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# THE PENNSYLVANIA CLEAN SLATE LAW

What Does it Mean for Employers?

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The Clean Slate Law is composed of two parts known as Act 5 and the Clean Slate Act.<sup>1</sup> The law creates an easier process for individuals to limit access to their criminal records and broadens the scope of records eligible for limited access.

Notably, the law now requires automatic sealing of certain records.

## WHAT IS LIMITED ACCESS?

Providing limited access is the sealing of a criminal record in Pennsylvania. Sealing the record means the criminal record still exists but is confidential and inaccessible by the public or by conventional means.<sup>2</sup> Sealing a record acts as a way to clear the record of an individual.

## ACT 5

Act 5, the first part of the Clean Slate Law, went into effect December 26, 2018. Act 5 allows individuals that have served their punishment, paid court ordered restitution, and are free of arrests and prosecutions punishable by a year or more in prison, for 10 years, to petition for limited access to the record.<sup>3,4</sup> The list of eligible offenses is broader than the Clean Slate Act and includes some non-violent qualifying misdemeanors and ungraded offenses punishable by five years or less in prison.<sup>5,6</sup>

The following is the process to be granted limited access:

1. The individual must file a petition at the county courthouse where the conviction occurred;
2. The district attorney then has 30 days to object. If the district attorney objects there will be a hearing

<sup>1</sup> These are found as PA ST 18 Pa.C.S.A. § 9122.1 Petition for Limited Access and PA ST 18 Pa.C.S.A. § 9122.2 Clean slate limited access respectively.

<sup>2</sup> <https://www.justia.com/criminal/expungement-record-sealing/>

<sup>3</sup> <http://www.pacourts.us/learn/learn-about-the-judicial-system/clean-slate-expungement-and-limited-access>

<sup>4</sup> PA ST 18 Pa.C.S.A. § 9122.1

<sup>5</sup> Supra, Note 5

<sup>6</sup> Under Act 5 the crimes ineligible to be sealed are similar to those ineligible under the Clean Slate Act but include impersonation of a public servant, intimidation of a victim or witness, retaliation against a victim or a witness, offenses punishable by imprisonment of more than two years, murder, conviction in the previous 20 years of a felony or an offense punishable by imprisonment of seven or more years. 18 Pa C.S.A. §9122.1(b)

where the judge determines if the petition should be granted;

3. If there is no objection, the petition for limited access of the record will be granted; and
4. Notice will then be given to criminal justice agencies.<sup>7</sup>

## THE CLEAN SLATE ACT

The Clean Slate Act, the second part of the Clean Slate Law, will go into effect on June 28, 2019. The Clean Slate Act creates a way of limiting access to some criminal records without filing a court petition. The Act creates an automated computer process to identify and provide limited access to eligible records, and automatically seals certain records after a period of time without requiring any further action from the individual.<sup>8</sup>

## HOW IT WORKS

The Clean Slate Act automation process works by the Administrative Office of Pennsylvania Courts running a query of the court records to identify potentially eligible cases.<sup>9</sup> The list of cases is then transmitted to the State Police who validate the eligible cases.<sup>10</sup> The State Police will validate the cases unless the cases are identified as ineligible or the information provided does not match data in the State Police database.<sup>11</sup> Each court of common pleas then provides limited access to the eligible records by removing the validated cases from public dockets.<sup>12</sup>

<sup>7</sup> <http://www.pahouse.com/Kim/cleanslate/>

<sup>8</sup> PA ST 18 Pa.C.S.A. § 9122.2

<sup>9</sup> PA ST 18 Pa.C.S.A. § 9122.2(b)

<sup>10</sup> PA ST 18 Pa.C.S.A. § 9122.2(b)(2)-(3)

<sup>11</sup> Supra, Note 11

<sup>12</sup> PA ST 18 Pa.C.S.A. § 9122.2(b)(5)

<sup>13</sup> PA ST 18 Pa.C.S.A. §9122.2(a)(1)

<sup>14</sup> PA ST 18 Pa.C.S.A. §9122.2(a)(2)

<sup>15</sup> PA ST 18 Pa.C.S.A. §9122.2(a)(3)

<sup>16</sup> PA ST 18 Pa.C.S.A. §9122.3(a)

<sup>17</sup> PA ST 18 Pa.C.S.A. §9122.3(a)(1)(i)-(vi)

## WHAT TYPE OF RECORDS WILL BE SEALED?

The automated system will seal:

- Convictions of a second or third degree misdemeanors, and misdemeanors punishable by two years or less in prison if there are no subsequent convictions punishable by imprisonment for more than one year for 10 years after the conviction and court ordered restitution was paid;<sup>13</sup>
- Charges that did not result in a conviction;<sup>14</sup>
- Summary convictions after 10 years.<sup>15</sup>

