



HOW TO VACATE AND EXPUNGE A FELONY CONVICTION

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Introduction to Felony Expungement

What is an expungement?

- An expungement is the process of removing a charge or charges from an individual's official state-performed background checks.

What is felony expungement?

- As of July 15, 2016, certain Class D felony convictions can be expunged through a process of filing an application to vacate and expunge a conviction.

Who is eligible for a felony expungement?

- Any person who:
 - has been convicted of a Class D felony listed in KRS 431.073(1); or
 - has been convicted of a series of Class D felonies listed in KRS 431.073(1) arising from a single incident; or
 - has been granted a full pardon.
- A complete list of all offenses eligible for expungement under KRS 431.073(1) can be found in the Appendix.
- Certain things about your record could make you ineligible even if your offense would otherwise qualify. For example, if you have felony or misdemeanor charges pending or being brought against you or if you have been convicted of a felony or misdemeanor in the 5 years prior to filing your application you would not be eligible for expungement.

When can I apply for an expungement?

- No sooner than 5 years after the completion of your sentence or 5 years after successful completion of your probation or parole, whichever occurs later.

How does an order vacating and expunging a conviction affect me?

- If an Application to Vacate and Expunge Felony Conviction is granted, the court and other agencies (as specified on the order) shall cause records to be deleted or removed so the charges do not appear on official state-performed background checks.
- If the expunged record was the only thing prohibiting you from voting or serving on a jury, then those rights shall be restored.

What does it cost to apply for a felony expungement?

- There is a \$500 per case filing fee that should be paid at the time of filing the felony expungement application. Should your expungement application be denied for any reason, \$50 of this fee is non-refundable.
- In addition to the filing fee, you will be required to obtain an expungement certification in order to file for expungement. An expungement certification costs \$40.

What if I cannot afford the filing fee?

- If you cannot afford to pay the filing fee, you may file a motion to proceed “in forma pauperis,” which allows the filing fee to be waived. You should only make this request to the court if you do not have the money to pay the filing fee. It is a sworn statement to the court and any false or misleading information could be punishable by law. The judge makes a determination of whether a party qualifies to proceed “in forma pauperis.” The court generally considers factors such as income, expenses, number of people you support and whether you own an automobile or any property.
- There are a number of non-profit organizations that are available to assist with completing an application for felony expungement. For example, see <http://www.cleanslatekentucky.com/>.

* Please note that Clean Slate Kentucky has no affiliation with the Kentucky Court of Justice.

How long does it take to expunge my record?

- Felony expungement is a process that includes the court and multiple state agencies and may take several months to complete.
- There are many steps to the process, such as:
 - The process to obtain an expungement certification can take months to complete.
 - Once an expungement certification has been obtained and your Application to Vacate and Expunge Felony Conviction is filed, the Prosecutor has 60 days to file an objection.
 - The court has up to 120 days to review the application and schedule a hearing if necessary.
 - Once an Application to Vacate and Expunge Felony Conviction is granted, it may take time for law enforcement and other agencies to update their records.

If I have questions or need help, what should I do?

- If after reviewing this packet you still have questions about the process to vacate and expunge a felony conviction or you need help completing the necessary forms, you may wish to consult with an attorney. Additional resources for assistance can be found on our website at <http://courts.ky.gov/representingyourself/Pages/KentuckyLegalAidSocieties.aspx>, or at Clean Slate Kentucky, <http://www.cleanslatekentucky.com/>.

Step 1: Obtain an Expungement Certification

What is an expungement certification?

- State law requires every application for expungement in Kentucky to include a certification of eligibility for expungement.
- As part of the process, both the Kentucky State Police and the Administrative Office of the Courts must run a criminal record report. These records are part of your expungement certification.
- The expungement certification is valid for only 30 days and any application for expungement must be filed before the certification expires.

How do I obtain an expungement certification?

- There are 3 different ways to request an expungement certification: online, in-person, or by mail.

Request online

1. Register at <https://kcoj.kycourts.net/RecordRequest>. An email account is required and will be verified during registration.
2. Complete the online request form.
3. Submit \$40 payment for the expungement certification. (Accepted forms of payment: American Express, Discover, MasterCard and Visa credit cards and most debit cards.)
4. Check your email for notification when the certification packet is available online.
5. Log in to the registration site at <https://kcoj.kycourts.net/RecordRequest> to download the certification packet.

Request in-person

You may request an expungement certification in-person at the drive-thru window at:

Administrative Office of the Courts

1001 Vandalay Drive

Frankfort, KY 40601

Drive-thru hours are 8 a.m. - 4 p.m. Monday - Friday (except state holidays).

