

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1543

Session of
2007

INTRODUCED BY SOLOBAY, BLACKWELL, CALTAGIRONE, CAPPELLI,
CARROLL, CREIGHTON, FABRIZIO, GEIST, GEORGE, GIBBONS,
GODSHALL, HENNESSEY, HERSHEY, JOSEPHS, KILLION, KOTIK, KULA,
LEACH, MAHONEY, OLIVER, READSHAW, RUBLEY, SCAVELLO, THOMAS,
WALKO, J. WHITE, WOJNAROSKI, YOUNGBLOOD, DENLINGER, KIRKLAND,
SONNEY, JAMES AND SIPTROTH, JUNE 18, 2007

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 8, 2008

AN ACT

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

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

6 ~~Section 1. Section 9122(b) and (b.1) of Title 18 of the~~ <—
7 ~~Pennsylvania Consolidated Statutes are amended to read:~~

8 SECTION 1. SECTION 9122(B), (B.1), (C), (D), (E) AND (F) OF <—
9 TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED
10 AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

11 § 9122. Expungement.

12 * * *

13 (b) Generally.--Criminal history record information may be
14 expunged when:

15 (1) [an] An individual who is the subject of the
16 information reaches 70 years of age and has been free of

1 arrest or prosecution for ten years following final release
2 from confinement or supervision[; or].

3 (2) [an] An individual who is the subject of the
4 information has been dead for three years.

5 (3) (i) An individual who is the subject of the
6 information petitions for expungement of the information
7 and the individual has been free of arrest or prosecution
8 following final release from confinement or supervision
9 for the greater of the following time periods:

10 (A) In the case of a summary offense, five
11 years.

12 (B) In the case of a misdemeanor of the third
13 degree, seven years.

14 (C) In the case of a misdemeanor of the second
15 degree, ten years.

16 (ii) This paragraph shall not apply to any
17 individual who has been convicted of:

18 (A) An offense punishable by imprisonment of
19 more than two years.

20 (B) Four or more offenses punishable by
21 imprisonment of one or more years.

22 (C) A violation of section 2701 (relating to
23 simple assault).

24 (D) An offense classified as a misdemeanor of
25 the second degree committed when the individual was
26 at least 25 years of age.

27 (E) A violation of section 3126 (relating to
28 indecent assault).

29 (F) A violation of section 3129 (relating to
30 sexual intercourse with animal).

1 (G) A violation of section 5511 (relating to
2 cruelty to animals).

3 (H) A violation of any provision of Chapter 61
4 (relating to firearms and other dangerous articles).

5 (I) A VIOLATION OF AN OFFENSE FOR WHICH
6 REGISTRATION IS REQUIRED UNDER 42 PA.C.S. § 9795.1
7 (RELATING TO REGISTRATION).

<—

8 (III) EXPUNGMENT SHALL BE AT THE DISCRETION OF THE
9 COURT. IN CONSIDERING WHETHER TO GRANT THE PETITION FOR
10 EXPUNGEMENT, THE COURT SHALL CONSIDER ALL RELEVANT
11 FACTORS, INCLUDING ANY REASONS THE COMMONWEALTH MAY GIVE
12 FOR WISHING TO RETAIN THE RECORDS; THE PETITIONER'S AGE,
13 CRIMINAL RECORD AND EMPLOYMENT HISTORY; THE LENGTH OF
14 TIME THAT HAS ELAPSED BETWEEN THE ARREST AND THE PETITION
15 TO EXPUNGE; AND THE SPECIFIC ADVERSE CONSEQUENCES THE
16 PETITIONER MAY ENDURE SHOULD EXPUNCTION BE DENIED.

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

22 Section 3121 (relating to rape).

23 Section 3122.1 (relating to statutory sexual assault).

24 Section 3123 (relating to involuntary deviate sexual
25 intercourse).

26 Section 3124.1 (relating to sexual assault).

27 Section 3125 (relating to aggravated indecent assault).

28 Section 3126 (relating to indecent assault).

29 Section 3127 (relating to indecent exposure).

30 Section 5902(b) (relating to prostitution and related

1 offenses).

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

4 * * *

5 (C) MAINTENANCE OF CERTAIN INFORMATION REQUIRED OR
6 AUTHORIZED.--NOTWITHSTANDING ANY OTHER PROVISION OF THIS
7 CHAPTER, THE FOLLOWING APPLY:

8 (1) THE PROSECUTING ATTORNEY AND THE CENTRAL REPOSITORY
9 SHALL, AND THE COURT MAY, MAINTAIN A LIST OF THE NAMES AND
10 OTHER CRIMINAL HISTORY RECORD INFORMATION OF PERSONS WHOSE
11 RECORDS ARE REQUIRED BY LAW OR COURT RULE TO BE EXPUNGED
12 WHERE THE INDIVIDUAL HAS SUCCESSFULLY COMPLETED THE
13 CONDITIONS OF ANY PRETRIAL OR POST-TRIAL DIVERSION OR
14 PROBATION PROGRAM. SUCH INFORMATION SHALL BE USED SOLELY FOR
15 THE PURPOSE OF DETERMINING SUBSEQUENT ELIGIBILITY FOR SUCH
16 PROGRAMS AND FOR IDENTIFYING PERSONS IN CRIMINAL
17 INVESTIGATIONS. CRIMINAL HISTORY RECORD INFORMATION MAY BE
18 EXPUNGED AS PROVIDED IN SUBSECTION (B)(1) AND (2). [SUCH
19 INFORMATION]

20 (2) THE CENTRAL REPOSITORY SHALL MAINTAIN THE NAME,
21 IDENTIFYING INFORMATION, FINGERPRINTS AND OFFENSE RECORD OF A
22 PERSON WHOSE RECORDS ARE EXPUNGED UNDER SUBSECTION(B)(3).
23 INFORMATION UNDER THIS PARAGRAPH MAY BE USED IN CONSIDERATION
24 FOR A PARDON AND SHALL BE ADMISSIBLE IN COURT SOLELY FOR THE
25 FOLLOWING PURPOSES:

26 (I) GRADING A SUBSEQUENT OFFENSE WHICH IS DEPENDENT
27 UPON A PRIOR CONVICTION.

