

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1197 Session of 2015

INTRODUCED BY WAGNER, WILLIAMS, STEFANO, TEPLITZ, SCHWANK, LEACH, WILEY, McGARRIGLE, KITCHEN, COSTA, BARTOLOTTA, WHITE, FONTANA, GREENLEAF, VOGEL, BREWSTER, WOZNIAK, WARD, AUMENT, HAYWOOD, YUDICHAK, HUGHES, TARTAGLIONE AND BLAKE, APRIL 20, 2016

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, MAY 10, 2016

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in dissemination of criminal history
3 record information, further providing for general regulations
4 and for order for limited access, providing for clean slate
5 for convictions of misdemeanors and summary offenses, for
6 charges not leading to convictions and for records of
7 juvenile delinquency and, for effects of expunged offenses <--
8 and offenses provided limited access AND FOR EMPLOYER <--
9 IMMUNITY AND LIABILITY and further providing for use of
10 records by licensing agencies.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Sections 9121(b) and (b.2) and 9122.1(a) of Title
14 18 of the Pennsylvania Consolidated Statutes, amended or added
15 February 16, 2016 (P.L.10, No.5), are amended to read:

16 § 9121. General regulations.

17 \* \* \*

18 (b) Dissemination to noncriminal justice agencies and
19 individuals.--Criminal history record information shall be
20 disseminated by a State or local police department to any

1 individual or noncriminal justice agency only upon request.

2 Except as provided in subsection (b.1):

3 (1) A fee may be charged by a State or local police  
4 department for each request for criminal history record  
5 information by an individual or noncriminal justice agency,  
6 except that no fee shall be charged to an individual who  
7 makes the request in order to apply to become a volunteer  
8 with an affiliate of Big Brothers of America or Big Sisters  
9 of America or with a rape crisis center or domestic violence  
10 program.

11 (2) Before a State or local police department  
12 disseminates criminal history record information to an  
13 individual or noncriminal justice agency, it shall extract  
14 from the record the following:

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

18 (A) three years have elapsed from the date of  
19 arrest;

20 (B) no conviction has occurred; and

21 (C) no proceedings are pending seeking a  
22 conviction.

23 (ii) All information relating to a conviction and  
24 the arrest, indictment or other information leading  
25 thereto, or relating to an arrest not leading to a  
26 conviction, which is the subject of a court order for  
27 limited access as provided in section 9122.1 (relating to  
28 order for limited access)[.] or which is automatically  
29 provided limited access under section 9122.2 (relating to  
30 clean slate for convictions of misdemeanors and summary

1 offenses, for charges not leading to convictions and for  
2 records of juvenile delinquency).

3 (3) A court or the Administrative Office of Pennsylvania  
4 Courts may not disseminate to an individual, a noncriminal  
5 justice agency or an Internet website any information  
6 relating to a conviction, arrest, indictment or other  
7 information leading to a conviction, arrest, indictment or  
8 other information, which is the subject of a court order for  
9 limited access as provided in section 9122.1 or which is  
10 automatically provided limited access under section 9122.2.

11 \* \* \*

12 (b.2) Additional exceptions.--Subsection (b) (2) (ii) and (3)  
13 shall not apply if the request is made [by a State agency to be  
14 used only as authorized under section 9124 (relating to use of  
15 records by licensing agencies).] ~~pursuant to a court order in a~~ <--  
16 ~~case brought under 23 Pa.C.S. Ch. 53 (relating to child custody)~~  
17 ~~or 61 (relating to protection from abuse). All information made~~  
18 ~~available to the court under this exception shall also be made~~  
19 ~~available for examination by the parties.:~~ <--

20 (1) PURSUANT TO A COURT ORDER IN A CASE BROUGHT UNDER 23  
21 PA.C.S. CH. 53 (RELATING TO CHILD CUSTODY) OR 61 (RELATING TO  
22 PROTECTION FROM ABUSE). ALL INFORMATION MADE AVAILABLE TO THE  
23 COURT UNDER THIS EXCEPTION SHALL ALSO BE MADE AVAILABLE FOR  
24 EXAMINATION BY THE PARTIES.

