

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, SIPTROTH AND MELIO, JUNE 18, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
SEPTEMBER 22, 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 AND FOR JUVENILE RECORDS. <—

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

6 Section 1. Section ~~9122(b)~~ 9122(A)(3), (B), (b.1), (c), (d), <—
7 (e) and (f) of Title 18 of the Pennsylvania Consolidated
8 Statutes are amended and the section is amended by adding a
9 subsection to read:

10 § 9122. Expungement.

11 * * *

12 (A) SPECIFIC PROCEEDINGS.--CRIMINAL HISTORY RECORD <—

13 INFORMATION SHALL BE EXPUNGED IN A SPECIFIC CRIMINAL PROCEEDING
14 WHEN:

15 * * *

16 (3) A PERSON 21 YEARS OF AGE OR OLDER WHO HAS BEEN

1 CONVICTED OF A VIOLATION OF SECTION 6308 (RELATING TO
2 PURCHASE, CONSUMPTION, POSSESSION OR TRANSPORTATION OF LIQUOR
3 OR MALT OR BREWED BEVERAGES) WHICH OCCURRED ON OR AFTER THE
4 PERSON ATTAINED 18 YEARS OF AGE PETITIONS THE COURT OF COMMON
5 PLEAS IN THE COUNTY WHERE THE CONVICTION OCCURRED SEEKING
6 EXPUNGEMENT AND THE PERSON HAS SATISFIED ALL TERMS AND
7 CONDITIONS OF THE SENTENCE IMPOSED FOR THE VIOLATION,
8 INCLUDING ANY SUSPENSION OF OPERATING PRIVILEGES IMPOSED
9 PURSUANT TO SECTION 6310.4 (RELATING TO RESTRICTION OF
10 OPERATING PRIVILEGES). UPON REVIEW OF THE PETITION, THE COURT
11 SHALL ORDER THE EXPUNGEMENT OF ALL CRIMINAL HISTORY RECORD
12 INFORMATION AND ALL ADMINISTRATIVE RECORDS OF THE DEPARTMENT
13 OF TRANSPORTATION RELATING TO SAID CONVICTION.

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

16 (1) [an] An individual who is the subject of the
17 information reaches 70 years of age and has been free of
18 arrest or prosecution for ten years following final release
19 from confinement or supervision[; or].

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

22 (3) (i) An individual who is the subject of the
23 information petitions for expungement of the information
24 and the individual has been free of arrest or prosecution
25 following final release from confinement or supervision
26 for the greater of the following time periods:

27 (A) In the case of a summary offense, five
28 years.

29 (B) In the case of a misdemeanor of the third
30 degree, seven years.

1 (C) In the case of a misdemeanor of the second
2 degree, ten years.

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

5 (A) An offense punishable by imprisonment of
6 more than two years.

7 (B) Four or more offenses punishable by
8 imprisonment of one or more years.

9 (C) A violation of section 2701 (relating to
10 simple assault).

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

14 (E) A violation of section 3126 (relating to
15 indecent assault).

16 (F) A violation of section 3129 (relating to
17 sexual intercourse with animal).

18 (G) A violation of section 5511 (relating to
19 cruelty to animals).

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

22 (I) A violation of an offense for which
23 registration is required under 42 Pa.C.S. § 9795.1
24 (relating to registration).

25 (iii) Expungment shall be at the discretion of the
26 court. In considering whether to grant the petition for
27 expungement, the court shall consider all relevant
28 factors, including any reasons the Commonwealth may give
29 for wishing to retain the records; the petitioner's age,
30 criminal record and employment history; the length of

1 time that has elapsed between the arrest and the petition
2 to expunge; and the specific adverse consequences the
3 petitioner may endure should expunction be denied.

