

Kentucky Expungement Law Overview House Bill 40 & Senate Bill 57

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There is a lot of misinformation about expungement in Kentucky. This overview is to assist you in determining whether you qualify for expungement in Kentucky. It is written by attorney Benham Sims, who testified as a former District Judge, State Prosecutor of the Year, and one of Kentucky's leading expungement advocates before the House Judiciary Committee for passage of Kentucky's expungement law.



Helpexpungeme.com Partner, Benham Sims (Left) testifying with Expungement, Bill Sponsor-Rep. Darryl Owens (Center), and Greater Louisville, Inc. Vice-President Sarah Davisher-Wisdom (Right) before the House Judiciary Committee in support of passage of House Bill 40.

Many Kentuckians mistakenly believe that dismissed charges are erased from their record *automatically, or that employers do not look at charges that occurred over five years ago. This* really is an example of fake news, because it is not true! Your state criminal record contains every charge on your record-including dismissed charges, traffic charges, and all convictions, no matter how many years ago they were committed. It is available for anyone who knows how to use a computer. **Your charges, even those cases that were dismissed, stay on your criminal record forever, the only process for removing charges from your Kentucky Criminal Record is by petitioning the sentencing court to expunge your record!**

Charges Do Not, And Never Have, Fallen Off Your Criminal Record After 5 Years

Minor traffic offenses, excluding DUI's, are automatically purged from the Kentucky Transportation Cabinet Driving Records after 5 years, ***but these same charges and all criminal charges and convictions remain on your Kentucky Criminal Record forever!*** The problem this creates is that the internet has made your criminal record available to millions of internet users. Many employers, to save money, run criminal background checks from data collected from state databases years ago. In fact, one study revealed that one in three background checks have incomplete, inaccurate, or false information on their report. It is, therefore, crucial to expunge your record and to be able to show a potential employer that your official state record does not contain convictions on your record. In fact, Kentucky's expungement law forbids employers from discriminating against you if the charges were expunged. They direct the courts and employers to treat the expunged charges as if they did not occur.

Now, more than ever, it is critical that you expunge your record to protect your privacy, to advance in your career and to maintain your ability to volunteer at your church, YMCA, or accompany your child on a school field trip or in their classroom.

The only way to remove charges and convictions from your record is by petitioning the sentencing court to expunge your Kentucky criminal record. Even if the Governor of Kentucky grants you a full and complete pardon, charges and convictions remain on your Kentucky Criminal Record until you petition the sentencing court to expunge your record. Sadly, some people who have received a Governor's pardon, have not expunged their record. Their charges, even though pardoned by the Governor, remain on their record until they petition the sentencing court to expunge their record.

The lawyers at helpexpungeme.com have spent thousands of hours trying to help people just like you! The saddest statistic we face is despite all our hard work to change minds and hearts in the legislature to pass expungement legislation, to educate people they are now eligible to expunge their record-***only 2001 Kentuckians out of 91,000 Kentuckians who are eligible to expunge their felony criminal record, have done so, even though the law was passed in 2016.*** But there is also good news, Kentucky courts have reported that 10,000 expungement orders have been signed by Kentucky Courts. Kentucky State Police have reported a 400% increase in expungement petition for the first quarter of 2019. My hope for you is that you will work with me to expunge your record and let others know that we can help them.

One in four adults in Kentucky has a criminal charge on their record. With the passage of Senate Bill 57, over 136,000 Kentuckians can petition to expunge their eligible Class D felony.

If You Have a Criminal Record,
You'll Make 40% Less Income Over Your Lifetime



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Did you know:

The average person has 11.7 jobs between the ages of 18-48.

Studies show that 95% of employers now run criminal background checks.

Over 50% of employers will not interview you if you have a criminal record!

A criminal record will result in you making 40% less income over your lifetime!

Over 70 million Americans have a criminal charge on their record.

In other words, 1 in 4 four adults has a criminal record!



Kentucky is no different than other states who have passed expungement reform. A recent study by the University of Michigan Law School reveals that **only 6% of the individuals eligible for expungement pursue an expungement within 5 years of eligibility in the state of Michigan.**

Sadly, the last statistics on expungement revealed less than 3% of those eligible for felony expungement, have petitioned a Kentucky Court for expungement.

The most startling revelation from the Michigan study was that those who expunged their records, on average, saw their wages increase by made than 25% within 2 years of expunging their criminal record! [Collateral Consequence Resource Center](#)

The Louisville Courier -Journal noted in a May 2019 editorial by Sarah Davisher-Wisdom Greater Louisville, Inc., Chief Operating Officer:

A recent study found that expungement not only improves an individual's chances of finding employment but also leads to better jobs and increased wages. In Michigan, for example, the study showed that successful applicants saw their wages increase, on average, 25 percent within two years of expungement.