25 (2) TO VERIFY INFORMATION PROVIDED BY AN APPLICANT WHERE  
26 FEDERAL LAW, INCLUDING RULES AND REGULATIONS PROMULGATED BY A  
27 SELF-REGULATORY ORGANIZATION THAT HAS BEEN CREATED PURSUANT  
28 TO FEDERAL LAW, REQUIRES THE CONSIDERATION OF AN APPLICANT'S  
29 CRIMINAL HISTORY FOR PURPOSES OF EMPLOYMENT.

30 (3) BY AN EMPLOYER AGAINST WHOM A CLAIM OF CIVIL

1 LIABILITY HAS BEEN BROUGHT AS DESCRIBED UNDER SECTION 9122.4  
2 FOR PURPOSES OF DEFENDING AGAINST A CLAIM OF CIVIL LIABILITY.

3 \* \* \*

4 § 9122.1. Order for limited access.

5 (a) General rule.--[The following shall apply:

6 (1)] Notwithstanding any other provision of this  
7 chapter, upon petition of a person who has been free of  
8 arrest or prosecution following conviction or final release  
9 from confinement or supervision, whichever is later, for a  
10 period of 10 years, the court of common pleas in the  
11 jurisdiction where the conviction occurred may enter an order  
12 that criminal history record information maintained by any  
13 criminal justice agency pertaining to a conviction for a  
14 misdemeanor of the second degree, a misdemeanor of the third  
15 degree or an ungraded offense which carries a maximum penalty  
16 of no more than two years be disseminated only to a criminal  
17 justice agency or a government agency as provided in section  
18 9121(b.1) and (b.2) (relating to general regulations).

19 [(2) Except when requested or required by a criminal  
20 justice agency, or by and for the official use of a  
21 government agency described in section 9121(b.1) or 9124(a)  
22 (relating to use of records by licensing agencies), no  
23 individual shall be required nor requested to disclose  
24 information about the person's criminal history records that  
25 are the subject of a court order for limited access granted  
26 under this section.]

27 \* \* \*

28 Section 2. Title 18 is amended by adding sections to read:

29 § 9122.2. Clean slate for convictions of misdemeanors and  
30 summary offenses, for charges not leading to

1 convictions and for records of juvenile delinquency.

2 (a) Declaration of policy.--The General Assembly finds and  
3 declares as follows:

4 (1) Individuals with charges not leading to convictions  
5 are MAY BE inherently harmed by the maintenance of that <--  
6 record and have a constitutional presumption of innocence.

7 (2) Individuals convicted of crimes in this Commonwealth  
8 shall serve their sentences as ordered by the courts of this  
9 Commonwealth.

10 (3) After LESS VIOLENT individuals convicted of their <--  
11 crimes have served their sentences and remained crime free  
12 long enough to demonstrate their rehabilitation, their access  
13 to employment, housing, education and other necessities of  
14 life should be fully restored.

15 (4) The Commonwealth shall provide a clean slate remedy,  
16 as set forth under this section, to:

17 (i) create a strong incentive for avoidance of  
18 recidivism by offenders;

19 (ii) provide hope for the alleviation of the  
20 hardships of having a criminal record by offenders who  
21 are trying to rehabilitate themselves; and

22 (iii) save the Commonwealth money that must be spent  
23 in the administration of criminal justice when offenders  
24 recidivate.

25 (5) The clean slate remedy should be implemented without  
26 cost to the Commonwealth's criminal justice agencies and the <--  
27 former offender of filing and adjudicating a petition with a <--  
28 court.