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

9 Section 3121 (relating to rape).

10 Section 3122.1 (relating to statutory sexual assault).

11 Section 3123 (relating to involuntary deviate sexual
12 intercourse).

13 Section 3124.1 (relating to sexual assault).

14 Section 3125 (relating to aggravated indecent assault).

15 Section 3126 (relating to indecent assault).

16 Section 3127 (relating to indecent exposure).

17 Section 5902(b) (relating to prostitution and related
18 offenses).

19 Section 5903 (relating to obscene and other sexual
20 materials and performances).

21 (c) Maintenance of certain information required or
22 authorized.--Notwithstanding any other provision of this
23 chapter, the following apply:

24 (1) The prosecuting attorney and the central repository
25 shall, and the court may, maintain a list of the names and
26 other criminal history record information of persons whose
27 records are required by law or court rule to be expunged
28 where the individual has successfully completed the
29 conditions of any pretrial or post-trial diversion or
30 probation program. Such information shall be used solely for

1 the purpose of determining subsequent eligibility for such
2 programs and for identifying persons in criminal
3 investigations. Criminal history record information may be
4 expunged as provided in subsection (b)(1) and (2). [Such
5 information]

6 (2) The central repository shall maintain the name,
7 identifying information, fingerprints and offense record of a
8 person whose records are expunged under subsection(b)(3).
9 Information under this paragraph may be used in consideration
10 for a pardon and shall be admissible in court solely for the
11 following purposes:

12 (i) Grading a subsequent offense which is dependent
13 upon a prior conviction.

14 (ii) Sentencing for a subsequent offense if a prior
15 conviction might result in a prior record score under 204
16 Pa. Code Ch. 303 (relating to sentencing guidelines).

17 (iii) Identifying a person in a criminal
18 investigation.

19 (iv) Eligibility for a pretrial or post-trial
20 diversion or probation program.

21 (3) Information under this subsection shall be made
22 available to any court or law enforcement agency upon request
23 indicating the purpose for use.

24 (d) Notice of expungement.--[Notice of expungement shall
25 promptly be submitted to the central repository which shall
26 notify all criminal justice agencies which have received the
27 criminal history record information to be expunged.]

28 (1) A court's expungement order shall direct the
29 appropriate repositories of criminal history record
30 information to do all of the following:

1 (i) Expunge and destroy the criminal history record
2 information.

3 (ii) Request that a Federal, state or local agency
4 to which the criminal history record information has been
5 made available return the criminal history record
6 information if possible.

7 (iii) Destroy criminal history record information
8 returned under subparagraph (ii).

9 (iv) File with the court, within 30 days, the
10 expungement order and an affidavit of compliance with the
11 expungement order. No copy of the expungement order or
12 the affidavit may be retained by the repository.

13 (2) Upon receipt of the affidavit under paragraph
14 (1)(iv), the court shall seal the expungement order and the
15 affidavit. Except for enforcement of this subsection, a
16 document sealed under this paragraph may not be examined by
17 any person or agency.

18 (e) Public records.--[Public]

19 (1) Except as set forth in paragraph (2), public records
20 listed in section 9104(a) (relating to scope) shall not be
21 expunged.

22 (2) Paragraph (1) does not apply to a document listed in
23 section 9104(a)(2). This paragraph includes a court docket.

24 (f) District attorney's notice.--The court shall give [ten]
25 20 days prior notice to the district attorney of the county
26 where the original charge was filed of any applications for
27 expungement under the provisions of subsection (a)(2) or (b)(3).

28 (g) Status.--

29 (1) Except as set forth in subsection (c) or (d)(2), an
30 expunged record of arrest, prosecution or conviction shall

1 not be regarded as an arrest, prosecution or conviction for a
2 public or private purpose. This paragraph includes the
3 purpose of any statute, regulation, license, questionnaire,
4 employment application or civil or criminal proceeding.

5 (2) A person may not knowingly disclose criminal history
6 record information which is subject to an expungement order.
7 A person that violates this paragraph commits a summary
8 offense.

9 SECTION 2. SECTION 9123(A) OF TITLE 18 IS AMENDED TO READ: <—

10 § 9123. JUVENILE RECORDS.

11 (A) EXPUNGEMENT OF JUVENILE RECORDS.--NOTWITHSTANDING THE
12 PROVISIONS OF SECTION 9105 (RELATING TO OTHER CRIMINAL JUSTICE
13 INFORMATION) AND EXCEPT UPON CAUSE SHOWN, EXPUNGEMENT OF RECORDS
14 OF JUVENILE DELINQUENCY CASES AND CASES INVOLVING SUMMARY
15 OFFENSES COMMITTED WHILE THE INDIVIDUAL WAS UNDER 18 YEARS OF
16 AGE, WHEREVER KEPT OR RETAINED, SHALL OCCUR AFTER 30 DAYS'
17 NOTICE TO THE DISTRICT ATTORNEY, WHENEVER THE COURT UPON ITS
18 MOTION OR UPON THE MOTION OF A CHILD OR THE PARENTS OR GUARDIAN
19 FINDS:

