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# Kentucky  Restoration of Rights, Pardon, Expungement & Sealing

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### I.  Restoration of Civil Rights/Firearms Privileges

#### A.  Vote/Office

Persons convicted of a felony lose the right to vote and it is restored only by personal action of the governor.  *See* Ky. Const. § 145(1) (“Persons convicted in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon.”); *see also* Ky. Rev. Stat. Ann. § 27A.070 (court shall send notice of a felony conviction to the state board of elections when conviction is final).  In addition, people who are “in confinement under the judgment of a court for some penal offense” at the time of the election, whether convicted of felony or misdemeanor, are not allowed to vote.  Ky. Const. § 145(2).  The legislature has chosen not to extend disenfranchisement to those convicted of “high misdemeanors,” except those “in confinement under the judgment of a court” at the time of an election.  *Id*.  Federal offenders and out-of-state offenders may have voting rights restored by the governor, *Arnett v. Stumbo*, 153 S.W.2d 889 (Ky. 1941), except that those with out-of-state convictions may vote in Kentucky if their rights were restored in the jurisdiction of conviction.  Source: Office of the Governor.**[1](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-1" \o "</strong> Efforts have been made in the Kentucky legislature to restore the vote automatically upon completion of sentence; The Democratic-led House repeatedly has approved a proposed constitutional amendment to that effect, but it has been blocked in the Republican-led Senate.  On November 24, 2015, just prior to leaving office, Governor Beshear issued an executive order restoring the right to vote and hold office to persons convicted of non-violent felonies upon completion of their sentence, as long as they had paid restitution and have no charges pending.  The order did not restore rights to those convicted of specified violent crimes, sex offenses, bribery or treason, who will still have to apply for discretionary restoration. Upon assuming office, his successor Governor Bevin suspended this order.  <em>See </em><span style="font-family: georgia, palatino, serif;">David Weigel, </span><em><span style="font-family: georgia, palatino, serif;">Kentucky’s new governor reverses executive order that restored voting rights for felons</span></em><span style="font-family: georgia, palatino, serif;">, Washington Post, </span><a href="https://www.washingtonpost.com/news/post-politics/wp/2015/12/23/kentuckys-new-governor-reverses-executive-order-that-restored-voting-rights-for-felons">https://www.washingtonpost.com/news/post-politics/wp/2015/12/23/kentuckys-new-governor-reverses-executive-order-that-restored-voting-rights-for-felons</a><span style="font-family: georgia, palatino, serif;"> (Dec. 23, 2015)</span>.  This action did not affect those whose voting rights had been recognized in the intervening two weeks. <strong>)** As of April 2016, set-aside and expungement of Class D felonies also restores the right to vote.  *See* Ky. Rev. Stat. Ann. § 431.078.

Except as provided below, a person convicted of a felony “or of such high misdemeanor as may be prescribed by law” loses the right to hold office, unless pardoned.  Ky. Const. § 150.

#### B.  Jury

A person who has “been previously convicted of a felony and has not been pardoned or received a restoration of civil rights by the Governor or other authorized person of the jurisdiction in which the person was convicted” is disqualified from jury service.  *See* Ky. Rev. Stat. Ann. § 29A.080(2)(e).

#### C.  Firearms

A person convicted after January 1, 1975 is prohibited from possessing a handgun, and a person convicted after July 15, 1994 is prohibited from possessing any firearm, unless pardoned.  Ky. Rev. Stat. Ann. § 527.040(1).  *See Posey v. Commonwealth*, 185 S.W.3d 170, 181 (Ky. 2006) (state constitutional right to bear arms did not limit legislature’s authority to prohibit possession of firearms by convicted felon).

#### D.  Collateral consequences

Kentucky’s collateral consequences have been compiled and analyzed in two law review articles:  Troy B. Daniels, Dawn L. Danley-Nichols, Kate R. Morgan and Bryce C. Roades, *Kentucky’s Statutory Collateral Consequences from Felony Convictions: A Practitioner’s Guide*, 35 N. Ky. L. Rev. 413 (2008), *available at* <http://chaselaw.nku.edu/content/dam/chaselaw/docs/academics/lawreview/v35/nklr_v35n4.pdf>;   Sara M. Caudill and Ashley England-Huff, *Collateral Consequences of Felony Convictions Established in the Kentucky Administrative Regulations,* 35 N. Ky. L. Rev. 453 (2008), *available at* <http://chaselaw.nku.edu/documents/law_review/v35/nklr_v35n4_pp543-606.pdf>.

