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TAB 1

APPROVED
JULY 22, 2021
BY GOVERNOR

CHAPTER
121
RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

H.P. 408 - L.D. 563

Resolve, To Create the Criminal Records Review Committee

Sec. 1. Review committee established. Resolved: That the Criminal Records Review Committee, referred to in this resolve as "the review committee," is established.

Sec. 2. Review committee membership. Resolved: That, notwithstanding Joint Rule 353, the review committee consists of the members appointed as follows:

1. Two members of the Senate appointed by the President of the Senate, including one member from each of the 2 parties holding the largest number of seats in the Legislature;

2. Two members of the House of Representatives appointed by the Speaker of the House of Representatives, including one member from each of the 2 parties holding the largest number of seats in the Legislature;

3. The Attorney General or the Attorney General's designee;

4. The Commissioner of Health and Human Services or the commissioner's designee;

5. The Commissioner of Public Safety or the commissioner's designee;

6. The Commissioner of Corrections or the commissioner's designee;

7. The President of the Maine Prosecutors Association or the president's designee;

8. The President of the Maine Association of Criminal Defense Lawyers or the president's designee;

9. The President of the Maine Sheriffs' Association or the president's designee;

10. The President of the Maine Chiefs of Police Association or the president's designee;

11. The chair of the Right To Know Advisory Committee or the chair's designee;

12. A representative of a civil rights organization whose primary mission includes the advancement of racial justice, appointed by the President of the Senate;

13. A representative of an organization that provides legal assistance on immigration, appointed by the President of the Senate;

14. A representative of an organization whose primary mission is to address issues related to poverty, appointed by the President of the Senate;

15. A representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors of domestic violence, appointed by the President of the Senate;

16. A representative of a substance use disorder treatment or recovery community, appointed by the President of the Senate;

17. A representative of an adult and juvenile prisoners' rights organization, appointed by the President of the Senate;

18. A representative of newspaper and other press interests, appointed by the President of the Senate;

19. A representative of broadcasting interests, appointed by the Speaker of the House of Representatives;

20. A representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors of sexual assault, appointed by the Speaker of the House of Representatives;

21. A representative of an organization that provides free civil legal assistance to citizens of the State with low incomes, appointed by the Speaker of the House of Representatives;

22. A representative of a mental health advocacy organization, appointed by the Speaker of the House of Representatives;

23. A representative of a civil liberties organization whose primary mission is the protection of civil liberties, appointed by the Speaker of the House of Representatives;

24. A representative of a nonprofit organization whose primary mission is to advocate for victims and survivors of sexual exploitation and sex trafficking, appointed by the Speaker of the House of Representatives;

25. A representative of an organization involved in advocating for juvenile justice reform, appointed by the Speaker of the House of Representatives; and

26. A representative of a public records access advocacy organization, appointed by the Speaker of the House of Representatives.

The review committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

Sec. 3. Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the review committee.

Sec. 4. Appointments; convening of review committee. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the review committee. If 30 days or more after the effective date of this resolve a majority of but not all appointments have

been made, the chairs may request authority and the Legislative Council may grant authority for the review committee to meet and conduct its business.

Sec. 5. Duties. Resolved: That the review committee shall:

1. Review activities in other states that address the expungement, sealing, vacating of and otherwise limiting public access to criminal records;

2. Consider "clean slate" legislation options;

3. Consider whether the following convictions should be subject to different treatment:

A. Convictions for conduct that has been decriminalized in this State over the last 10 years and conduct that is currently under consideration for decriminalization; and

B. Convictions for conduct that was committed by victims and survivors of sexual exploitation and sex trafficking;

4. Consider whether there is a time limit after which some or all criminal records should not be publicly available;

5. Invite comments and suggestions from interested parties, including but not limited to victim advocates and prison and correctional reform organizations;

6. Review existing information about the harms and benefits of making criminal records confidential, including the use and dissemination of those records;

7. Invite comments and suggestions concerning the procedures to limit public accessibility of criminal records;

8. Consider who, if anyone, should continue to have access to criminal records that are not publicly available; and

9. Develop options to manage criminal records.

Sec. 6. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the review committee, except that Legislative Council staff support is not authorized when the Legislature is in regular or special session.

Sec. 7. Report. Resolved: That, no later than December 3, 2021, the review committee shall submit to the Joint Standing Committee on Judiciary a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 130th Legislature.

MEMBERSHIP LIST TO BE DISTRIBUTED AT A LATER DATE

MEMBERSHIP LIST TO BE DISTRIBUTED AT A LATER DATE

MEMBERSHIP LIST TO BE DISTRIBUTED AT A LATER DATE

MEMBERSHIP LIST TO BE DISTRIBUTED AT A LATER DATE

TAB 2

Criminal Records Bills Referred to the Judiciary Committee

LD	Title/Sponsor	Bill Summary
216	An Act To Seal Marijuana Criminal Convictions and Civil Adjudications (Rep. J. Fecteau)	This bill seals criminal history record information regarding convictions or adjudications for crimes and civil violations relating to personal adult use of marijuana by making the information confidential.
1055	Resolve, To Automatically Seal the Criminal History Records Relating to Any Crimes Decriminalized in the 130th Legislature (Rep. C. Warren)	This resolve directs the commanding officer of the State Bureau of Identification within the Department of Public Safety to immediately seal and make confidential any criminal history record information related to a person for the conviction of a crime that has been decriminalized by the 130th Legislature upon the effective date of legislation decriminalizing the crime.
1210	An Act To Remove Barriers to Employment by Sealing the Records of Persons Convicted of Certain Nonviolent Crimes (Rep. J. Fecteau)	This bill allows a person convicted of a Class E, Class D or Class C crime to petition the court where the person was convicted to seal all records of the crime 5 years after the completion of the person's sentence by making the record a confidential criminal history record. Sealing a record is not available for persons who have subsequent convictions or pending criminal charges; for crimes involving bribery, corruption, violence or sex offenses; or for crimes that had as an element of the offense victims who were minors or were 65 years of age or older
1310	An Act Regarding Criminal Records (Rep. Talbot Ross)	This bill is a concept draft pursuant to Joint Rule 208. This bill would make changes to the laws regarding criminal records.
1459	An Act Regarding a Post-judgment Motion by a Person Seeking To Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions (Rep. Talbot Ross0)	This bill replaces the special process to seal certain criminal records, found in the Maine Revised Statutes, Title 15, chapter 310, that was repealed by its own terms on October 1, 2019. The bill uses the same process to seal criminal records of an eligible criminal conviction as in the repealed law. The bill defines "eligible criminal conviction" to include all current and former Class D and Class E crimes except for: Class D crimes contained in Title 17-A, chapter 11, Sexual Assaults; Class D crimes contained in Title 17-A, chapter 12, Sexual Exploitation of Minors; The Class D and Class E crimes of aggravated sex trafficking, sex trafficking and patronizing prostitution of a minor or a person with a mental disability; Stalking and domestic violence stalking; Any crime involving domestic violence, unless the sentence has been commuted; A crime against a family or household member before 20 years have passed since entry of the judgment of conviction; A conviction for a violation of a condition of release for a charge that involves a crime against a family or household member before 20 years have passed since entry of the judgment of conviction; A conviction for a violation of a protective order under Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; Title 17-A, section 506-B; Title 19-A, 21 section 4011, subsection 3; or Title 19-A, section 4012, subsection 5; and A conviction for cruelty to animals. A person with an eligible criminal conviction may file a motion for the special restrictions on dissemination and use of criminal history record information for an eligible criminal conviction if at least 4 years have passed since the person fully satisfied each of the sentencing alternatives imposed for the conviction; the person has not been convicted of another criminal violation in this State, and has not had a criminal charge dismissed as a result of a deferred disposition, since satisfying the sentencing alternatives; the person has no criminal convictions in another jurisdiction

