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KENTUCKY DEPARTMENT OF PUBLIC ADVOCACY

GUIDE TO EXPUNGEMENT IN KENTUCKY



Commonwealth of Kentucky
Department of Public Advocacy
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INTRODUCING THE EXPUNGEMENT GUIDEBOOK

In 2016, the first felony expungement bill in Kentucky passed after years of effort, primarily by State Representative Darryl Owens from Louisville. Then-Public Advocate Ed Monahan and Current Public Advocate Damon Preston worked with Owens and several other groups and legislators to make felony expungement a reality. With the help of Molly Rose Green (working with DPA as part of a fellowship program), DPA leaders educated the legislature on the importance and value of expungement. Following their successful efforts in the legislature, DPA's goal then shifted to educating the people of the Commonwealth on access to expungements. This guidebook is based on their original efforts and subsequent efforts to achieve expungement – a clean slate - for as many Kentuckians as possible.

Expungement is the path to removal of old misdemeanors and Class D felonies from the criminal legal records of Kentuckians, giving them access to jobs, housing, educational opportunities, and many other resources. If expungement is granted, the person, “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.” KRS 431.073(6). For many Kentuckians, expungement is a path to peace of mind and relief from the harsh impacts of a prior conviction.

The expungement process was originally designed to be simple, giving people the ability to apply for expungement without the assistance of counsel. Over time, the process has become more complicated so that the advice of counsel is recommended in several situations. This guidebook is intended to guide criminal legal counsel, as they guide community members seeking expungement. This guidebook is not intended to be read cover to cover. Practitioners can use this guide to answer specific questions as they arise. Use the table of contents to find the expungement question that you are answering. Within each section, you will find a step-by-step instruction on how to address the issue(s) presented.

A special thanks to those who updated and revised this guidebook:

- Miranda Hellman, Staff Attorney III, DPA Kentucky Innocence Project
- Ches Clark, Staff Attorney III, Adult Post Conviction Branch
- Pam Hobbs, Paralegal, Adult Post Conviction Branch

An additional message of appreciation to Miranda Hellman, who has worked tirelessly to expand access to expungement in Kentucky through expungement fairs, educational materials, and training presentations.



Melanie A. Foote

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Table of Contents

EXPUNGEMENT OF CONVICTIONS	2
FELONY CONVICTIONS	2
<i>Ineligible Felonies</i>	3
<i>Presumptively Eligible Felonies - Enumerated Felonies</i>	3
<i>A Series of Enumerated Felonies Arising from a Single Incident</i>	5
<i>Pardoned Felonies of All Classes</i>	7
<i>Class D Felonies, Not Otherwise Excluded</i>	8
<i>Multiple Class D Felonies</i>	10
<i>Impact of Expungement of Class D Felonies and Pardons</i>	13
<i>Payment of Fees</i>	14
<i>Alternate Paths to a Removing Felonies from a Records</i>	14
MISDEMEANOR CONVICTIONS	15
<i>Requirements for Misdemeanor Expungement</i>	15
<i>Sexual Based Offenses & Offenses Against Children</i>	15
<i>Enhancement Periods Have Concluded</i>	16
VIOLATIONS	16
NON-CONVICTIONS	16
ACQUITTALS	16
DISMISSED CHARGES.....	17
<i>Dismissal With Prejudice</i>	18
<i>Dismissal Without Prejudice</i>	19
<i>Failure to Indict</i>	19
AGENCIES AND ENTITIES TO EXPUNGE RECORDS.....	20
<i>Lower Court and Law Enforcement</i>	20
<i>The Appellate Courts</i>	21
FEES ASSOCIATED WITH EXPUNGEMENT	21
MISDEMEANOR EXPUNGEMENT FEES	21
FELONY EXPUNGEMENT FEES.....	21
ACQUITTAL, DISMISSAL & FAILURE TO INDICT FEES.....	22
WAIVER OF FEES FOR INDIGENT PERSONS	22
THE EXPUNGEMENT PROCESS.....	23
STEP 1: CERTIFICATE OF ELIGIBILITY: FOR EXPUNGEMENT OF CONVICTIONS	23
STEP 2: COMPLETE NEEDED AOC FORM	23
STEP 3: FILING THE PETITION FOR EXPUNGEMENT	24
STEP 4: A HEARING ON PETITION FOR EXPUNGEMENT.....	25
<i>Misdemeanors</i>	25
<i>Felonies</i>	25
<i>Dismissal, Acquittal, & Failure to Indict</i>	26
STATUTES RELATED TO EXPUNGEMENT.....	26
KRS 431.073: FELONY CONVICTIONS	26

KRS 431.076: ACQUITTALS, DISMISSALS & FAILURE TO INDICT26
KRS 431.078: MISDEMEANOR, VIOLATION & TRAFFIC INFRACTIONS26
QUICK-REFERENCE EXPUNGEMENT GUIDEBOOK 27

Expungement of Convictions

Felony Convictions

Under certain circumstances, nearly all Class D felonies are expungable. Felony expungement is prohibited for Class C, B, and A felonies and for capital offenses, unless the expungement follows a full pardon. In 2023, expungement was expanded to allow for the expungement of multiple Class D felonies.

Baseline Requirements for all Felony Expungements. KRS 431.073 requires the following for all Class D felony expungements:

1. No criminal charges currently pending. KRS 431.073(5)(c)
2. 5-years from completion of the sentence related to the charge the party is seeking to expunge. KRS 431.073(2). Completion of a sentence is when all conditions have been met, including fines. This period includes all time on probation and parole.
3. No misdemeanor or felony convictions in the 5-years prior to filing a petition for expungement. KRS 431.073(5)(b). Violations, traffic infractions, or non-convictions do not serve as a bar to expungement.
4. Eligible Class D felony which is not listed as specifically excluded. KRS 431.073(1)(d)

Categories of Class D Felony Expungement. Class D felony expungement now falls into 5 categories:

1. Enumerated felonies in KRS 431.073(1)(a).
2. "Series" of enumerated felonies arising from a "single incident." KRS 431.073(1)(b).
3. Granted a full pardon, presumably of any felony class. KRS 431.073(1)(c).
4. Class D felonies generally, with specifically excluded offenses (KRS 189A.010, 508.032, or 519.055, abuse of public office, a sex offense, or an offense committed against a child). KRS 431.073(1)(d).
5. Multiple Class D felony offenses. KRS 431.073(1)(d)

Proof Requirements. Proof requirements will vary based on the type of felony expungement sought. A person seeking expungement must determine their appropriate category of Class D felony expungement and then meet the individual proof requirements. Because categories 4 and 5 of Class D felony expungement require heightened proof requirements and require a hearing, be sure to carefully examine each category and determine if a client falls into more than one subsection. Practitioners should also consider alternatives to expungement, such as Void and Seal, when assisting impacted persons to remove felonies from their records.

Discretionary. Felony expungement is *always discretionary*. KRS 431.073(5).

Limitations on Expungement of Records. If expungement is granted, and the judgement is vacated "the court shall dismiss with prejudice any charges which are eligible for expungement

... upon full payment of the fee.” KRS 431.073(5). “[A]ll records in the custody of the court and any records in the custody of any other agency or official, including law enforcement” shall be expunged. Practitioners should be aware that pursuant to KRS 431.076(4), the Department for Community Based Services (commonly referred to as the Cabinet for Health & Family Services) is exempt from expunging records related to acquittals and dismissals. This language is not included in the statute for felony expungement. Be aware that KRS 431.076(4) may cause issues when seeking expungement of felony records in the possession of the Department for Community Based Services.

Ineligible Felonies

Most Class D felony convictions in Kentucky can be expunged¹¹. A, B, C, and capital offenses cannot be expunged unless they were first fully pardoned. Certain Class D felonies are ineligible for expungement pursuant to KRS 431.073(1)(d). Expungement of multiple Class D felonies is possible, following a hearing and with heightened proof requirements.

The following convictions remain ineligible for expungement:

1. Driving under the Influence, pursuant to KRS 189A.010;
2. Assault 4, Domestic Violence, pursuant to KRS 508.032;
3. Impersonating a Peace Officer, pursuant to KRS 519.055;
4. Abuse of a Public Office;
5. A Sexual Based Offense;
6. An Offense Against a Child; and
7. Convictions which resulted in serious bodily injury or death.

Those wishing to remove the above offenses from their record will need a dismissal of the offense or a pardon. Both paths are difficult but can be considered when looking at paths to relief. If a client has a compelling story, consider speaking with the prosecutor about an agreement to vacate and dismiss or requesting a pardon from the Governor.

Presumptively Eligible Felonies - Enumerated Felonies

Single felonies specifically listed in KRS 431.073(1)(a) are presumptively eligible for Class D felony expungement. These felonies are listed within the statute and also outlined fully in the “Expungement Guidebook” which is included in these materials. All general conditions in KRS 431.073 for Class D felony expungement must be met.

1. No criminal charges currently pending. KRS 431.073(5)(c)
2. 5-years from completion of the sentence related to the charge the party is seeking to expunge. KRS 431.073(2).

¹¹ Class D felony expungement first became available in Kentucky in 2017. At that time, only convictions on a specific list of Class D felonies were eligible for expungement. In 2019, Class D felony expungement was expanded to include nearly all Class D felonies. Effective June 29, 2023, a person may seek expungement of multiple Class D felonies.

3. No misdemeanor or felony convictions in the 5-years prior to filing a petition for expungement. KRS 431.073(5)(b).
4. Eligible Class D felony which is not listed as specifically excluded. KRS 431.073(1)(d).