1. Request a paper copy of the Expungement Certification Request Form <http://courts.ky.gov/resources/legalforms/LegalForms/RU009.pdf> if you have not already completed the form online.
2. Complete the form.
3. Submit \$40 payment for the expungement certification. (Accepted forms of payment: American Express, Discover, MasterCard and Visa credit cards and most debit cards; check or money order made payable to Kentucky State Treasurer; cash payment in exact amount.)
4. You will receive your certification packet by U.S. mail at the address you provided.

Request by mail

1. Download the Expungement Certification Request Form at <http://courts.ky.gov/resources/legalforms/LegalForms/RU009.pdf>
2. Complete the form.
3. Provide the \$40 for the expungement certification payment by check or money order made payable to Kentucky State Treasurer.
4. Mail the completed form and payment to:

Records Unit
Administrative Office of the Courts
1001 Vandalay Drive
Frankfort, KY 40601

5. You will receive your certification packet by U.S. mail at the address you provided.

Step 2: Fill Out the Felony Expungement Application Form

Where can I find the expungement form I need?

- The AOC-496.3, Application to Vacate and Expunge Felony Conviction, can be found at <http://courts.ky.gov/resources/legalforms/LegalForms/4963.pdf>.

Is there a separate form for expunging charges if I have received a full pardon?

- No. A person granted a full pardon may file to have a felony conviction vacated and expunged by completing form AOC-496.3. You will need to attach a copy of your pardon with your application.

How do I fill out the AOC-496.3, Application to Vacate and Expunge Felony Conviction?

- You can find all the information you need to complete this form on the Expungement Eligibility Certification Notice, the Kentucky State Police Criminal History Report, and the Administrative Office of the Courts Criminal Record Report.
- Listed below are line-by-line instructions for completing the form. Keep in mind it is not uncommon for some charges to appear on one report and not another. Below are some samples to help you locate the information you need to complete the AOC-496.3.

AOC-496.3 Page 1 Line-By-Line Instructions

Case No.: Enter the case number of the criminal case including the charges you are asking the court to expunge. The case number can be located on both the Expungement Eligibility Certification Notice and the Administrative Office of the Courts Criminal Record Report. Only one criminal case can be filed per application. If your record contains both a “CR” and an “F” case for the same charges list the “CR” case number on your application.

Court: Enter the level of court where your case was heard and ruled on. Was the case heard at the district or circuit court level? The court type can be determined from the letters in the case number. A case number containing “F” or “T” represents a case heard at the district court level whereas a “CR” will represent a case heard at the circuit court level. If your record contains both a “CR” and an “F” case for the same charges list the “CR” case number on your application. Sometimes the court type will be referenced on the Kentucky State Police Criminal History Report as the Court Name.

County: This is the county where your case was filed. The county is located on the Administrative Office of the Courts Criminal Record Report next to the date the case was filed and the case number.

Sample: AOC Record Report

Name: Jon Doe DOB: 02/12/1982 Gender: M Race: W
Case Filed on 08/15/2000 in FRANKLIN County as case number 00-CR-01234 → Case No.

County Court

Sample: Certification Notice

Arrest Date:	Charge:	Disposition:	Case:	County:	Eligible:
11/12/2000	POSSESS DRUG PARAPHERNALIA, 1ST OFFENSE	GUILTY	00-CR-01234	FRANKLIN	YES
11/12/2000	POSSESS CONT SUB, 1ST DEGREE, 1ST OFFENSE - COCAINE	GUILTY	00-CR-01234	FRANKLIN	YES

Division: Enter the division number of the court that heard your case. Division indicates which specific judge heard your case if there are multiple district or circuit court judges in your county (ex. Division I, Division II). If you do not know the division number, you may leave this blank.

Sample: Completed Section of AOC-496.3

Case No.	00-CR-01234
Court	Circuit
County	Franklin
Division	

Name: Enter your name as it appears on your criminal case. You will be referred to as the defendant for the remainder of the form and proceedings.

Address, Phone Number: Enter your current contact information. List your complete mailing address including the street, city, state, and zip code. This is the address the circuit court clerk will use to send a notice of hearing if a hearing is ordered or to notify you whether your application for expungement has been granted or denied. Be sure to include the area code for your phone number.

Defendant's Birthdate, SSN: Enter your birthdate and social security number. Your birthdate should be entered as two digits for the month, two digits for the day, and four digits for the year just as the birthdate appears on all paperwork in the expungement certification: MM/DD/YYYY. This information is necessary to match records in the expungement process.