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LD	Title/Sponsor	Bill Summary
		since satisfying the sentencing alternatives; and the person has no presently pending criminal charges in this State or in another jurisdiction. The court must hold a hearing on the motion and, if the court determines all the requirements have been met, the court must find the person entitled to the special restrictions on dissemination and issue a written order certifying the determination. A copy of the order must be provided to the person and the prosecutorial office that prosecuted the person. The order must also be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification, which must promptly amend its records relating to the eligible criminal conviction. If the person is convicted of a crime after the court's order, the new conviction extinguishes the entitlement. The person is required to file notice of the new conviction, but if the person does not do so, the court is required to notify the person of the new conviction and offer an opportunity for a hearing to contest the fact of the new conviction. If the court determines that there is a new criminal conviction, the court must issue an order that the person is no longer eligible to have the criminal record sealed. That order must be submitted to the State Bureau of Identification. When a person's records are subject to the special restrictions on dissemination and use, the criminal history record information is confidential and may not be disseminated by a criminal justice agency to anyone except the following for limited purposes: the person; a criminal justice agency; the Secretary of State; victims; the Department of Professional and Financial Regulation, Office of Securities; and financial institutions. The criminal history record information may also be disseminated pursuant to court order. A person whose criminal conviction is covered by the special restrictions on dissemination and use may respond to inquiries from other than criminal justice agencies by not disclosing its existence without being subject to any sanctions. The State may appeal as of right an order to seal a record; the person may appeal, but not as of right, when the court does not order the record sealed.
1465	An Act To Remove Barriers to Occupational Licensing Due to Criminal Records (Rep. O'Neil)	This bill adds restrictions to the use of criminal history record information in the context of licensing decisions by licensing agencies. It also makes certain criminal history record information in the possession of a licensing agency confidential.
1602	An Act Regarding Criminal Records (Rep. Talbot Ross)	This bill is a concept draft pursuant to Joint Rule 208. This bill would make changes to the laws regarding criminal records.

130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document **No. 216**

H.P. 151 House of Representatives, January 27, 2021

An Act To Seal Marijuana Criminal Convictions and Civil Adjudications

Received by the Clerk of the House on January 25, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative FECTEAU of Augusta.
Cosponsored by Representatives: ANDREWS of Paris, FAULKINGHAM of Winter Harbor, HARNETT of Gardiner, ROEDER of Bangor, TALBOT ROSS of Portland, WARREN of Hallowell, Senator: MAXMIN of Lincoln.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 16 MRSA §703, sub-§2, ¶K, as enacted by PL 2013, c. 267, Pt. A, §2, is amended to read:

K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; ~~and~~

Sec. 2. 16 MRSA §703, sub-§2, ¶L, as amended by PL 2017, c. 432, Pt. B, §1, is further amended to read:

L. Information disclosing that a person has petitioned for and been granted a full and free pardon~~.~~; and

Sec. 3. 16 MRSA §703, sub-§2, ¶M is enacted to read:

M. Information disclosing a conviction or adjudication for a current or former crime or civil violation that consisted of conduct that is authorized under Title 28-B, chapter 3.

SUMMARY

This bill seals criminal history record information regarding convictions or adjudications for crimes and civil violations relating to personal adult use of marijuana by making the information confidential.

130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document **No. 1055**

H.P. 784 House of Representatives, March 11, 2021

Resolve, To Automatically Seal the Criminal History Records Relating to Any Crimes Decriminalized in the 130th Legislature

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative WARREN of Hallowell.
Cosponsored by Representatives: EVANGELOS of Friendship, FECTEAU of Augusta, LOOKNER of Portland, McCREIGHT of Harpswell, PLUECKER of Warren, RECKITT of South Portland, Senators: POULIOT of Kennebec, STEWART of Aroostook.

Sec. 1. Commanding officer of State Bureau of Identification to seal records relating to crimes decriminalized by the 130th Legislature. Resolved: That the commanding officer of the State Bureau of Identification within the Department of Public Safety shall seal and make confidential any record contained in the criminal history record information related to a person for the conviction of a crime that has been decriminalized by the 130th Legislature immediately upon the effective date of legislation decriminalizing the crime.

SUMMARY

This resolve directs the commanding officer of the State Bureau of Identification within the Department of Public Safety to immediately seal and make confidential any criminal history record information related to a person for the conviction of a crime that has been decriminalized by the 130th Legislature upon the effective date of legislation decriminalizing the crime.