Expungement Procedure. For expungement of a single presumptively eligible felony, the process is relatively straightforward.

1. Obtain a Certificate of Eligibility from the KSP Records Division
2. Within 30 days of receipt of the Certificate of Eligibility, file in the county and court of conviction:
 - The Certificate of Eligibility
 - Completed AOC Form AOC-496.3
 - Filing fee of \$50

Determination of Eligible Felony. To apply for expungement of a “series” of Class D felonies arising from a single incident the petitioner must first seek a Certificate of Eligibility from the Records Division of the Kentucky State Police. Be aware that the Certificate of Eligibility will reflect the determination by the Kentucky State Police, Records Division, regarding whether the petitioner is eligible for expungement of each individual felony. The Kentucky State Police Records Division does not making the final determination of expungement eligibility. If you feel the determination is in error, you may still file a petition for expungement and put eligibility arguments before the Court.

Notice to the Commonwealth. “Upon payment of the filing fee and filing of the application, the Circuit Court Clerk shall serve a notice of filing” upon the Commonwealth’s attorney that prosecuted the case. KRS 431.073(2)(b). The prosecutor then has 60-days to respond, or longer if good cause is shown. KRS 431.073(2)(b). Even if an extension is granted for the Commonwealth’s response, a hearing “shall occur no later than one hundred twenty (120) days following the filing of the application. KRS 431.073(2)(b).

Hearing Not Required. A hearing cannot be held prior to the Commonwealth’s filing of a response or 120-days, whichever occurs later. KRS 431.073(3). A hearing is not required under this section. “If one hundred twenty (120) days have elapsed since the filing of the application and no response has been received from the victim or the office of the Commonwealth’s attorney ... the court may without a hearing, vacate the judgment. KRS 431.073(6). If a hearing is set, the Clerk shall notify the Commonwealth of the hearing and the Commonwealth shall notify the “victim of the crime, if there is an identified victim.” KRS 431.073(3).

Ensuring Expungement of All Eligible Records. When completing AOC-496.3, be sure to include all agencies which may have a record of the conviction listed in the petition for expungement. Include the Kentucky State Police, Records Division to ensure that the conviction is expunged from state and federal databases. Remember to include all agencies that may maintain records of the arrest, pretrial monitoring, conviction, and any subsequent monitoring or fees. It is better to be overly cautious when completing this section.

Completeness of the Petition. Be aware that the Commonwealth can “object that the application is grossly incomplete.” KRS 431.073(2)(c). If the prosecutor objects in this manner, “the court shall order the person or agency originating the application to supplement the application.” KRS 431.073(2)(c). The language of the statute is concerning because it does not seem to require the Commonwealth to state the grounds for objecting on the ground that an application is “grossly incomplete” yet required the Court to return the petition for additional information. If this occurs, attempt to learn the reasoning for the objection so the petitioner is not delayed for significant periods of time.

More than One Felony Conviction. If a person is seeking expungement of more than one presumptively eligible Class D felonies, they should see the subsequent sections on “Series of Enumerated Felonies from a Single Incident” and “Multiple Class D Felonies.”

A Series of Enumerated Felonies Arising from a Single Incident

Expungement for a “series” of enumerated felonies which “arise from a single incident” is permitted under KRS 431.073(1)(b). The enumerated felonies are listed in 431.073(1)(a) and can be found in the “Expungement Guidebook,” which is included in these materials. When the felony expungement statute was amended in 2023 to allow for multiple felony expungements, the provision allowing for expungement of a series of enumerated felonies arising from a single incident remained in the statute. The 2023 statutory change has yet to be interpreted by the Courts. Practitioners are encouraged to search for new caselaw prior to filing for expungement under this section.

Baseline Requirements apply. KRS 431.073 requires the following for all Class D felony expungements:

1. No criminal charges currently pending. KRS 431.073(5)(c)
2. 5-years from completion of the sentence related to the charge the party is seeking to expunge. KRS 431.073(2).
3. No misdemeanor or felony convictions in the 5-years prior to filing a petition for expungement. KRS 431.073(5)(b).
4. Felony is not specifically excluded from eligibility. KRS 431.073(1)(d).

Single Incident Requirement. The most challenging portion of seeking expungement under this section is establishing that the series of enumerated felonies are part of a “single incident” as the caselaw in this area has not been favorable to those seeking expungement of a series of enumerated felonies. For a series of Class D felonies to arise from a “single incident,” it must be shown that the felonies were “performed in the furtherance of an individual criminal episode” and that the felonies were “closely compressed in terms of time.” Adams v. Commonwealth, 599 S.W.3d 752, 756 (Ky. 2019) (denial of expungement of role in cattle theft which arose over a period of time). In reversing the lower court’s granting of his petition for expungement, the Kentucky Supreme Court emphasized that between each cattle theft, “Adams had more than a

sufficient amount of time to disassociate himself from the criminal act ... formed a new criminal intent and completed a separate and distinct theft.” Adams v. Commonwealth, 599 S.W.3d 752, 756 (Ky. 2019).

The Kentucky Supreme Court ruling in Adams mirrored previous opinions from the Kentucky Court of Appeals. In Commonwealth v. Ford, 543 S.W.3d 579, 581 (Ky. Ct. App. 2018), the Kentucky Court of Appeals held that “[p]assing bad checks on four different days at three different institutions over a ten-day period simply does not constitute a “single incident,” despite the fact that all forgeries were contained in a single indictment and resolved as a single case. Id. In Commonwealth v. Vowels, No. 2016-CA-001629-MR, 2018 WL 4044146, at *1 (Ky. Ct. App. Aug. 24, 2018) (unpublished), the Kentucky Court of Appeals determined that two (2) counts of Burglary and three (3) counts of Theft by Unlawful Taking related to car thefts in 1978 did not constitute a “single incident.” The Court held that while the crimes “are related inasmuch as they are similar in nature, and they occurred within a relatively brief period” they did not “appear to arise from a single incident” because “[e]ach crime was discrete, and following each crime, Vowels had ample time to reflect of his past conduct, and to disassociate himself from further criminal activity Id. at 4.

Consider the “Multiple Felonies” Expungement Option. When determining if expungement under this section is appropriate, consider whether the better route would be to seek expungement of “multiple” felonies under KRS 431.073(1)(d). While there are additional evidentiary requirements under KRS 431.073(1)(d), it may be a more favorable path to relief for some clients, especially considering caselaw limiting the use of “series” which arise from a “single incident.”

Expungement Procedure. The procedure for expungement of a series of enumerated felonies which arise from a single incident is the same as seeking expungement for a single enumerated felony.

1. Obtain a Certificate of Eligibility from the KSP Records Division
2. Within 30 days of receipt of the Certificate of Eligibility, file in the county and court of conviction:
 - The Certificate of Eligibility
 - Completed AOC Form AOC-496.3
 - Filing fee of \$50

Determination of Eligible Felony. To apply for expungement of a “series” of Class D felonies arising from a single incident the petitioner must first seek a Certificate of Eligibility from the Records Division of the Kentucky State Police. Be aware that the Certificate of Eligibility will reflect the determination by the Kentucky State Police, Records Division, regarding whether the petitioner is eligible for expungement of each individual felony. The Kentucky State Police Records Division does not make the final determination of expungement eligibility. If you feel the determination is in error, you may still file a petition for expungement and put eligibility arguments before the Court.

Notice to the Commonwealth. “Upon payment of the filing fee and filing of the application, the Circuit Court Clerk shall serve a notice of filing” upon the Commonwealth’s attorney that prosecuted the case. KRS 431.073(2)(b). The prosecutor then has 60-days to respond, or longer if good cause is shown. KRS 431.073(2)(b). Even if an extension is granted for the Commonwealth’s response, a hearing “shall occur no later than one hundred twenty (120) days following the filing of the application. KRS 431.073(2)(b).

Hearing Not Required. A hearing cannot be held prior to the Commonwealth’s filing of a response or 120-days, whichever occurs later. KRS 431.073(3). A hearing is not required under this section. “If one hundred twenty (120) days have elapsed since the filing of the application and no response has been received from the victim or the office of the Commonwealth’s attorney ... the court may without a hearing, vacate the judgment. KRS 431.073(6). If a hearing is set, the Clerk shall notify the Commonwealth of the hearing and the Commonwealth shall notify the “victim of the crime, if there is an identified victim.” KRS 431.073(3).

Ensuring Expungement of All Eligible Records. When completing AOC-496.3, be sure to include all agencies which may have a record of the conviction listed in the petition for expungement. Include the Kentucky State Police, Records Division to ensure that the conviction is expunged from state and federal databases. Remember to include all agencies that may maintain records of the arrest, pretrial monitoring, conviction, and any subsequent monitoring or fees. It is better to be overly cautious when completing this section.

Completeness of the Petition. Be aware that the Commonwealth can “object that the application is grossly incomplete.” KRS 431.073(2)(c). If the prosecutor objects in this manner, “the court shall order the person or agency originating the application to supplement the application.” KRS 431.073(2)(c). The language of the statute is concerning because it does not seem to require the Commonwealth to state the grounds for objecting on the ground that an application is “grossly incomplete” yet required the Court to return the petition for additional information. If this occurs, attempt to learn the reasoning for the objection so the petitioner is not delayed for significant periods of time.

[Pardoned Felonies of All Classes](#)

Expungement for a fully pardoned offense is available pursuant to KRS 431.073(1)(c). It is unclear whether a person is entitled to expungement of more than one fully pardoned offense. All other rules and requirements described in “Enumerated Felonies” apply.

