee and the filing*  
23 *of the application, the Circuit Court clerk shall serve a notice of filing upon the*  
24 *office of the Commonwealth's attorney or county attorney that prosecuted the*  
25 *case and the county attorney of the county where the judgment was entered. The*  
26 *office of the Commonwealth's attorney or county attorney that prosecuted the*  
27 *case shall file a response within sixty (60) days after being served with the notice*

1 of filing. That time period may be extended for good cause, but the hearing on  
2 the application to vacate the judgment shall occur no later than one hundred  
3 twenty (120) days following the filing of the application. The inability to  
4 determine the location of the crime victim shall constitute good cause for an  
5 extension of time. No hearing upon the merits of the application shall be  
6 scheduled until the Commonwealth's response has been filed, or if no response is  
7 received, no later than one hundred twenty (120) days after the filing of the  
8 application.

9 (3) Upon the filing of the Commonwealth's response to an application, or if no  
10 response is received, no later than one hundred twenty (120) days after the filing  
11 of the application, the court shall set a date for a hearing and the Circuit Court  
12 clerk shall notify the office of the Commonwealth's attorney or county attorney  
13 that prosecuted the case. The office of the Commonwealth's attorney or county  
14 attorney that prosecuted the case shall notify the victim of the crime, if there was  
15 an identified victim. The Commonwealth's attorney or county attorney shall be  
16 authorized to obtain without payment of any fee information from the  
17 Transportation Cabinet regarding the crime victim's address on file regarding  
18 any vehicle operator's license issued to that person.

19 (4) The court may order the judgment vacated, and if the judgment is vacated the  
20 court shall dismiss with prejudice any charges which are eligible for  
21 expungement under subsection (1) of this section, Section 2 of this Act, or  
22 Section 3 of this Act, and order expunged all records in the custody of the court  
23 and any records in the custody of any other agency or official, including law  
24 enforcement records, if the court finds that:

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

27 (b) The person had not in the five (5) years prior to the filing of the application

1           to have the judgment vacated been convicted of a felony or a misdemeanor;  
2           and

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

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

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

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

27           (8) The Administrative Office of the Courts shall establish a form application to be

1 used in filing an application to have judgment vacated and records expunged.

2 (9) The filing fee for an application to have judgment vacated and records expunged  
 3 shall be five hundred dollars (\$500). The first fifty dollars (\$50) of each fee  
 4 collected pursuant to this subsection shall be deposited into a trust and agency  
 5 account for deputy clerks and shall not be refundable.

6 (10) This section shall be retroactive.

7 → Section 2. KRS 431.076 is amended to read as follows:

8 (1) A person who has been charged with a criminal offense and who has been found not  
 9 guilty of the offense, or against whom charges have been dismissed with  
 10 prejudice~~[,]~~ and not in exchange for a guilty plea to another offense, or against  
 11 whom felony charges originally filed in the District Court have not resulted in an  
 12 indictment by the grand jury, may petition~~[make a motion, in]~~ the District or  
 13 Circuit Court in which the charges were filed~~[,]~~ to expunge all records.

14 (2) The expungement petition~~[motion]~~ shall be filed no sooner than sixty (60) days  
 15 following the order of acquittal or dismissal by the court or twelve (12) months  
 16 following the date of the District Court decision to hold the matter to the grand  
 17 jury. The petition shall be served upon the office of the Commonwealth's attorney  
 18 or county attorney that prosecuted the case.

19 (3) Following the filing of the petition~~[motion]~~, the court may set a date for a hearing.  
 20 If the court does so, it shall notify the county or Commonwealth's attorney, as  
 21 appropriate, of an opportunity for a response to the expungement petition~~[motion]~~.  
 22 In addition, if the criminal charge relates to the abuse or neglect of a child, the court  
 23 shall also notify the Office of General Counsel of the Cabinet for Health and Family  
 24 Services of an opportunity for a response to the expungement petition~~[motion]~~. The  
 25 counsel for the Cabinet for Health and Family Services shall respond to the  
 26 expungement petition~~[motion]~~, within twenty (20) days of receipt of the notice,  
 27 which period of time shall not be extended by the court, if the Cabinet for Health

1 and Family Services has custody of records reflecting that the person charged with  
2 the criminal offense has been determined by the cabinet or by a court under KRS  
3 Chapter 620 to be a substantiated perpetrator of child abuse or neglect. If the cabinet  
4 fails to respond to the expungement petition~~[motion]~~ or if the cabinet fails to  
5 prevail, the order of expungement shall extend to the cabinet's records. If the cabinet  
6 prevails, the order of expungement shall not extend to the cabinet's records.