130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document **No. 1210**

H.P. 885 House of Representatives, March 24, 2021

An Act To Remove Barriers to Employment by Sealing the Records of Persons Convicted of Certain Nonviolent Crimes

Received by the Clerk of the House on March 22, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative FECTEAU of Augusta.
Cosponsored by Representatives: FAULKINGHAM of Winter Harbor, MORALES of South Portland, PICKETT of Dixfield, WARREN of Hallowell, Senator: POULIOT of Kennebec.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 16 MRSA §703, sub-§2, ¶K, as enacted by PL 2013, c. 267, Pt. A, §2, is amended to read:

K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; ~~and~~

Sec. 2. 16 MRSA §703, sub-§2, ¶L, as amended by PL 2017, c. 432, Pt. B, §1, is further amended to read:

L. Information disclosing that a person has petitioned for and been granted a full and free pardon~~.~~; and

Sec. 3. 16 MRSA §703, sub-§2, ¶M is enacted to read:

M. Information disclosing a criminal conviction record ordered sealed under section 711.

Sec. 4. 16 MRSA §711 is enacted to read:

§711. Sealing of records of nonviolent crimes

1. Class E, D and C crimes. A person convicted of a Class E, Class D or Class C crime may petition the court in which the conviction was recorded to seal the record of the conviction after a period of 5 years from the completion of the sentence. The court shall order all records of the conviction sealed if:

A. The defendant has not been convicted of a crime in this State or any other jurisdiction since the conviction subject to the petition and has no formal charging instrument for a crime pending in this State or any other jurisdiction; and

B. The crime is not a crime:

(1) Under Title 17-A, chapter 11, 12, 25 or 35;

(2) That involved violence or domestic violence; or

(3) That had as an element of the offense a victim who was 17 years of age or younger or a victim who was 65 years of age or older.

2. State Bureau of Identification. Following receipt of a court order to seal a conviction record under subsection 1, the Department of Public Safety, Bureau of State Police, State Bureau of Identification shall make the record a confidential criminal history record and make the necessary arrangements with the identification division of the Federal Bureau of Investigation to have all references to the sealed crime deleted from the Federal Bureau of Investigation's identification record and any state materials returned to the contributing agency.

SUMMARY

This bill allows a person convicted of a Class E, Class D or Class C crime to petition the court where the person was convicted to seal all records of the crime 5 years after the completion of the person's sentence by making the record a confidential criminal history record. Sealing a record is not available for persons who have subsequent convictions or pending criminal charges; for crimes involving bribery, corruption, violence or sex

offenses; or for crimes that had as an element of the offense victims who were minors or were 65 years of age or older.

130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document **No. 1310**

H.P. 966 House of Representatives, March 30, 2021

An Act Regarding Criminal Records

Reference to the Committee on Judiciary suggested and ordered printed.

R(t B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.

Be it enacted by the People of the State of Maine as follows:

CONCEPT DRAFT

SUMMARY

This bill is a concept draft pursuant to Joint Rule 208.

This bill would make changes to the laws regarding criminal records.

130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document **No. 1459**

H.P. 1075 House of Representatives, April 12, 2021

An Act Regarding a Post-judgment Motion by a Person Seeking To Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions

Received by the Clerk of the House on April 8, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 15 MRSA c. 310-A is enacted to read:

CHAPTER 310-A

POST-JUDGMENT MOTION BY PERSON SEEKING TO SATISFY THE PREREQUISITES FOR OBTAINING SPECIAL RESTRICTIONS ON DISSEMINATION AND USE OF CRIMINAL HISTORY RECORD INFORMATION FOR CERTAIN CRIMINAL CONVICTIONS

§2261. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" has the same meaning as in Title 16, section 703, subsection 1.

2. Another jurisdiction. "Another jurisdiction" has the same meaning as in Title 17-A, section 2, subsection 3-B.

3. Criminal history record information. "Criminal history record information" has the same meaning as in Title 16, section 703, subsection 3.

4. Criminal justice agency. "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.

5. Dissemination. "Dissemination" has the same meaning as in Title 16, section 703, subsection 6.

6. Eligible criminal conviction. "Eligible criminal conviction" means a conviction for a current or former Class D or Class E crime, except:

A. A conviction for a current or former Class D crime under Title 17-A, chapter 11 or 12 or Title 17-A, section 852, 853 or 855;

B. A conviction for stalking under Title 17-A, section 210-A or 210-C;

C. Unless a sentence has been commuted, any conviction involving a crime of domestic violence or any crime involving domestic violence, as defined in section 1003, subsection 3-A;

D. If 20 years have not yet passed since the judgment of conviction was entered, a crime against a family or household member, as defined in Title 19-A, section 4002, subsection 4, regardless of whether the relationship was an element of that crime;

E. If 20 years have not yet passed since the judgment of conviction was entered, a violation of a condition of release, pursuant to section 1092, committed while the defendant is released on preconviction or post-conviction bail for a charge that involves a crime against a family or household member, as defined in Title 19-A, section 4002, subsection 4, regardless of whether the relationship was an element of that crime;

F. A violation of a protective order, as specified in section 321, subsection 6; Title 5, section 4659, subsection 2; Title 17-A, section 506-B; Title 19-A, section 4011, subsection 3; or Title 19-A, section 4012, subsection 5; and

G. A conviction for cruelty to animals under Title 17, section 1031.

§2262. Statutory prerequisites for obtaining special restrictions on dissemination and use of criminal history record information for a criminal conviction

The special restrictions on dissemination and use of criminal history record information for a criminal conviction specified in section 2265 apply only if:

1. Eligible criminal conviction. The criminal conviction is an eligible criminal conviction;

2. Time since sentence fully satisfied. At least 4 years have passed since the person has fully satisfied each of the sentencing alternatives imposed for the eligible criminal conviction;

3. Other state convictions. The person has not been convicted of another criminal violation in this State and has not had a criminal charge dismissed as a result of a deferred disposition pursuant to Title 17-A, former chapter 54-F or Title 17-A, chapter 67, subchapter 4 between the time at which the person fully satisfied each of the sentencing alternatives imposed for the most recent eligible criminal conviction and the filing of the motion under this chapter;

4. Convictions in another jurisdiction. The person has no criminal convictions from another jurisdiction between the time at which the person fully satisfied each of the sentencing alternatives imposed for the most recent eligible criminal conviction and the filing of the motion under this chapter; and

5. Pending criminal charges. The person has no presently pending criminal charges in this State or in another jurisdiction.

§2263. Motion; persons who may file

A person may file a written motion in the underlying criminal proceeding seeking a court determination that the person satisfies the statutory prerequisites specified in section 2262 for obtaining the special restrictions on dissemination and use of criminal history record information relating to a criminal conviction as specified in section 2265. The written motion must briefly address each of the statutory prerequisites.

