

AMENDMENTS TO HOUSE BILL NO. 1419

Sponsor: REPRESENTATIVE MARSICO

Printer's No. 1847

1 Amend Bill, page 1, lines 1 through 11, by striking out all
2 of said lines and inserting

3 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
4 Consolidated Statutes, in criminal history record
5 information, further providing for general regulations and
6 for order for limited access and providing for clean slate
7 limited access, for exceptions, for order to vacate order for
8 limited access, for effects of expunged records and records
9 subject to limited access and for employer immunity from
10 liability.

11 The General Assembly finds and declares as follows:

12 (1) Individuals with charges not leading to convictions
13 may be inherently harmed by the maintenance of that record
14 and have a constitutional presumption of innocence.

15 (2) Individuals convicted of crimes in this Commonwealth
16 should serve their sentences as ordered by the courts of this
17 Commonwealth.

18 (3) After less violent individuals convicted of crimes
19 have served their sentences and remained crime free long
20 enough to demonstrate rehabilitation, the individuals' access
21 to employment, housing, education and other necessities of
22 life should be fully restored.

23 (4) Criminal justice agencies need access to all
24 criminal history record information in order to effectively
25 carry out the agencies' duties to protect the public.

26 (5) The Commonwealth shall provide a clean slate remedy,
27 as set forth under this act, to:

28 (i) Create a strong incentive for avoidance of
29 recidivism by offenders.

30 (ii) Provide hope for the alleviation of the
31 hardships of having a criminal record by offenders who
32 are trying to rehabilitate themselves.

33 (iii) Save the Commonwealth money that must be spent
34 in the administration of criminal justice when offenders
35 recidivate.

36 (iv) Ensure appropriate access to criminal history
37 information by criminal justice agencies.

38 (6) The clean slate remedy should be implemented without

1 cost to the former offender of filing a petition with a
2 court.

3 Amend Bill, page 1, lines 14 through 20; pages 2 through 10,
4 lines 1 through 30; page 11, lines 1 through 20; by striking out
5 all of said lines on said pages and inserting

6 Section 1. Sections 9121(b) introductory paragraph, (2) and
7 (3), (b.1) and (b.2) and 9122.1 heading, (a) and (b) of Title 18
8 of the Pennsylvania Consolidated Statutes are amended to read:
9 § 9121. General regulations.

10 * * *

11 (b) Dissemination to noncriminal justice agencies and
12 individuals.--Criminal history record information shall be
13 disseminated by a State or local police department to any
14 individual or noncriminal justice agency only upon request.
15 [Except as provided in subsection (b.1):] The following apply:

16 * * *

17 (2) [Before] Except as provided for in subsections (b.1)
18 and (b.2), before a State or local police department
19 disseminates criminal history record information to an
20 individual or noncriminal justice agency, it shall extract
21 from the record the following:

22 (i) All notations of arrests, indictments or other
23 information relating to the initiation of criminal
24 proceedings where:

25 (A) three years have elapsed from the date of
26 arrest;

27 (B) no [conviction has occurred] disposition is
28 indicated in the record; and

29 (C) [no proceedings are pending seeking a
30 conviction.] nothing in the record indicates that
31 proceedings seeking conviction remain pending.

32 (ii) All information relating to a conviction and
33 the arrest, indictment or other information leading
34 thereto, which is the subject of a court order for
35 limited access as provided in section 9122.1 (relating to
36 order for limited access).

37 (iii) All information relating to a conviction or
38 nonconviction final disposition, and the arrest,
39 indictment or other information leading to the arrest or
40 indictment which is subject to a court order for limited
41 access as provided for in section 9122.2 (relating to
42 clean slate limited access).

43 (3) A court or the Administrative Office of Pennsylvania
44 Courts may not disseminate to an individual, a noncriminal
45 justice agency or an Internet website any information
46 [relating to a conviction, arrest, indictment or other
47 information leading to a conviction, arrest, indictment or
48 other information,] which is the subject of a court order for

1 limited access as provided in section 9122.1 or 9122.2.

2 (b.1) Exception.--Subsection (b)(1) and (2) shall not apply
3 if the request is made by a county children and youth agency or
4 the Department of [Public Welfare] Human Services in the
5 performance of duties relating to children and youth under the
6 act of June 24, 1937 (P.L.2017, No.396), known as the County
7 Institution District Law, section 2168 of the act of August 9,
8 1955 (P.L.323, No.130), known as The County Code, the act of
9 June 13, 1967 (P.L.31, No.21), known as the [Public Welfare]
10 Human Services Code, 23 Pa.C.S. Ch. 63 (relating to child
11 protective services) or 42 Pa.C.S. Ch. 63 (relating to juvenile
12 matters).