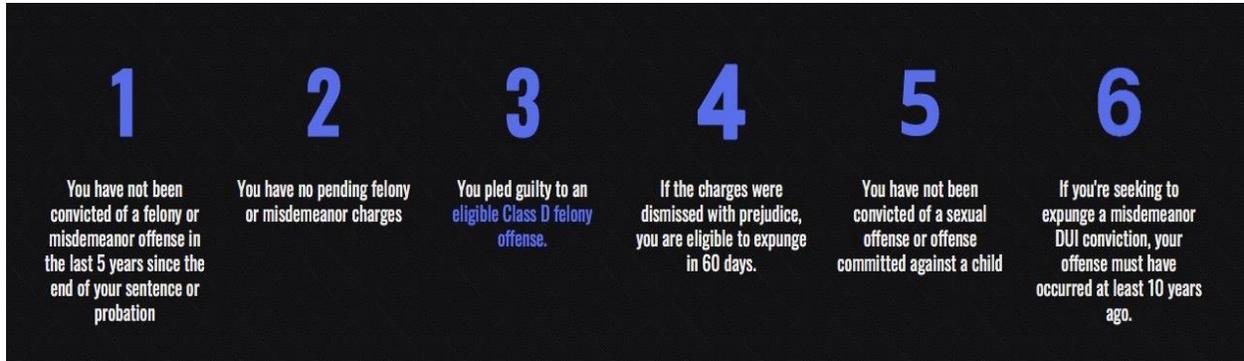
With the passage of Senate Bill 57: 126,000 Kentuckians can now petition the court to expunge their eligible Class D felony!

Why would you not expunge your record?



ELIGIBILITY

In order to petition the Court to expunge your felony or misdemeanor conviction, the Court must make the following findings:



Kentucky first passed expungement reform in the late 1980s. In 2016, Kentucky passed House Bill 40 which permitted the expungement of 61 eligible Class D felony offenses. In the Spring of 2019, the General Assembly passed Senate Bill 57 which now permits the expungement of hundreds of Class D felony offenses previously barred from expungement. Under either law, expungement is not automatic, prosecutors and victims can object, and often do object to a petition to void and expunge a felony. Senate Bill 57, while permitting the expungements of hundreds of Class D felonies, places the burden of proof by clear and convincing evidence on the person petitioning the court to expunge their record. It is important to prepare for this hearing with an experienced expungement attorney.

Our expungement law now permits for the first time the right to expunge multiple eligible misdemeanor offenses, even for offenders who committed more than one offense in a 5-year period. Hundreds of thousands of Kentuckians are now eligible to expunge their record. **House Bill 40 and Senate Bill 57 now permits hundreds of thousands of Kentuckians the opportunity to petition the court to expunge the eligible criminal charge on their Kentucky criminal record, who were previously denied the right to expunge.**

I. Dismissed Violations, Misdemeanors, and Felonies

You are eligible to expunge dismissed Traffic Violations and Misdemeanors in Kentucky 60 days after the case has been dismissed by a Judge. Dismissed felonies have a unique set of laws and protocols to follow. It is important to review petitions to void and expunge a felony charge with an experienced criminal defense lawyer.

II. Eligibility for expungement of Misdemeanors Convictions (*Non-DUI's*) in Kentucky:

If it has been five years since the end of your sentence or probations (*whichever is longer*) and you have not pled guilty to a criminal offense in the last 5 years, and you have no new pending criminal charges. The Petition for Misdemeanor conviction shall be filed no sooner

than five (5) years after the completion of the person's sentence or five years after the successful completion of the person's probation, whichever occurs later. A filing fee of \$100.00 is charged by the clerk to file an expungement for a misdemeanor conviction.

At the hearing the Judge must find:

- a. The offense was not a sex offense or an offense committed against a child.**
- b. the person had not in the five years prior to the filing of the petition for expungement been convicted of a felony or a misdemeanor.**
- c. No proceeding concerning a felony or misdemeanor is pending or being instituted against the person; and**
- d. the offense is not one subject to enhancement for a second or subsequent offense or the time for such enhancement has expired**

Please note with the passage of Senate Bill 56, a person cannot petition to expunge their DUI conviction until 10 years after the end of their sentence or probation.