Jail ID Number: If you do not know your jail ID number or you do not have one, simply write "NA" in the blank. Also known as the inmate ID number, the jail ID number is a unique identification number assigned to each inmate at the time they are booked. Not everyone will have a jail ID number. This information is not mandatory, but you should include it if you know it to assist with expunging matching records the jail may keep, such as booking photos.

Violation/Arrest Date: Enter the date you were arrested. If you were not arrested, enter the date the violation occurred. The arrest date is located on the criminal history section of the Kentucky State Police Criminal History Report.

Sample KSP Criminal History Report

CRIMINAL HISTORY	
*ARREST *1	
ARREST DATE:	06/01/2000
ARREST ORI/NAME:	KY0370100 FRANKFORT PD
FINGERPRINTING ORI:	KY037013C
ARREST NAME:	
CHARGE:	1
OFFENSE:	42075/DRUG PARAPHERNALIA LAW, BUY, POSS 1 ST OFFENSE (OBS)
OFFENSE DATE:	06/01/2000
SEVERITY:	MISDEMEANOR
COUNTS:	1
KRS:	218A.500 (2)
ASCF:	NONE
CITATION NUMBER:	
POLICE CASE:	
CHARGE:	2
OFFENSE:	42203/POSS CONT SUB 1 ST DEG 1 ST OFF (COCAINE)
OFFENSE DATE:	06/01/2000
SEVERITY:	FELONY
COUNTS:	1
KRS:	218A.1415
ASCF:	NONE
CITATION NUMBER:	
POLICE CASE:	

Sample: Completed Section of AOC-496.3

(555) 555-5555 PHONE NUMBER Jail ID Number NA (optional)
 Defendant's Birthdate: 02/12/1982 Defendant's SSN: XXX-XX-0000 Violation/Arrest Date: 06/01/2000

Charge(s): Enter the name of the charge(s) you wish to have expunged as they appear on your criminal record for that case. Each charge you wish to have expunged must be listed separately. The charge(s) is/are listed on the Expungement Certification or the Administrative Office of the Courts Criminal Record Report. Only charges listed under the case number that you entered previously on the form should be included. Be sure to list every charge you wish to have expunged.

Sample: Certification Notice

Arrest Date:	Case: 00-CR-01234	FRANKLIN	Eligible
Charge: 2	*OBS* USE/POSSESS DRUG PARAPHERNALIA, 1ST OFFENSE		YES
Disposition:	11/12/2000 GUILTY		
<hr/>			
Arrest Date:	Case: 00-CR-01234	FRANKLIN	Eligible
Charge: 1	POSS CONT SUB, 1ST DEGREE, 1ST OFFENSE - COCAINE		YES
Disposition:	11/12/2000 GUILTY		

Charge

Victim(s): List the name and address of any victim(s) to the crime if known. This information might be located on your Kentucky State Police Criminal History Report. If there were no victims simply write "NA" or if you do not know the information write "unknown."

Sample: Completed Section of AOC-496.3

Victims: <u>unknown</u>

Sample: Completed Section of AOC-496.3

Comes now the Defendant herein and moves this Court, pursuant to KRS 431.073, to vacate the conviction and expunge the following offense(s) in the above-referenced case: <i>(If there are non-felony charges in the same case to be expunged, list as well.)</i>	
CHARGE: <u>Drug Paraphernalia Law, Buy, Poss 1st Offense (OBS)</u>	CHARGE: _____
CHARGE: <u>Poss Cont Sub, 1st Degree, 1st Offense - Cocaine</u>	CHARGE: _____
CHARGE: _____	CHARGE: _____

AOC-496.3 Page 2 Line-By-Line Instructions

Case No.: This will be the same case number you entered on page 1.

Agencies and Addresses: Enter the name and address of the police department that arrested or cited you, the jail you were booked into, and any other agency that may have records of your arrest or charges for this case. Each arrest listed on the Kentucky State Police Criminal History Report lists an Arrest ORI/Name that tells what agency arrested you. There is a section at the end of the Kentucky State Police Criminal History Report that gives information for every agency that reports information on a defendant to Kentucky State Police. Only list the agencies that pertain to the charge(s) you want to expunge. Don't forget to include any jails where you were held on the charges you wish to expunge; they may have photos on file that can be expunged.

