Criminal Records In Pennsylvania

Relief and Removal
Presented by

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*information provided
Criminal History Record Information Act

Enacted January 1, 1980
Criminal history record information act

• Regulates the collection and dissemination of criminal history record information.
• Limits what employers may consider for employment decisions.
• Limits what State agencies may consider for licenses.
• Provides for the removal of information.
• Provides for civil action for violations.
The creation and dissemination of criminal history record information
Defining Criminal history record information

§ 9102. Definitions.

- "Criminal history record information." Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom.
  - The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in section 9104 (relating to scope).

- "Dissemination." The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency which maintains the information.
Defining Criminal history record information

§ 9102. Definitions.

- "Criminal justice agency." Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function.

- "Central repository." The central location for the collection, compilation, maintenance and dissemination of criminal history record information by the Pennsylvania State Police.
Defining Criminal history record information

§ 9102. Definitions.

- "Expunge."

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

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

- (3) maintenance of certain information required or authorized under the provisions of section 9122(c) (relating to expungement), when an individual has successfully completed the conditions of any pretrial or posttrial diversion or probation program.
12 types of information that is not expunged or disseminated

§ 9105. Other criminal justice information.

Nothing in this chapter shall be construed to apply to information concerning juveniles, except as provided in section 9123 (relating to juvenile records) unless they have been adjudicated as adults

<table>
<thead>
<tr>
<th>intelligence information</th>
<th>investigative information</th>
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<tr>
<td>treatment information, including medical and psychiatric information</td>
<td>caution indicator information</td>
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<td>modus operandi information</td>
<td>wanted persons information</td>
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<tr>
<td>missing persons information</td>
<td>stolen property information</td>
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<td>employment history information personal history information</td>
<td>nor presentence investigation information</td>
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Criminal history record information maintained as a part of these records shall not be disseminated unless in compliance with the provisions of this chapter.
§ 9111. Duties of criminal justice agencies.
- It shall be the duty of every criminal justice agency within the Commonwealth to maintain complete and accurate criminal history record information and to report such information at such times and in such manner as required by the provisions of this chapter or other applicable statutes.

§ 9112. Mandatory fingerprinting.
- General rule.--Fingerprints of all persons arrested for a felony, misdemeanor or summary offense which becomes a misdemeanor on a second arrest after conviction of that summary offense, shall be taken by the arresting authority, and within 48 hours of the arrest, shall be forwarded to, and in a manner and such a form as provided by, the central repository.
Maintaining the accuracy of criminal history record information

- § 9113. Disposition reporting by criminal justice agencies.
- (a) Reports of dispositions required.--All criminal justice agencies, including but not limited to, courts, county, regional and State correctional institutions and parole and probation agencies, shall collect and submit reports of dispositions occurring within their respective agencies for criminal history record information, within 90 days of the date of such disposition to the central repository as provided for in this section.
Dissemination of criminal history record information

§ 9121. General regulations.

(b) Dissemination to noncriminal justice agencies and individuals.-- Criminal history record information shall be disseminated by a State or local police department to any individual or noncriminal justice agency only upon request. A fee may be charged by a State or local police department for each request.

Before a State or local police department disseminates criminal history record information to an individual or noncriminal justice agency, it shall extract from the record the following:

(i) All notations of arrests, indictments or other information relating to the initiation of criminal proceedings where:

- (A) three years have elapsed from the date of arrest;
- (B) no conviction has occurred; and
- (C) no proceedings are pending seeking a conviction.

(ii) All information relating to a conviction and the arrest, indictment or other information leading thereto, which is the subject of a court order for limited access as provided in section 9122.1 (relating to order for limited access).
Criminal history record information is saved, shared, and sold

- Use by non criminal justice agencies creates many unforeseen harms and consequences.
- Technological advancements in information sharing has increased these harms, and the resulting increase in the demand for relief and removal of criminal history record information.
Relief from criminal history record information

Note: this information does not include the Post-Conviction Relief Act, appeals, and other forms of relief for active cases.
Limited Access Orders

Pennsylvania’s newest form of relief
What is a Limited Access order?

- Created to reduce recidivism, relieve the pardon system, and provide ex-offenders greater opportunity to join the workforce.
- More about restricting dissemination than destroying a record.

A court or the Administrative Office of Pennsylvania Courts may not disseminate to an individual, a noncriminal justice agency or an Internet website any information relating to a conviction, arrest, indictment or other information leading to a conviction, arrest, indictment or other information, which is the subject of a court order for limited access as provided in section 9122.1.
Limited Access Orders

Pennsylvania's newest form of relief

§ 9122.1. Order for limited access.

