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 THE GENERAL ASSEMBLY OF PENNSYLVANIA
 

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# HOUSE BILL

No. 440 Session of  
2019

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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

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AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, DECEMBER 9, 2019

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## AN ACT

1 Amending ~~Title~~ TITLES 18 (Crimes and Offenses) AND 42 (JUDICIARY <--  
2 AND 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 § 9122. Expungement.

14 (a) Specific proceedings.--Criminal history record  
15 information shall be expunged in a specific criminal proceeding  
16 when:

17 (1) no disposition has been received or, upon request

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

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

10 (2.1) a person has been ~~pardoned~~ GRANTED AN <--  
11 UNCONDITIONAL PARDON for an offense in accordance with law;

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

26 (4) a judicial determination has been made that a person  
27 is acquitted of an offense, if the person has been acquitted  
28 of all charges based on the same conduct or arising from the  
29 same criminal episode FOLLOWING A TRIAL AND A VERDICT OF NOT <--  
30 GUILTY. This paragraph shall not apply to a partial

1 acquittal. A judicial determination under this paragraph may  
2 only be made after the following:

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

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

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

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

27 \* \* \*

28 (c) Maintenance of certain information required or  
29 authorized.--Notwithstanding any other provision of this  
30 chapter, the prosecuting attorney and the central repository

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

13 \* \* \*

14 SECTION 2. SECTIONS 9122.1(A) AND 9122.2(A) (1) AND (3) AND <--  
15 (B) (2) (I) OF TITLE 18 ARE AMENDED TO READ:

16 § 9122.1. PETITION FOR LIMITED ACCESS.

17 (A) GENERAL RULE.--SUBJECT TO THE EXCEPTIONS IN SUBSECTION  
18 (B) AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER,  
19 UPON PETITION OF A PERSON WHO HAS BEEN FREE FROM CONVICTION FOR  
20 A PERIOD OF 10 YEARS FOR AN OFFENSE PUNISHABLE BY ONE OR MORE  
21 YEARS IN PRISON AND HAS COMPLETED [EACH COURT-ORDERED FINANCIAL  
22 OBLIGATION OF THE SENTENCE] PAYMENT OF ALL COURT-ORDERED  
23 RESTITUTION AND THE FEE PREVIOUSLY AUTHORIZED TO CARRY OUT THE  
24 LIMITED ACCESS AND CLEAN SLATE LIMITED ACCESS PROVISIONS, THE  
25 COURT OF COMMON PLEAS IN THE JURISDICTION WHERE A CONVICTION  
26 OCCURRED MAY ENTER AN ORDER THAT CRIMINAL HISTORY RECORD  
27 INFORMATION MAINTAINED BY A CRIMINAL JUSTICE AGENCY PERTAINING  
28 TO A QUALIFYING MISDEMEANOR OR AN UNGRADED OFFENSE WHICH CARRIES  
29 A MAXIMUM PENALTY OF NO MORE THAN FIVE YEARS BE DISSEMINATED  
30 ONLY TO A CRIMINAL JUSTICE AGENCY OR AS PROVIDED IN SECTION

1 9121(B.1) AND (B.2) (RELATING TO GENERAL REGULATIONS).

2 \* \* \*

3 § 9122.2. CLEAN SLATE LIMITED ACCESS.

4 (A) GENERAL RULE.--THE FOLLOWING SHALL BE SUBJECT TO LIMITED  
5 ACCESS:

6 (1) SUBJECT TO THE EXCEPTIONS UNDER SECTION 9122.3  
7 (RELATING TO EXCEPTIONS) OR IF A COURT HAS VACATED AN ORDER  
8 FOR LIMITED ACCESS UNDER SECTION 9122.4 (RELATING TO ORDER TO  
9 VACATE ORDER FOR LIMITED ACCESS), CRIMINAL HISTORY RECORD  
10 INFORMATION PERTAINING TO A CONVICTION OF A MISDEMEANOR OF  
11 THE SECOND DEGREE, A MISDEMEANOR OF THE THIRD DEGREE OR A  
12 MISDEMEANOR OFFENSE PUNISHABLE BY IMPRISONMENT OF NO MORE  
13 THAN TWO YEARS IF A PERSON HAS BEEN FREE FOR 10 YEARS FROM  
14 CONVICTION FOR ANY OFFENSE PUNISHABLE BY IMPRISONMENT OF ONE  
15 OR MORE YEARS AND IF [COMPLETION OF EACH COURT-ORDERED  
16 FINANCIAL OBLIGATION OF THE SENTENCE] PAYMENT OF ALL COURT-  
17 ORDERED RESTITUTION AND THE FEE PREVIOUSLY AUTHORIZED TO  
18 CARRY OUT THE LIMITED ACCESS AND CLEAN SLATE LIMITED ACCESS  
19 PROVISIONS HAS OCCURRED.