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

21 (5) *If an expungement is ordered under this section, an appellate court which issued*  
22 *an opinion in the case may, upon motion of the petitioner in the case, order the*  
23 *appellate case file to be sealed and also direct that the version of the appellate*  
24 *opinion published on the court's Web site be modified to avoid use of the*  
25 *petitioner's name in the case title and body of the opinion.*

26 (6) After the expungement, the proceedings in the matter shall be deemed never to have  
27 occurred. The court and other agencies shall delete or remove the records from their

1 computer systems so that any official state-performed background check will  
 2 indicate that the records do not exist. The court and other agencies shall reply to any  
 3 inquiry that no record exists on the matter. The person whose record is expunged  
 4 shall not have to disclose the fact of the record or any matter relating thereto on an  
 5 application for employment, credit, or other type of application.

6 ~~(7)~~~~(6)~~ This section shall be retroactive.

7 → Section 3. KRS 431.078 is amended to read as follows:

8 (1) Any person who has been convicted of:

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

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

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

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

23 (3) Upon the filing of a petition, the court shall set a date for a hearing, no sooner than  
 24 thirty (30) days after the filing of the petition, and shall notify the county attorney;  
 25 the victim of the crime, if there was an identified victim; and any other person  
 26 whom the person filing the petition has reason to believe may have relevant  
 27 information related to the expungement of the record. Inability to locate the victim

1 shall not delay the proceedings in the case or preclude the holding of a hearing or  
2 the issuance of an order of expungement.

3 (4) **For a petition brought under subsection (1)(a) of this section,** the court shall order  
4 expunged all records in the custody of the court and any records in the custody of  
5 any other agency or official, including law enforcement records, if at the hearing the  
6 court finds that:

7 (a) The offense was not a sex offense or an offense committed against a child;

8 (b) ~~{The person had no previous felony conviction;~~

9 ~~(c) The person had not been convicted of any other misdemeanor or violation~~  
10 ~~offense in the five (5) years prior to the conviction sought to be expunged;~~

11 ~~(d) }~~ **The person had not in the five (5) years prior to the filing of the petition for**  
12 **expungement**~~{since the time of the conviction sought to be expunged}~~ been  
13 convicted of a felony **or**~~;~~ a misdemeanor~~;~~ or a violation~~;~~;

14 ~~(e)~~ **No proceeding concerning a felony or misdemeanor is**  
15 **pending or being instituted against the person**~~{him}~~; and

16 ~~(f)~~ **The offense is not one subject to enhancement for a second or**  
17 **subsequent offense or the time for such an enhancement has expired**~~{The~~  
18 ~~offense was an offense against the Commonwealth of Kentucky}~~.

19 (5) **For a petition brought under subsection (1)(b) of this section, the court may order**  
20 **expunged all records in the custody of the court and any records in the custody of**  
21 **any other agency or official, including law enforcement records, if at the hearing**  
22 **the court finds that:**

23 **(a) The offense was not a sex offense or an offense committed against a child;**

24 **(b) The person had not in the five (5) years prior to the filing of the petition for**  
25 **expungement been convicted of a felony or a misdemeanor;**

26 **(c) No proceeding concerning a felony or misdemeanor is pending or being**  
27 **instituted against the person; and**



1        **(d) The offense is not one subject to enhancement for a second or subsequent**  
 2        **offense or the time for such an enhancement has expired.**

3        **(6)** Upon the entry of an order to expunge the records, ~~and payment to the circuit clerk~~  
 4        ~~of one hundred dollars (\$100),~~ the proceedings in the case shall be deemed never to  
 5        have occurred; the court and other agencies shall cause records to be deleted or  
 6        removed from their computer systems so that the matter shall not appear on official  
 7        state-performed background checks; the persons and the court may properly reply  
 8        that no record exists with respect to the persons upon any inquiry in the matter; and  
 9        the person whose record is expunged shall not have to disclose the fact of the record  
 10       or any matter relating thereto on an application for employment, credit, or other type  
 11       of application.