28 (II) SENTENCING FOR A SUBSEQUENT OFFENSE IF A PRIOR
29 CONVICTION MIGHT RESULT IN A PRIOR RECORD SCORE UNDER 204
30 PA. CODE CH. 303 (RELATING TO SENTENCING GUIDELINES)

1 (III) IDENTIFYING A PERSON IN A CRIMINAL
2 INVESTIGATION.

3 (IV) ELIGIBILITY FOR A PRETRIAL OR POST-TRIAL
4 DIVERSION OR PROBATION PROGRAM.

5 (3) INFORMATION UNDER THIS SUBSECTION SHALL BE MADE
6 AVAILABLE TO ANY COURT OR LAW ENFORCEMENT AGENCY UPON REQUEST
7 INDICATING THE PURPOSE FOR USE.

8 (D) NOTICE OF EXPUNGEMENT.--[NOTICE OF EXPUNGEMENT SHALL
9 PROMPTLY BE SUBMITTED TO THE CENTRAL RESPOSITORY WHICH SHALL
10 NOTIFY ALL CRIMINAL JUSTICE AGENCIES WHICH HAVE RECEIVED THE
11 CRIMINAL HISTORY RECORD INFORMATION TO BE EXPUNGED.]

12 (1) A COURT'S EXPUNGEMENT ORDER SHALL DIRECT THE
13 APPROPRIATE REPOSITORIES OF CRIMINAL HISTORY RECORD
14 INFORMATION TO DO ALL OF THE FOLLOWING:

15 (I) EXPUNGE AND DESTROY THE CRIMINAL HISTORY RECORD
16 INFORMATION.

17 (II) REQUEST THAT A FEDERAL, STATE OR LOCAL AGENCY
18 TO WHICH THE CRIMINAL HISTORY RECORD INFORMATION HAS BEEN
19 MADE AVAILABLE RETURN THE CRIMINAL HISTORY RECORD
20 INFORMATION IF POSSIBLE.

21 (III) DESTROY CRIMINAL HISTORY RECORD INFORMATION
22 RETURNED UNDER SUBPARAGRAPH (II).

23 (IV) FILE WITH THE COURT, WITHIN 30 DAYS, THE
24 EXPUNGEMENT ORDER AND AN AFFIDAVIT OF COMPLIANCE WITH THE
25 EXPUNGEMENT ORDER. NO COPY OF THE EXPUNGEMENT ORDER OR
26 THE AFFIDAVIT MAY BE RETAINED BY THE REPOSITORY.

27 (2) UPON RECEIPT OF THE AFFIDAVIT UNDER PARAGRAPH
28 (1)(IV), THE COURT SHALL SEAL THE EXPUNGEMENT ORDER AND THE
29 AFFIDAVIT. EXCEPT FOR ENFORCEMENT OF THIS SUBSECTION, A
30 DOCUMENT SEALED UNDER THIS PARAGRAPH MAY NOT BE EXAMINED BY

1 ANY PERSON OR AGENCY.

2 (E) PUBLIC RECORDS.--[PUBLIC]

3 (1) EXCEPT AS SET FORTH IN PARAGRAPH (2), PUBLIC RECORDS
4 LISTED IN SECTION 9104(A) (RELATING TO SCOPE) SHALL NOT BE
5 EXPUNGED.

6 (2) PARAGRAPH (1) DOES NOT APPLY TO A DOCUMENT LISTED IN
7 SECTION 9104(A)(2). THIS PARAGRAPH INCLUDES A COURT DOCKET.

8 (F) DISTRICT ATTORNEY'S NOTICE.--THE COURT SHALL GIVE [TEN]
9 20 DAYS PRIOR NOTICE TO THE DISTRICT ATTORNEY OF THE COUNTY
10 WHERE THE ORIGINAL CHARGE WAS FILED OF ANY APPLICATIONS FOR
11 EXPUNGEMENT UNDER THE PROVISIONS OF SUBSECTION (A)(2) OR (B)(3).

12 (G) STATUS.--

13 (1) EXCEPT AS SET FORTH IN SUBSECTION (C) OR (D)(2), AN
14 EXPUNGED RECORD OF ARREST, PROSECUTION OR CONVICTION SHALL
15 NOT BE REGARDED AS AN ARREST, PROSECUTION OR CONVICTION FOR A
16 PUBLIC OR PRIVATE PURPOSE. THIS PARAGRAPH INCLUDES THE
17 PURPOSE OF ANY STATUTE, REGULATION, LICENSE, QUESTIONNAIRE,
18 EMPLOYMENT APPLICATION OR CIVIL OR CRIMINAL PROCEEDING.

19 (2) A PERSON MAY NOT KNOWINGLY DISCLOSE CRIMINAL HISTORY
20 RECORD INFORMATION WHICH IS SUBJECT TO AN EXPUNGEMENT ORDER.
21 A PERSON THAT VIOLATES THIS PARAGRAPH COMMITS A SUMMARY
22 OFFENSE.

23 Section 2. This act shall take effect in 60 days.