
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 788 Session of
2015

INTRODUCED BY WATERS, V. BROWN, SCHWEYER, BISHOP, THOMAS,
BROWNLEE, McNEILL, ROZZI, CALTAGIRONE, KINSEY, SCHLOSSBERG,
MAHONEY, KIRKLAND, COHEN AND MURT, MARCH 13, 2015

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 13, 2015

AN ACT

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

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

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

10 § 9102. Definitions.

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

14 * * *

15 "Exoneration."

16 (1) When a person is pardoned pursuant to section 9 of
17 Article IV of the Constitution of Pennsylvania.

18 (2) When a judgment of conviction was reversed or

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2 was withdrawn by leave of court, and the indictment or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

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

12 "Expunge."

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

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

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

23 (4) to remove, destroy or erase records possessed by the
24 Commonwealth or any of its political subdivisions, including,
25 but not limited to:

26 (i) Fingerprints.

27 (ii) Photographs.

28 (iii) Photographic plates.

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

30 incarceration data for the crime for which the defendant

1 has been conclusively proven to be innocent.

2 * * *

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

4 § 9122. Expungement.

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

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

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

19 (3) a person 21 years of age or older who has been
20 convicted of a violation of section 6308 (relating to
21 purchase, consumption, possession or transportation of liquor
22 or malt or brewed beverages), which occurred on or after the
23 day the person attained 18 years of age, petitions the court
24 of common pleas in the county where the conviction occurred
25 seeking expungement and the person has satisfied all terms
26 and 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 the conviction.

10 (b) [Generally.--Criminal history record information]

11 Conviction data.--Notwithstanding any provision to the contrary,
12 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.

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

19 (3) (i) An individual who is the subject of the
20 information petitions the court for the expungement of a
21 summary offense and has been free of arrest or
22 prosecution for five years following the conviction for
23 that offense.

24 (ii) Expungement under this paragraph shall only be
25 permitted for a conviction of a summary offense.

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

1 Section 3121 (relating to rape).

2 Section 3122.1 (relating to statutory sexual assault).

3 Section 3123 (relating to involuntary deviate sexual
4 intercourse).

5 Section 3124.1 (relating to sexual assault).

6 Section 3125 (relating to aggravated indecent assault).

7 Section 3126 (relating to indecent assault).

8 Section 3127 (relating to indecent exposure).

9 Section 5902(b) (relating to prostitution and related
10 offenses).

11 Section 5903 (relating to obscene and other sexual
12 materials and performances).

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

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

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

19 (3) A dismissal of information or indictment.

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

21 (c) Maintenance of certain information required or
22 authorized.--Notwithstanding any other provision of this
23 chapter, the prosecuting attorney and the central repository
24 shall, and the court may, maintain a list of the names and other
25 criminal history record information of persons whose records are
26 required by law or court rule to be expunged where the
27 individual has successfully completed the conditions of any
28 pretrial or post-trial diversion or probation program or where
29 the court has ordered expungement under this section. Such
30 information shall be used solely for the purposes of determining

1 subsequent eligibility for such programs, identifying persons in
2 criminal investigations or determining the grading of subsequent
3 offenses. Such information shall be made available to any court
4 or law enforcement agency upon request.

5 (d) Notice of expungement.--Notice of expungement shall
6 promptly be submitted to the central repository which shall
7 notify all criminal justice agencies which have received the
8 criminal history record information to be expunged.

9 (e) Public records.--Public records listed in section
10 9104(a) (relating to scope) shall not be expunged.

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

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