III. DUI's



If you pled guilty to DUI, you must now wait **10 years** after your sentence or probation (whichever is longer) to expunge your DUI misdemeanor conviction. DUI felony convictions are **not** eligible for expungement. A filing fee of \$100.00 is charged by the clerk to file an expungement of a DUI misdemeanor conviction. In 2016, the Kentucky General Assembly passed, and the Governor signed into law Senate Bill 56. This Bill substantially enhanced penalties for subsequent DUI offenses. The 2016 amendment increased the look-back period in Kentucky from 5 years to 10 years. The amendment also now requires those convicted of DUI misdemeanor offenses must wait 10 years to expunge a DUI offense. Kentucky defense attorney's challenged the law as unconstitutional, but the Supreme Court ruled in Kentucky Supreme Court in *Commonwealth v. Jackson* and *Commonwealth v. Denson*, (2016-SC-000530 and 2016 SC 000531): "a plea entered without knowledge of unanticipated and unforeseeable consequences that may not become manifest for many years does not have the constitutional significance of a plea entered without knowledge of its immediate foreseeable consequence, or

an ignorance of fundamental rights to remain silent, to a jury trial and to confront witnesses.” In other words, *the 10-year look-back is now law.*

IV. Felony Expungement-Two Tracks to Petition to Expunge Your Record

Track 1

In 2016, Kentucky passed House Bill 40, permitted for the first time-the expungement of 61 Class D felonies such as felony theft, burglary, possession of a controlled substance. **The law permits the expungement of *only one (1) eligible Felony conviction or a series of Class D Felony eligible felony charges arising from a single incident.* In order to grant your expungement, the Court must find:**

- 1. The charge is one of the 61 eligible Class D felonies; and**
- 2. The person had not previously had a felony conviction vacated and the record expunged pursuant to this law; and**
- 3. No proceeding concerning a felony or misdemeanor is pending or being instituted against the person; and**
- 4. The petition to expunge was filed no sooner than five (5) years after the completion of the person's sentence, or five years after the successful completion of the person's probation or parole, whichever occurs later; and**
- 5. The person has not been convicted of a felony or a misdemeanor in the five years prior to the filing for expungement**

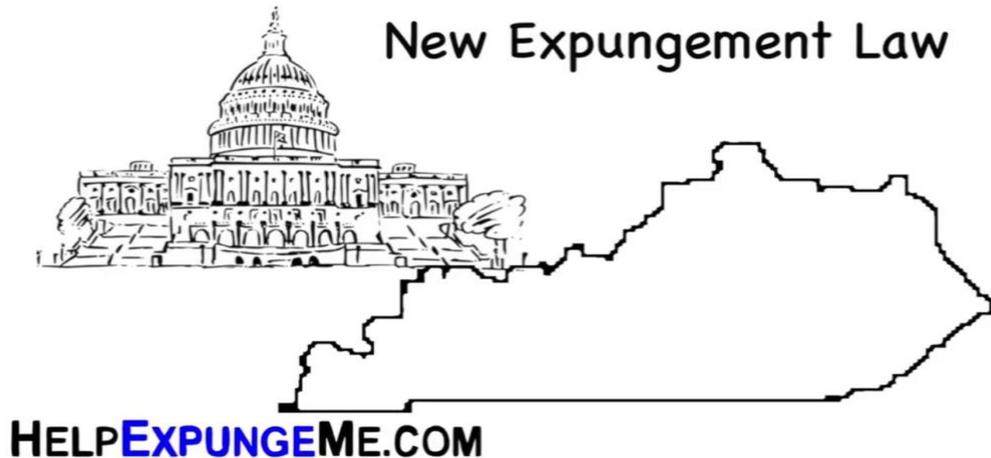
If you have a felony record, go to my website, helpexpungeme.com to determine whether you qualify to expunge your felony record. Here is the list of 61 eligible felony offenses: <https://helpexpungeme.com/61-class-d-felonies/>

Track 2

In the spring of 2019, the Kentucky General Assembly passed Senate Bill 57 which now permits the expungement of hundreds of other Class D felony offenses that were previously barred from expungement. The new law goes into effect on June 27, 2019. Senate Bill 57 still prohibits the expungement of DUI felony charges, any offenses committed against a child, and sex offenses. In addition, the law prohibits the expungement of a breach of public trust offense. **But instead of just 61 Class D offenses eligible for expungement under House Bill 40, Senate Bill 57 opens the door for expungement of hundreds of other previously not eligible Class D felony offenses.**

The Bill also places the *burden of proof by clear and convincing evidence* on the person petitioning the court for expungement. The petition must convince the court that they are rehabilitated, are not likely to re-offend, the expungement is in the interest of the welfare and

safety of the public, and in the interest of justice. In other words, it is up to us to convince a Judge to grant the expungement if the prosecutor or victim objects. The good news is that the Kentucky General Assembly has reduced the expungement felony filing fee from \$500.00 to \$250.00.