29 (b) Misdemeanor conviction.--Except for offenses under <--  
30 Article B (relating to offenses involving danger to the person)

1 ~~or offenses that require registration under 42 Pa.C.S. Ch. 97~~  
2 ~~Subch. H (relating to registration of sexual offenders),~~  
3 ~~criminal history record information of all convictions of~~  
4 ~~misdemeanor offenses shall automatically receive limited access~~  
5 ~~when 10 years have passed since the most recent felony or~~  
6 ~~misdemeanor conviction.~~ THE FOLLOWING SHALL APPLY: <--

7       (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2), CRIMINAL  
8 HISTORY RECORD INFORMATION OF ALL CONVICTIONS OF MISDEMEANOR  
9 OFFENSES SHALL AUTOMATICALLY RECEIVE LIMITED ACCESS WHEN  
10 COMPLETION OF THE SENTENCE, INCLUDING THE PAYMENT OF ALL  
11 COURT-ORDERED OBLIGATIONS, HAS OCCURRED AND 10 YEARS HAVE  
12 PASSED SINCE THE MOST RECENT FELONY OR MISDEMEANOR CONVICTION  
13 IN ANY COURT OF THE UNIFIED JUDICIAL SYSTEM.

14       (2) LIMITED ACCESS UNDER THIS SUBSECTION SHALL NOT BE  
15 GRANTED TO MISDEMEANOR CONVICTIONS OF THE FOLLOWING OFFENSES:

16           (I) OFFENSES UNDER ARTICLE B (RELATING TO OFFENSES  
17 INVOLVING DANGER TO THE PERSON).

18           (II) OFFENSES UNDER ARTICLE D (RELATING TO OFFENSES  
19 AGAINST THE FAMILY).

20           (III) OFFENSES UNDER CHAPTER 61 (RELATING TO  
21 FIREARMS AND OTHER DANGEROUS ARTICLES).

22           (IV) OFFENSES THAT REQUIRE REGISTRATION UNDER 42  
23 PA.C.S. CH. 97 SUBCH. H (RELATING TO REGISTRATION OF  
24 SEXUAL OFFENDERS).

25           (V) A VIOLATION OF SECTION 3127 (RELATING TO  
26 INDECENT EXPOSURE).

27           (VI) A VIOLATION OF SECTION 4915.1 (RELATING TO  
28 FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS).

29           (VII) A VIOLATION OF SECTION 5122 (RELATING TO  
30 WEAPONS OR IMPLEMENTS FOR ESCAPE).

1 (VIII) A VIOLATION OF SECTION 5511 (RELATING TO  
2 CRUELTY TO ANIMALS).

3 (c) Summary offense conviction.--Criminal history record  
4 information of all convictions of summary offenses shall  
5 automatically receive limited access when COMPLETION OF THE <--  
6 SENTENCE, INCLUDING PAYMENT OF ALL COURT-ORDERED OBLIGATIONS,  
7 HAS OCCURRED AND five years have passed since the most recent <--  
8 felony or misdemeanor conviction.

9 (d) Charges not leading to conviction OR ADJUDICATION OF <--  
10 JUVENILE DELINQUENCY.--Criminal history record information of  
11 charges with a final disposition other than conviction shall  
12 automatically receive limited access 60 days after entry of the  
13 disposition AND PAYMENT OF ANY COURT-ORDERED OBLIGATIONS. <--

14 (e) Records of juvenile delinquency.--Records of A juvenile <--  
15 delinquency ADJUDICATED DELINQUENT shall automatically receive <--  
16 limited access when COMPLETION OF THE TERM OF THE DISPOSITIONAL <--  
17 ORDER, INCLUDING THE PAYMENT OF ANY COURT-ORDERED OBLIGATIONS,  
18 HAS OCCURRED AND seven years have passed with no further  
19 adjudication of delinquency or conviction for a felony or  
20 misdemeanor offense IN ANY COURT OF THE UNIFIED JUDICIAL SYSTEM. <--

21 (F) TIME PERIOD FOR MULTIPLE OFFENSE CASES.--IF A CASE HAS <--  
22 MORE THAN ONE OFFENSE, THE APPLICABLE PERIOD OF TIME WHICH MUST  
23 PASS BEFORE THE CASE MAY BE ELIGIBLE FOR LIMITED ACCESS RELIEF  
24 SHALL BE DETERMINED BASED UPON THE HIGHEST GRADED OFFENSE OF  
25 WHICH THE INDIVIDUAL WAS CONVICTED.