12       **(7) The filing fee for a petition under this section shall be one hundred dollars**  
 13       **(\$100).** The first fifty dollars (\$50) of each fee collected pursuant to this subsection  
 14       shall be ~~deposited into the general fund, and the remainder shall be~~ deposited into  
 15       a trust and agency account for deputy clerks **and shall not be refundable.**

16       ~~**(8)**~~ ~~**(6)**~~ Copies of the order shall be sent to each agency or official named therein.

17       ~~**(9)**~~ ~~**(7)**~~ Inspection of the records included in the order may thereafter be permitted by  
 18       the court only upon petition by the person who is the subject of the records and only  
 19       to those persons named in the petition.

20       ~~**(10)**~~ ~~**(8)**~~ This section shall be deemed to be retroactive, and any person who has been  
 21       convicted of a misdemeanor prior to July 14, 1992, may petition the court in which  
 22       he was convicted, or if he was convicted prior to the inception of the District Court  
 23       to the District Court in the county where he now resides, for expungement of the  
 24       record of one (1) misdemeanor offense or violation or a series of misdemeanor  
 25       offenses or violations arising from a single incident, provided that the offense was  
 26       not one specified in subsection (4) and that the offense was not the precursor  
 27       offense of a felony offense for which he was subsequently convicted. This section

1 shall apply only to offenses against the Commonwealth of Kentucky.

2 ~~(11)~~~~(9)~~ As used in this section, "violation" has the same meaning as in KRS 500.080.

3 ~~(12)~~~~(10)~~ Any person denied an expungement prior to June 25, 2013, due to the  
4 presence of a traffic infraction on his or her record may file a new petition for  
5 expungement of the previously petitioned offenses, which the court shall hear and  
6 decide under the terms of this section. No court costs or other fees, from the court or  
7 any other agency, shall be required of a person filing a new petition under this  
8 subsection.

9 →Section 4. KRS 431.079 is amended to read as follows:

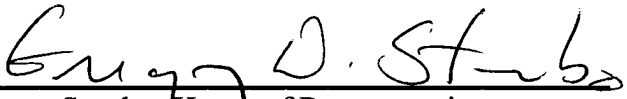
10 (1) Beginning January 1, 2014, every petition ***or application*** filed seeking expungement  
11 shall include a certification of eligibility for expungement. The Department of  
12 Kentucky State Police and the Administrative Office of the Courts shall certify that  
13 the agencies have conducted a criminal background check on the petitioner and  
14 whether or not the petitioner is eligible to have the requested record expunged. The  
15 Department of Kentucky State Police shall promulgate administrative regulations to  
16 implement this section, in consultation with the Administrative Office of the  
17 Courts.


18 (2) For the purposes of this section, ~~and~~ KRS 431.076, ***Section 1 of this Act***, and  
19 431.078, "expungement" means the removal or deletion of records by the court and  
20 other agencies which prevents the matter from appearing on official state-performed  
21 background checks.

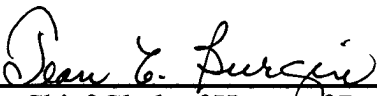
22 →SECTION 5. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO  
23 READ AS FOLLOWS:

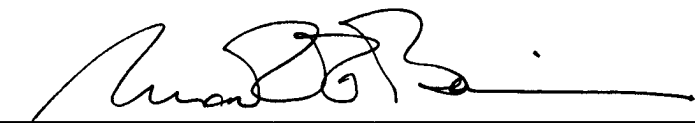
24 ***The Administrative Office of the Courts shall retain an index of expungement orders***  
25 ***entered under Section 1 of this Act. The index shall only be accessible to persons***  
26 ***preparing a certification of eligibility for expungement pursuant to Section 4 of this***  
27 ***Act. If the index indicates that the person applying for expungement has had a prior***

1 *felony expunged under Section 1 of this Act, the person preparing the report may,*  
2 *notwithstanding the provisions of Section 1 of this Act, access the expunged record and*  
3 *include information from the expunged record in the certification.*

  
\_\_\_\_\_  
Speaker House of Representatives

  
\_\_\_\_\_  
President of Senate

Attest:   
\_\_\_\_\_  
Chief Clerk of House of Representatives

Approved   
\_\_\_\_\_  
Governor

Date 12 APRIL 2016