The 2019 law (Senate Bill 57) requires:

The person had not:

- A. After the effective date of this Act, had a felony conviction vacated and the record expunged;**
- B. The person had not in the five (5) years prior to the filing of the application to have the judgment vacated been convicted of a felony or a misdemeanor; and**
- C. No proceeding concerning a felony or misdemeanor is pending or being instituted against the person.**
- D. The person has been rehabilitated and poses no significant threat of recidivism.**

If the prosecutor or victim objects, the court shall schedule a hearing within one hundred twenty (120) days of the Commonwealth's response. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. At the hearing at which the applicant or his or her attorney must be present, the applicant must prove by **clear and convincing** evidence that:

- 1. Vacating the judgment and expunging the record is consistent with the welfare and safety of the public;**
- 2. The action is supported by his or her behavior since the conviction or convictions, as evidenced that he or she has been active in**

rehabilitative activities in prison and is living a law-abiding life since release;

3. **The vacation and expungement are warranted by the interests of justice;**
4. **Any other matter deemed appropriate or necessary by the court to make a determination regarding the petition for expungement is met.**

At the hearing, you may testify as to the specific adverse consequences you may be subject to if the application is denied. The court may hear the testimony of witnesses and any other matter the court deems proper and relevant to its determination regarding the application.

The Commonwealth may present proof of any **extraordinary circumstances** that exist to deny the application. A victim of any offense listed in the application shall have an opportunity to be heard at any hearing held under this section.



If the court determines that circumstances warrant vacation and expungement and that the harm otherwise resulting to the applicant clearly outweighs the public interest in the criminal history record information being publicly available, then the original conviction or convictions shall be vacated, and the records shall be expunged.

The order of expungement shall not preclude a prosecutor's office from retaining a nonpublic record for law enforcement purposes only.

I believe we can personalize you to the court and persuade the judge to expunge your order. Because I need to personalize you to the court, **I ask that you call my receptionist Charlene Manley at (502) 589-6190 to schedule an appointment to meet with you.** If you live out of

town, my receptionist will schedule a phone interview. I do not charge for the initial expungement client interview

You can review the bill yourself by clicking:

<https://apps.legislature.ky.gov/recorddocuments/bill/19RS/sb57/bill.pdf>

V. Process

The process of expungement is quite simple with my office. I meet with clients in person or by phone and learn their story, as well as, review their cases. I am required by statute to order both your official **Kentucky Administrative Office of the Court Criminal History** and a **Kentucky State Police Certificate of Expungement Eligibility**. The state charges me \$40.00 for these documents. I cannot review your criminal history on Courtnet without your: full name, date of birth, and social security number.

Please go to my website www.helpexpungeme.com on your smartphone or computer and complete the contact us form. I will look up your criminal history, review it with you, and order the Kentucky Administrative Office of the Courts Criminal Record and the Kentucky State Police Certificate of Expungement Eligibility documents listed above.

After I receive your records, I will review them with you and prepare the appropriate notices, petitions, motions and orders for the courts. The state has up to 30 days to send me your records. ***Once I receive the records, I only have 30 days in which to file the petitions and pay the court fees.*** I will be able to review your records with you and file the appropriate Motions and Orders with the court. If you pled guilty to a misdemeanor, the court charges \$100.00 to file for a misdemeanor expungement petition and order. If the charge is for a felony expungement, the court charges \$250.00 for filing a felony expungement petition and order. The legislature after June 27, 2019, will permit the \$250.00 fee to be paid in installments. The first installment of \$50.00 must be paid at the filing of the felony expungement petition. The remaining \$200.00 can be paid over an 18-month period. The expungement order will not be entered until the balance is paid.

Generally speaking, my fees range from \$250.00-\$500.00 per misdemeanor expungement. My fees for felony expungement range from \$1000.00 to \$2500.00 for a felony expungement. The fees depend on the number, complexity, eligibility and time involved. Please call my receptionist Charlene Manley at (502) 589-6190 to schedule an appointment to meet with you. ***I do not charge for the initial expungement client interview!***

V. Pardons

If the Governor has granted a full **Pardon**, you may file with the sentencing court in which you were convicted a petition to expunge your charge/conviction.