26 ~~(f)~~ (G) No court petition required.--The following shall <--  
27 apply:

28 (1) ~~Limited~~ EXCEPT AS PROVIDED UNDER PARAGRAPH (3), <--  
29 LIMITED access of criminal AND JUVENILE proceedings under <--  
30 subsections (b), (c), (d) and (e) shall be performed by

1 criminal justice agencies within 30 days of the eligibility  
2 of such proceedings, without the requirement of a court  
3 order.

4 (2) Nothing in this section shall preclude the filing of  
5 a petition for limited access of criminal proceedings  
6 eligible for limited access under subsections (b), (c), (d)  
7 and (e) if limited access has not been provided by criminal  
8 justice agencies without a petition.

9 (3) ANY COURT, INCLUDING THE MINOR JUDICIARY, WITH <--  
10 CRIMINAL JURISDICTION, IN COOPERATION WITH THE ADMINISTRATIVE  
11 OFFICE OF PENNSYLVANIA COURTS, SHALL PREPARE A LIST OF ITS  
12 CASES WHICH ARE BELIEVED TO BE APPROPRIATE FOR LIMITED ACCESS  
13 RELIEF UNDER SUBSECTIONS (B), (C), (D) AND (E) WITHIN 30 DAYS  
14 OF THE ELIGIBILITY OF SUCH CASES AND SHALL PROVIDE THE LIST  
15 TO THE PENNSYLVANIA STATE POLICE FOR REVIEW. WITHIN 30 DAYS  
16 OF RECEIPT OF THE LIST, THE PENNSYLVANIA STATE POLICE SHALL  
17 FILE A CONSENT, AN OBJECTION TO SPECIFIC CASES ON THE LIST,  
18 OR TAKE NO ACTION. UPON THE RECEIPT OF THE PENNSYLVANIA STATE  
19 POLICE'S CONSENT, OR NO LATER THAN 14 DAYS FOLLOWING THE  
20 EXPIRATION OF THE 30-DAY REVIEW PERIOD, THE COURT SHALL GRANT  
21 THE LIMITED ACCESS RELIEF. ANY CASE WHICH IS THE SUBJECT OF  
22 AN OBJECTION FILED BY THE PENNSYLVANIA STATE POLICE AND IN  
23 WHICH EVIDENCE IS PRESENTED WHICH PROVES DISQUALIFICATION  
24 SHALL NOT BE GRANTED RELIEF UNDER THIS SUBSECTION.

25 ~~(g) (H) Elimination.--A district attorney may petition a~~ <--  
26 ~~court to eliminate limited access under this section if the~~  
27 ~~individual receiving limited access is subsequently convicted of~~  
28 ~~a misdemeanor or felony offense.~~ IF AN INDIVIDUAL RECEIVING <--  
29 LIMITED ACCESS IS SUBSEQUENTLY CONVICTED OF A MISDEMEANOR OR  
30 FELONY, THE DISTRICT ATTORNEY OF THE COUNTY IN WHICH THE

1 UNDERLYING CONVICTION TOOK PLACE OR THE OFFICE OF THE ATTORNEY  
2 GENERAL IF IT OBTAINED THE CONVICTION FOR THE UNDERLYING  
3 CONVICTION MAY NOTIFY THE COURT OF THAT CONVICTION AND THE COURT  
4 AND THE PENNSYLVANIA STATE POLICE SHALL UNDO THE LIMITED ACCESS.

5 § 9122.3. Effects of expunged offenses and offenses provided  
6 limited access.

7 (a) Disclosure.--~~No~~ THE FOLLOWING SHALL APPLY: <--

8 (1) EXCEPT WHEN REQUESTED OR REQUIRED BY A CRIMINAL  
9 JUSTICE AGENCY OR PURSUANT TO AN ORDER UNDER SECTION  
10 9121(B.2) (RELATING TO GENERAL REGULATIONS), NO individual  
11 shall be required or requested to disclose information about  
12 the individual's criminal history records that have been  
13 expunged or provided limited access under section 9122.1  
14 (relating to order for limited access) or 9122.2 (relating to  
15 clean slate for convictions of misdemeanors and summary  
16 offenses, for charges not leading to convictions and for  
17 records of juvenile delinquency). An individual required or  
18 requested to provide information in violation of this section  
19 may respond as if the offense did not occur.