13 (b.2) Additional exceptions.--

14 (1) Subsection (b)(2)(ii) and [(3)] (iii) shall not
15 apply if the request is made [by a State agency to be used
16 only as authorized under section 9124 (relating to use of
17 records by licensing agencies).] under a court order:

18 (i) In a case brought under 23 Pa.C.S. Ch. 53
19 (relating to child custody) or 61 (relating to protection
20 from abuse).

21 (ii) By an employer against whom a claim of civil
22 liability has been brought as described under section
23 9122.6 (relating to employer immunity from liability) for
24 purposes of defending against a claim of civil liability.

25 (2) Subsection (b)(2) shall not apply:

26 (i) To the verification of information provided by
27 an applicant if Federal law, including rules and
28 regulations promulgated by a self-regulatory organization
29 that has been created under Federal law, requires the
30 consideration of an applicant's criminal history for
31 purposes of employment.

32 (ii) To the verification of information provided to
33 the Supreme Court, or an entity of the Supreme Court, in
34 its capacity to govern the practice, procedure and
35 conduct of all courts, the admission to the bar, the
36 practice of law, the administration of all courts and
37 supervision of all officers of the judicial branch.

38 * * *

39 § 9122.1. [Order] Petition for limited access.

40 (a) General rule.--[The following shall apply:

41 (1) Notwithstanding any other provision of this chapter,
42 upon petition of a person who has been free of arrest or
43 prosecution following conviction or final release from
44 confinement or supervision, whichever is later, for a period
45 of 10 years, the court of common pleas in the jurisdiction
46 where the conviction occurred may enter an order that
47 criminal history record information maintained by any
48 criminal justice agency pertaining to a conviction for a
49 misdemeanor of the second degree, a misdemeanor of the third
50 degree or an ungraded offense which carries a maximum penalty
51 of no more than two years be disseminated only to a criminal

1 justice agency or a government agency as provided in section
2 9121(b.1) and (b.2) (relating to general regulations).

3 (2) Except when requested or required by a criminal
4 justice agency, or by and for the official use of a
5 government agency described in section 9121(b.1) or 9124(a)
6 (relating to use of records by licensing agencies), no
7 individual shall be required nor requested to disclose
8 information about the person's criminal history records that
9 are the subject of a court order for limited access granted
10 under this section.] Subject to the exceptions in subsection
11 (b) and notwithstanding any other provision of this chapter,
12 upon petition of a person who has been free from conviction
13 for a period of 10 years for an offense punishable by one or
14 more years in prison and has completed court-ordered
15 financial obligations of the sentence, the court of common
16 pleas in the jurisdiction if a conviction occurred may enter
17 an order that criminal history record information maintained
18 by a criminal justice agency pertaining to a qualifying
19 misdemeanor or an ungraded offense which carries a maximum
20 penalty of no more than five years be disseminated only to a
21 criminal justice agency or as provided in section 9121(b.1)
22 and (b.2) (relating to general regulations).

23 (b) Exceptions.--An order for limited access under this
24 section shall not be granted [to an individual who has been
25 convicted at any time of any of the following:

26 (1) An offense punishable by imprisonment of more than
27 two years.

28 (2) Four or more offenses punishable by imprisonment of
29 one or more years.

30 (3) A violation of section 2701 (relating to simple
31 assault), except when the offense is graded as a misdemeanor
32 of the third degree.

33 (4) A violation of section 3129 (relating to sexual
34 intercourse with animal).

35 (5) A violation of section 4912 (relating to
36 impersonating a public servant).

37 (6) A violation of section 4952 (relating to
38 intimidation of witnesses or victims).

39 (7) A violation of section 4953 (relating to retaliation
40 against witness, victim or party).

41 (8) A violation of section 4958 (relating to
42 intimidation, retaliation or obstruction in child abuse
43 cases).

44 (9) An offense which requires registration under 42
45 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual
46 offenders).] for any of the following:

47 (1) A conviction for an offense punishable by more than
48 two years in prison which is any of the following:

49 (i) An offense under Pt. II Article B (relating to
50 offenses involving danger to the person).