Sample: KSP Criminal History Record

CRIMINAL HISTORY	
*ARREST *1	
ARREST DATE:	06/01/2000
ARREST ORI/NAME:	KY0370100 FRANKFORT PD
FINGERPRINTING ORI:	KY037013C
ARREST NAME:	Jon Doe
CHARGE: 1	
OFFENSE:	42075/DRUG PARAPHERNALIA LAW, BUY, POSS 1 ST OFFENSE (OBS)
OFFENSE DATE:	06/01/2000
SEVERITY:	MISDEMEANOR
COUNTS:	1
KRS:	218A.500 (2)
ASCF:	NONE
CITATION NUMBER:	
POLICE CASE:	
CHARGE: 2	
OFFENSE:	42203/POSS CONT SUB 1 ST DEG 1 ST OFF (COCAINE)
OFFENSE DATE:	06/01/2000
SEVERITY:	FELONY
COUNTS:	1
KRS:	218A.1415
ASCF:	NONE
INDEX OF AGENCIES	
AGENCY ORI/NAME:	KY0370100 FRANKFORT PD (555) 555-5555
PHONE NUMBER:	
STREET ADDRESS:	300 WEST SECOND STREET
CITY, STATE, ZIP:	FRANKFORT, KY 40601
COUNTY:	FRANKLIN
END OF RECORD	

A different Fingerprinting ORI # than the arresting agency means another agency might have information about your arrest.

Frankfort PD Address

Sample: Completed Section of AOC-496.3

AOC-496.3 Rev. 7-16 Page 2 of 2	Case No. <u>00-CR-01234</u>
<p>The Defendant moves that this Application to Vacate and Expunge a Felony Conviction be granted and that this Court enter an Order that the Kentucky State Police, the Kentucky Department of Libraries and Archives, and the following agencies expunge any records in the agencies' custody regarding these charges: LIST AGENCIES AND ADDRESSES HERE:</p> <p><u>Frankfort PD, 300 West Second Street, Frankfort, KY 40601</u></p> <p><u>Franklin County Regional Jail, 400 Coffee Tree Rd, Frankfort, KY 40601</u></p> <p>_____</p> <p>_____</p> <p>_____</p>	

* * You must sign and date your Application to Vacate and Expunge Felony Conviction in the presence of a notary or the circuit court clerk. **DO NOT SIGN UNTIL YOU ARE IN THE PRESENCE OF A NOTARY PUBLIC OR THE CIRCUIT COURT CLERK.** A notary public is a public servant appointed by the state to witness the signing of documents and deter fraud. * *

Date: The date the form is signed in the presence of a notary public or the circuit court clerk.

Defendant/Petitioner: The person requesting the expungement must sign the document here in the presence of the notary or the circuit court clerk.

Subscribed and sworn to before me by: The notary public or circuit court clerk will complete the remaining information on the form. They will supply their name, the date the document is signed and notarized, their signature, and the date their services as a notary is set to expire (if applicable).

Step 3: Next Steps for Expungement

What do I do after I fill out the Application to Vacate and Expunge Felony Conviction?

- The completed Application to Vacate and Expunge Felony Conviction form, expungement certification, and \$500 filing fee should be filed with the [Office of the Circuit Court Clerk](#) in the county where the original charge was filed.
- If you do not have an attorney, file the forms in person. Keep a copy of all your paperwork for your records.

Can I file online?

- Attorneys may eFile a felony expungement application. If an attorney does not have an eFile account, he or she will have to file the form in person in the county where the original charge was filed. If you are not an attorney, at this time you will have to file the form in person in the county where the original charge was filed.

What if I have charges from multiple cases to expunge?

- Each individual may apply for expungement of one eligible Class D felony conviction (or a series of eligible Class D felony convictions arising from a single incident).

What if I change addresses before my expungement case is over?

- If you move before your case is over, immediately notify the circuit court clerk in the county where the application was filed of your new address. If you do not tell the circuit court clerk your new address, you may not receive notices of hearing dates or copies of court orders.

Will I have to go to court?

- It is possible that the court could schedule a hearing no later than 120 days after the filing of your application. If the court schedules a hearing the circuit court clerk will send you notice of the date and time of the hearing so that you can be in attendance.
- It is possible the court may issue an order without a hearing if the prosecutor does not object to the expungement.

How will I know if anyone objects to my expungement?

- The prosecutor has 60 days to object to your application for expungement. If the prosecutor objects, the court will schedule a hearing and the circuit court clerk will send you notice of the date and time of the hearing.

Step 4: Understanding Your Expungement Order

How will I know if my application for expungement has been granted?

- You will receive an order signed by the judge either granting or denying your expungement application. Please be sure the circuit court clerk has your most recent address.

How can I ensure that all agencies ordered to expunge their records have done so?

- It can take time for agencies to update their records and/or database systems. If you want to confirm that all agencies have complied with the court's expungement order, you should check with each agency ordered by the court to expunge all records related to your arrest, charge(s), or other matters arising out of your arrest or charge(s).