### II.  Discretionary Restoration Mechanisms

#### A. Executive pardon

##### *Authority*

The power to pardon is vested in the governor.  Ky. Const. § 77.  The governor may also act to restore certain rights of citizenship to a person, including the right to vote or to hold office.  §§ 145 (right to vote), 150 (eligibility to hold office).  For pardons, the governor must file with the legislature a statement of reasons with each pardon grant, which must be available to the public.  § 77.  The governor may ask the Kentucky Parole Board to investigate and make recommendations on pardon cases, but he is not bound by its advice.  Ky. Rev. Stat. Ann. § 439.450 (“On request of the Governor the board shall investigate and report to him with respect to any case of pardon…”).

##### *Administration*

The Kentucky Parole Board is composed of nine full-time members appointed by the governor to four-year terms. Ky. Rev. Stat. Ann. § 439.320.  The governor must make each appointment from a list of three names provided by the Kentucky State Corrections Commission.  §439.320(1).  No more than six Board members may be of the same political party.  *Id*.  Full-time members are salaried employees.  The governor designates one Board member to serve as chair.  § 439.320(2).**[2](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-2" \o "</strong> Note that prior to 2010, the Parole Board consisted of 9 full-time and 2 part-time members, and each of the part-time members had to be from a different political party.  In 2010, legislation was passed that deleted reference to part-time Board members.  <em>See</em> 2010 Ky. Laws Ch. 107 (H.B. 564). <strong>)**

##### *Eligibility*

For restoration of rights, expiration of sentence or discharge, with no pending charges.  For pardon, governor requires seven-year waiting period.  Federal and out-of-state offenders are eligible only for a partial pardon (restoration of citizenship).  *See Stumbo*, 153 S.W.2d at 891-92.

##### *Effect*

Restoration of citizenship restores a person’s right to vote and eligibility for jury service.  A full pardon relieves additional legal disabilities.  *See Leonard v.* *Corrections Cabinet,* 828 S.W.2d 668, 672-73 (Ky. Ct. App. 1992) (Governor’s pardon would at least open the door for convicted person’s consideration as peace officer, but restoration of rights does not).  The governor’s pardon document may limit rights being restored.  *See Anderson v. Commonwealth*, 107 S.W.3d 193 (Ky. 2003) (Governor’s order restoring a convicted person’s civil rights did not restore felon’s “right” or eligibility to serve as a juror, where order specifically limited the restoration to felon’s rights to vote and to hold office).

##### *Process*

###### Restoration of rights:

Simplified process for restoration of rights: In 2001, legislature directed Department of Corrections to implement “simplified” process for restoration of civil rights, including informing all eligible offenders of their right to apply, generating a monthly list of all eligible offenders who have asked for their rights back, conducting investigations, giving notice to prosecutor in county of conviction and county of residence, and forwarding to Governor’s office on a monthly basis a list of all eligible offenders for consideration for partial pardon.  *See* Ky. Rev. Stat. Ann. § 196.045.  Application form on DOC website is available at <http://corrections.ky.gov/depts/Probation%20and%20Parole/Documents/Restoration%20of%20Civil%20Rights.pdf>.

###### Full pardon:

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.  An application form may be obtained by inquiring with the office of the governor (Phone:  502-564-2611).  Each completed application is sent to prosecutor for recommendation (if no response within 30 days, assumes no objection).

