

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1053 Session of
2007

INTRODUCED BY MCGEEHAN, BLACKWELL, BRENNAN, CALTAGIRONE,
CARROLL, CONKLIN, CURRY, DALEY, FREEMAN, GODSHALL, HERSHEY,
JAMES, JOSEPHS, KIRKLAND, KORTZ, KULA, LEACH, MAHONEY,
MANDERINO, MCILHATTAN, PALLONE, PARKER, READSHAW, ROEBUCK,
SABATINA, MCILVAINE SMITH, STURLA, THOMAS, WATERS AND
WHEATLEY, APRIL 10, 2007

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 10, 2007

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for definitions and
3 for expungement.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. The definition of "expunge" in section 9102 of
7 Title 18 of the Pennsylvania Consolidated Statutes is amended
8 and the section is amended by adding a definition to read:

9 § 9102. Definitions.

10 The following words and phrases when used in this chapter
11 shall have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 * * *

14 "Exoneration."

15 (1) Whenever a person is pardoned pursuant to section 9
16 of Article IV of the Constitution of Pennsylvania; or

1 (2) whenever judgment of conviction was reversed or
2 vacated, or a plea of guilty, no contest or nolo contendere
3 was withdrawn by leave of court, and the indictment or
4 information dismissed or, if a new trial was ordered, either
5 the claimant was found not guilty at the new trial or was not
6 retried and the indictment or information dismissed, provided
7 that the count or counts dismissed were the sole basis for
8 the imprisonment complained of.

9 (3) In order for a person to fall within the meaning of
10 this term, deoxyribonucleic acid (DNA) evidence does not
11 necessarily have to form the basis of the reversal, vacation,
12 withdrawal, dismissal or pardon.

13 "Expunge."

14 (1) To remove information so that there is no trace or
15 indication that such information existed;

16 (2) to eliminate all identifiers which may be used to
17 trace the identity of an individual, allowing remaining data
18 to be used for statistical purposes; [or]

19 (3) maintenance of certain information required or
20 authorized under the provisions of section 9122(c) (relating
21 to expungement), when an individual has successfully
22 completed the conditions of any pretrial or posttrial
23 diversion or probation program[.]; or

24 (4) the removal, destruction or erasure of records
25 possessed by the Commonwealth or any of its political
26 subdivisions, including, but not limited to:

27 (i) Fingerprints.

28 (ii) Photographs.

29 (iii) Photographic plates.

30 (iv) Arrest, trial, conviction, sentence or

1 incarceration data for the crime for which the defendant
2 has been conclusively proven to be innocent.

3 * * *

4 Section 2. Section 9122 of Title 18 is amended to read:

5 § 9122. Expungement.

6 (a) [Specific proceedings.--Criminal history record
7 information] Arrest data.--Notwithstanding any provision to the
8 contrary, criminal arrest data shall be expunged in a specific
9 criminal proceeding when:

10 (1) no disposition has been received or, upon request
11 for criminal history record information, no disposition has
12 been recorded in the repository within 18 months after the
13 date of arrest and the court of proper jurisdiction certifies
14 to the director of the repository that no disposition is
15 available and no action is pending. Expungement shall not
16 occur until the certification from the court is received and
17 the director of the repository authorizes such expungement;

18 (2) a court order requires that such [nonconviction]
19 data be expunged; [or]

20 (3) a person 21 years of age or older who has been
21 convicted of a violation of section 6308 (relating to
22 purchase, consumption, possession or transportation of liquor
23 or malt or brewed beverages) petitions the court of common
24 pleas in the county where the conviction occurred seeking
25 expungement and the person has satisfied all terms and
26 conditions of the sentence imposed for the violation,
27 including any suspension of operating privileges imposed
28 pursuant to section 6310.4 (relating to restriction of
29 operating privileges). Upon review of the petition, the court
30 shall order the expungement of all criminal history record

1 information and all administrative records of the Department
2 of Transportation relating to said conviction[.]; or

3 (4) a person 18 years of age or older who has been
4 convicted of a crime, other than a violation under section
5 6308, and is later exonerated, has petitioned the court of
6 common pleas having jurisdiction over the conviction seeking
7 expungement. Upon review of the petition, the court may order
8 the expungement of all criminal history record information
9 and all administrative records relating to said conviction.

10 (b) [Generally.-- Criminal history record information]
11 Conviction data.-- Notwithstanding any provision to the
12 contrary, conviction data may be expunged when:

13 (1) an individual who is the subject of the information
14 reaches 70 years of age and has been free of arrest or
15 prosecution for ten years following final release from
16 confinement or supervision; or

17 (2) an individual who is the subject of the information
18 has been dead for three years.

19 (b.1) Prohibition.--A court shall not have the authority to
20 order expungement of the defendant's arrest record where the
21 defendant was placed on Accelerated Rehabilitative Disposition
22 for a violation of any offense set forth in any of the following
23 where the victim is under 18 years of age:

24 Section 3121 (relating to rape).

25 Section 3122.1 (relating to statutory sexual assault).

26 Section 3123 (relating to involuntary deviate sexual
27 intercourse).

28 Section 3124.1 (relating to sexual assault).

29 Section 3125 (relating to aggravated indecent assault).

30 Section 3126 (relating to indecent assault).

1 Section 5902(b) (relating to prostitution and related
2 offenses).

3 Section 5903 (relating to obscene and other sexual
4 materials and performances).

5 (b.2) Automatic expungement.--The following shall trigger
6 automatic expungement when occurring as a result of the
7 presentation of deoxyribonucleic acid (DNA) evidence:

8 (1) A reversal or vacation of a conviction.

9 (2) A withdrawal of a guilty, no contest or nolo
10 contendere plea.

11 (3) A dismissal of information or indictment.

12 (4) A retrial where the defendant was found not guilty.

13 (c) Maintenance of certain information required or
14 authorized.--Notwithstanding any other provision of this
15 chapter, the prosecuting attorney and the central repository
16 shall, and the court may, maintain a list of the names and other
17 criminal history record information of persons whose records are
18 required by law or court rule to be expunged where the
19 individual has successfully completed the conditions of any
20 pretrial or post-trial diversion or probation program. Such
21 information shall be used solely for the purpose of determining
22 subsequent eligibility for such programs and for identifying
23 persons in criminal investigations. Criminal history record
24 information may be expunged as provided in subsection (b)(1) and
25 (2). Such information shall be made available to any court or
26 law enforcement agency upon request.

27 (d) Notice of expungement.--Notice of expungement shall
28 promptly be submitted to the central repository which shall
29 notify all criminal justice agencies which have received the
30 criminal history record information to be expunged.

1 (e) Public records.--Public records listed in section
2 9104(a) (relating to scope) shall not be expunged.

3 (f) District attorney's notice.--The court shall give ten
4 days prior notice to the district attorney of the county where
5 the original charge was filed of any applications for
6 expungement under the provisions of subsection (a)(2).

7 Section 3. This act shall take effect in 60 days.