Pardon applications are sent directly to the Governor’s office, along with a statement of the reasons for seeking relief and three letters of recommendation. Each completed application is sent to the prosecutor for recommendation. For more information on the pardon process, visit the Kentucky Governor’s official website.

Expungement Procedure. The procedure for expungement of a pardoned felony is the same as a single enumerated felony or a series of enumerated felonies. The process is:

1. Obtain a Certificate of Eligibility from the KSP Records Division
2. Within 30 days of receipt of the Certificate of Eligibility, file in the county and court of conviction:
 - The Certificate of Eligibility
 - Completed AOC Form AOC-496.3
 - Filing fee of \$50

Notice to the Commonwealth. “Upon payment of the filing fee and filing of the application, the Circuit Court Clerk shall serve a notice of filing” upon the Commonwealth’s attorney that prosecuted the case. KRS 431.073(2)(b). The prosecutor then has 60-days to respond, or longer if good cause is shown. KRS 431.073(2)(b). Even if an extension is granted for the Commonwealth’s response, a hearing “shall occur no later than one hundred twenty (120) days following the filing of the application. KRS 431.073(2)(b).

Hearing Not Required. A hearing cannot be held prior to the Commonwealth’s filing of a response or 120-days, whichever occurs later. KRS 431.073(3). A hearing is not required under this section. “If one hundred twenty (120) days have elapsed since the filing of the application and no response has been received from the victim or the office of the Commonwealth’s attorney ... the court may without a hearing, vacate the judgment. KRS 431.073(6). If a hearing is set, the Clerk shall notify the Commonwealth of the hearing and the Commonwealth shall notify the “victim of the crime, if there is an identified victim.” KRS 431.073(3).

Ensuring Expungement of All Eligible Records. When completing AOC-496.3, be sure to include all agencies which may have a record of the conviction listed in the petition for expungement. Include the Kentucky State Police, Records Division to ensure that the conviction is expunged from state and federal databases. Remember to include all agencies that may maintain records of the arrest, pretrial monitoring, conviction, and any subsequent monitoring or fees. It is better to be overly cautious when completing this section.

[Class D Felonies, Not Otherwise Excluded](#)

In 2019, the felony expungement law was modified to allow for expungement of all Class D felonies, unless specifically excluded from eligibility. KRS 431.073(1)(d). If you encounter a Prosecutor or Court that argues a Class D felony must be enumerated to be expungement eligible, see arguments in the next section titled “Multiple Class D Felonies.”

Baseline Requirements apply. KRS 431.073 requires the following for all Class D felony expungements:

1. No criminal charges currently pending. KRS 431.073(5)(c)
2. 5-years from completion of the sentence related to the charge the party is seeking to expunge. KRS 431.073(2).

3. No misdemeanor or felony convictions in the 5-years prior to filing a petition for expungement. KRS431.073(5)(b).
4. Felony is not specifically excluded from eligibility. KRS 431.073(1)(d).

Expungement Procedure. The procedure for expungement of a series of enumerated felonies which arise from a single incident is the same as seeking expungement for a single enumerated felony.

1. Obtain a Certificate of Eligibility from the KSP Records Division
2. Within 30 days of receipt of the Certificate of Eligibility, file in the county and court of conviction:
 - The Certificate of Eligibility
 - Completed AOC Form AOC-496.3
 - Filing fee of \$50

Potential Certificate of Eligibility Issues. The first hurdle to be cleared is that the Certificate of Eligibility may list non-enumerated felonies or multiple felonies as “not eligible.” If this occurs, considering calling the Records Division of the Kentucky State Police and see if the inclusion was an error. Even if KSP Records is unable to change their determination, the Court is the ultimate decision-maker on whether a felony is expungable.

Ensuring Expungement of All Eligible Records. When completing AOC-496.3, be sure to include all agencies which may have a record of the conviction listed in the petition for expungement. Include the Kentucky State Police, Records Division to ensure that the conviction is expunged from state and federal databases. Remember to include all agencies that may maintain records of the arrest, pretrial monitoring, conviction, and any subsequent monitoring or fees. It is better to be overly cautious when completing this section.

Notice to the Commonwealth. “Upon payment of the filing fee and filing of the application, the Circuit Court Clerk shall serve a notice of filing” upon the Commonwealth’s attorney that prosecuted the case. KRS 431.073(2)(b). The prosecutor then has 60-days to respond, or longer if good cause is shown. KRS 431.073(2)(b). Even if an extension is granted for the Commonwealth’s response, a hearing “shall occur no later than one hundred twenty (120) days following the filing of the application. KRS 431.073(2)(b).

Hearing Required. At the required hearing, both the petitioner and the “victim” have a right to testify and additional evidence can be heard by the Court. KRS 431.073(4)(b). The Court must then determine if “circumstances warrant vacation and expungement,” and that harm to the person seeking expungement “clearly outweighs the public interest in the criminal history record information being publicly available.” KRS 431.073(4)(c).

- KRS 431.0873(4)(c) asks the Court to weigh the harm to the petitioner versus public interest in knowing a person’s criminal history. Remember that in many cases the public interest lies with expungement. Felony expungement in Kentucky was achieved largely

due to the need for more workers without a criminal legal history that would bar them from employment. Kentucky benefits when people can move beyond their legal past and obtain meaningful employment. This benefit is not only to the individual, but also to the business owners and communities where the businesses reside. Acquittal, Dismissal and Failure to Indict Expungement: [AOC-497.2](#)

It is also important to fully develop the background story of your client and show why expungement is appropriate, and the harm of the prior felony conviction. Think creatively when presenting the harm to your client. Include collateral consequences such as the inability to get certain degrees, being barred as chaperone for school field trips, lack of eligibility for certain jobs, and the impact of those things on the petitioner and their families.

Multiple Class D Felonies

A person may petition for expungement of “multiple felony offenses” which are eligible under KRS 431.073(1)(d). All Class D felonies are eligible for expungement, unless specifically excluded from eligibility. Expungement under this category has heightened evidentiary requirements and a hearing is mandatory.

Baseline Requirements apply. KRS 431.073 requires the following for all Class D felony expungements:

1. No criminal charges currently pending. KRS 431.073(5)(c)
2. 5-years from completion of the sentence related to the charge the party is seeking to expunge. KRS 431.073(2).
3. No misdemeanor or felony convictions in the 5-years prior to filing a petition for expungement. KRS 431.073(5)(b).
4. Felony is not specifically excluded from eligibility. KRS 431.073(1)(d).

PRACTICE TIP:

Expungement of a series of enumerated felonies arising from a single incident does not require a hearing. However, proving a single incident can be challenging. Evaluate the argument for expungement and determine which hurdle is higher for your client, establishing a “single incident” or withstanding the heightened burden at the hearing under “multiple felonies.”

Expungement Procedure. The procedure for expungement of a series of enumerated felonies which arise from a single incident is the same as seeking expungement for a single enumerated felony.

3. Obtain a Certificate of Eligibility from the KSP Records Division
4. Within 30 days of receipt of the Certificate of Eligibility, file in the county and court of conviction:
 - The Certificate of Eligibility
 - Completed AOC Form AOC-496.3
 - Filing fee of \$50

Potential Certificate of Eligibility Issues. The first hurdle to be cleared is that the Certificate of Eligibility may list a “series” of enumerated felonies or multiple felonies as “not eligible.” If this occurs, then a petition for expungement can still be filed but arguments outlining eligibility may be required. Remember, the Kentucky State Police Records Division does not make the final determination of expungement eligibility. The ultimate decision regarding eligibility is made by the Court.

Ensuring Expungement of All Eligible Records. When completing AOC-496.3, be sure to include all agencies which may have a record of the conviction listed in the petition for expungement. Include the Kentucky State Police, Records Division to ensure that the conviction is expunged from state and federal databases. Remember to include all agencies that may maintain records of the arrest, pretrial monitoring, conviction, and any subsequent monitoring or fees. It is better to be overly cautious when completing this section.

Notice to the Commonwealth. “Upon payment of the filing fee and filing of the application, the Circuit Court Clerk shall serve a notice of filing” upon the Commonwealth’s attorney that prosecuted the case. KRS 431.073(2)(b). The prosecutor then has 60-days to respond, or longer if good cause is shown. KRS 431.073(2)(b). Even if an extension is granted for the Commonwealth’s response, a hearing “shall occur no later than one hundred twenty (120) days following the filing of the application. KRS 431.073(2)(b).

Hearing Required. At the required hearing, both the petitioner and the “victim” have a right to testify and additional evidence can be heard by the Court. KRS 431.073(4)(b). The Court must then determine if “circumstances warrant vacation and expungement,” and that harm to the person seeking expungement “clearly outweighs the public interest in the criminal history record information being publicly available.” KRS 431.073(4)(c).

KRS 431.0873(4)(c) asks the Court to weigh the harm to the petitioner versus public interest in knowing a person’s criminal history. Remember that in many cases the public interest lies with expungement. Felony expungement in Kentucky was achieved largely due to the need for more workers without a criminal legal history that would bar them from employment. Kentucky benefits when people are able to move past their legal past and obtain meaningful employment. This benefit is not only to the individual, but also to the business owners and communities where the businesses reside.

It is also important to fully develop the background story of your client and show why expungement is appropriate, and the harm of the prior felony conviction. Think creatively when presenting the harm to your client. Include collateral consequences such as the inability to get certain degrees, being barred as chaperone for school field trips, lack of eligibility for certain jobs, and the impact of those things on the petitioner and their families.