§2264. Motion and hearing; process

1. Filing motion. A motion filed pursuant to section 2263 must be filed in the underlying criminal proceeding. After a motion has been filed, the clerk shall set the motion for hearing.

2. Counsel. The person filing a motion pursuant to section 2263 has the right to employ counsel but is not entitled to assignment of counsel at state expense.

3. Representation of the State. The prosecutorial office that represented the State in the underlying criminal proceeding may represent the State for purposes of this chapter. On a case-by-case basis, a different prosecutorial office may represent the State on agreement between the 2 prosecutorial offices.

4. Evidence. The Maine Rules of Evidence do not apply to a hearing on a motion under this section, and evidence presented at a hearing by the participants may include testimony, affidavits and other reliable hearsay evidence as permitted by the court.

5. Hearing; certification of results. The judge or justice shall hold a hearing on the motion under this section. At the conclusion of the hearing, if the court determines that the person who filed the motion has established by a preponderance of the evidence each of the statutory prerequisites specified in section 2262, the court shall find the person entitled to the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2265 and shall issue a written order certifying this determination. If, at the conclusion of the hearing, the court determines that the person has not established one or more of the statutory prerequisites specified in section 2262, the court shall deny the motion and issue a written order certifying this determination. The order must contain written findings of fact supporting the court's determination. A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State pursuant to subsection 3.

6. Notice to State Bureau of Identification. If the court determines pursuant to subsection 5 that a person has established by a preponderance of the evidence each of the statutory prerequisites specified in section 2262, a copy of the court's written order certifying its determination must be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification for all criminal offenses deemed retainable pursuant to Title 25, section 1547. The State Bureau of Identification upon receipt of the order shall promptly amend its records relating to the person's eligible criminal conviction to reflect that future dissemination of this criminal history record information must be pursuant to section 2265 rather than pursuant to Title 16, section 704. The State Bureau of Identification shall send notification of compliance with that requirement to the person's last known address.

7. Subsequent new criminal conviction; automatic loss of eligibility; person's duty to notify. Notwithstanding that a person has been determined by a court pursuant to subsection 5 to be entitled to the special restrictions on dissemination and use of criminal history record information relating to a criminal conviction specified in section 2265, if at any time subsequent to the court's determination the person is convicted of a new crime in this State or in another jurisdiction, the new conviction extinguishes that entitlement. In the event of a new criminal conviction, the person shall promptly file a written notice in the underlying criminal proceeding of the person's disqualification from entitlement identifying the new conviction, including the jurisdiction, court and docket number of the criminal proceeding. If the person fails to file the required written notice and the court learns of the existence of the new criminal conviction, the court shall notify the person of its apparent existence and offer the person an opportunity at a hearing to contest the fact of a new conviction. If a hearing is requested by the person, the court shall, after giving notice to the person and the appropriate prosecutorial office, hold a hearing. At the hearing, the person has the burden of proving by clear and convincing evidence that the person does not have the new conviction. At the conclusion of the hearing, if the court determines that the person has not satisfied the burden of proof, it shall find that the person has been convicted of the new crime and as a consequence is no longer entitled to the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2265 and shall issue a written order certifying this

determination. If, at the conclusion of the hearing, the court determines that the person has satisfied the burden of proof, it shall find that the person has not been convicted of the new crime and issue a written order certifying this determination. The order must contain written findings of fact supporting the court's determination. A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State.

8. Notice to State Bureau of Identification of new crime. If the court determines under subsection 7 that a person has been convicted of a new crime and as a consequence is no longer eligible for the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2265, a copy of the court's written order certifying its determination must be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification upon receipt of the order shall promptly amend its records relating to the person's criminal conviction to reflect that dissemination of this criminal history record information is pursuant to Title 16, section 704 rather than pursuant to section 2265. The State Bureau of Identification shall send notification of compliance with that requirement to the person's last known address.

§2265. Special restrictions on dissemination and use of criminal history record information relating to criminal conviction

Notwithstanding Title 16, section 704, the criminal history record information relating to a criminal conviction for which the court has determined the person is entitled to special restrictions on dissemination and use is confidential and may not be disseminated by a criminal justice agency, whether directly or through any intermediary, except:

1. Subject of conviction. To the person who is the subject of the criminal conviction or that person's designee;

2. Criminal justice agency. To a criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment.

For the purposes of this subsection, dissemination to a criminal justice agency for the purpose of the administration of criminal justice includes dissemination and use of the criminal history record information relating to the eligible criminal conviction by an attorney for the State or for another jurisdiction as part of a prosecution of the person for a new crime, including use in a charging instrument or other public court document and in open court;

3. Secretary of State. To the Secretary of State to ensure compliance with federal motor vehicle law;

4. Victims. To the victim or victims of the crime related to the conviction or:

A. If the victim is a minor, to the parent or parents, guardian or legal custodian of the victim; or

B. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, to an immediate family member, guardian, legal custodian or attorney representing the victim;

5. Office of Securities. To the Department of Professional and Financial Regulation, Office of Securities to ensure compliance with securities laws pursuant to Title 32, section 16412, subsection 4, paragraph C;

6. Financial institutions. To a financial institution if the financial institution is required by federal or state law, regulation or rule to conduct a criminal history record check for the position for which a prospective employee or prospective board member is applying; or

7. Pursuant to court order. In accordance with an order issued on a finding of good cause by a court of competent jurisdiction. Good cause includes a finding that access to the criminal history record information may be necessary for the determination of any issue before the court.

§2266. Limited disclosure of eligible criminal conviction

A person who has a criminal conviction eligible for the special restrictions on dissemination and use of criminal history record information under section 2265 for which the court has determined the person is entitled to special restrictions on dissemination may respond to inquiries from other than criminal justice agencies by not disclosing its existence without being subject to any sanctions.

§2267. Unlawful dissemination

A person who intentionally disseminates criminal history record information relating to a criminal conviction in violation of section 2265 knowing it to be in violation is guilty of unlawful dissemination as provided in Title 16, section 707.

§2268. Review of determination of eligibility; review of determination of subsequent criminal conviction

A final judgment entered under section 2264, subsection 5 or 7 may be reviewed by the Supreme Judicial Court.