An individual's criminal record will not be eligible to be sealed if he or she has:<sup>16</sup>

- A conviction or an attempt, conspiracy or solicitation of the following crimes:<sup>17</sup>
  - An offense relating to danger to a person;
  - An offense against the family;
  - An offense relating to firearms or other dangerous weapons;
  - An offense relating to a sex registration or a sexual offense;
  - An offense relating to cruelty to an animal;
  - An offense relating to the corruption of a minor.
- At any time been convicted of a felony; two or



more offenses punishable by imprisonment of more than two years; four or more offenses punishable by imprisonment of one or more years; or any offense related to indecent exposure or using a weapon during an escape.<sup>18</sup>

## WHO CAN ACCESS THE SEALED FILES?

- Employers who are required to verify and consider criminal records for employment purposes under federal law<sup>19 20</sup>
- Employers, with a court order, when defending a claim of civil liability<sup>21</sup>
- A state licensing agency<sup>22</sup>

Other entities who may access sealed files are: law enforcement entities; County Children and Youth Agency or the Department of Human Services in the performance of duties relating to children; and the Supreme Court or an entity of the Supreme Court that governs the practice of law.<sup>23</sup>

## APPLICANT/EMPLOYEE DISCLOSURE OF SEALED RECORDS

Under the Clean Slate Act, an individual is not required to disclose information about criminal history that was provided limited access and may respond as if the offense did not occur.<sup>24</sup> But if the employer under Federal law is required to verify and consider the criminal history of an applicant for employment, the applicant can be requested and is required to disclose the offense to the employer.<sup>25</sup>

Generally, an expunged record or a record subject to limited access under section 9122.1 or 9122.2 may not be considered a conviction that would prohibit the employment of a person under any law of the Commonwealth of Pennsylvania or under Federal laws that prohibit employment based on State convictions to the extent permitted by Federal law.<sup>26</sup>



<sup>18</sup> PA ST 18 Pa.C.S.A. §9122.3 (a) (2)

<sup>19</sup> PA ST 18 Pa.C.S.A. 9122.5(2)

<sup>20</sup> <https://clsphila.org/sites/default/files/issues/Employment/Clean%20Slate/Criminal%20Record%20Sealing%20Aftercare%20handout%203.5.19.pdf>

<sup>21</sup> PA ST 18 Pa.C.S.A. §9121 (b.2)(1)(ii)

<sup>22</sup> PA ST 18 Pa.C.S.A. §9121 (b.2)

<sup>23</sup> PA ST 18 Pa.C.S.A. §9121(b.1)-(b.2)

<sup>24</sup> PA ST 18 Pa.C.S.A §9122.5 (a)(1)-(2)

<sup>25</sup> Supra, Note 25

<sup>26</sup> PA ST 18 Pa.C.S.A §9122.5 (a)(2)(b)



## SEALED RECORDS - FBI BACKGROUND CHECKS

According to the Commonwealth of Pennsylvania, records that have been sealed pursuant to the Clean Slate Law will continue to appear on an FBI background check.<sup>27</sup> This is because the FBI maintains its own records that are transmitted to it by the Commonwealth of Pennsylvania, and thus the FBI's records are not affected by any subsequent action to limit access or seal records.<sup>28 29</sup> Further, according to Community Legal Services, when asked about sealed records by an employer who is required to consider such records under federal law, the individual should not deny the record but may explain that it is sealed under the Clean Slate Act in Pennsylvania.<sup>30</sup>

## EMPLOYER IMMUNITY

The Clean State law also creates immunity from liability for employers who employ an individual whose criminal record has been sealed by the law.<sup>31</sup> If there is a claim of misconduct by an individual and the misconduct relates to the portion of the criminal history that was sealed, the employer will be immune from liability.<sup>32</sup>

## GOING FORWARD

Once the Clean Slate Act goes into effect on June 28, 2019, criminal records will be automatically provided limited access. Eligible misdemeanors will become confidential and hidden from public access. As a result, employers should be aware that some background checks will not show a criminal record for a crime if the individual was provided limited access by the Clean Slate Act.

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<sup>27</sup> <http://www.senatorsharifstreet.com/cleanslate>

<sup>28</sup> Pub. L. 105-251

<sup>29</sup> Supra, Note 28

<sup>30</sup> <https://clsphila.org/sites/default/files/news/Get%20Ready%20Get%20Set%20Clean%20Slate%20Report%20-%20March%202019.pdf>

<sup>31</sup> PA ST 18 Pa.C.S.A §9122.6

<sup>32</sup> Supra, Note 32