Multiple Class D Felonies Eligible, Unless Specifically Excluded. The 2023 amendments to the expungement statute have not yet been interpreted by the Courts. It is possible that some

prosecutors will argue that expungement of multiple felonies is only permissible when all the Class D felonies are specifically enumerated in the statute. Review of the history of felony expungement in Kentucky, the language of the statute, and available AOC forms, show that expungement of non-enumerated felonies is permissible.

KRS 431.073 outlines 5 categories where a person is eligible for felony expungement:

1. Category 1 (enacted 2016): Enumerated Class D felonies. KRS 431.073(1)(a).
2. Category 2 (enacted 2016): “Series” of enumerated Class D felonies arising from a “single incident.” KRS 431.073(1)(b).
3. Category 3 (enacted 2016): Pardoned felonies (any class of felony). KRS 431.073(1)(c).
4. Category 4 (enacted 2019): Class D felonies, not otherwise excluded. KRS 431.073(1)(d)
5. Category 5 (enacted 2023): Multiple Class D felonies, not otherwise excluded. 431.073(1)(d)

The crucial elements that distinguish Category 4 and Category 5 are the mandatory hearing and heightened evidentiary elements placed on the petitioner. The additional hearing safeguards were initially applied to Category 4, and now Category 5 allows for an expansion of expungement, but with safety of the public being fully considered through a hearing process. If a person is eligible for expungement under Category 1, 2, or 3, then they are not required to have the hearing required in KRS 431.073(4). However, if you wish to seek expungement of “multiple” felonies or a “series of felony offenses,” (without the requirement of “single incident”) whether listed in (1)(a), or not, then the additional safeguards of KRS 471.073(4) are triggered.

The intent to make available the avenue of KRS 431.074(1)(d) to all Class D felonies (excepting those specifically excluded) is also reflected in AOC-4963, the form required for the petition for felony expungement. The categories for petitioning for Class D felony expungement are as follows:

1. One of the eligible offenses listed in KRS 431.073(1)(a)
2. Series of felonies listed in KRS 431.073(1)(a) which arose from a “single incident”
3. Pardoned felony of any class
4. Eligible offense under KRS 431.073 (additional requirements in hearing)
5. Multiple eligible felony offenses under KRS 431.073(1)(d) (additional requirements in hearing)

Laws governing statutory interpretation also requires a 5-category interpretation. “In construing statutes, our goal, of course, is to give effect to the intent of the General Assembly. We derive that intent, if at all possible, from the language the General Assembly chose, either as defined by the General Assembly or as generally understood in the context of the matter under consideration. *Shawnee Telecom Resources, Inc. v. Brown*, 354 S.W.3d 542, 551 (Ky. 2011) (citing, *Osborne v. Commonwealth*, 185 S.W.3d 645 (Ky.2006)). The 2019 modifications to the felony expungement statute, KRS 431.073, seems to directly mirror barriers to expungement in the interpretation of “single incident.” See *Commonwealth v. Ford*, 543 S.W.3d 579, 581 (Ky. Ct. App. 2018); *Adams v. Commonwealth*, 599 S.W.3d 752, 756 (Ky. 2019); *Commonwealth v. Vowels*, No.

2016-CA-001629-MR, 2018 WL 4044146, at *1 (Ky. Ct. App. Aug. 24, 2018) (unpublished). In an attempt to widen access to expungement, the legislature created a path to expungement with heightened requirements intended to protect the public and ensure an expungement recipient is deserving, and to reduce barriers to relief, which may read as unclear or contradictory. However, with the 2023 expansion to multiple felonies not otherwise prohibited, the legislative intent to expand felony expungement became clearer.

Interpretation of the expungement statute in the manner above is also a more logical interpretation of the intent of the General Assembly. The felonies enumerated in KRS 431.073(1)(a) are the felonies first made eligible for expungement by the General Assembly. It was argued that these were the “least bad” Class D felonies, and they should therefore be expungable. In 2019, the list grew to include “worse” Class D felonies, but with additional safeguards, under KRS 431.073(4). Within that newly created category, less restrictive language for multiple felonies was also added. What initially was merely a “series of eligible offenses,” was later amended in 2023 to include “multiple felony offenses,” not restricted to a series. The unavoidable implication is that the General Assembly was intentionally widening access to multiple felony expungement. It would be contrary to that plain legislative intent to limit the expungement of the “least bad” Class D felonies, while expanding access to expungement of the “worse” Class D felonies. To read the statute otherwise would result in an absurd outcome, and “[w]e ... presume that the General Assembly did not intend an absurd statute or an unconstitutional one. *Layne v. Newberg*, 841 S.W.2d 181 (Ky.1992).

The 5-category approach is also needed so that all portions of the statute are read in their entirety. This reading is required based on laws surrounding statutory interpretation, as “[w]e presume that the General Assembly intended for the statute to be construed as a whole, for all of its parts to have meaning, and for it to harmonize with related statutes.” *Hall v. Hospitality Resources, Inc.*, 276 S.W.3d 775 (Ky.2008); *Lewis v. Jackson Energy Cooperative Corporation*, 189 S.W.3d 87 (Ky.2005). The plain language of KRS 431.073(1)(d) does not exclude felonies enumerated in subsection (1)(a). Indeed, the language read as a whole is: “A person who has been ... Convicted of a Class D felony ... which was not a violation of [specifically listed excluded Class D felonies], a series of felony offenses, or multiple felony offenses, eligible under this paragraph ... may file ... and application to have the judgment vacated.” To remove enumerated felonies from eligibility would therefore be contrary to the plain meaning of the statute.

Impact of Expungement of Class D Felonies and Pardons

Upon entry of an order vacating and expunging conviction and payment of all fees, the record shall be expunged. KRS 431.073(7). “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.” KRS 431.073(7). While proof of expungement is required under the statute, practitioners should also ensure that all involved agencies provided such proof. Indeed “[t]he court and other agencies shall reply to any inquiry that no record exists on the matter.” KRS 431.073(7).

When advising clients on the impact of expungement, be sure to advise that they “shall not have to disclose the fact of the record or any matter relating thereto on any application for employment, credit, or other type of application.” KRS 431.073(7). Further, “[i]f 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.” KRS 431.073(7). Remind your clients that they must register to vote once the expungement is final.

Payment of Fees

The total fee for a felony expungement is \$300. A \$50 non-refundable filing fee is due at the time the application is filed. If the application is granted, the petitioner must pay an expungement fee of \$250, which can be made in installment payments. The expungement will not be completed until the full \$250 has been paid.

It is important to remind persons on a payment plan that their expungement will not be final until the payment of all fees. KRS 431.073(7). This means that the conviction will continue to remain on their record and subject to viewing by members of the public. This also means that their right to vote will not be restored until payment is made in full.

Persons may request a waiver of the filing fees from the Court. This is within the discretion of the Court. See Waiver of Fees for Indigent Persons for more information.

Alternate Paths to a Removing Felonies from a Records

When examining the best path to a complete expungement for each client, remember that alternatives to expungement may assist in the process. The primary form of relief that is often overlooked is the Void and Seal process contained in KRS 218A.275 for first time offense of Possession of a Controlled Substance. This avenue of relief is only available to those who have not previously been convicted of Possession of a Controlled Substance. KRS 218A.275(12). The Void and Seal process is available to a person only one time. KRS 218A.275(7).

Please note that the Void and Seal process is not a full expungement. “If the court voids a conviction ... the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency official, including law enforcement.” KRS 218A.275(9). “After the sealing of the record, the proceedings in the matter shall not be used against [the person] except for the purposes of determining the person’s eligibility to have [their] conviction voided” under the same statute. KRS 218A.275(10). However, inspection of the voided and sealed conviction is possible pursuant to a court order and KRS 27A.099. KRS 218A.275(11). In effect, the charge is undone and hidden, but it is not removed from a criminal history.

Misdemeanor Convictions

Under KRS 431.078, a person may apply to expunge an unlimited number of misdemeanors and may seek misdemeanor expungement an unlimited number of times. For a person with only a single misdemeanor or only one case with multiple misdemeanor convictions, expungement is mandatory. KRS 431.073(4). Expungement of multiple sets of misdemeanors is discretionary. KRS 431.073(5).

Requirements for Misdemeanor Expungement

Eligibility for misdemeanor expungement requires the following:

1. **No criminal charges currently pending.** KRS 431.073(4)(c); KRS 431.073(5)(c)
2. **5-years from completion of the sentence** related to the charge the party is seeking to expunge. KRS 431.073(2). Completion of a sentence is when all conditions have been met, including fines.
3. **No misdemeanor or felony convictions in the 5-years prior to filing a petition for expungement.** KRS 431.073(4)(b), KRS 431.073(5)(b). Violations, traffic infractions, or non-convictions do not serve as a bar to expungement.
4. **Sexual based offense and offenses against children are not expungable.** KRS 431.073(4)(a), KRS 431.073(5)(a). These terms are not defined in the statute.
5. **All enhancement periods have concluded.** The offense may not have been subject to enhancement for a second or subsequent offense or the time for the enhancement has expired. KRS 431.073(4)(d), KRS 431.073(5)(d). Expungement will be impacted by changes in the law related to enhancement periods, an example is that when DUI enhancement was extended to 10-years, so was the required waiting time for expungement.