51 (ii) An offense under Pt. II Article D (relating to

1 offenses against the family).

2 (iii) An offense under Chapter 61 (relating to
3 firearms and other dangerous articles).

4 (iv) An offense specified in 42 Pa.C.S. § 9799.14
5 (relating to sexual offenses and tier system).

6 (2) An individual who meets any of the following:

7 (i) Has been convicted of murder, a felony of the
8 first degree or an offense punishable by imprisonment of
9 20 or more years.

10 (ii) Has been convicted within the previous 20 years
11 of:

12 (A) a felony or an offense punishable by
13 imprisonment of seven or more years involving:

14 (I) an offense under Pt. II Article B;

15 (II) an offense under Pt. II Article D;

16 (III) an offense under Chapter 61; or

17 (IV) an offense specified in 42 Pa.C.S. §

18 9799.14; or

19 (B) four or more offenses punishable by
20 imprisonment of two or more years.

21 (iii) Has, within the previous 15 years, been
22 convicted of:

23 (A) two or more offenses punishable by more than
24 two years in prison; or

25 (B) any of the following:

26 (I) An offense under section 3127 (relating
27 to indecent exposure).

28 (II) An offense under section 3129 (relating
29 to sexual intercourse with animal).

30 (III) An offense under section 4915.1
31 (relating to failure to comply with registration
32 requirements).

33 (IV) An offense under section 5122 (relating
34 to weapons or implements for escape).

35 (V) An offense under section 5510 (relating
36 to abuse of corpse).

37 (VI) An offense under section 5515 (relating
38 to prohibiting of paramilitary training).

39 * * *

40 Section 2. Title 18 is amended by adding sections to read:
41 § 9122.2. Clean slate limited access.

42 (a) General rule.--The following shall be subject to limited
43 access:

44 (1) Subject to the exceptions under section 9122.3
45 (relating to exceptions) or if a court has vacated an order
46 for limited access under section 9122.4 (relating to order to
47 vacate order for limited access), criminal history record
48 information pertaining to a conviction of a misdemeanor of
49 the second degree, a misdemeanor of the third degree or a
50 misdemeanor offense punishable by imprisonment of no more
51 than two years if a person has been free for 10 years from

1 conviction for any offense punishable by imprisonment of one
2 or more years and if completion of the court-ordered
3 financial obligations of the sentence has occurred.

4 (2) Criminal history record information pertaining to
5 charges which resulted in a final disposition other than a
6 conviction.

7 (3) Criminal history record information pertaining to a
8 conviction for a summary offense when 10 years have elapsed
9 since entry of the judgment of conviction and completion of
10 all court-ordered financial obligations of the sentence has
11 occurred.

12 (b) Procedures.--

13 (1) On a monthly basis, the Administrative Office of
14 Pennsylvania Courts shall transmit to the Pennsylvania State
15 Police central repository the record of any conviction
16 eligible for limited access under subsection (a)(1).

17 (2) The Administrative Office of Pennsylvania Courts
18 shall transmit to the Pennsylvania State Police repository:

19 (i) The record of charges subject to limited access
20 under subsection (a)(2) within 30 days after entry of the
21 disposition and payment of court-ordered obligations.

22 (ii) The record of any conviction under subsection
23 (a)(3) within 30 days after the record becomes subject to
24 limited access.

25 (3) If the Pennsylvania State Police central repository
26 determines through a validation process that a record
27 transmitted is not eligible for limited access relief under
28 subsection (a) or does not match data held in the repository,
29 the Pennsylvania State Police shall notify the Administrative
30 Office of Pennsylvania Courts of this determination within 30
31 days of receiving the information.

32 (4) Upon the expiration of the 30-day period, the
33 Administrative Office of Pennsylvania Courts shall remove
34 from the list of eligible records any record for which the
35 Administrative Office of Pennsylvania Courts received a
36 notification of ineligibility or nonmatch with repository
37 data.

38 (5) Each court of common pleas shall issue monthly an
39 order for limited access for any record in its judicial
40 district for which no notification of ineligibility was
41 received by the Administrative Office of Pennsylvania Courts.

42 (c) Limitation on release of records.--A criminal history
43 record that is the subject of an order for limited access under
44 this section shall be made available to a noncriminal justice
45 agency only as provided for in section 9121(b), (b.1) and (b.2)
46 (relating to general regulations).