1. Appeal by the person. A person aggrieved by the final judgment under section 2264, subsection 5 or 7 may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

2. Appeal by the State. If the State is aggrieved by the final judgment under section 2264, subsection 5 or 7, it may appeal as of right, and a certificate of approval by the Attorney General is not required. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

Sec. 2. 16 MRSA §707, sub-§1, as amended by PL 2015, c. 354, §2, is further amended to read:

1. Offense. A person other than a person receiving confidential criminal history record information pursuant to section 2265, subsection 4 is guilty of unlawful dissemination of confidential criminal history record information if the person intentionally disseminates confidential criminal history record information knowing it to be in violation of any of the provisions of this chapter or if the person intentionally disseminates criminal history record information relating to a criminal conviction in violation of Title 15, section ~~2255~~ 2265 knowing it to be in violation.

SUMMARY

This bill replaces the special process to seal certain criminal records, found in the Maine Revised Statutes, Title 15, chapter 310, that was repealed by its own terms on October 1, 2019.

The bill uses the same process to seal criminal records of an eligible criminal conviction as in the repealed law. The bill defines "eligible criminal conviction" to include all current and former Class D and Class E crimes except for:

1. Class D crimes contained in Title 17-A, chapter 11, Sexual Assaults;

2. Class D crimes contained in Title 17-A, chapter 12, Sexual Exploitation of Minors;

3. The Class D and Class E crimes of aggravated sex trafficking, sex trafficking and patronizing prostitution of a minor or a person with a mental disability;

4. Stalking and domestic violence stalking;

5. Any crime involving domestic violence, unless the sentence has been commuted;

6. A crime against a family or household member before 20 years have passed since entry of the judgment of conviction;

7. A conviction for a violation of a condition of release for a charge that involves a crime against a family or household member before 20 years have passed since entry of the judgment of conviction;

8. A conviction for a violation of a protective order under Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; Title 17-A, section 506-B; Title 19-A, section 4011, subsection 3; or Title 19-A, section 4012, subsection 5; and

9. A conviction for cruelty to animals.

A person with an eligible criminal conviction may file a motion for the special restrictions on dissemination and use of criminal history record information for an eligible criminal conviction if at least 4 years have passed since the person fully satisfied each of the sentencing alternatives imposed for the conviction; the person has not been convicted of another criminal violation in this State, and has not had a criminal charge dismissed as a result of a deferred disposition, since satisfying the sentencing alternatives; the person has no criminal convictions in another jurisdiction since satisfying the sentencing alternatives; and the person has no presently pending criminal charges in this State or in another jurisdiction.

The court must hold a hearing on the motion and, if the court determines all the requirements have been met, the court must find the person entitled to the special restrictions on dissemination and issue a written order certifying the determination. A copy of the order must be provided to the person and the prosecutorial office that prosecuted the person. The order must also be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification, which must promptly amend its records relating to the eligible criminal conviction.

If the person is convicted of a crime after the court's order, the new conviction extinguishes the entitlement. The person is required to file notice of the new conviction, but if the person does not do so, the court is required to notify the person of the new conviction and offer an opportunity for a hearing to contest the fact of the new conviction.

If the court determines that there is a new criminal conviction, the court must issue an order that the person is no longer eligible to have the criminal record sealed. That order must be submitted to the State Bureau of Identification.

When a person's records are subject to the special restrictions on dissemination and use, the criminal history record information is confidential and may not be disseminated by a criminal justice agency to anyone except the following for limited purposes: the person; a criminal justice agency; the Secretary of State; victims; the Department of Professional and Financial Regulation, Office of Securities; and financial institutions. The criminal history record information may also be disseminated pursuant to court order.

A person whose criminal conviction is covered by the special restrictions on dissemination and use may respond to inquiries from other than criminal justice agencies by not disclosing its existence without being subject to any sanctions.

The State may appeal as of right an order to seal a record; the person may appeal, but not as of right, when the court does not order the record sealed.

130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document **No. 1465**

H.P. 1081 House of Representatives, April 12, 2021

An Act To Remove Barriers to Occupational Licensing Due to Criminal Records

Received by the Clerk of the House on April 8, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative O'NEIL of Saco.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §5301, as amended by PL 2011, c. 286, Pt. O, §1 and PL 2015, c. 429, §23, is further amended to read:

§5301. Eligibility for occupational license, registration or permit

1. Effect of criminal history record information respecting certain convictions. Subject to ~~subsection 2~~ this section and sections 5302 and 5303, in determining eligibility for the granting of any occupational license, registration or permit issued by the State, the appropriate ~~State~~ state licensing agency may take into consideration criminal history record information from Maine or elsewhere relating to certain convictions ~~which~~ that have not been set aside, dismissed, sealed or expunged or for which a full and free pardon has not been granted, but the existence of such information ~~shall~~ may not operate as an automatic bar to being licensed, registered or permitted to practice any profession, trade or occupation.

2. Criminal history record information ~~which~~ that may be considered. A licensing agency may not inquire into or consider the criminal history of an applicant until after the applicant has been found to be otherwise qualified for the license, registration or permit. A licensing agency ~~may use~~ shall consider only the following in connection with an application for an occupational license, registration or permit criminal history record information pertaining to the following:

A. Convictions for which incarceration for less than one year may be imposed and ~~which~~ that involve dishonesty or false statement;

B. Convictions for which incarceration for less than one year may be imposed and ~~which~~ that directly relate to the profession, trade or occupation for which the license or permit is sought;

~~C. Convictions for which no incarceration can be imposed and which directly relate to the trade or occupation for which the license or permit is sought;~~

D. Convictions for which incarceration for one year or more may be imposed; or

E. Convictions for which incarceration for less than one year may be imposed and that involve sexual misconduct by an applicant for massage therapy licensure or a licensed massage therapist or an applicant or licensee of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Practice, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the Board of Chiropractic Licensure, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of Speech, Audiology and Hearing, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, the Maine Board of Pharmacy, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Nursing and the Emergency Medical Services' Board.

3. Criminal history record information directly related to the profession, trade or occupation. In determining pursuant to subsection 2 whether criminal history record information is directly related to the profession, trade or occupation for which the license,

registration or permit is being sought, the licensing agency must consider the following factors:

A. Whether the conviction is directly related to the duties and responsibilities of that position or profession, trade or occupation;

B. Whether the position or profession, trade or occupation offers the opportunity for the same or a similar offense to occur;

C. Whether circumstances leading to the conduct for which the person was convicted will recur in the position or profession, trade or occupation; and

D. The length of time since the offense occurred.

4. Criminal convictions prohibited by statute. Notwithstanding subsection 2, a licensing agency may consider criminal convictions that are explicitly prohibited by statute for the license, registration or permit sought.