When granted for a single misdemeanor, and if granted for a series of misdemeanors, “the proceedings in the case shall be deemed never to have occurred.” KRS 431.078(6). It should be noted that misdemeanor expungement is retroactive for “persons convicted of a misdemeanor prior to July 14, 1992” if they were convicted prior to the “inception of the District Court” in their county. KRS 431.078(10). Additionally, any person denied expungement “prior to June 25, 2013, due to the presence of a traffic infraction” on their records “may file a new petition for expungement” under this statute. KRS 431.078(12).

Sexual Based Offenses & Offenses Against Children

“Sexual based offense” and “offense against a minor” are not defined in the expungement statute. Guidance on the interpretation of “sex offense is provided in KRS 17.500-17.580. While practitioners may be confined by statutory definitions on this case, be aware that certain misdemeanor offenses have a statute title that appears to be a “sex offense” when the elements do not contain sexual elements. When evaluating an “offense against a minor,” look to the plain meaning of the offense. Miller v. Commonwealth, 2004 WL 315161 (Ky. App. 2004). Think creatively about how to best assist the client, and evaluate whether the offense can be

interpreted as an offense against the morals and values of society, as opposed to a named complaining witness.

Enhancement Periods Have Concluded

The offense may not have been subject to enhancement for a second or subsequent offense or the time for the enhancement has expired. KRS 431.073(4)(d), KRS 431.073(5)(d). Expungement will be impacted by changes in the law related to enhancement periods, an example is that when DUI enhancement was extended to 10-years, so was the required waiting time for expungement. Commonwealth v. Jackson, 529 S.W.3d 739 (Ky. 2017) (expungement 10-year look-back period, extended from 5 years, is applicable to those convicted under the 5-year look-back period).

Be aware of misdemeanor offenses which carry a lifetime enhancement such as:

- Trafficking
- Cultivation
- Unauthorized use of a Motor Vehicle

Violations

The process for expungement of violations is the same as that for misdemeanors. KRS 431.078(1)(a); See, “Requirements for Misdemeanor Expungement.” For the purpose of violation expungement, the term “violation” has the same meaning as in KRS 500.080.

Non-Convictions

KRS 431.076 sets forth the process for expungement of dismissals, acquittals and failure to indict. Acquittals are always entitled to automatic expungement after July 15, 2020, and presumptively expungable 60-days after acquittal. Charges after failure to indict are also presumptively expungable after 6-months of inaction. Dismissals with prejudice and dismissals without prejudice are treated differently under the statute, as outlined below. While dismissals with prejudice are automatically expunged after July 15, 2020, and presumptively expungable, dismissals without prejudice are subject to waiting periods.

The impact of a completed expungement of an acquittal, dismissal, or failure to indict is tremendous on the life of an impacted person. “After the expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall delete or remove the records from their computer systems so that any official state-performed background check will indicate that the records do not exist.” KRS 431.076(6).

Acquittals

Automatic expungement is available for acquittals that were received on or after July 15, 2020. KRS 431.076(1)(a). Expungement for acquittals received prior to July 15, 2020, are also available,

but will require additional steps to secure the expungement. The process for acquittals received prior to July 15, 2020, should be used for automatic expungement that is not received due to error. KRS 431.076(1)(b).

Automatic Expungement After Acquittal. KRS 431.076(1)(a) requires the Court to order a record expunged thirty (30) days after the Court enters an order of acquittal of criminal charges against a person. The only exception to this requirement is if a person objects to the expungement. Counsel should advise their client on the impact of an expungement after acquittal, and whether there is any reason they may not want their record expunged. While expungement is automatic, if a client determines that expungement is in their best interest, counsel should still request expungement thirty (30) days after the acquittal. Because mistakes happen, practitioners are encouraged to confirm that the Expungement Order is entered and properly sent to KSP Records and all other agencies in connection with the acquitted charges.

Retain a copy of the expungement order so mistakes can be corrected after the court file is expunged. Without action from the person who was acquitted of charges, the charges should be expunged. Because mistakes happen, a practitioner should remind the court that an expungement order should be entered and confirm that the Expungement Order was entered and properly sent to KSP Records and all other agencies in connection with the acquitted charges.

Request for Expungement After Acquittal. Expungement following an acquittal is available to all persons, regardless of acquittal date. KRS 431.076(8). If a persons record of acquittal is not automatically expunged, due to mistake or date of acquittal, relief is available under KRS 431.076(1)(b). A request for expungement after acquittal cannot be filed prior to sixty (60) days after acquittal. KRS 431.076(2)(a).

A certificate of eligibility is not needed when seeking expungement following acquittal. There is also no filing fee. To seek expungement following acquittal, file AOC form AOC-497.2 in the court of acquittal.

Dismissed Charges

Expungement of dismissed charges, both with and without prejudice, is available. KRS 431.076. Expungement is limited to charges which were not received “in exchange for a guilty plea to another charge.” KRS 431.076(1)(a).

Determining whether a conviction has been dismissed with or without prejudice can be difficult due to a lack of consistency in how dismissals are entered in Courtnet. If it is unclear whether a case was dismissed with or without prejudice, a formal sentencing order or docket sheet can be requested from the Clerk’s office. If neither is available, a review of the video record may be necessary.

A trial court's dismissal of an indictment, without consent of the Commonwealth, should be deemed "without prejudice" due to separation of powers concerns. Keeling v. Commonwealth, 381 S.W.3d 248, 258059 (Ky. 2012). Keeling overrules previous application of CR 41.02(3) to criminal proceedings by virtue of RCr 13.04. See, Commonwealth v. Hicks, 869 S.W.2d 35, 36 (Ky. 1994)(overruled by Keeling, supra). It should be noted that when written and oral statements regarding dismissal are inconsistent, the written statements "shall prevail and the [oral statements] shall be disregarded." Hicks, supra.

Dismissal With Prejudice

If a charge is dismissed with prejudice and the dismissal was not in exchange for a guilty plea to another charge, the person is entitled to automatic expungement. KRS 431.076(1)(a). Automatic expungement applies to dismissals with prejudice after July 15, 2020. Expungement of dismissals with prejudice prior to July 15, 2020 is also available but requires a few additional steps. KRS 431.076(1)(b).

Automatic Expungement After Dismissal with Prejudice. KRS 431.076(1)(a) requires the Court to order a record expunged thirty (30) days after the Court enters an order of dismissal with prejudice of all criminal charges and not in exchange for a guilty plea to another charge. The only exception to this requirement is if a person objects to the expungement. Counsel should advise their client on the impact of an expungement after acquittal, and whether there is any reason they may not want their record expunged. While expungement is automatic, if a client determines that expungement is in their best interest, counsel should still request expungement thirty (30) days after the acquittal. Because mistakes happen, practitioners are encouraged to confirm that the Expungement Order is entered and properly sent to KSP Records and all other agencies in connection with the acquitted charges.

Retain a copy of the expungement order so mistakes can be corrected after the court file is expunged. Without action from the person who was acquitted of charges, the charges should be expunged. Because mistakes happen, a practitioner should remind the court that an expungement order should be entered and confirm that the Expungement Order was entered and properly sent to KSP Records and all other agencies in connection with the acquitted charges.

Request for Expungement After Dismissal with Prejudice. Expungement following dismissal with prejudice but not in exchange for a guilty plea to another offense, regardless of acquittal date. 431.076(1)(b). If a person's record of acquittal is not automatically expunged, due to mistake or date of acquittal, relief is available under KRS 431.076(1)(b). A request for expungement after acquittal cannot be filed prior to sixty (60) days after acquittal. KRS 431.076(2)(a).

A certificate of eligibility is not needed when seeking expungement following a dismissal with prejudice. There is also no filing fee. To seek expungement of a dismissal with prejudice, file AOC form AOC-497.2 in the court of dismissal. If the Court finds that the petition is properly brought, "the court shall grant the petition and order the expunging of records." KRS 431.076(3)(a).

Dismissal Without Prejudice

Expungement following a dismissal without prejudice is available to all persons, regardless of dismissal without prejudice date. KRS 431.076(1)(b); KRS 431.076(8). However, a waiting-period will apply to any dismissal without prejudice. The following waiting periods apply:

1. Felony charges dismissed without prejudice are eligible for expungement three (3) years following “the date of the order of dismissal without prejudice.” KRS 431.076(2)(c)(1).
2. Misdemeanor charges dismissed without prejudice are eligible for expungement one (1) year following “the date of the order of dismissal without prejudice.” KRS 431.076(2)(c)(2)

A certificate of eligibility is not needed when seeking expungement following a dismissal without prejudice. There is also no filing fee. To seek expungement of a dismissal without prejudice, file AOC form AOC-497.2 in the court where charges were dismissed without prejudice. “If the court finds the petition under (1)(b) of this section is properly brought, the court shall grant the petition and order the expunging of records.” KRS 431.076(3)(a).

Failure to Indict

Failure to indict occurs when a person is charged in District Court with a felony, and the case is then referred to the Grand Jury for indictment. Due to constraints of RCr 5.22 where a person shall be released from custody and bond conditions if not indicted within 60 days, cases are often resolved within that timeframe. In cases where an indictment is not received and information has not been filed by the Commonwealth’s attorney (also known as “direct indictment”) within 6 months, the impacted person is eligible for expungement of the pending charges. Practitioners should be aware that this does not prevent future indictment but does remove the charge from the record of the impacted person.