20 (2) THIS SUBSECTION SHALL NOT APPLY WHERE FEDERAL LAW, <--  
21 INCLUDING RULES AND REGULATIONS PROMULGATED BY A SELF-  
22 REGULATORY ORGANIZATION THAT HAS BEEN CREATED PURSUANT TO  
23 FEDERAL LAW, REQUIRES THE CONSIDERATION OF AN APPLICANT'S  
24 CRIMINAL HISTORY FOR PURPOSES OF EMPLOYMENT.

25 (b) Disqualification by law.--An expunged offense or an  
26 offense provided limited access under section 9122.1 or 9122.2  
27 may not be considered a conviction that would prohibit the  
28 employment of a person under any law of this Commonwealth or  
29 under Federal laws that prohibit employment based on state  
30 convictions TO THE EXTENT PERMITTED BY FEDERAL LAW. <--

<--

1 § 9122.4. EMPLOYER IMMUNITY FROM LIABILITY.

2 AN EMPLOYER WHO EMPLOYS OR OTHERWISE ENGAGES AN INDIVIDUAL  
3 WHOSE CRIMINAL HISTORY RECORD HAS BEEN EXPUNGED OR PROVIDED  
4 LIMITED ACCESS UNDER SECTION 9122.1 (RELATING TO ORDER FOR  
5 LIMITED ACCESS) OR 9122.2 (RELATING TO CLEAN SLATE FOR  
6 CONVICTIONS OF MISDEMEANORS AND SUMMARY OFFENSES, FOR CHARGES  
7 NOT LEADING TO CONVICTIONS AND FOR RECORDS OF JUVENILE  
8 DELINQUENCY) SHALL BE IMMUNE FROM LIABILITY IN A CIVIL ACTION  
9 BASED, IN WHOLE OR IN PART, UPON DAMAGES SUFFERED TO A PERSON OR  
10 PROPERTY AS A RESULT OF CRIMINAL OR OTHER UNLAWFUL CONDUCT OF  
11 THE INDIVIDUAL EMPLOYEE WHEN THE PORTION OF THE CRIMINAL HISTORY  
12 RECORD THAT HAS BEEN EXPUNGED OR PROVIDED LIMITED ACCESS RELATED  
13 TO THE CRIMINAL OR OTHER UNLAWFUL CONDUCT AND THE INDIVIDUAL'S  
14 SUITABILITY FOR EMPLOYMENT IN THE POSITION FOR WHICH THE  
15 INDIVIDUAL WAS HIRED OR ENGAGED.

16 Section 3. Section 9124(b) of Title 18 is amended to read:  
17 § 9124. Use of records by licensing agencies.

18 \* \* \*

19 (b) Prohibited use of information.--The following  
20 information shall not be used in consideration of an application  
21 for a license, certificate, registration or permit:

22 (1) Records of arrest if there is no conviction of a  
23 crime based on the arrest.

24 (2) Convictions which have been annulled [or],  
25 expunged[.] or provided limited access under section 9122.1  
26 (relating to order for limited access) or 9122.2 (relating to  
27 clean slate for convictions of misdemeanors and summary  
28 offenses, for charges not leading to convictions OR  
29 ADJUDICATIONS OF DELINQUENCY and for records of juvenile  
30 delinquency).

<--

1           (3) Convictions of a summary offense.

2           (4) Convictions for which the individual has received a  
3      pardon from the Governor.

4           (5) Convictions which do not relate to the applicant's  
5      suitability for the license, certificate, registration or  
6      permit.

7      \* \* \*

8      Section 4. This act shall take effect in ~~90~~ 270 days.           <--