Sec. 2. 5 MRSA §5302, as amended by PL 1989, c. 84, §2, is further amended to read:

§5302. Denial, suspension, revocation or other discipline of licensees because of criminal record

1. Reasons for denial or disciplinary action; process. Licensing agencies may refuse to grant or renew, or may suspend, revoke or take other disciplinary action against any occupational license, registration or permit based in whole or in part on ~~the basis of~~ the criminal history record information ~~relating to convictions~~ denominated in section 5301~~, subsection 2~~, but only if the licensing agency ~~determines~~ has complied with the notice requirements of this section and after the licensing agency has properly considered a timely appeal of its preliminary determination, if any, and has determined that the applicant, licensee, registrant or permit holder so convicted has not been sufficiently rehabilitated to warrant the public trust as described in subsection 3. The applicant, licensee, registrant or permit holder ~~shall bear~~ bears the burden of proof that there exists sufficient rehabilitation to warrant the public trust.

2. ~~Reasons to be stated in writing~~ Preliminary determination. ~~The~~ Before a licensing agency may make a final decision, the licensing agency shall explicitly state in writing the reasons for a ~~decision which prohibits~~ preliminary determination that the applicant, licensee, registrant or permit holder should be prohibited from practicing the profession, trade or occupation if that decision is based in whole or in part on conviction of any crime ~~described in~~ that may be considered pursuant to section 5301~~, subsection 2~~. The licensing agency shall issue a notice containing the written preliminary determination to the applicant, licensee, registrant or permit holder. The written notice required by this subsection must include the following information:

A. The criminal conviction or convictions that are the basis for the preliminary denial;

B. A copy of the criminal history record information, if any;

C. Information about the applicant's, licensee's, registrant's or permit holder's right to appeal the preliminary determination; and

D. Any examples of mitigation or rehabilitation evidence that the applicant, licensee, registrant or permit holder may voluntarily provide.

3. Appeal of preliminary determination. An applicant, licensee, registrant or permit holder may appeal a preliminary determination of a licensing agency made pursuant to subsection 2 by challenging the accuracy of the criminal history record information or by demonstrating that the applicant, licensee, registrant or permit holder is sufficiently rehabilitated to warrant the public trust. An applicant, licensee, registrant or permit holder may demonstrate sufficient rehabilitation to warrant the public trust by providing the licensing agency:

A. Evidence demonstrating that at least one year has elapsed since the applicant's, licensee's, registrant's or permit holder's release from any correctional institution without criminal conviction or arrest; or

B. Any other information or evidence of mitigation or rehabilitation and present fitness to practice the profession, trade or occupation for which the license, registration or permit is being sought, including, but not limited to, letters of reference.

If the applicant, licensee, registrant or permit holder demonstrates sufficient rehabilitation to warrant the public trust, the licensing agency may not deny the applicant, licensee, registrant or permit holder the license, registration or permit based in whole or in part on the applicant's, licensee's, registrant's or permit holder's prior criminal conviction.

After receiving notice of the preliminary denial issued pursuant to subsection 2, the applicant, licensee, registrant or permit holder must send or hand deliver the appeal within 30 business days.

4. Final determination. If the licensing agency has made a final determination that the applicant, licensee, registrant or permit holder should be prohibited from practicing the profession, trade or occupation because the applicant, licensee, registrant or permit holder has not been sufficiently rehabilitated to warrant the public trust as described in subsection 3, the licensing agency must notify the applicant, licensee, registrant or permit holder in writing of the following:

A. The final determination;

B. Information about the right to appeal pursuant to section 5304 the licensing agency's decision;

C. A statement that the applicant, licensee, registrant or permit holder may be eligible for a different license, registration or permit; and

D. The earliest date on which the applicant, licensee, registrant or permit holder may reapply with the licensing agency, if applicable.

Sec. 3. 5 MRSA §5303, as amended by PL 2017, c. 288, Pt. A, §12, is further amended to read:

§5303. Time limit on consideration of prior criminal conviction

1. Three-year limits. Except as set forth in this subsection ~~and subsection 2~~, the procedures outlined in sections 5301 and 5302 for the consideration of prior criminal conviction as an element of fitness to practice a ~~licensed~~ profession, trade or occupation ~~shall~~ requiring a license, registration or permit apply within 3 years of the applicant's ~~or~~, licensee's ~~final discharge, if any, from the correctional system~~, registrant's or permit holder's criminal conviction. Beyond the 3-year period, ex-offender applicants ~~or~~, licensees, registrants or permit holders with no additional convictions are to be considered

in the same manner as applicants ~~or,~~ licensees, registrants or permit holders possessing no prior criminal record for the purposes of licensing decisions. There is no time limitation for consideration of an applicant's ~~or,~~ licensee's, registrant's or permit holder's conduct ~~which~~ that gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action against a licensee, registrant or permit holder.

~~**2. Ten-year limits.** For applicants to and licensees and registrants of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Practice, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the State Board of Nursing, the Board of Chiropractic Licensure, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of Speech, Audiology and Hearing, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, the Maine Board of Pharmacy, and the Emergency Medical Services' Board and applicants for massage therapy licensure or licensed massage therapists, the following apply.~~

~~A. The procedures outlined in sections 5301 and 5302 for the consideration of prior criminal conviction as an element of fitness to practice a licensed profession, trade or occupation apply within 10 years of the applicant's or licensee's final discharge, if any, from the correctional system.~~

~~B. Beyond the 10-year period, ex-offender applicants or licensees with no additional convictions must be considered in the same manner as applicants or licensees possessing no prior criminal record for the purposes of licensing decisions.~~

~~C. There is no time limitation for consideration of a registrant's, an applicant's or licensee's conduct that gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action.~~

Sec. 4. 5 MRSA §5305 is enacted to read:

§5305. Confidential

Criminal history record information, and any other information pertaining to an applicant's, licensee's, registrant's or permit holder's background check obtained in conjunction with a screening, in the possession of a licensing agency is confidential and may not be disclosed if the information is being requested for use in connection with any application for employment or a license, registration or permit.