KRS 431.076(1)(c) A person against whom felony charges originally filed in the District Court have not resulted in an indictment by the grand jury or in an information filed by the Commonwealth’s attorney may petition the District Court in which the charges were filed to dismiss and expunge all charges for which an indictment or information has not issued. An expungement petition shall not be filed sooner than 6 months “following the date of the District Court decision to hold the matter to the grand jury.” KRS 431.076(2)(b).

A certificate of eligibility is not needed when seeking expungement following failure to indict. There is also no filing fee. To seek expungement following a failure to indict, file AOC form AOC-497.2 in the court where there was no indictment (following the 6-month waiting period). The petition “shall be served upon the office of the county and Commonwealth’s attorneys that prosecuted the case.” KRS 431.076(3)(b). The prosecuting agency then has 90-days to file a response. KRS 431.076(3)(b)(2). If a response is not filed in 90-days, the court “shall dismiss the charges without prejudice and order the expunging of records” KRS 431.076(3)(b)(3). If a

response is filed, “ninety (90) days after the date the response is filed, if an indictment has not been issued, the court shall dismiss without prejudice the charges for which an indictment has not been issued and order the expunging of the records.” KRS 431.076(3)(b)(4).

Agencies and Entities to Expunge Records

For expungement to be an effective tool for clients, we must ensure that all agencies retaining records related to our clients must be notified. Further, each entity must provide proof that records have been indeed expunged. A client will be deeply impacted if they report they have not been charged or convicted of an offense, and evidence of the charge is later discovered. The practitioner must work diligently to ensure that expungement is accomplished.

Practitioners should be aware that inspection of records is available after expungement but “only upon petition by the person who is the subject of the records and only to those persons named in the petition.” KRS 431.076(7). This portion of the statute is essential because often the Records of the Kentucky State Police are not properly notified of expungement. Without ability to access these records after expungement could result in a disastrous result where expungement has been granted but a petitioner cannot prove expungement due to lack of access to necessary court records. This also highlights the need for practitioners to ensure that expungement orders notice all parties retaining records of conviction, including the Kentucky State Police, Records Division.

Lower Court and Law Enforcement

“An order of expungement pursuant to this section shall expunge all criminal records in the custody of the court and any criminal records in the custody of any other agency or official, including law enforcement records...” KRS 431.076(4). “Every agency, with records relating to the arrest, charge, or other matters arising out of the arrest or charge, that is ordered to expunge records, shall certify to the court within sixty (60) days of the entry of the expungement order, that the required expunging action has been completed. All orders enforcing the expungement procedure shall also be expunged.” KRS 431.076(4).

It is important that practitioners research and be aware of all agencies involved in the charging of their client. This may include entities such as city or local police, probation and parole, pretrial services, the local or other regional jail. Be sure that each entity is included in the Order for expungement. Indeed, “[t]he 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.” KRS 431.076(6).

The only exception is that “no order no order of expungement pursuant to this section shall expunge records in the custody of the Department for Community Based Services.” KRS 431.076(4). The Department for Community Based Services is most commonly known as the Cabinet for Health and Family Services.

The Appellate Courts

Expungement of appellate records is also essential for a client to truly receive a fresh start. If a potential service provider, employer, or community member can simply search appellate court records and find evidence of a prior charge, the client may be greatly impacted. The statute allows for expungement of appellate court records for dismissed charges. This will not impact failure to indict as appellate action would not be appropriate on the pending charge.

Misdemeanor Expungement Impact on Appellate Records. “If an expungement is ordered under subsection (1)(a) or (b) of this section, an appellate court which issued an opinion in the case shall order the appellate case file to be sealed and also direct that the version of the appellate opinion published on the court’s Web site be modified to avoid use of the defendant’s name in the case title and body of the opinion.” KRS 431.076(5)(a).

Felony Expungement Impact on Appellate Records. Expungement does not, however, “nullify any findings of fact or conclusion of law made by the trial court or any appellate court.” KRS 431.073(8). Expungement also “shall not constitute a finding of innocence regarding the conviction.” KRS 431.073(8). Remember, the expungement process makes it as though the conviction never occurred, which is different than innocence, but still a distinction that we must remind those that we assist.

Fees Associated with Expungement

Misdemeanor Expungement Fees

The filing fee for a misdemeanor expungement is \$100. KRS 431.078(7). The first \$50 is non-refundable. KRS 431.078(7). If expungement is not granted, the petitioner can be reimbursed of the remaining \$50 of the fee. Persons may request a waiver of the filing fees from the Court. This is within the discretion of the Court. See Waiver of Fees for Indigent Persons for more information.

Felony Expungement Fees

The total fee for felony expungement is \$300. KRS 431.073(10); KRS 431.073(11). The filing fee that must accompany the petition for expungement and certificate of eligibility is \$50. KRS 431.078(10). An additional \$250 is due “[u]pon issuance of an order vacating and expunging a conviction.” The expungement will not be final until full payment is received. KRS 431.073(5).

Payment plans are available to those unable to immediately pay \$250. KRS 431.073(11); KRS 543.020. If an installment payment plan is selected, the court must give the impacted person at

least 18-months to pay, from the date of the order. KRS 431.073(11)(a). The Court must also provide information on total amount due, payment frequency, and due date for all payment. KRS 431.073(11)(b). The notice should also state that “expungement cannot be completed until full payment is received,” and if that payment cannot be made in full, the petitioner “shall appear on the date to show good cause” as to why payment has not been made. KRS 431.073(11)(b). Remember that “no applicant shall be ordered to jail for failure to complete an installment plan” when related to a petition for expungement. KRS 431.073(11)(b).

Persons may request a waiver of the filing fees from the Court. This is within the discretion of the Court. See Waiver of Fees for Indigent Persons for more information.

Acquittal, Dismissal & Failure to Indict Fees

There is no fee for expungement associated with acquittal, dismissal, and failure to indict. KRS 431.076. A Certificate of Eligibility is not required. The only required action is to file the appropriate AOC form (AOC-497.2) in the court of acquittal or dismissal without prejudice.

Automatic expungement of acquittals and dismissals with prejudice which take place on or after July 15, 2020, should occur without any action or payment of any fee or fine by the impacted person. KRS 431.076(1)(a).

For acquittals and dismissals without prejudice prior to July 15, 2020, or if automatic expungement does not occur, the impacted person may file for expungement after 60-days. KRS 431.076(2)(a).

- For dismissals without prejudice of a misdemeanor the application can be made after 1-year, no filing fee is required. KRS 431.076(2)(c)(2).
- For dismissals without prejudice for a felony, the application can be made after 3-years, no filing fee is required. KRS 431.076(2)(c)(1).
- For failure to indict, the application can be made after 6-months, no filing fee is required. KRS 431.076(2)(b).

Waiver of Fees for Indigent Persons

The statute does not specifically state whether the fee is waivable. Practitioners working on behalf of indigent clients should seek waiver of fees with a motion to proceed *in forma pauperis*. See KRS 453.190 (“A court shall allow a poor person residing in this state to file or defend any action or appeal therein without paying costs.”); Spees v. Kentucky Legal Aid, 274 S.W.3d 447, 450 (Ky. 2009).

In Jones v. Commonwealth, 636 S.W.3d 503 (Ky. 2021), the Kentucky Supreme Court held that an expungement proceeding is an “action” under the in forma pauperis statute, and the in forma pauperis statute applies to both the \$50 filing fee and \$250 filing fee for felony expungements.

The fee associated with the Certificate of Eligibility, which is issued by the Kentucky State Police Records Division, cannot be waived under any circumstance.

The Expungement Process

Step 1: Certificate of Eligibility: For Expungement of Convictions

Request a Certificate of Eligibility (for expungement of convictions, only):

- **Request online:** Go to the Kentucky Administrative Office of the Courts webpage and follow the instructions to request a Certificate of Eligibility for expungement.
 - Cost: \$40, payable by credit card or debit card
 - Delivery: notification by email when the certificate of eligibility is complete and ready to be downloaded from the AOC portal.
- **Request by mail:** Go to the Kentucky Administrative Office of the Courts webpage and follow the instructions to download a copy of the Expungement Certification Request Form. Complete the form and mail it to: Records Unit, Administrative Office of the Courts, 1001 Vandalay Drive, Frankfort, KY 40601
 - Cost: \$40, payable by check or money order made payable to the Kentucky State Treasurer
 - Delivery: by US Postal Service to the address provided

Online order preferred. The Kentucky State Police, Records Division, who processes the Certificate of Eligibility recommends using the online processing portal over mail. If a Certificate of Eligibility is lost in the mail, another \$40 will have to be paid for a second Certificate of Eligibility. When using the online portal, be sure to check your email regularly as the Certificate of Eligibility is only valid for 30-days.

Step 2: Complete Needed AOC Form

For non-convictions (dismissal, acquittal, and failure to indict), start the process here. You do not need a Certificate of Eligibility. Complete the AOC form associated with your type of expungement requested.

- Acquittal, Dismissal and Failure to Indict Expungement: [AOC-497.2](#)

For a conviction, once you have received your Certificate of Eligibility, you have 30-days to file your petition for expungement, filing fee, and proper AOC form.