##### *Frequency of Grants*

###### Restoration of Rights:

Shortly after taking office in December 2015, Governor Matt Bevin suspended an executive order of predecessor Governor Steve Beshear that automatically restored civil rights to all those who have completed their sentences.  *See*David Weigel, *Kentucky’s new governor reverses executive order that restored voting rights for felons*, Washington Post, <https://www.washingtonpost.com/news/post-politics/wp/2015/12/23/kentuckys-new-governor-reverses-executive-order-that-restored-voting-rights-for-felons> (Dec. 23, 2015); *see also*Part I-A, *supra*.  According to the Office of the Secretary of State, Beshear had restored rights to more than 4200 individuals in his first 21/2 years alone.  (Phone:  502-564-3490).  Governor Fletcher, Beshear’s predecessor, imposed strict limits on restoration, including payment of an application fee and requirement of a written essay from applicants.**[3](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-3" \o "</strong> <em style="font-family: georgia, palatino, serif;">See</em> <a style="font-family: georgia, palatino, serif;" href="http://governor.ky.gov/pressrelease.htm?postingguid=%7B00a7f84b-ee36-4f5a-8386-d184c68324ff%7D">http://governor.ky.gov/pressrelease.htm?postingguid=%7B00a7f84b-ee36-4f5a-8386-d184c68324ff%7D</a><span style="font-family: georgia, palatino, serif;">.  </span><em style="font-family: georgia, palatino, serif;">See also</em><span style="font-family: georgia, palatino, serif;"> Elizabeth A. Wahler, </span><em style="font-family: georgia, palatino, serif;">Losing the Right to Vote: Perceptions of Permanent Disenfranchisement and the Civil Rights Restoration Application Process in the State of Kentucky</em><span style="font-family: georgia, palatino, serif;">, The Sentencing Project (Apr. 2006), </span><em style="font-family: georgia, palatino, serif;">available at</em> <a style="font-family: georgia, palatino, serif;" href="http://www.sentencingproject.org/doc/publications/fd_kylosingtherighttovote.pdf">http://www.sentencingproject.org/doc/publications/fd_kylosingtherighttovote.pdf</a><span style="font-family: georgia, palatino, serif;">; Marc Mauer & Tushar Kansal, </span><em style="font-family: georgia, palatino, serif;">Barred For Life: Voting Rights Restoration in Permanent Disenfranchisement States</em><span style="font-family: georgia, palatino, serif;">, Sentencing Project (Feb. 2005) at 14, </span><em style="font-family: georgia, palatino, serif;">available at</em> <a style="font-family: georgia, palatino, serif;" href="http://www.sentencingproject.org/pdfs/barredforlife.pdf">http://www.sentencingproject.org/pdfs/barredforlife.pdf</a><span style="font-family: georgia, palatino, serif;">. </span><strong style="font-family: georgia, palatino, serif;">)**

###### Full Pardon:

On December 8, 2015, his last day in office, Governor Beshear pardoned 201 people and commuted six prison sentences.  Ten of the grants went to women convicted of violent acts stemming out of domestic violence.  The grants are listed at <http://www.kentucky.com/news/politics-government/article48539005.html>.  He received approximately 3400 applications during his eight years in office.  Governor Fletcher issued about 100 pardons on his last day in office.  He also caused a sensation in August of 2005 by issuing blanket pardons to nine of his aides who were being investigated by a grand jury for merit system personnel violations, but had not been convicted.  *See* Associated Press, “Kentucky Governor Issues Pardons in Hiring Probe,” August 29, 2005, *available at* <http://www.msnbc.msn.com/id/9121273/ns/politics/t/ky-governor-issues-pardons-hiring-probe/>.

##### *Contact*

Office of the Governor, State Capitol, 700 Capitol Avenue, Frankfurt Kentucky, 40601.  502-564-2611, malexander@ky.gov.

#### B.  Judicial Expungement or Sealing

##### *1. Set-aside and Expungement of Minor Felonies, Pardoned Convictions*

On April 1, 2016 the Kentucky legislature passed HR40, amending Ky. Rev. Stat. Ann. § 431.078 to authorize courts upon petition to set-aside specified Class D felony convictions, dismiss the charges, and expunge the record.  *See* <https://legiscan.com/KY/text/HB40/id/1381730/Kentucky-2016-HB40-Draft.pdf>.   Eligible crimes include third-degree burglary, drug possession, prescription forgery, theft by unlawful taking, theft by deception, stealing credit card information, stealing computer data, filing falsified financial records, conspiracy to promote gambling, bigamy and selling real estate without a license, among several others.   Multiple Class D felonies stemming from a single incident are also be eligible for expungement.

The vacatur application shall be filed as a motion in the original criminal case, and defendants “shall be informed of the right at the time of adjudication.”  The eligibility waiting period is 5 years after completion of sentence, and the court must hold a hearing within 120 days of filing.  Prosecutors have 60 days to respond, and no hearing is required if the prosecutor either indicates no objection or does not respond within the 120 days.  There is a filing fee of $500 (a floor amendment to reduce this to $250 was defeated).

