

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 440 Session of 2019

INTRODUCED BY NESBIT, McCLINTON, BRIGGS, JAMES, MURT, KENYATTA, LONGIETTI, READSHAW, RABB, YOUNGBLOOD, ISAACSON, DIAMOND, FREEMAN, IRVIN, SIMMONS, McNEILL, HOWARD, STAATS, HILL-EVANS, GROVE, NEILSON, SCHWEYER, WARREN, HARRIS, BURGOS, SOLOMON, SANCHEZ, STURLA, A. DAVIS, KINSEY, D. MILLER, KORTZ, CEPHAS, T. DAVIS, BULLOCK, DALEY, DAVIDSON, GOODMAN, KRUEGER, CIRESI, WILLIAMS, MADDEN, DAWKINS, SNYDER, WHEELAND, McCARTER AND ROEBUCK, FEBRUARY 11, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, DECEMBER 17, 2019

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in criminal history record information, further
4 providing for expungement, for petition for limited access,
5 for clean slate limited access and for effects of expunged
6 records and records subject to limited access; and, in
7 administration of justice, further providing for attachment
8 and summary punishment for contempts.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 ~~Section 1. Section 9122(a) and (c) of Title 18 of the~~ <--
12 ~~Pennsylvania Consolidated Statutes are amended to read:~~

13 SECTION 1. SECTIONS 9122(A) AND 9122.1(A) OF TITLE 18 OF THE <--
14 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

15 § 9122. Expungement.

16 (a) Specific proceedings.--Criminal history record
17 information shall be expunged in a specific criminal proceeding

1 when:

2 (1) no disposition has been received or, upon request
3 for criminal history record information, no disposition has
4 been recorded in the repository within 18 months after the
5 date of arrest and the court of proper jurisdiction certifies
6 to the director of the repository that no disposition is
7 available and no action is pending. Expungement shall not
8 occur until the certification from the court is received and
9 the director of the repository authorizes such expungement;

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

12 ~~(2.1) a person has been granted an unconditional pardon <--~~
13 ~~for an offense in accordance with law;~~

14 (3) a person 21 years of age or older who has been
15 convicted of a violation of section 6308 (relating to
16 purchase, consumption, possession or transportation of liquor
17 or malt or brewed beverages), which occurred on or after the
18 day the person attained 18 years of age, petitions the court
19 of common pleas in the county where the conviction occurred
20 seeking expungement and the person has satisfied all terms
21 and conditions of the sentence imposed for the violation,
22 including any suspension of operating privileges imposed
23 pursuant to section 6310.4 (relating to restriction of
24 operating privileges). Upon review of the petition, the court
25 shall order the expungement of all criminal history record
26 information and all administrative records of the Department
27 of Transportation relating to said conviction[.]; or

28 (4) a judicial determination has been made that a person
29 is acquitted of an offense, if the person has been acquitted
30 of all charges based on the same conduct or arising from the

1 same criminal episode following a trial and a verdict of not
2 guilty. This paragraph shall not apply to a partial
3 acquittal. A judicial determination under this paragraph may
4 only be made after the following:

5 (i) The court provides notice in writing to the
6 person and to the Commonwealth that the person's criminal
7 history record information will be automatically expunged
8 pursuant to this section.

9 (ii) Upon receipt of the notice under subparagraph
10 (i), the Commonwealth shall have 60 days to object to the
11 automatic expungement on the basis that the expungement
12 of the acquittal relates to the same conduct, arises from
13 the same criminal episode or otherwise relates to a
14 partial acquittal.

15 (iii) Upon the filing of an objection, the court
16 shall conduct a hearing to determine whether expungement
17 of the acquittal relates to the same conduct, arises from
18 the same criminal episode or otherwise relates to a
19 partial acquittal. The hearing may be waived by agreement
20 of both parties and the court.

21 (iv) Following the hearing, or if no objection has
22 been filed or the hearing has been waived, the court
23 shall order that the person's criminal history record
24 information be automatically expunged unless the court
25 determines the expungement relates to the same conduct,
26 arises from the same criminal episode or otherwise
27 relates to a partial acquittal. Expungement shall occur
28 no later than 12 months from the date of acquittal.