- Felony expungement and Pardon Expungement: [AOC-496.3](#)
- Misdemeanor and Violation Expungement: [AOC-496.2](#)

The form asks where the expungement request should be sent, upon a successful petition for expungement. Practitioners should be exhaustive in providing the list, and should provide all of the appropriate institutions, organizations and agencies:

- Kentucky State Police, Records Division **(ALWAYS INCLUDE)**
- Administrative Office of the Courts [1001 Vandalay Dr, Frankfort, KY, 40601] **(ALWAYS INCLUDE)**
- City Police
- County Police
- Sheriff's Department
- Pretrial Services, including e-warrants
- Kentucky Alternative Programs
- All federal Databases, including the Dept. of Homeland Security & Immigration (ICE) [500 12th St SW, Washington, DC, 20024]
- FBI database a.k.a NCIC [12401 Sycamore Station Place, Louisville, KY, 40299]
- CourtNet
- County Detention Center/Jail
- Cabinet for Health and Family Services [275 East Main St, Frankfort, KY, 40601] [note: the Cabinet is exempt from expunging records under KRS 431.076(4) but a person may choose to include them if necessary for particular facts of your case]
- KY educational database [KY Department of Education, 300 Sower Blvd 5th Floor, Frankfort, KY, 40601]
- County or local Expungement & Information Processing Dept. (EIP)
- Department of Public Advocacy [5 Mill Creek Park, Frankfort, KY 40601]
- Any other agency which may hold records related to the arrest and/or conviction

Step 3: Filing the Petition for Expungement

The petition for expungement must be filed in the county and court of conviction, acquittal, dismissal, or failure to indict. For expungement of a conviction, file the Certificate of Eligibility, with the proper AOC form, and the filing fee within 30-days of the issuance date of the Certificate of Eligibility. For a dismissal, acquittal, or failure to indict, simply file the appropriate AOC form.

In instances of multiple convictions in multiple cases and/or counties, a separate petition needs to be filed under each case number to expunge that conviction.

Filing fees. The Clerk will not accept a petition for expungement without the filing fee. Advise your client to save money for the filing fee prior to requesting the Certificate of Eligibility. If a person seeking expungement cannot afford the filing fee before the Certificate of Eligibility expires, they will have to pay to get a second (renewed) Certificate of Eligibility.

- The filing fee for a misdemeanor expungement is \$100. \$50 of the filing fee will be returned if the expungement is not granted. The remaining \$50 is retained as a processing fee.

- The filing fee for felony expungement is \$50. An additional \$250 is due if an expungement is granted. The felony expungement is not complete until payment is made in full.

Step 4: A Hearing on Petition for Expungement

Misdemeanors

Upon the filing of a petition, the Court shall set a date for a hearing, no sooner than 30-days after the filing of the petition for a misdemeanor expungement. KRS 431.078(3). Parties that shall be notified are the County Attorney, “the victim of the crime,” and “any other persons whom the person filing the petition has reason to believe may have relevant information related to the expungement of the record.” KRS 431.078(3). Note that “inability to locate the victim shall not delay the proceedings ... or preclude the holding of a hearing.” KRS 431.078(3). At the conclusion of the hearing, if all requirements for misdemeanor expungement are met, the Court *may* order expungement. KRS 431.078(5).

In many counties, the local practice is to waive the hearing if all parties agree to expungement without a hearing.

Felonies

Single Enumerated Felony, Series of Felonies Arising from a Single Incident & Pardons. A hearing cannot be held prior to the Commonwealth’s filing of a response or 120-days, whichever occurs later. KRS 431.073(3). If one hundred twenty (120) days have elapsed since the filing of the application and no response has been received from the victim or the office of the Commonwealth’s attorney ... the court may without a hearing, vacate the judgment. KRS 431.073(6). If a hearing is set, the Clerk shall notify the Commonwealth of the hearing and the Commonwealth shall notify the “victim of the crime, if there is an identified victim.” KRS 431.073(3).

Non-Enumerated Class-D felonies & Multiple Class D felonies. A hearing “shall occur no later than one hundred twenty (120) days following the filing of the application. KRS 431.073(2)(b). This means that a hearing must be held on an application for expungement pursuant to KRS 341.073(1)(d).

At the required hearing, both the petitioner and the “victim” have a right to testify and additional evidence can be heard by the Court. KRS 431.073(4)(b). The Court must then determine if “circumstances warrant vacation and expungement,” and that harm to the person seeking expungement “clearly outweighs the public interest in the criminal history record information being publicly available.” KRS 431.073(4)(c).

Dismissal, Acquittal, & Failure to Indict

A hearing is not required and should not be held on a properly filed petition for expungement on dismissal or acquittal. KRS 431.076(3)(a). The Court is mandated by statute to “grant the petition and order the expunging of records” where a petition is “properly brought.” KRS 431.076(3)(a).

For petitions for expungement related to failure to indict, a hearing will not be held. However, “the petition shall be served upon” the County or Commonwealth’s attorney. KRS 431.076(3)(b). The prosecution response shall be filed within 90-days of the filing of the petition for expungement. KRS 431.076(3)(b)(2). If a response is not filed in 90-days, the Court “shall dismiss the charges without prejudice and order the expunging of records.” KRS 431.076(3)(b)(3). If a response is filed, 90-days after the date the response is filed, if an indictment has not been issued, the Court “shall dismiss without prejudice” and issue the order expunging. KRS 431.076(3)(b)(3).

Statutes Related to Expungement

KRS 431.073: Felony Convictions

Effective June 29, 2023, access to felony expungement was expanded within KRS 431.073 to allow for expungement of the majority of Class D felony offenses in the Commonwealth. The statute also provides for the process in accessing felony expungement for both enumerated and non-enumerated Class D felony convictions, including multiple Class D felony convictions.

KRS 431.076: Acquittals, Dismissals & Failure to Indict

Effective July 15, 2020, KRS 431.076 provides automatic expungement for those who are acquitted of crimes and for those for whom charges have been dismissed without prejudice. KRS 431.076 also provides timeframes and procedures for expungement of felonies and misdemeanors that are dismissed without prejudice. This statute also provides for expungement of felony charges which have not resulted in an indictment or information filed by the Commonwealth’s attorney.

KRS 431.078: Misdemeanor, Violation & Traffic Infractions

Effective July 15, 2016, KRS 431.078 overhauled the prior expungement process, allowing for far expanded access to misdemeanor expungement in the Commonwealth. The statute also sets forth requirements for misdemeanor expungement and the process of expungement of misdemeanor offenses.



Clearing your criminal record through expungement can help you find a job, access housing and educational support, and move on from a criminal charge

Expungement Guidebook

What is expungement?

In Kentucky, when you are charged with a crime or convicted of a crime, that information stays on your criminal record. Expungement is the legal process of completely removing an arrest, charge, or conviction from your record.

Why should I get an expungement?

If you get an expungement, all records relating to the charge or conviction are deleted. It means that you can answer “NO” when asked on an application if you have been convicted of a crime. This can help you find a job or a place to live.

How do I know if I’m eligible to get an expungement?

Only certain things can be removed from your record in Kentucky. You may be eligible if:

- You have misdemeanor or Class D felony convictions
- You were acquitted or charges against you were dismissed
- You received a pardon from the governor

Don't charges automatically fall off my record after 5 or 10 years?

No, convictions are never automatically expunged. Only acquittals and dismissals with prejudice which occur after July 2020 will be automatically expunged.

Before seeking an expungement, figure out if you are eligible under Kentucky law by using the following flowcharts.

Clean Slate Kentucky is a free public service offered by the Kentucky Department of Public Advocacy which provides information and training.

dpa.ky.gov/home-2/clients/expungement/

Disclaimer of Liability: This information is provided as a public service. The information is not legal advice or legal representation.

Use this chart if you were convicted of a misdemeanor.

You can apply to expunge an unlimited number of misdemeanors, even if they were in different cases or counties.

Are there any criminal charges currently pending against you?

YES → You are not currently eligible for expungement.

You cannot have any pending charges against you at the time that you apply for expungement.

NO → go to NEXT QUESTION

Were you convicted of a misdemeanor or felony in the past five years?

YES → You are not currently eligible for expungement.

You cannot have any misdemeanor or felony convictions on your record for the five years before you apply for expungement.

NO → go to NEXT QUESTION

Has five years passed since the completion of your sentence, including payment of fines and probation?

NO → You are not currently eligible.

You must wait five years after you complete your sentence, pay any fines or fees, or complete probation, whichever is later.

YES → go to NEXT QUESTION

Is the conviction for a sexual offense or an offense against a child?

YES → You are not eligible, consult with an attorney to confirm.

NO → go to NEXT QUESTION

Was your offense subject to enhancement for a second or subsequent offense?

YES → You may be eligible, speak with an attorney

At the completion of the enhancement period, if other conditions are met you will be eligible for expungement.

NO → You are eligible for expungement

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Use this chart if you were convicted of a Class D Felony.

Class C, B, A and Capital Offenses are not eligible for expungement.

Are there any criminal charges currently pending against you?

YES → You are not currently eligible for expungement.

NO → go to NEXT QUESTION

Were you convicted of a misdemeanor or felony in the past five years?

YES → You are not currently eligible for expungement.

NO → go to NEXT QUESTION

Has five years passed since the completion of your sentence, including payment of fines and probation?

NO → You are not currently eligible.

YES → go to NEXT QUESTION

Is the Class-D felony listed on page 4-5 of this pamphlet?

YES → You are eligible for expungement.

NO → go to NEXT QUESTION

Is the Class-D felony a conviction for abuse of a public office, a sexual offense, against a child, or an offense that resulted in serious bodily injury or death?

YES → You are not eligible for expungement.

NO → You are eligible for expungement, speak with an attorney.

Speak to an Attorney if you are seeking expungement of a more than one felony. The law changed to expand expungement to multiple felonies, but these expungements will be subject to a higher standard with the court and will likely require a hearing with the judge. It may be best to consult a legal expert.

