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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1543 Session of  
2007

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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

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SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,  
OCTOBER 6, 2008

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

10 ~~§ 9122. Expungement.~~

11 ~~(a) Specific proceedings. Criminal history record~~  
12 ~~information shall be expunged in a specific criminal proceeding~~  
13 ~~when:~~

14 \* \* \*

15 ~~(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 SECTION 1. SECTION 9122(B), (B.1) AND (C) OF TITLE 18 OF THE ←  
15 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

16 § 9122. EXPUNGEMENT.

17 \* \* \*

18 (b) Generally.--Criminal history record information may be  
19 expunged when:

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

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

26 ~~(3) (i) An individual who is the subject of the~~  
27 ~~information petitions for expungement of the information ←~~  
28 ~~and the individual has been free of arrest or prosecution~~  
29 ~~following final release from confinement or supervision~~  
30 ~~for the greater of the following time periods:~~

1 ~~(A) In the case of a summary offense, five~~  
2 ~~years.~~

3 ~~(B) In the case of a misdemeanor of the third~~  
4 ~~degree, seven years.~~

5 ~~(C) In the case of a misdemeanor of the second~~  
6 ~~degree, ten years.~~

7 ~~(ii) This paragraph shall not apply to any~~  
8 ~~individual who has been convicted of:~~

9 ~~(A) An offense punishable by imprisonment of~~  
10 ~~more than two years.~~

11 ~~(B) Four or more offenses punishable by~~  
12 ~~imprisonment of one or more years.~~

13 ~~(C) A violation of section 2701 (relating to~~  
14 ~~simple assault).~~

15 ~~(D) An offense classified as a misdemeanor of~~  
16 ~~the second degree committed when the individual was~~  
17 ~~at least 25 years of age.~~

18 ~~(E) A violation of section 3126 (relating to~~  
19 ~~indecent assault).~~

20 ~~(F) A violation of section 3129 (relating to~~  
21 ~~sexual intercourse with animal).~~

22 ~~(G) A violation of section 5511 (relating to~~  
23 ~~cruelty to animals).~~

24 ~~(H) A violation of any provision of Chapter 61~~  
25 ~~(relating to firearms and other dangerous articles).~~

26 ~~(I) A violation of an offense for which~~  
27 ~~registration is required under 42 Pa.C.S. § 9795.1~~  
28 ~~(relating to registration).~~

29 ~~(iii) Expungement shall be at the discretion of the~~  
30 ~~court. In considering whether to grant the petition for~~

~~expungement, the court shall consider all relevant factors, including any reasons the Commonwealth may give for wishing to retain the records; the petitioner's age, criminal record and employment history; the length of time that has elapsed between the arrest and the petition to expunge; and the specific adverse consequences the petitioner may endure should expunction be denied.~~

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.

(II) EXPUNGEMENT UNDER THIS PARAGRAPH SHALL ONLY BE PERMITTED FOR A CONVICTION OF A SUMMARY OFFENSE.

(b.1) Prohibition.--A court shall not have the authority to order expungement of the defendant's arrest record where the defendant was placed on 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).

1 (c) Maintenance of certain information required or  
2 authorized.--Notwithstanding any other provision of this  
3 chapter, ~~the following apply:~~ <—

4 ~~(1) The prosecuting attorney and the central repository~~  
5 CHAPTER, THE PROSECUTING ATTORNEY AND THE CENTRAL REPOSITORY <—  
6 shall, and the court may, maintain a list of the names and  
7 other criminal history record information of persons whose  
8 records are required by law or court rule to be expunged  
9 where the individual has successfully completed the  
10 conditions of any pretrial or post-trial diversion or  
11 probation program OR WHERE THE COURT HAS ORDERED EXPUNGEMENT <—  
12 UNDER THIS SECTION. Such information shall be used solely for  
13 ~~the purpose of determining subsequent eligibility for such~~ <—  
14 ~~programs and for identifying persons in criminal~~  
15 ~~investigations. Criminal history record information may be~~  
16 ~~expunged as provided in subsection (b)(1) and (2). [Such~~  
17 ~~information]~~

18 ~~(2) The central repository shall maintain the name,~~  
19 ~~identifying information, fingerprints and offense record of a~~  
20 ~~person whose records are expunged under subsection(b)(3).~~  
21 ~~Information under this paragraph may be used in consideration~~  
22 ~~for a pardon and shall be admissible in court solely for the~~  
23 ~~following purposes:~~

24 ~~(i) Grading a subsequent offense which is dependent~~  
25 ~~upon a prior conviction.~~

26 ~~(ii) Sentencing for a subsequent offense if a prior~~  
27 ~~conviction might result in a prior record score under 204~~  
28 ~~Pa. Code Ch. 303 (relating to sentencing guidelines).~~

29 ~~(iii) Identifying a person in a criminal~~  
30 ~~investigation.~~

1           ~~(iv) Eligibility for a pretrial or post trial~~  
2           ~~diversion or probation program.~~

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

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

10          ~~(1) A court's expungement order shall direct the~~  
11          ~~appropriate repositories of criminal history record~~  
12          ~~information to do all of the following:~~

13                 ~~(i) Expunge and destroy the criminal history record~~  
14                 ~~information.~~

15                 ~~(ii) Request that a Federal, state or local agency~~  
16                 ~~to which the criminal history record information has been~~  
17                 ~~made available return the criminal history record~~  
18                 ~~information if possible.~~

19                 ~~(iii) Destroy criminal history record information~~  
20                 ~~returned under subparagraph (ii).~~