29 * * *

30 ~~(c) Maintenance of certain information required or~~

<--

1 authorized. ~~Notwithstanding any other provision of this~~
2 ~~chapter, the prosecuting attorney and the central repository~~
3 ~~shall, and the court may, maintain a list of the names and other~~
4 ~~criminal history record information of persons whose records are~~
5 ~~required by law or court rule to be expunged where the~~
6 ~~individual has successfully completed the conditions of any~~
7 ~~pretrial or post trial diversion or probation program [or]~~
8 ~~where the individual has been pardoned or where the court has~~
9 ~~ordered expungement under this section. Such information shall~~
10 ~~be used solely for the purposes of determining subsequent~~
11 ~~eligibility for such programs, identifying persons in criminal~~
12 ~~investigations or determining the grading of subsequent~~
13 ~~offenses. Such information shall be made available to any court~~
14 ~~or law enforcement agency upon request.~~

15 * * *

16 Section 2. ~~Sections 9122.1(a) and 9122.2(a)(1) and (3) and~~
17 ~~(b)(2)(i) of Title 18 are amended to read:~~

18 § 9122.1. Petition for limited access.

19 (a) General rule.--Subject to the exceptions in subsection
20 (b) and notwithstanding any other provision of this chapter,
21 upon petition of a person who has been free from conviction for
22 a period of 10 years for an offense punishable by one or more
23 years in prison and has completed [each court-ordered financial
24 obligation of the sentence] payment of all court-ordered
25 restitution and the fee previously authorized to carry out the
26 limited access and clean slate limited access provisions, the
27 court of common pleas in the jurisdiction where a conviction
28 occurred may enter an order that criminal history record
29 information maintained by a criminal justice agency pertaining
30 to a qualifying misdemeanor or an ungraded offense which carries

1 a maximum penalty of no more than five years be disseminated
2 only to a criminal justice agency or as provided in section
3 9121(b.1) and (b.2) (relating to general regulations). A COURT <--
4 MAY NOT ENTER AN ORDER UNDER THIS SUBSECTION UNLESS THE PERSON
5 WHO FILED THE PETITION, UPON PAYMENT OF ALL COURT-ORDERED
6 RESTITUTION, ALSO PAID THE FEE PREVIOUSLY AUTHORIZED TO CARRY
7 OUT THE LIMITED ACCESS AND CLEAN SLATE LIMITED ACCESS
8 PROVISIONS.

9 * * *

10 SECTION 2. SECTION 9122.2(A)(1) AND (3) AND (B)(2)(I) OF <--
11 TITLE 18 ARE AMENDED AND SUBSECTION (A) IS AMENDED BY ADDING A
12 PARAGRAPH TO READ:

13 § 9122.2. Clean slate limited access.

14 (a) General rule.--The following shall be subject to limited
15 access:

16 (1) Subject to the exceptions under section 9122.3
17 (relating to exceptions) or if a court has vacated an order
18 for limited access under section 9122.4 (relating to order to
19 vacate order for limited access), criminal history record
20 information pertaining to a conviction of a misdemeanor of
21 the second degree, a misdemeanor of the third degree or a
22 misdemeanor offense punishable by imprisonment of no more
23 than two years if a person has been free for 10 years from
24 conviction for any offense punishable by imprisonment of one
25 or more years and if [completion of each court-ordered
26 financial obligation of the sentence] payment of all court-
27 ordered restitution and the fee previously authorized to <--
28 carry out the limited access and clean slate limited access
29 provisions has occurred. UPON PAYMENT OF ALL COURT-ORDERED <--
30 RESTITUTION, THE PERSON WHOSE CRIMINAL HISTORY RECORD

1 INFORMATION IS SUBJECT TO LIMITED ACCESS UNDER THIS PARAGRAPH
2 SHALL ALSO PAY THE FEE PREVIOUSLY AUTHORIZED TO CARRY OUT THE
3 LIMITED ACCESS AND CLEAN SLATE LIMITED ACCESS PROVISIONS.