Sec. 5. 5 MRSA §5306 is enacted to read:

§5306. Application

The provisions of this chapter apply notwithstanding any provision of law to the contrary, except to the extent the provision of law contains additional limitations on the consideration of criminal history record information by licensing agencies.

SUMMARY

This bill adds restrictions to the use of criminal history record information in the context of licensing decisions by licensing agencies. It also makes certain criminal history record information in the possession of a licensing agency confidential.

130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document **No. 1602**

H.P. 1191 House of Representatives, April 27, 2021

An Act Regarding Criminal Records

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.

Be it enacted by the People of the State of Maine as follows:

CONCEPT DRAFT

SUMMARY

This bill is a concept draft pursuant to Joint Rule 208.

This bill proposes to change the laws regarding criminal records.

APPROVED
JULY 6, 2021
BY GOVERNOR

CHAPTER
404
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

H.P. 845 - L.D. 1167

An Act Relating to Fair Chance in Employment

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §600-A is enacted to read:

§600-A. Criminal history record information; employment application

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Criminal history record information" has the same meaning as in Title 16, section 703, subsection 3.

B. "Employer" means a person in this State who employs individuals. "Employer" includes municipalities and political subdivisions of the State, but does not include an employer of an individual who holds a position in the legislative, executive or judicial branch of State Government or a position with a quasi-independent state entity or public instrumentality of the State. "Employer" includes a person acting in the interest of an employer directly or indirectly.

2. Initial employee application form. Except as provided in subsection 4, an employer may not:

A. Request criminal history record information on the employer's initial employee application form; or

B. State on an initial employee application form or advertisement or specify prior to determining a person is otherwise qualified for the position that a person with a criminal history may not apply or will not be considered for a position.

3. Interviews. An employer may inquire about a prospective employee's criminal history record information during an interview or once the prospective employee has been determined otherwise qualified for the position. An employer that inquires about a prospective employee's criminal history record information shall afford to the prospective employee the opportunity to explain the information and the circumstances regarding any convictions, including post-conviction rehabilitation.

4. Exceptions for initial employee application form. An employer may inquire about criminal convictions on an initial employee application form or state on an initial

employee application form or advertisement or otherwise assert that a person with a criminal history may not apply or will not be considered for a position if:

A. The position is one for which a federal or state law or regulation or rule creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses, and the questions on the initial employee application form are limited to the types of criminal offenses creating the disqualification; or

B. The employer is subject to an obligation imposed by a federal or state law or regulation or rule not to employ in a position a person who has been convicted of one or more types of criminal offenses, and the questions on the initial employee application form are limited to the types of criminal offenses creating the obligation.

5. Penalty. This section must be enforced pursuant to section 626-A.

Sec. 2. 26 MRSA §626-A, first ¶, as amended by PL 2019, c. 35, §2, is further amended to read:

Whoever violates any of the provisions of section 600-A, sections 621-A to 623 or section 626, 628, 628-A, 629 or 629-B is subject to a forfeiture of not less than $100 nor more than $500 for each violation.

TAB 3

COLLATERAL CONSEQUENCES RESOURCE CENTER

Collateral Consequences of Criminal Conviction and Restoration of Rights: News, Commentary, and Tools

After a haul of record relief reforms in 2020, more states launch clean slate campaigns

| February 17, 2021 | CCRC Staff

Yesterday, the Clean Slate Initiative, a bipartisan national effort to automate the clearing of criminal records, announced four new state campaigns in Texas, New York, Oregon, and Delaware, joining ongoing campaigns in Louisiana, Connecticut, and North Carolina to advocate for automatic record relief legislation.

This announcement follows a productive year for record relief reforms in 2020, when Michigan became the sixth state to enact automatic relief for a

range of conviction records, the most expansive such authority enacted to date. In total, 20 states enacted 35 bills and two ballot measures creating or expanding record relief (i.e. expungement, sealing, set-aside) last year. Michigan, along with three other states, also enacted major legislation expanding eligibility for petition-based conviction relief. Kentucky and North Carolina authorized the automatic sealing of many non-conviction records (with simplified petitions for others), consistent with a 2019 model law on non-conviction records developed by a group of practitioners under CCRC's leadership. Other reforms addressed marijuana offenses, victims of human trafficking, juvenile records, and more.

Below we summarize 2020's record relief reforms, broken down into six categories: general conviction relief (9 states, 14 laws), automatic conviction relief (4 states, 5 laws), non-conviction records (4 states, 4 laws), marijuana offenses (6 states, 5 laws, 2 ballot measures), offenses by victims of human trafficking (3 states, 3 bills), and juvenile records (5 states, 6 laws). Seven bills that were vetoed are described at the end. (Our full report on 2020 legislation is available here. Further detail about a particular jurisdiction's record relief laws can be found in the CCRC Restoration of Rights Project, which includes both individual state profiles and 50-state comparison charts for conviction and non-conviction records.)

General conviction relief (9 states, 14 laws)

In 2020, four states enacted major reforms expanding eligibility for petition-based conviction relief. **Michigan** significantly expanded sealing eligibility for misdemeanors and felonies. **Georgia** for the first time authorized the sealing of convictions, covering pardoned records and up to

two misdemeanors. **North Carolina** broadened felony and misdemeanor eligibility criteria. **Nebraska** extended set-aside eligibility beyond only probation cases to include cases involving sentences of up to one year's imprisonment.

- **Michigan** expanded petition-based eligibility for set-aside and sealing to an unlimited number of misdemeanors and up to three felonies, provided that no more than two convictions for assaultive crimes may be set-aside in a person's lifetime, and no more than one conviction for the same offense may be set-aside if the offense is punishable by more than 10 years in prison (HB 4984). Mich. Comp. Laws § 780.621, *et seq.* HB 4983 sets new waiting periods for seeking set-aside: more than one felony requires 7 years; one felony, or 2+ serious or assaultive misdemeanors requires 5 years; other misdemeanors require 3 years. These periods run from the latest of the following: imposition of sentence, completion of incarceration, and completion of supervision. HB 4985 provides that in counting convictions for determining eligibility for set-aside and sealing, crimes in the same 24-hour period arising from the same transaction are counted as a single offense unless they involve violence, guns, or a maximum sentence of 10+ years in prison.HB 4981 specifies that set-aside and sealing is not available for felonies punishable by a life sentence; specified sex offenses; traffic offenses if they involved alcohol, injury or commercial licensees; and a felony domestic violence conviction if the person has a misdemeanor domestic violence conviction.
- **Georgia** made eligible for record restriction and sealing: pardoned convictions (except for serious violent felonies or sexual offenses), up

to two misdemeanor convictions (excluding specified violent and sexual offenses), and various conditional discharges (SB 288). Ga. Code Ann. § 35-3-37.

