

PENNSYLVANIA STATE POLICE TESTIMONY

CLEAN SLATE EXPANSION

HOUSE JUDICIARY COMMITTEE

AUGUST 31, 2022



WRITTEN TESTIMONY

BUREAU OF RECORDS AND IDENTIFICATION

The Pennsylvania State Police (PSP), is grateful to Chairman Kauffman, Chairman Briggs, and the members of the House Judiciary Committee for the invitation to participate in this important discussion regarding House Bill 1826. We are pleased to have the opportunity to provide:

- An overview of Act 56 of 2018, the existing Clean Slate law
- An overview of PSP's current efforts to improve the execution of that law
- Concerns that PSP has with HB 1826 and how it would impact our current efforts related to existing law

Overview of Act 56 of 2018

PSP was legislatively required through Act 56 of 2018 to implement the Clean Slate law by using technology to seal certain criminal records from public view through an automated process. The intent of this legislation was to improve citizen's access to employment, housing, and education after remaining conviction free for a set timeframe.

Current law does not permit the sealing of the following:

- Any offense that is punishable by more than 2 years of imprisonment.
- Four or more offenses that are punishable by 1 or more years imprisonment.
- Certain other serious offenses.

Overview of PSP efforts to improve the execution of Act 56 of 2018

The PSP has successfully implemented the parameters of Act 56 of 2018 at the Commonwealth level. Applicable offenses are sealed from Commonwealth inquiries for

employment, housing, and education. However, Act 56 did not impact Federal Criminal records.

This created a problem for Clean Slate eligible individuals. They may, for example, apply for employment and receive a clean criminal record check from the Commonwealth- but any federal inquiry may still reveal the “sealed” record resulting in a denial of employment. PSP has been working diligently to correct this critical problem. The PSP, Bureau of Records and Identification (BRI) has discussed this issue with the Federal Bureau of investigation. Pursuant to those discussions, BRI believes that it can accomplish the intent of Act 56 of 2018 by using Purpose Code I.

Purpose Code I would allow PSP to obtain noncriminal justice employment and/or licensing background checks authorized by federal law, Federal Executive order, or a state statute approved by the U.S. Attorney General. This mechanism would allow PSP to request federal criminal histories and stand in the shoes of the FBI to disseminate the histories. Through this process, PSP could appropriately limit or redact records. However, where the identity of the requester and their statutory authority to review federal criminal information is unidentified, the primary obstacle remains how we may effectively respond to requests for state and federal criminal background checks by entities who are entitled to view them under varied statutory criterion.

We believe that making federal records sealed as they are at the Commonwealth level to be an attainable goal, but the work and technology required to make this solution come to fruition are significant, will take considerable time, and require additional resources.

Concerns that PSP has with HB 1826

Presently, Commonwealth and Federal statutes require particular entities to receive full, un-sealed criminal records. For example, under the Race Horse Industry Reform Act¹, the Race Horse Commission is entitled to receive reports of Federal criminal history record information when screening prospective employees. The current iteration of Clean Slate largely provides for such incongruities through carve-outs in impacted statutes to allow the PSP to provide Federal criminal history to entitled employers. As a result, PSP believes the current Clean Slate law creates few barriers for PSP's effort to provide full and limited access records.

As written, HB 1826 decreases the look-back timeframe and adds eligible offenses, including qualifying felonies, to the list of offenses that may be subject to limited access or Clean Slate. While well intentioned, it is anticipated that the increase in eligible offenses and decreased timeframes proposed in HB 1826 will, indeed, create conflict with existing state employment statutes and state or federal licensure requirements for professions governed under federal law. If implemented in its current form, and without companion legislation to amend incongruous statutes, we believe that HB 1826 will make it more difficult for PSP to ensure that federal inquiries are sealed as they should be.

For example:

1. The Medical Marijuana Act (MMA) currently requires that "The department shall deny the application of a caregiver who has been convicted of a criminal offense that occurred within the past **five years** (emphasis added) relating to the sale or possession of drugs, narcotics, or controlled substances."² The MMA also prohibits any individual convicted of a felony criminal offense related to the manufacture, delivery, or possession with intent to manufacture or delivery a controlled substance, unless more than 10 years has elapsed since the conviction

¹ Act 114 of 2016, Ch. 93 Race Horse Industry Reform; 3 Pa.C.S.A. §9312

² 35 P.S. § 10231.502(b)

or 1 year has lapsed since release from incarceration for the felony conviction, whichever is later.^{3,4}

2. The Mortgage Licensing Act states that an individual applying for a license under the Act is prohibited from obtaining one, if "at any time preceding the date of application" he or she has been convicted of a felony if it "involved an act of fraud, dishonesty, breach of trust or money laundering" unless the applicant has been pardoned.^{5,6} This requirement under the Act mirrors its federal counterpart under Title 12 of the US Code. Specifically, 12 U.S.C. §5104(b)(2)(B)⁷, the registration, application, and issuance as a State-licensed loan originator.
3. The Nurse Aid Resident Abuse Prevention Training Act likewise prohibits applicant acceptance in State-approved nurse aide training programs if their criminal history record information indicates a conviction for any of an extensive list of offense including but not limited to a felony conviction under The Controlled Substance, Drug, Device and Cosmetic Act, any felony theft offense, and any forgery offense.^{8,9}

³ 35 P.S. § 10231.614

⁴ Here, the expansion of qualifying offenses and decrease of the lookback period creates a conflict.

⁵ 7 Pa.C.S. § 6133(d)(1).

⁶ Here, the expansion of qualifying offenses creates an issue with the current lookback period.

⁷ §5104. State license and registration application and issuance. (b) Issuance of license: The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

(1) The applicant has never had a loan originator license revoked in any governmental jurisdiction.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court-

(A) during the 7-year period preceding the date of the application for licensing and registration; or

(B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this chapter.

(4) The applicant has completed the pre-licensing education requirement described in subsection (c).

(5) The applicant has passed a written test that meets the test requirement described in subsection (d).

(6) The applicant has met either a net worth or surety bond requirement, or paid into a State fund, as required by the State pursuant to section 5107(d)(6) of this title.

⁸ 63 P.S. § 675

⁹ Here, the issue is the expansion of qualified offenses.

In each example, the proposed amendments in HB 1826 would create conflict between its reduced timeframes for Limited Access or Clean Slate eligibility and those mandatory background check prohibitions. Moreover, unless those statutes are also amended contemporaneously, PSP anticipates the same will create implementation difficulties and resource strains for PSP to fulfill its duties to provide complete, accurate, and appropriately limited criminal history record information.

PSP would like to thank the committee for this opportunity to present testimony. We look forward to answering questions and working with the committee in the future.