4 * * *

5 (3) Criminal history record information pertaining to a
6 conviction for a summary offense when 10 years have elapsed
7 since entry of the judgment of conviction and [completion of
8 all court-ordered financial obligations of the sentence]

9 payment of all court-ordered restitution and the fee <--

10 previously authorized to carry out the limited access and

11 clean slate limited access provisions has occurred. UPON <--

12 PAYMENT OF ALL COURT-ORDERED RESTITUTION, THE PERSON WHOSE

13 CRIMINAL HISTORY RECORD INFORMATION IS SUBJECT TO LIMITED

14 ACCESS UNDER THIS PARAGRAPH SHALL ALSO PAY THE FEE PREVIOUSLY

15 AUTHORIZED TO CARRY OUT THE LIMITED ACCESS AND CLEAN SLATE

16 LIMITED ACCESS PROVISIONS.

17 (4) CRIMINAL HISTORY RECORD INFORMATION PERTAINING TO A
18 CONVICTION FOR WHICH A PARDON WAS GRANTED.

19 (b) Procedures.--

20 * * *

21 (2) The Administrative Office of Pennsylvania Courts
22 shall transmit to the Pennsylvania State Police repository:

23 (i) The record of charges subject to limited access
24 under subsection (a) (2) within 30 days after entry of the
25 disposition and payment of [each court-ordered
26 obligation] any ordered restitution.

27 * * *

28 Section 3. Section 9122.5 of Title 18 is amended by adding a <--
29 ~~subsection~~ SUBSECTIONS to read: <--

30 § 9122.5. Effects of expunged records and records subject to

1 limited access.

2 * * *

3 (c) Use for sentencing.--Notwithstanding any other provision
4 of this chapter, a record subject to limited access under
5 section 9122.1 or 9122.2 shall remain part of a person's
6 criminal history record information and shall be disclosed to a
7 court for any relevant purpose in accordance with law, including
8 sentencing.

9 (D) USE AND DISCLOSURE OF INFORMATION.--NOTWITHSTANDING ANY <--
10 OTHER PROVISION OF THIS CHAPTER, THE PENNSYLVANIA COMMISSION ON
11 SENTENCING MAY MAINTAIN A LIST OF THE NAMES AND OTHER CRIMINAL
12 HISTORY RECORD INFORMATION OF PERSONS WHOSE RECORDS ARE REQUIRED
13 BY LAW, COURT RULE OR COURT ORDER TO BE EXPUNGED OR SUBJECT TO
14 LIMITED ACCESS UNDER THIS CHAPTER. THE INFORMATION:

15 (1) SHALL BE USED SOLELY FOR THE PURPOSES OF CONDUCTING
16 RESEARCH AND COLLECTING AND REPORTING STATISTICAL DATA UNDER
17 SECTION 2804-F OF THE ACT OF APRIL 9, 1929 (P.L.177, NO.175),
18 KNOWN AS THE ADMINISTRATIVE CODE OF 1929; AND

19 (2) MAY NOT BE DISCLOSED UNLESS AUTHORIZED OR REQUIRED
20 BY SECTION 9121(B.1) AND (B.2).

21 Section 4. Section 4132 of Title 42 is amended to read:

22 § 4132. Attachment and summary punishment for contempts.

23 The power of the several courts of this Commonwealth to issue
24 attachments and to impose summary punishments for contempts of
25 court shall be restricted to the following cases:

26 (1) The official misconduct of the officers of such
27 courts respectively.

28 (1.1) The willful failure of the officers of such courts
29 to disclose a person's complete criminal history record
30 information when requested.

1 (2) Disobedience or neglect by officers, parties, jurors
2 or witnesses of or to the lawful process of the court.

3 (3) The misbehavior of any person in the presence of the
4 court, thereby obstructing the administration of justice.

5 Section 5. Within 365 days of the effective date of this
6 section, the Administrative Office of Pennsylvania Courts and
7 the Pennsylvania State Police shall identify and complete the
8 processing of records that are eligible for expungement under 18
9 Pa.C.S. § 9122(a)(4), limited access under 18 Pa.C.S. §
10 9122.2(a) and clean slate limited access under 18 Pa.C.S. §
11 9122.2(a)(1) and (3).

12 Section 6. This act shall take effect in 60 days.