21                 ~~(iv) File with the court, within 30 days, the~~  
22                 ~~expungement order and an affidavit of compliance with the~~  
23                 ~~expungement order. No copy of the expungement order or~~  
24                 ~~the affidavit may be retained by the repository.~~

25          ~~(2) Upon receipt of the affidavit under paragraph~~  
26          ~~(1)(iv), the court shall seal the expungement order and the~~  
27          ~~affidavit. Except for enforcement of this subsection, a~~  
28          ~~document sealed under this paragraph may not be examined by~~  
29          ~~any person or agency.~~

30          ~~(c) Public records. [Public]~~

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

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

6 ~~(f) District attorney's notice. The court shall give [ten]~~  
7 ~~20 days prior notice to the district attorney of the county~~  
8 ~~where the original charge was filed of any applications for~~  
9 ~~expungement under the provisions of subsection (a)(2) or (b)(3).~~

10 ~~(g) Status.~~

11 ~~(1) Except as set forth in subsection (c) or (d)(2), an~~  
12 ~~expunged record of arrest, prosecution or conviction shall~~  
13 ~~not be regarded as an arrest, prosecution or conviction for a~~  
14 ~~public or private purpose. This paragraph includes the~~  
15 ~~purpose of any statute, regulation, license, questionnaire,~~  
16 ~~employment application or civil or criminal proceeding.~~

17 ~~(2) A person may not knowingly disclose criminal history~~  
18 ~~record information which is subject to an expungement order.~~  
19 ~~A person that violates this paragraph commits a summary~~  
20 ~~offense.~~

21 ~~Section 2. Section 9123(a) of Title 18 is amended to read:~~  
22 ~~§ 9123. Juvenile records.~~

23 ~~(a) Expungement of juvenile records. Notwithstanding the~~  
24 ~~provisions of section 9105 (relating to other criminal justice~~  
25 ~~information) and except upon cause shown, expungement of records~~  
26 ~~of juvenile delinquency cases and cases involving summary~~  
27 ~~offenses committed while the individual was under 18 years of~~  
28 ~~age, wherever kept or retained, shall occur after 30 days'~~  
29 ~~notice to the district attorney, whenever the court upon its~~  
30 ~~motion or upon the motion of a child or the parents or guardian~~

1 finds:

2 ~~(1) a complaint is filed which is not substantiated or~~  
3 ~~the petition which is filed as a result of a complaint is~~  
4 ~~dismissed by the court;~~

5 ~~(2) six months have elapsed since the final discharge of~~  
6 ~~the person from supervision under a consent decree and no~~  
7 ~~proceeding seeking adjudication or conviction is pending;~~

8 ~~(2.1) the individual is 18 years of age or older and has~~  
9 ~~been convicted of a violation of section 6308 (relating to~~  
10 ~~purchase, consumption, possession or transportation of liquor~~  
11 ~~or malt or brewed beverages) which occurred while the~~  
12 ~~individual was under 18 years of age and the individual has~~  
13 ~~satisfied all terms and conditions of the sentence imposed~~  
14 ~~for the violation, including any suspension of operating~~  
15 ~~privileges imposed pursuant to section 6310.4 (relating to~~  
16 ~~restriction of operating privileges). Expungement shall~~  
17 ~~include all criminal history record information and all~~  
18 ~~administrative records of the Department of Transportation~~  
19 ~~relating to the conviction;~~

20 ~~(2.2) the individual is 18 years of age or older and the~~  
21 ~~individual has satisfied all terms and conditions of the~~  
22 ~~sentence imposed following a conviction for a summary~~  
23 ~~offense, with the exception of a violation of section 6308,~~  
24 ~~committed while the individual was under 18 years of age and~~  
25 ~~the individual has not been convicted of a felony,~~  
26 ~~misdemeanor or adjudicated delinquent and no proceeding is~~  
27 ~~pending seeking such conviction or adjudication;~~

28 ~~(3) five years have elapsed since the final discharge of~~  
29 ~~the person from commitment, placement, probation or any other~~  
30 ~~disposition and referral and since such final discharge, the~~

1 ~~person has not been convicted of a felony, misdemeanor or~~  
2 ~~adjudicated delinquent and no proceeding is pending seeking~~  
3 ~~such conviction or adjudication; or~~

4 ~~(4) the individual is [18] 17 years of age or older, the~~  
5 ~~attorney for the Commonwealth consents to the expungement and~~  
6 ~~a court orders the expungement after giving consideration to~~  
7 ~~the following factors:~~

8 ~~(i) the type of offense;~~

9 ~~(ii) the individual's age, history of employment,~~  
10 ~~criminal activity and drug or alcohol problems;~~

11 ~~(iii) adverse consequences that the individual may~~  
12 ~~suffer if the records are not expunged; and~~

13 ~~(iv) whether retention of the record is required for~~  
14 ~~purposes of protection of the public safety.~~

15 \* \* \*

16 ~~Section 3. This act shall take effect July 1, 2009. THE~~ <—  
17 [PURPOSE] PURPOSES OF DETERMINING SUBSEQUENT ELIGIBILITY FOR  
18 SUCH PROGRAMS [AND FOR], IDENTIFYING PERSONS IN CRIMINAL  
19 INVESTIGATIONS[. CRIMINAL HISTORY RECORD INFORMATION MAY BE  
20 EXPUNGED AS PROVIDED IN SUBSECTION (B)(1) AND (2).] OR  
21 DETERMINING THE GRADING OF SUBSEQUENT OFFENSES. SUCH INFORMATION  
22 SHALL BE MADE AVAILABLE TO ANY COURT OR LAW ENFORCEMENT AGENCY  
23 UPON REQUEST.

24 \* \* \*

25 SECTION 2. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.