- person who has been free of arrest or prosecution following conviction for a period of 10 years from final release of confinement or supervision,
- the court of common pleas in the jurisdiction where the conviction occurred may enter an order that criminal history record information maintained by any criminal justice agency pertaining to a
  - conviction for a misdemeanor of the second degree,
  - a misdemeanor of the third degree or
  - an ungraded offense which carries a maximum penalty of no more than two years
- be disseminated only to a criminal justice agency or a government agency as provided in section 9121(b.1) and (b.2) (relating to general regulations).
Convictions that bar limited access eligibility

An individual who has been convicted at any time of any of the following is ineligible to have a limited access order

- (1) An offense punishable by imprisonment of more than two years.
- (2) Four or more offenses punishable by imprisonment of one or more years.
- (3) A violation of section 2701 (relating to simple assault), except when the offense is graded as a misdemeanor of the third degree.
- (4) A violation of section 3129 (relating to sexual intercourse with animal).
- (5) A violation of section 4912 (relating to impersonating a public servant).
- (6) A violation of section 4952 (relating to intimidation of witnesses or victims).
- (7) A violation of section 4953 (relating to retaliation against witness, victim or party).
- (8) A violation of section 4958 (relating to intimidation, retaliation or obstruction in child abuse cases).
- (9) An offense which requires registration under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).
LIMITED ACCESS OF CRIMINAL RECORDS IN PENNSYLVANIA

A limited access order removes a conviction from public view, and restricts access to law enforcement and state licensing agencies.

INELIGIBLE

Felony (any degree) or Misdemeanor (1st degree)

Limited access order not available for any case

Must obtain a pardon

ELIGIBLE

Misdemeanor (2nd or 3rd degree)*

Limited access order may be available if all of the following apply

No arrest or prosecutions for at least ten years - from incarceration or supervision

No more than four convictions punishable by up to one year incarceration

No convictions from the list

CONVICTIONS THAT BAR LIMITED ACCESS

A limited access order is no available if a person has any of the following convictions:

- A felony (any degree)
- A misdemeanor (1st degree)
- Simple assault (unless mutual fight)
- Sexual intercourse with an animal
- Impersonating a public official
- Witness intimidation
- Witness retaliation
- An offense requiring registration a sex offender

* Question: What happens if I do not meet these requirements?
Answer: You must obtain a pardon.

For Educational Purposes Only. Consult PLSE or an attorney with specific questions about limited access orders.

PHILADELPHIA LAWYERS FOR SOCIAL EQUITY
1501 Cherry Street, Philadelphia, PA 19102 // 215-995-1230 // www.plsephilly.org
Limited Access Orders procedure

1. Determine eligibility
2. File petition in county where arrest occurred
3. District Attorney review
4. Court hearing (if necessary)
5. Confirmation letters for law enforcement
6. Limited access order processed
Clemency:
Pathway to Pardons and commutations
Clemency can be defined as mercy, especially to moderate the severity of punishment. There are two categories:

**Pardon**
- Relieves an individual of the legal disabilities associated with the conviction of a crime.
- Constitutes total forgiveness by the Commonwealth.
- Does not expunge or seal a conviction.
- 85% of clemency applications are pardons.

**Commutation**
- Reduction of a prison sentence currently being served.
- Only means of release for an inmate serving a life sentence.
- Inmates serving indeterminate sentences may apply, but generally parole is more appropriate form of relief.
Board of Pardons

- Reviews applications for clemency of felony and misdemeanor convictions.
- Does not decide innocence or guilt.
- Determines if there are sufficient reasons to recommend mercy.
- Consists of five members
  - Lieutenant Governor
  - Attorney General
  - Three appointees by Governor
    - Criminal justice expert
    - Victim of a crime
    - Psychiatrist/Psychologist

Submit application to board of pardons
- Copies sent to Probation and Parole, District Attorney, sentencing Judge/President Judge, and if applicable Dep’t of Corrections and victims in county where crime occurred.

Probation and Parole investigation
- Residence, Marital status and family composition, employment, resources, liabilities and indebtedness, community reputation, membership in organizations, and volunteer activities.

Public hearing
- 15 minutes question and answer with the board.
- Recommendation in favor requires a majority vote.
Commutations for incarcerated applicants

- Must be represented by legal counsel or designated person.
- Conduct, academic, vocational work, religion, medical, counseling, psychology and psychiatric reports are prepared.
- Merit review
  - If applicant did not commit crimes of violence 2 of 5 votes needed for public hearing.
  - If applicant is convicted of crime of violence 3 of 5 votes needed for public hearing.

