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# Understanding Expungement and Limited Access to Criminal Records

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A new state law goes into effect on Nov. 14, 2016, that amends the Crimes Code to create a new option to address criminal-history-record information. The new law limits access to criminal records for eligible individuals convicted of second- or third-degree misdemeanors, including ungraded offenses, who have completed all punishment from previous convictions and have no arrests or prosecutions for at least 10 years.

The new law allows individuals to petition the courts for an order of limited access to information about certain second- and third-degree misdemeanors. Although the public will no longer have access, the criminal histories would still be available upon request to a limited number of entities, including law-enforcement and state licensing agencies.

Pennsylvania has joined a growing number of states that are creating limited access to individuals’ criminal histories with the primary goal of removing barriers to employment, housing and education for individuals who have completed their sentences. In addition to the new limited-access law, Pennsylvania has existing expungement laws that delete and remove certain information from public view.

### **What does “expungement” mean?**

In Pennsylvania, all criminal and summary cases filed with a court, including those that don’t result in convictions, are posted online for public viewing. These cases may also be reported by consumer reporting agencies. An expungement is a legal order that destroys and removes a criminal record from public view and restricts access to law-enforcement agencies.

### **What information is eligible for expungement?**

In Pennsylvania, information of all offenses that resulted in nonconviction is eligible for expungement. This includes being found not guilty of charges, as well as information about charges that are withdrawn or dismissed and not prosecuted “nolle prossed.”

Charges that lead to involvement in a diversionary program such as ARD (Accelerated Rehabilitative Disposition) and Section 17 can be expunged if the program is successfully completed.

In addition, information of an offense that resulted in a conviction is eligible for expungement if one of the following conditions is met:

- The conviction is a summary offense and the individual has not been arrested for five or more years. Common summary offenses include disorderly conduct, simple trespass, public consumption of alcoholic beverages and retail theft (if it is a first offense and the value of the merchandise is less than \$150).

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- The individual is over age 70 and has not been arrested for 10 or more years.
- The subject of the expungement petition has been dead for three years or more.
- The individual receives a pardon from the governor for a conviction.

## **What is the expungement process?**

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To have an eligible charge expunged, an expungement petition must be filed in the county where the case occurred. Separate petitions must be filed for each case with eligible charges. The Administrative Office of Pennsylvania Courts provides standard petition forms for expungements at [www.pacourts.us/forms](http://www.pacourts.us/forms). The cost to file an expungement petition varies by county. It is advisable to have a lawyer file the expungement petition.

The clerk of courts in the county where the expungement petition(s) can be filed may be contacted to gather information on filing fees, to request copies of the expungement petition and to get answers to logistical questions about filing the petition(s).

After the petition is filed, the county district attorney's office has the right to challenge the petition and request a hearing before a judge to determine if the request for expungement should be granted or denied. If the district attorney's office does not object, then the expungement is generally granted without a court hearing.

## **What can I expect if there is a contested-expungement hearing?**

If the district attorney's office does object, then a contested-expungement hearing is scheduled. The judge conducts a balancing test to weigh the right of the petitioner to be free from the harm of keeping the case record versus the commonwealth's interest in preserving the record. The individual seeking the expungement may be asked to testify in support of the expungement petition. The judge may consider factors such as the strength of the commonwealth's case against the individual and the specific reason the expungement should be denied. The judge may also consider factors such as age, criminal record, employment history, the length of time since the case and the negative consequences if the expungement is denied. In support of the petition, the individual seeking the expungement may show the judge copies of recent job denials, letters of support, certificates of rehabilitation, occupational and behavioral training and any other documents reflecting the impact of the case record.

## **How is the information removed from a criminal record?**

If an expungement petition is granted, the court will provide the individual subject of the expungement or the lawyer who filed the petition for the individual with a copy of the signed expungement order. The court also sends copies of the signed order to state police and other criminal-justice agencies that remove the information from

the public record. The destruction of the criminal-history record occurs when these agencies comply with the expungement order. These agencies may send a letter to the individual or to the lawyer who filed the petition to confirm that the information has been removed and the expungement process has been completed.

## **Who can still review information about past cases?**

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The prosecutor and central repository (the Pennsylvania State Police Central Repository) are required to keep criminal-history-record information, which may be used in the future to determine eligibility for diversionary programs, to identify persons in criminal investigations and to determine the grading of any future offenses. This information is available upon request to other law-enforcement agencies. The court also may maintain such information.

## **What are the changes in the 2016 law that limit access to criminal records?**

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The amended law, which goes into effect on Nov. 14, 2016, limits access to information about some misdemeanor convictions to specific entities such as law-enforcement and state licensing agencies.

The limited-access provision can be requested for second- or third-degree misdemeanor convictions, including ungraded offenses, provided that the responsible individual has completed all punishment and has had a clear record for at least 10

years. Second- and third-degree misdemeanors include crimes such as criminal trespassing, vandalism and indecent assault.

The law excludes some individuals from the limited-access process. Individuals with otherwise-eligible offenses are excluded from the limited-access process if they have offenses punishable by more than two years in prison, four or more offenses punishable by one or more years in jail, some subsets of misdemeanor simple-assault offenses, some subsets of sex-crimes offenses, some subsets of witness-intimidation offenses and offenses that require Megan's Law registration.

## **What is the process to obtain limited access to criminal records?**

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A person who qualifies for this relief may file a petition with the court of common pleas in the county where the case was filed. The district attorney's office will be notified of the petition and have an opportunity to file an objection. Ultimately the judge assigned to the matter will decide whether to grant or deny the petition.

Note that on July 9, 2016, the Pennsylvania Supreme Court's Criminal Procedural Rules Committee published for public comment in the *Pennsylvania Bulletin* proposed Rule 791 of the Rules of Criminal Procedure that would provide further procedural guidance on the filing of a petition for limited access.