Class D Felonies presumptively eligible for expungement.

Statute	Offense
218A.1415	Possession of controlled substance, 1st degree
530.050	Flagrant non support
516.060	Criminal possession of forged instrument, 2nd degree
514.030	Theft by unlawful taking
512.020	Criminal mischief, 1st degree
514.110	Receiving stolen property under \$10,000
511.040	Burglary, 3rd degree
524.100	Tampering with physical evidence
516.030	Forgery, 2nd degree
514.040	Theft by deception under \$10,000
514.160	Theft of identity
514.070	Theft by failure to make required disposition of property
218A.140	Prohibited acts relating to controlled substances
218A.140(1A)	Attempting to obtain a prescription for a controlled substance by fraud or forgery
218A.140(1B)	Making a false statement to procure a controlled substance
218A.140(1C)	Use of false name or address to procure a controlled substance
218A.140(1D)	Making a false statement regarding a prescription
218A.140(2)	Possess, manufacture, sell, dispense, etc. a counterfeit substance
218A.140(3)	Obtain a prescription without having formed a practitioner-patient relationship
218A.284	Criminal possession of a forged prescription
186.990	Theft of motor vehicle plates/decal
514.140	Theft of mail matter
218A.1418	Theft of controlled substance
218A.282	Forgery of a prescription for a controlled substance, 1st offense
218A.286	Theft, criminal possession, or trafficking of a prescription for controlled substance
514.060	Theft of services
217.181	Theft of a legend drug
514.150	Possession of stolen mail matter
218A.1423	Cultivation of marijuana
218A.1416	Possession of controlled substance in 2nd degree *ENH*
514.050	Theft of property lost, mislaid, or delivered by mistake
218A.1417	Possession of controlled substance in 3rd degree *ENH*
516.090	Possession of a forgery device
217.208	Forgery of a prescription for a legend drug, 1st offense
530.010	Bigamy
514.080	Theft by extortion

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Class D Felonies presumptively eligible for expungement.

Statute	Offense
514.100	Unauthorized use of automobile or other propelled vehicle
17.175	Unauthorized use/dissemination/receipt of DNA info
217.207	Theft, criminal possession, or trafficking of a prescription for legend drug
218A.1439	Trafficking in or transferring a dietary supplement
528.020	Promoting gambling
244.165	Unlawful sale/shipment of alcoholic beverages by out-of-state seller
365.241	Counterfeiting intellectual property
434.155	Filing illegal lien
434.675	Use of scanning device or reencoder to obtain payment card information
434.872	Disclosure of information from financial information repository
514.065	Possession, use, or transfer of device for theft of telecommunication services
516.108	Criminal simulation in the first degree
525.113	Institutional vandalism
194A.505	False statement or misrepresentation to receive benefits under \$100
	False statement or misrepresentation to receive benefits under \$100 (repealed in 194B.505 2005)
218A.320	Criminal possession of a medical record
218A.322	Theft of a medical record
218A.324	Criminal falsification of a medical record
218A.500	Possession of Drug Paraphernalia, 2 nd or subsequent offense
286.11-057	False Statement/Certification in money transmission record
304.47-025	Felony offense involving dishonesty or breach of trust -Fraudulent Insurance Act
324.990	Engaging in real estate brokerage without license
434.850	Unlawful access to a computer in the second degree
514.090	Theft of labor
514.120	Obscuring identity of machine or other property
517.120	Operating a sham or front company
518.040	Sports bribery
522.040	Misuse of confidential information
526.020	Eavesdropping
526.030	Installing eavesdropping device
528.040	Conspiracy to promote gambling
528.050	Possession of gambling records in the first degree

Speak to an Attorney if you are seeking expungement of multiple Class-D felonies and your felonies are a "single incident" or "series of felonies" OR received a felony expungement prior to July 2019 and are seeking expungement.

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Disclaimer of Liability: This information is provided as a public service. The information is not legal advice or legal representation.

Use this chart if you were convicted as a child.

Was your juvenile conviction transferred to adult court?

YES → See the felony expungement chart for eligibility.

NO → go to NEXT QUESTION

Are there any criminal charges currently pending against you?

YES → You are not currently eligible for expungement.

NO → go to NEXT QUESTION

Has two years passed since release from DJJ or CHFS?

NO → You are not currently eligible.

YES → go to NEXT QUESTION

Is the conviction for a sex offense or violent offense?

YES → You are not currently eligible for expungement.

NO → go to NEXT QUESTION

Are you seeking expungement of a misdemeanor or violation?

NO → You are eligible for expungement.

YES → go to NEXT QUESTION for felony expungement.

Are you seeking expungement of more than one felony conviction?

NO → Review the felony expungement chart for eligibility

YES → Please speak with an attorney, the law recently changed

Acquittal, Dismissal & Failure to Indict.

- **A certificate of eligibility is NOT required.**
- **Acquittal or Dismissal with Prejudice:** automatic expungement after July 2020, meaning no action required but you may file if expungement is not automatically granted. After 60-days from dismissal/acquittal, file the Acquittal Form in the court of acquittal/dismissal. There is no fee.
- **Dismissal without Prejudice:**
 - **Misdemeanor:** Eligible for expungement after **1-year**. There is no filing fee. File the Dismissal Form in the court of dismissal.
 - **Felony:** Eligible for expungement after **3-years**. There is no filing fee. File the Dismissal Form in the court of dismissal.
- **Failure to Indict:** If you are charged with a felony in district court and after **6-months** you have not been indicted, you may file for expungement. There is no filing fee. File the “Failure to Indict” Form in the court you were charged.

I think I’m eligible!

How do I get an expungement?

STEP 1: Get a Certificate of Eligibility (only needed for expungement of a conviction)

- You must have a Certificate of Eligibility to request an expungement for any conviction.
- A certificate of eligibility costs \$40 and can be ordered online or by mail.
 - Online: <https://kycourts.gov/AOC/Information-and-Technology/Pages/Expungement.aspx>
 - Mail: sending the “certification form” and a \$40 money order to:
Records Unit / Administrative Office of the
Courts / 1001 Vandalay Drive / Frankfort, KY 40601
- Your packet will confirm whether you are eligible to expunge your record. If the packet says you are not eligible, there could be a mistake. You can always file as the Court ultimately decides eligibility. We suggest you speak with an attorney.

STEP 2: File your packet and expungement request form with the court.

- Once you receive your certification packet, you have **30 days to file** your documents with the court. After that time, your certification packet will expire.
- You must file in the county where the conviction took place.
- Misdemeanor: file the misdemeanor conviction expungement form, with certification packet, and a filing fee of \$100 per case (\$50 refunded if not granted). A judge may schedule a hearing. If so, it will be within 1-month of filing.
- Class D Felony: file felony conviction expungement form, with certification packet, and a filing fee of \$50. If the judge scheduled a hearing, it will be within 1-month of filing.
 - If granted, for the expungement to become final you must pay an additional \$250. Remember that you can ask the court to waive fees if the seeking party is indigent.
 - Payment plans are available but the expungement is not final until paid in full.

dpa.ky.gov/home-2/clients/expungement/

Frequently Asked Questions

Can I expunge an acquittal or dismissal?

Yes. For details on how to apply for expungement and when you are eligible, please see the paragraph at the top of page 7.

If I expunge my felony, will I be able to vote?

Your voting rights will be restored as long as you have no other felonies remaining on your record. Persons who were convicted of non-violent felonies and have completed their sentence may be entitled to automatic restoration of voting rights under Governor's Order 2019-003. More information at <https://civilrightsrestoration.ky.gov/Pages/home.aspx>. With both restoration of rights and expunged felonies, you must register to vote: <https://vrsws.sos.ky.gov/ovrweb/>.

I got a pardon from the governor. Does that mean my record is clear?

No. After receiving a pardon, convictions will remain on your record, and you still must acknowledge them. You may apply to expunge your pardoned convictions to completely remove them from your record. Expungement is available for all categories of misdemeanors and felonies.

Can I expunge a federal conviction?

Currently, there is no procedure for expunging federal convictions.

What if I have convictions in different counties?

If you have convictions in different counties, you will need to file separately in each county as well as paying the expungement fee in each county. You can use the same Certificate of Eligibility for each.

How could an expungement affect my immigration status?

If you are not a United States citizen, speak with an immigration attorney before filing for expungement. Expungement of your criminal case may be harmful to any current or future immigration action.

Do I need an attorney?

You may file for expungement on your own, without an attorney. However, the law can be tricky! We recommend speaking with an attorney from the Department of Public Advocacy or other agencies or attorneys who provide information on expungement.

Can fees associated with expungement be waived?

Expungement fees can be waived for indigent persons, but it is up to the judge. You can ask the judge to waive all filing fees required for expungement by filing a motion to proceed in forma pauperis and file it with the court. You can request the needed forms from the clerks office. If possible, speak to an attorney before asking the court to waive fees.

If you are seeking expungement of a Class D felony that does not appear on the list on pages 4-5 of this pamphlet or if you are seeking expungement of multiple Class-D felonies, please speak to an attorney. The judge may require you to appear in court for a hearing where you answer questions and present evidence to support your request for expungement.



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The Advocate

Kentucky Department of Public Advocacy's Journal of Criminal Justice Education & Research

The Advocate provides education and research for persons serving indigent clients in order to improve client representation and ensure fair process and reliable results for those whose life or liberty is at risk. It educates criminal justice professionals and the public on defender work, mission, and values.

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