<table>
<thead>
<tr>
<th>Notification sent to superintendent</th>
<th>Merit review*</th>
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<tbody>
<tr>
<td>Reports generated</td>
<td>Completed reports and recommendations forwarded to board.</td>
</tr>
<tr>
<td>Superintendent makes recommendation</td>
<td>Bureau of treatment services makes recommendation</td>
</tr>
</tbody>
</table>

- Recommendation for or against public hearing
- Pre-public hearing interview
- Public hearing

Must be represented by legal counsel or designated person.

- Conduct, academic, vocational work, religion, medical, counseling, psychology and psychiatric reports are prepared.
- Merit review
  - If applicant did not commit crimes of violence 2 of 5 votes needed for public hearing.
  - If applicant is convicted of crime of violence 3 of 5 votes needed for public hearing.
Hearing Results

- The Board votes in public after the hearing.
- If a majority of the Board vote in favor of an application, the Board recommends favorable action to the Governor.
- If less than a majority of the Board vote in favor of an applicant, the result is a denial by the Board and the application is not forwarded to the Governor.
- Life or Death sentence cases require a unanimous vote by the Board to be recommended to the Governor.
- The Governor, at his discretion, may approve or disapprove any favorable recommendation submitted by the Board.
Relief from denial

**Reconsideration** - A request for reconsideration of any decision may be made to the Board. The applicant must show a change in circumstances since the application was filed, or other compelling reasons, sufficient to justify reconsideration. Dissatisfaction with the Board's decision is not grounds to request reconsideration.

**Reapplication** – An application may not be filed before the expiration of 12 months from the Board's “no” vote in a merit review or public hearing. If an application receives two consecutive “no” votes, an application may not be filed again until 24 months has passed from the last “no” vote.
Rights Restored after a pardon is granted includes:

- Serving on a jury
- Holding public office
- Owning and carrying a firearm
- Service in the military
- International travel
- State professional licenses
The destruction of criminal records

Expungements and partial expungements
§ 9122. Expungement

Criminal history record information shall be expunged in a specific criminal proceeding when:

- **No disposition** has been received or no disposition has been recorded in the repository within **18 months** after the date of arrest and the court of proper jurisdiction certifies to the director of the repository that no disposition is available and no action is pending.

- A court order requires that such **nonconviction data** be expunged;

- A person 21 years of age or older who has been convicted of a violation of section 6308. Upon review of the petition, the court shall order the expungement of **all criminal history record information** and **all administrative records** of the Department of Transportation relating to said conviction.
§ 9122. Expungement

Criminal history record information may be expunged when:

- An individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision.
- An individual who is the subject of the information has been dead for three years.
- An individual who is the subject of the information petitions the court for the expungement of a summary offense and has been free of arrest or prosecution for five years following the conviction for that offense.
  - See Pa. R. Crim. P. 490
§ 9122. Expungement- exceptions

Accelerated Rehabilitative Disposition for a violation of any offense set forth in any of the following where the victim is under 18 years of age:

- Section 3121 (relating to rape).
- Section 3122.1 (relating to statutory sexual assault).
- Section 3123 (relating to involuntary deviate sexual intercourse).
- Section 3124.1 (relating to sexual assault).
- Section 3125 (relating to aggravated indecent assault).
- Section 3126 (relating to indecent assault).
- Section 3127 (relating to indecent exposure).
- Section 5902(b) (relating to prostitution and related offenses).
- Section 5903 (relating to obscene and other sexual materials and performances).
Expunged but not forgotten: Maintenance of certain information required or authorized

Notwithstanding any other provision of this chapter, the **prosecuting attorney and the central repository shall** and the **court may**, maintain a list of the names and other criminal history record information of persons whose records are required by law or court rule to be expunged where:

- the individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program, or
- where the court has ordered expungement under this section.

- Such information shall be used solely for the purposes of
  - determining subsequent eligibility for such programs,
  - identifying persons in criminal investigations or
  - determining the grading of subsequent offenses.

- Such information shall be made available to any court or law enforcement agency upon request.
Expungement Order Procedure

Determine eligibility

File petition in county where arrest occurred

District Attorney review

Court hearing (if necessary)

Expungement order processed

Confirmation letters for law enforcement

Pa. R. Crim. P. 790 & 490
Sample petition

- Most expungements are filed pursuant to Pa. R. Crim. P. 790.
- Summary offenses are filed pursuant to Pa. R. Crim. P. 490
- The AOPC provides a template form accepted in every county.
- Check with the District Attorney to see if you need a State Police Criminal History.
Proposed orders are generally filed with a motion for an expungement.

Most expungements are filed pursuant to Pa. R. Crim. P. 790.

Summary offenses are filed pursuant to Pa. R. Crim. P. 490.

The AOPC provides a template form accepted in every county.