47 § 9122.3. Exceptions.

48 (a) Limited access not applicable.--Limited access to
49 records under section 9122.2(a)(1) (relating to clean slate
50 limited access) shall not be granted for any of the following:

51 (1) A conviction for any of the following:

1 (i) An offense under Pt. II Article B (relating to
2 offenses involving danger to the person).

3 (ii) An offense under Pt. II Article D (relating to
4 offenses against the family).

5 (iii) An offense under Chapter 61 (relating to
6 firearms and other dangerous articles).

7 (iv) An offense under 42 Pa.C.S. § 9799.14 (relating
8 to sexual offenses and tier system).

9 (v) An offense under section 5533 (relating to
10 cruelty to animal).

11 (vi) An offense under section 6301 (relating to
12 corruption of minors).

13 (2) An individual who at any time has been convicted of:

14 (i) A felony.

15 (ii) Two or more offenses punishable by imprisonment
16 of more than two years.

17 (iii) Four or more offenses punishable by
18 imprisonment of one or more years.

19 (iv) An offense under the following:

20 (A) Section 3127 (relating to indecent
21 exposure).

22 (B) Section 3129 (relating to sexual intercourse
23 with animal).

24 (C) Section 4915.1 (relating to failure to
25 comply with registration requirements).

26 (D) Section 5122 (relating to weapons or
27 implements for escape).

28 (E) Section 5510 (relating to abuse of corpse).

29 (F) Section 5515 (relating to prohibiting of
30 paramilitary training).

31 (b) Limited access to same case.--Limited access under this
32 section shall not apply to an otherwise qualifying conviction if
33 a conviction for an offense punishable by imprisonment of five
34 or more years or an offense enumerated in subsection (a) arose
35 out of the same case.

36 (c) Filing.--Nothing in this section shall preclude the
37 filing of a petition for limited access under section 9122.1
38 (relating to petition for limited access) if limited access is
39 available under that section.

40 § 9122.4. Order to vacate order for limited access.

41 (a) General rule.--Upon petition of the prosecuting attorney
42 to the court with jurisdiction over a conviction, and with
43 notice to the defendant and opportunity to be heard, the court
44 shall vacate an order for limited access granted under section
45 9122.2 (relating to clean slate limited access) if the court
46 determines that the order was erroneously entered and not in
47 accordance with section 9122.2.

48 (b) Conviction.--Upon conviction of a misdemeanor or felony
49 offense and motion of the prosecuting attorney, the court shall
50 enter an order vacating any prior order for limited access
51 pertaining to a record of the defendant, except under section

1 9122.2(a)(2).

2 (c) Transmission to repository.--An order under subsection
3 (a) or (b) shall be transmitted to the central repository of the
4 Pennsylvania State Police.

5 § 9122.5. Effects of expunged records and records subject to
6 limited access.

7 (a) Disclosure.--

8 (1) Except if requested or required by a criminal
9 justice agency, or if disclosure to noncriminal justice
10 agencies is authorized or required by section 9121(b.1) and
11 (b.2) (relating to general regulations), an individual may
12 not be required or requested to disclose information about
13 the individual's criminal history record that has been
14 expunged or provided limited access under section 9122.1
15 (relating to petition for limited access) or 9122.2 (relating
16 to clean slate limited access). An individual required or
17 requested to provide information in violation of this section
18 may respond as if the offense did not occur.

19 (2) This subsection shall not apply if Federal law,
20 including rules and regulations promulgated by a self-
21 regulatory organization that has been created under Federal
22 law, requires the consideration of an applicant's criminal
23 history for purposes of employment.

24 (b) Disqualification by law.--An expunged record or a record
25 subject to limited access under section 9122.1 or 9122.2 may not
26 be considered a conviction that would prohibit the employment of
27 a person under any law of this Commonwealth or under Federal
28 laws that prohibit employment based on State convictions to the
29 extent permitted by Federal law.

30 § 9122.6. Employer immunity from liability.

31 An employer who employs or otherwise engages an individual
32 whose criminal history record has been expunged or to which
33 limited access has been applied under section 9122.1 (relating
34 to petition for limited access) or 9122.2 (relating to clean
35 slate limited access) shall be immune from liability for any
36 claim arising out of the misconduct of the individual, if the
37 misconduct relates to the portion of the criminal history record
38 that has been expunged or provided limited access.

39 Section 3. This act shall take effect in 365 days.