20 (1) A COMPLAINT IS FILED WHICH IS NOT SUBSTANTIATED OR
21 THE PETITION WHICH IS FILED AS A RESULT OF A COMPLAINT IS
22 DISMISSED BY THE COURT;

23 (2) SIX MONTHS HAVE ELAPSED SINCE THE FINAL DISCHARGE OF
24 THE PERSON FROM SUPERVISION UNDER A CONSENT DECREE AND NO
25 PROCEEDING SEEKING ADJUDICATION OR CONVICTION IS PENDING;

26 (2.1) THE INDIVIDUAL IS 18 YEARS OF AGE OR OLDER AND HAS
27 BEEN CONVICTED OF A VIOLATION OF SECTION 6308 (RELATING TO
28 PURCHASE, CONSUMPTION, POSSESSION OR TRANSPORTATION OF LIQUOR
29 OR MALT OR BREWED BEVERAGES) WHICH OCCURRED WHILE THE
30 INDIVIDUAL WAS UNDER 18 YEARS OF AGE AND THE INDIVIDUAL HAS

1 SATISFIED ALL TERMS AND CONDITIONS OF THE SENTENCE IMPOSED
2 FOR THE VIOLATION, INCLUDING ANY SUSPENSION OF OPERATING
3 PRIVILEGES IMPOSED PURSUANT TO SECTION 6310.4 (RELATING TO
4 RESTRICTION OF OPERATING PRIVILEGES). EXPUNGEMENT SHALL
5 INCLUDE ALL CRIMINAL HISTORY RECORD INFORMATION AND ALL
6 ADMINISTRATIVE RECORDS OF THE DEPARTMENT OF TRANSPORTATION
7 RELATING TO THE CONVICTION;

8 (2.2) THE INDIVIDUAL IS 18 YEARS OF AGE OR OLDER AND THE
9 INDIVIDUAL HAS SATISFIED ALL TERMS AND CONDITIONS OF THE
10 SENTENCE IMPOSED FOLLOWING A CONVICTION FOR A SUMMARY
11 OFFENSE, WITH THE EXCEPTION OF A VIOLATION OF SECTION 6308,
12 COMMITTED WHILE THE INDIVIDUAL WAS UNDER 18 YEARS OF AGE AND
13 THE INDIVIDUAL HAS NOT BEEN CONVICTED OF A FELONY,
14 MISDEMEANOR OR ADJUDICATED DELINQUENT AND NO PROCEEDING IS
15 PENDING SEEKING SUCH CONVICTION OR ADJUDICATION;

16 (3) FIVE YEARS HAVE ELAPSED SINCE THE FINAL DISCHARGE OF
17 THE PERSON FROM COMMITMENT, PLACEMENT, PROBATION OR ANY OTHER
18 DISPOSITION AND REFERRAL AND SINCE SUCH FINAL DISCHARGE, THE
19 PERSON HAS NOT BEEN CONVICTED OF A FELONY, MISDEMEANOR OR
20 ADJUDICATED DELINQUENT AND NO PROCEEDING IS PENDING SEEKING
21 SUCH CONVICTION OR ADJUDICATION; OR

22 (4) THE INDIVIDUAL IS [18] 17 YEARS OF AGE OR OLDER, THE
23 ATTORNEY FOR THE COMMONWEALTH CONSENTS TO THE EXPUNGEMENT AND
24 A COURT ORDERS THE EXPUNGEMENT AFTER GIVING CONSIDERATION TO
25 THE FOLLOWING FACTORS:

26 (I) THE TYPE OF OFFENSE;

27 (II) THE INDIVIDUAL'S AGE, HISTORY OF EMPLOYMENT,
28 CRIMINAL ACTIVITY AND DRUG OR ALCOHOL PROBLEMS;

29 (III) ADVERSE CONSEQUENCES THAT THE INDIVIDUAL MAY
30 SUFFER IF THE RECORDS ARE NOT EXPUNGED; AND

1 (IV) WHETHER RETENTION OF THE RECORD IS REQUIRED FOR
2 PURPOSES OF PROTECTION OF THE PUBLIC SAFETY.

3 * * *

4 Section ~~2~~ 3. This act shall take effect ~~in 60 days~~ JULY 1, <—
5 2009.