



TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

HB 1826

August 31, 2022

Fran Chardo, Dauphin County District Attorney

&

Greg Rowe, Executive Director, PDAA

Good morning Chairmen Kauffman and Briggs and members of the Judiciary Committee. Thank you for the opportunity to speak with you about HB 1826. We are Fran Chardo, Dauphin County District Attorney and Chair of the Pennsylvania District Attorneys Association's Legislative Committee, and Greg Rowe, Executive Director of the PDAA.

We are here to speak in support of HB 1826 by Representatives Delozier and Harris, legislation that would expand Pennsylvania's Clean Slate law.

We were proud to have strongly supported the existing first-in-the nation Clean Slate Law. The rationale in support of Clean Slate remains strong: recidivism rates are lower among those who are employed after they are released. Record sealing helps lead to better opportunities of employment, and, therefore, helps to improve public safety.

In 2018, Pennsylvania was the first state to enact a Clean Slate Law. The hallmark of Pennsylvania's law at that time was that the record sealing for eligible offenses (typically lower to mid-level misdemeanors) was automatic. Providing for automatic record sealing is important: it obviates the need for individuals to file a petition, avoids fees to file one, and ensures that district attorneys' offices can focus on investigating and prosecuting cases as opposed to reading through old records. The results have been impressive. According to Community Legal Services, more than 1 million individuals have benefitted from Clean Slate, and over 40 million cases have been sealed. While the Clean Slate Initiative also includes some petition-based record sealing for certain circumstances, our focus is on the automated process because automation removes barriers to record sealing. Since 2018, other states have enacted automatic record sealing laws, looking to Pennsylvania for guidance.

The most significant provision of HB 1826 would expand automatic record sealing to include certain drug felonies, specifically possession with intent to deliver cases. HB 1826 excludes sentences for this crime where the minimum sentence is for 30 months or more. The purpose of that exclusion is to treat differently those who sell the most dangerous and/or highest quantity drugs. The legislation also adds additional crimes which can be eligible for petition-based (not automatic) record sealing, specifically some less violent felonies. HB 1826 also reduces the time period from 10 years to 7 years by which the crimes currently eligible for automatic record sealing (again, the lower to mid-level misdemeanors that are

less violent) will be sealed assuming there are no convictions in the intervening time period, and summaries are reduced to 5 years.

Violent crimes remain excluded, including firearms offenses, sex offenses, and crimes against the person. And individuals convicted of felonies (other than drug deliveries with sentences less than 30 months) remain excluded from automatic record sealing. This provision is important because many who traffic in drugs carry firearms, a dangerous combination that leads to violence across the Commonwealth. Therefore, those who were convicted of a drug delivery and a felony firearms crime will not see his or her records automatically sealed.

We look forward to discussing this legislation in more detail and answering your questions. We hope the work on this legislation will continue, because it is important legislation that will help increase employment and other important opportunities for those with records. As you work on the legislation, we wanted to note two areas somewhat related that ought to be examined as well.

First, the law should provide more guidance to law enforcement agencies who are asked via the Right to Know Law to provide criminal record information that is supposed to be sealed. The current state of law creates confusion because under Clean Slate, AOPC ensures that appropriate records are sealed, but individuals can seek criminal records from many different law enforcement agencies that are not tasked with record sealing and often do not receive notice of sealing. One solution might be to require that the original repository provides the response to such a record request.

Second, Pennsylvania's expungement law is sometimes interpreted to require that agencies with expunged records in their possession to literally destroy or black out any information related to the expunged record or incident giving rise to the conviction that has been expunged. We do not believe the intent of the expungement statute requires this arcane process, and we have worked successfully with AOPC to provide some guidance. But a statutory clarification would be the most direct way to ensure that the criminal history record information is truly expunged from the repository, but that agencies need not dig through their working files to delete this information, particularly investigative information.

These two suggestions do not affect the Clean Slate proposal, but if you do address our suggestions, they likely could be changed in sections of law that contain provisions related to Clean Slate. Therefore, they would be germane.

Thank you again for holding this hearing. The PDAA looks forward to continuing to support HB 1826, to helping to advance it through the legislative process, and to working with all of you as the work on the legislation continues.