20 \* \* \*

21 (3) CRIMINAL HISTORY RECORD INFORMATION PERTAINING TO A  
22 CONVICTION FOR A SUMMARY OFFENSE WHEN 10 YEARS HAVE ELAPSED  
23 SINCE ENTRY OF THE JUDGMENT OF CONVICTION AND [COMPLETION OF  
24 ALL COURT-ORDERED FINANCIAL OBLIGATIONS OF THE SENTENCE]  
25 PAYMENT OF ALL COURT-ORDERED RESTITUTION AND THE FEE  
26 PREVIOUSLY AUTHORIZED TO CARRY OUT THE LIMITED ACCESS AND  
27 CLEAN SLATE LIMITED ACCESS PROVISIONS HAS OCCURRED.

28 (B) PROCEDURES.--

29 \* \* \*

30 (2) THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

1 SHALL TRANSMIT TO THE PENNSYLVANIA STATE POLICE REPOSITORY:

2 (I) THE RECORD OF CHARGES SUBJECT TO LIMITED ACCESS  
3 UNDER SUBSECTION (A) (2) WITHIN 30 DAYS AFTER ENTRY OF THE  
4 DISPOSITION AND PAYMENT OF [EACH COURT-ORDERED  
5 OBLIGATION] ANY ORDERED RESTITUTION.

6 \* \* \*

7 SECTION 3. SECTION 9122.5 OF TITLE 18 IS AMENDED BY ADDING A  
8 SUBSECTION TO READ:

9 § 9122.5. EFFECTS OF EXPUNGED RECORDS AND RECORDS SUBJECT TO  
10 LIMITED ACCESS.

11 \* \* \*

12 (C) USE FOR SENTENCING.--NOTWITHSTANDING ANY OTHER PROVISION  
13 OF THIS CHAPTER, A RECORD SUBJECT TO LIMITED ACCESS UNDER  
14 SECTION 9122.1 OR 9122.2 SHALL REMAIN PART OF A PERSON'S  
15 CRIMINAL HISTORY RECORD INFORMATION AND SHALL BE DISCLOSED TO A  
16 COURT FOR ANY RELEVANT PURPOSE IN ACCORDANCE WITH LAW, INCLUDING  
17 SENTENCING.

18 SECTION 4. SECTION 4132 OF TITLE 42 IS AMENDED TO READ:

19 § 4132. ATTACHMENT AND SUMMARY PUNISHMENT FOR CONTEMPTS.

20 THE POWER OF THE SEVERAL COURTS OF THIS COMMONWEALTH TO ISSUE  
21 ATTACHMENTS AND TO IMPOSE SUMMARY PUNISHMENTS FOR CONTEMPTS OF  
22 COURT SHALL BE RESTRICTED TO THE FOLLOWING CASES:

23 (1) THE OFFICIAL MISCONDUCT OF THE OFFICERS OF SUCH  
24 COURTS RESPECTIVELY.

25 (1.1) THE WILLFUL FAILURE OF THE OFFICERS OF SUCH COURTS  
26 TO DISCLOSE A PERSON'S COMPLETE CRIMINAL HISTORY RECORD  
27 INFORMATION WHEN REQUESTED.

28 (2) DISOBEDIENCE OR NEGLIGENCE BY OFFICERS, PARTIES, JURORS  
29 OR WITNESSES OF OR TO THE LAWFUL PROCESS OF THE COURT.

30 (3) THE MISBEHAVIOR OF ANY PERSON IN THE PRESENCE OF THE

1 COURT, THEREBY OBSTRUCTING THE ADMINISTRATION OF JUSTICE.  
2 SECTION 5. WITHIN 365 DAYS OF THE EFFECTIVE DATE OF THIS  
3 SECTION, THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS AND  
4 THE PENNSYLVANIA STATE POLICE SHALL IDENTIFY AND COMPLETE THE  
5 PROCESSING OF RECORDS THAT ARE ELIGIBLE FOR EXPUNGEMENT UNDER 18  
6 PA.C.S. § 9122(A)(4), LIMITED ACCESS UNDER 18 PA.C.S. §  
7 9122.2(A) AND CLEAN SLATE LIMITED ACCESS UNDER 18 PA.C.S. §  
8 9122.2(A)(1) AND (3).

9 Section ~~2~~ 6. This act shall take effect in 60 days.

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