Upon entry of a vacatur order,

*the court  shall  dismiss  with  prejudice  any  charges  which  are  eligible  for expungement . . . and order expunged all records in the custody of the court and  any  records  in  the  custody  of  any  other  agency  or  official,  including  law enforcement records, if the court finds that:
(a)  The  person  had  not  previously  had  a  felony  conviction  vacated  and  the
record expunged pursuant to this section;
(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.*

###### Effect

*Upon  entry  of  an  order  vacating  and  expunging  a  conviction,  the  original
conviction  shall  be  vacated  and  the  record  shall  be  expunged.  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. The 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. If 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.*

##### *2. Expungement of Misdemeanors*

Judges, upon request, must expunge convictions for most misdemeanors and violations five years after completion of the person’s sentence if the applicant has no prior felony conviction, and no other criminal violations within that time. Ky. Rev. Stat. Ann. § 431.078.  Sex offenses or offenses against a child are ineligible.  Under § 431.078(1)(a), “any person who has been convicted of a misdemeanor or a violation, or a series of misdemeanors or violations arising from a single incident, may petition the court in which he was convicted for expungement of his misdemeanor or violation record.”  Under § 431.078(1)(b), multiple misdemeanors may be expunged, as long as the applicant has not been convicted of any offense in the last five years, and no proceedings are pending.  A person must be informed of this “right” at the time of adjudication.  *Id.*  Until the passage of HR 40 in 2016, the only felony cases eligible for expungement were Class D felonies in which adjudication was deferred.  *See* §§ 533.250-533.262, discussed *infra*.

Beginning Jan. 1, 2014, every petition for expungement must include a certificate of eligibility for expungement, in which the Kentucky State Police certify an individual’s eligibility.**[4](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-4" \o "</strong> The website of the Kentucky courts describes certification procedures and allows petitioners to begin the certification process online.  <em>See </em><a href="http://courts.ky.gov/expungement/Pages/default.aspx">http://courts.ky.gov/expungement/Pages/default.aspx</a><em>. </em>As of February 2016, a $40 fee is required for certification — this is in addition to the $100 fee required to file the petition itself. <strong>)**  Ky. Rev. Stat. Ann. § 431.079.   Upon filing a petition,**[5](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-5" \o "</strong> The petition form is available at <a href="http://courts.ky.gov/resources/legalforms/LegalForms/4962.pdf">http://courts.ky.gov/resources/legalforms/LegalForms/4962.pdf</a>. <strong>)** court must notify prosecutor and any identified victim.  § 431.078(3).  The court “shall” seal records unless the offense was a sex offense or was committed against a child, the applicant had a previous felony conviction, the applicant was convicted of a misdemeanor or violation in the five years prior to the conviction sought to be expunged, the applicant had been convicted of a felony, misdemeanor, or violation in the five years since the conviction sought to be expunged, the applicant is currently subject to proceedings concerning a felony, misdemeanor, or violation, or the offense sought to be expunged was an offense against the Commonwealth of Kentucky. § 431.078(4).  The section is retroactive to offenses committed prior to July 14, 1992.  § 431.078(8).

###### Effect

*Upon the entry of an order to expunge the records the proceedings in the case shall be deemed never to have occurred; 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; the persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and 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.*

Ky. Rev. Stat. § 431.078(6).

##### *3.  Pretrial Diversion/Deferred Adjudication*

Ky. Rev. Stat. Ann. §§ 533.250-533.262.  Pretrial diversion is available to a person charged with a Class D felony offense who has had no prior felony convictions within a ten-year period, who has not been under felony sentence within the ten year period immediately preceding the commission of the offense, and whose offense is not one for which probation or parole is prohibited.  § 533.250(1)(a).  Persons must demonstrate treatment compliance as a precondition of participation in the pretrial diversion program, if indicated, though this requirement may be waived.  §§ 533.251(1)-(2).  The court may permit Class C felony offenders to participate.  § 533.251(4).  Prosecutor must make a recommendation on each request for admission to diversion, and the court cannot grant diversion without the prosecutor’s approval.  § 533.250(6).  *See also Flynt v. Commonwealth,* 105 S.W.3d 415 (Ky. 2003).**[6](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-6" \o )** A guilty plea is a precondition for participation, but upon successful completion of the probationary period the charges are listed as “dismissed-diverted” and “shall not constitute a criminal conviction.”  § 533.258(1).  Expungement is available under Ky. Rev. Stat. Ann. § 431.076 (*see* *supra*).  The defendant shall not be required to list this disposition on any application for employment, licensure, or otherwise unless required to do so by federal law.  § 533.258(2).