If my records are expunged, do I have to tell employers or potential employers about it?

- Upon entry of the order you will not have to disclose your record or any matter relating to it on an application for employment, credit, or other purpose.
- If a potential employer requests a background check on your expunged charge, the court and other agencies listed on the court's expungement order must reply that no record exists on the matter.

My charge has been expunged; why is it still showing on a background check?

- If a potential employer conducts a background investigation through a private third party instead of the Kentucky State Police or the Administrative Office of the Courts, your charge(s) may still appear on that background check. If this occurs, you will need to contact the private third party directly.

What else do I need to know?

- Always keep a certified copy of the expungement order. This will be the only way you will be able to prove the expungement has been completed by the court in the future.

Appendix

The following Class D felony charges are eligible for expungement:

KRS 17.175 Unlawful use of DNA database identification system

KRS 186.990 Motor Vehicles, Operators, and Trailers – Theft and Fraud Offenses.

KRS 194A.505; KRS 194B.505 Assistance Program Fraud.

KRS 217.181 Theft of a legend drug.

KRS 217.207 Theft, criminal possession, trafficking, or unlawful possession of a prescription blank.

KRS 217.208 Forgery of a prescription.

KRS 218A.140 Prohibited acts relating to controlled substances – Penalties.

KRS 218A.1415 Possession of controlled substance in first degree.

KRS 218A.1416 Possession of controlled substance in second degree.

KRS 218A.1417 Possession of controlled substance in third degree.

KRS 218A.1418 Theft of a controlled substance (Repealed in 2013).

KRS 218A.1439 Trafficking in or transferring a dietary supplement – Exceptions -- Penalties.

KRS 218A.282 Forgery of a prescription.

KRS 218A.284 Criminal possession of a forged prescription.

KRS 218A.286 Theft, criminal possession, trafficking, or unlawful possession of a prescription or blank.

KRS 218A.320 Criminal possession of a medical record – Penalties.

KRS 218A.322 Theft of a medical record – Penalties.

KRS 218A.324 Criminal falsification of a medical record – Penalties.

KRS 218A.1423 Marijuana Cultivation -- Penalties.

KRS 244.165 Unlawful sale and shipment by out-of-state seller directly to a Kentucky consumer -- Permissible shipments of wine into Kentucky by out-of-state small farm wineries -- Penalty.

KRS 286.11-057 Penalties under KY Financial Services Code.

KRS 304.47-025 Felony offense involving dishonesty or breach of trust -- Fraudulent insurance act

KRS 324.990 Engaging in real estate brokerage without license – Penalties.

KRS 365.241 Counterfeiting intellectual property -- Penalties -- Disposition of property.

KRS 434.155 Filing illegal lien.

KRS 434.675 Use of scanning device or reencoder to obtain payment card information prohibited.

KRS 434.850 Unlawful access to a computer in the second degree.

KRS 434.872 Disclosure of information from financial information repository – Penalties.

KRS 511.040 Burglary in the third degree.

KRS 512.020 Criminal mischief in the first degree.

KRS 514.030 Theft by unlawful taking or disposition – Penalties.

KRS 514.040 Theft by deception.

KRS 514.050 Theft of property lost, mislaid, or delivered by mistake.

KRS 514.060 Theft of services.

KRS 514.065 Possession, use or transfer of device for theft of telecommunications services.

KRS 514.070 Theft by failure to make required disposition of property.

KRS 514.080 Theft by extortion.

KRS 514.090 Theft of labor already rendered.

KRS 514.100 Unauthorized use of automobile or other propelled vehicle.

KRS 514.110 Receiving stolen property.

KRS 514.120 Obscuring identity of machine or other property.

KRS 514.140 Theft of mail matter.

KRS 514.150 Possession of stolen mail matter.

KRS 514.160 Theft of identity.

KRS 516.030 Forgery in the second degree.

KRS 516.060 Criminal possession of forged instrument in the second degree.

KRS 516.090 Possession of forgery device.

KRS 516.108 Criminal simulation in the first degree.

KRS 517.120 Operating a sham or front company.

KRS 518.040 Sports bribery.

KRS 522.040 Misuse of confidential information.

KRS 524.100 Tampering with physical evidence.

KRS 525.113 Institutional vandalism.

KRS 526.020 Eavesdropping.

KRS 526.030 Installing eavesdropping device.

KRS 528.020 Promoting gambling in the first degree.

KRS 528.040 Conspiracy to promote gambling.

KRS 528.050 Possession of gambling records in the first degree.

KRS 530.010 Bigamy – Defense.

KRS 530.050 Nonsupport and flagrant nonsupport.