

# JULY 2019 EXPUNGEMENT UPDATE

## CHARGES THAT WERE DISMISSED WITHOUT PREJUDICE

### CERTIFICATE OF ELIGIBILITY:

- A Certificate of Eligibility is not required if you are seeking expungement of a charged that was DISMISSED WITHOUT PREJUDICE by the Court.
- If you are seeking expungement of a charge that was DISMISSED WITHOUT PREJUDICE file the appropriate form with the Clerk of the Court where the charge was originally brought.

## MISDEMEANOR EXPUNGEMENT CHANGES

**DISMISSAL WITHOUT PREJUDICE:** Eligible for expungement after 5 years. Please consult with a lawyer if your misdemeanor charge was dismissed without prejudice to see if a motion can be filed after 1 year due to the Statute of Limitations.

## FELONY EXPUNGEMENT CHANGES

**DISMISSAL WITHOUT PREJUDICE:** Eligible for expungement after 5 years.



### REDUCED FEE FOR FELONY EXPUNGEMENT:

- \$50 at time of filing the petition for felony expungement
- \$250 due when expungement is granted by the court
- Entitled to a payment plan (but expungement does not go into effect until paid in full)
- Indigent persons should request waiver of the fee.



### NOW ELIGIBLE - POSSESSION OF DRUG PARAPHERNALIA:

- Possession of Drug Paraphernalia, 2nd or Subsequent Offense was added to the listed Class-D felonies that are eligible for expungement
- Heightened proof of rehabilitation and other elements are not required for this charge



### NOW ELIGIBLE - ADDITIONAL CLASS-D FELONIES:

- Felony prior to Jan 1, 1975 that carried less than a 5-year prison sentence.
- All other Class-D felonies **EXCEPT**:
  - Felony Driving Under the Influence (KRS 189A.010)
  - Felony Assault in the 4th Degree (KRS 508.032)
  - Impersonating a Peace Officer (KRS 519.055)
  - Abuse of Public Office
  - Sexual Based Offenses (consult with an attorney to see which offenses fall under this category)
  - Offense Against a Child (consult with an attorney to see which offenses fall under this category)
  - Serious Bodily Injury or Death (consult with an attorney if serious bodily injury is involved)



### TWO BITES AT THE APPLE - SECOND FELONY EXPUNGEMENT POSSIBLE

- A person who received a Class-D felony expungement prior to July 1, 2019 may be eligible for an additional Class-D felony expungement after July 1, 2019.
- If you have not yet received an expungement for a Class-D felony, generally only one petition for expungement of Class-D felonies can be granted.

## HEIGHTENED PROCEDURE UNDER THE NEW LAW

If you are seeking expungement of a Class-D felony that is not specifically listed in the statute, or are seeking to expungement more than one felony, then your application may be subject to additional requirements. **It is important that you consult with an attorney if you are seeking expungement of a Class-D felony in this new category of felonies.**

### Heightened requirements may apply to:

- The Application Process - the prosecutor can object if there is not enough information provided
- The Expungement Hearing - additional proof may be required showing that expungement is consistent with the "welfare and safety of the public," that the applying person has been rehabilitated and lived a "law-abiding life" since completion of the felony sentence, that expungement is warranted in the "interest of justice," and any other evidence that is "appropriate or necessary."



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