##### *4.  Juvenile Expungement*

Ky. Rev. Stat. Ann. § 610.330.  Expungement is available, upon petition to the court, where a juvenile is a status offender or a public offender with only a misdemeanor record and where the offense would not have been a felony if committed by an adult.  § 610.330(1).  The court must inform the juvenile of the right to expungement at the time of adjudication.  *Id.*  The petition must be filed and expungement ordered no sooner than two years after the ending of the court’s jurisdiction over the juvenile or two years after the juvenile’s unconditional release from commitment, with waiver of the waiting period available in extraordinary circumstances.  *Id.* A juvenile’s records are sealed upon a court finding that there are no subsequent convictions, adjudications, or pending proceedings since the termination of the court’s jurisdiction or the juvenile’s release.  § 610.330(3).  Upon sealing, only the person or those named in the sealing order may inspect the records, and the juvenile may deny the existence of any record.  § 610.330(4), (6).

##### *5.  Expungement of Non-conviction Records*

Courts have discretion to expunge records of misdemeanor or felony cases that result in dismissals or acquittals. Ky. Rev. Stat. Ann. § 431.076.  In spousal abuse cases judges must expunge if the charges are dismissed or end in acquittal.  *Id*. § 510.300.  *See also* *id*. § 17.142 (segregation of records).

In 2016 expungement authority under § 431.076 was extended to cases in which filed charges have not resulted in indictment after 12 months.

##### *Comment*

In 2005, an investigative article from the Louisville Courier-Journal reports that 12,000 expungements were granted in Kentucky in the two-year period prior to May 2005.  Jason Riley & Kay Stewart, *Confusing laws allow abuse and inequality: Filing errors also leave some sealed cases open*, Courier-Journal, May 15, 2005, *available at* <http://www.courier-journal.com/apps/pbcs.dll/article?AID=/20050515/NEWS01/505150409>.  The Courier-Journal article also documents confusion among judges as to whether they have discretion to deny expungement under these statutes.  Uncertainty expressed about court authority to expunge records in diversion cases.  When a case is expunged, several agencies—including Metro Corrections, the commonwealth’s attorney’s office, metro police and sometimes the state police and the FBI—are ordered to seal their records.  They are supposed to certify to the court within 60 days that they have done so.  The FBI, which runs the National Crime Information Center, is not bound by the state order but routinely erases the requested records.  *See also* *Jefferson works to improve expungement process*, *available at* <http://www.wkyt.com/Global/story.asp?S=3499230> (in 2004 there were 6500 applications for expungement filed in Jefferson County alone, 2100 of which were granted).

### III.  Nondiscrimination in Licensing and Employment:

Public Employment and Licensing:  Ky. Rev. Stat. Ann. §§ 335B.020-.070.  Under § 335B.020(1),

*No person shall be disqualified from public employment, [or from] . . . any occupation for which a license is required, solely because of a prior conviction of a crime, unless the crime for which convicted is [a felony or misdemeanor punishable by imprisonment] or otherwise directly relates to the position of employment sought or the occupation for which the license is sought.*

§ 335B.020(1).

*In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider:*

*(a) The nature and seriousness of the crime for which the individual was convicted;*

*(b) The relationship of the crime to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;*

*(c) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.*

§ 335B.020(2).

Also, under Ky. Rev. Stat. Ann. § 335B.020(3),

*Nothing in KRS 335B.020 to 335B.070 shall be construed so as to limit the power of the hiring or licensing authority to determine that an individual shall be entitled to public employment or a license regardless of that individual’s conviction if the hiring or licensing authority determines that the individual has been successfully rehabilitated*.

*See* *also* 1980 Ky. Op. Atty Gen. 80-388 (1980), 1980 WL 102528 (Ky.A.G) (explaining that a felony conviction is not an absolute bar to an occupational license, Ky. Rev. Stat. Ann. Ch. 335B supersedes all other statutes and regulations as to licensing convicted persons, and the licensing board should consider if an applicant has been rehabilitated).