- **North Carolina** enacted the Second Chance Act, which expands "expunction" opportunities and streamlines the process in a variety of ways, including providing mandatory expungement for 16- and 17-year olds convicted as adults before "Raise the Age" legislation, who meet certain criteria; broadened eligibility criteria for expungement of conviction records (i.e. allowing multiple non-violent misdemeanors to be expunged; treating multiple convictions in the same court session as one conviction, etc.) (SB 562). A more detailed summary ishere.
- **Nebraska** expanded eligibility for set-aside to people sentenced to a year or less in prison. Preexisting law permits a person sentenced to probation to petition the sentencing court to "set aside" the conviction upon completion of sentence. LB 881, for the first time, allows a person who has completed a term of imprisonment of one year or less, to also petition to "set aside" their conviction, so long as: no charge is currently pending against them; they are not required to register under the Sex Offender Registration Act; the offense was not vehicular homicide; and they were not denied a set-aside within the previous two years. Neb. Rev. Stat. § 29-2264.

Also in 2020, five other states eliminated some eligibility barriers and streamlined procedures:

- **Louisiana** repealed a requirement that to expunge certain violent offenses, the person "has been employed for a period of ten consecutive years" (HB 179). La. C. Cr. Proc. Art.

978. The state also authorized expungement when a person is on parole; repealing requirements that no felony conviction was expunged in the last 15 years and no misdemeanor was expunged in the last 5 years; and repealing a requirement, where expungement is sought for DUI, that the person have had no arrest or conviction expunged in the past 10 years (HB 241). Arts. 975, 977, 978. Finally, Louisiana modified its expungement forms to allow applicants to indicate if they had received a "first offender pardon" (HB 194).

- **Indiana** clarified that the waiting period for expungement for a felony reduced to a misdemeanor is five years from the date of conviction (SB 47). Ind. Code §§ 35-38-9-2.
- **West Virginia** authorized a state resident seeking expungement of convictions in multiple counties to file a single petition for expungement in their county of residence; and deleted a provision that a person may file only one expungement petition under either the general expungement authority or the special treatment/job program authority (SB 562). W. Va. Code §§ 61-11-26, -26a.
- **Wyoming** provided that convictions for purchase, possession, or use of nicotine products by persons under 21 shall not be reported by the court to law enforcement agencies; and, upon payment of the fine, the conviction "shall be expunged by operation of law…six (6) months after the entry of conviction" (SF 50). Wyo. Stat. Ann. §§ 14-3-304, -305.
- **Utah** prohibited the Bureau of Criminal Identification from considering minor prior or pending cases, or any clean-slate-eligible cases, in determining whether to issue a certificate of

eligibility for expungement (HB 397). Utah Code Ann. § 77-40-105(4).

Automatic relief ("clean slate") (4 states, 5 laws)

In 2020, **Michigan** became the sixth state to enact automatic relief for a range of conviction records—a type of reform known as "clean slate," championed by the Clean Slate Initiative, among others. Michigan's law is the most expansive automatic authority enacted to date. **Pennsylvania** improved its landmark 2018 Clean Slate Act, by eliminating barriers to relief based on unpaid fines and fees; and, automatically sealing pardoned convictions and expunging acquittals. **Louisiana** established a Clean Slate Task Force. And **Vermont** authorized automatic relief for marijuana possession. In addition, two states delayed or blocked automatic relief, as described below.

- **Michigan** authorized automatic set-aside and sealing for a range of convictions. An unlimited number of minor misdemeanors will be eligible seven years after imposition of sentence; and, up to four more serious misdemeanors and up to two felonies that are eligible for relief under expanded petition-based standards (see above) would be eligible 7 or 10 years after imposition of sentence or release from imprisonment, respectively, provided that the conditions in the petition-based standards are met (no pending charges in the state database, no additional convictions in the waiting period) (HB 4980). Mich. Comp. Laws § 780.622, *et seq.* For more serious misdemeanors and felonies, a person with more than one conviction for an assaultive crime (broadly defined) is ineligible for relief. Also, a broad range of crimes involving violence or dishonesty, or subject to a lengthy sentence, are ineligible.

While restitution and other court debt need not be paid for a conviction to be expunged, a court may reinstate a conviction if a person "has not made a good-faith effort to pay" restitution. The law requires the system to be made operational two years after the effective date of the law, "subject to any necessary appropriation," as well as a potential one-time 180-day extension at the governor's request it cannot be implemented by the deadline "because of technological limitations." See also the juvenile section for additional clean slate authority.

- **Pennsylvania** eliminated unpaid fines and fees (excluding restitution and a filing fee) as barriers to existing petition-based and automated sealing; authorized automatic sealing of pardoned convictions; and authorized automatic expungement of acquittals (HB 440). 18 Pa. Cons. Stat. § 9122.1, *et seq.*
- **Louisiana** established a Clean Slate Task Force to study the possibility of automating expungement (HR 67) and authorized access to criminal justice data for nonprofit partners providing technical assistance to this task force (HB 2).
- **Vermont** authorized automatic expungement of convictions involving possession of 2 ounces or less of marijuana entered prior to January 1, 2021, with expungement to be completed no later than January 1, 2022.

Also, **California** postponed implementation of its 2019 automatic record relief law from early 2021 to mid-2022. (SB 118). Cal. Penal Code §§ 851.93, 1203.425. **Washington** governor Jay Inslee vetoed an automatic conviction relief bill (HB 2793), predicating the veto on the economic burdens imposed on the state by the pandemic. Automation

authorized in 2019 has also been delayed in **Utah** and **New Jersey** because of disruptions based on the pandemic.

Non-conviction records (4 states, 4 laws)

Last year two states (**Kentucky** and **North Carolina**) authorized the automatic sealing of many non-conviction records (with simplified petitions for others), consistent with a 2019 model law on non-conviction records developed by a group of practitioners under CCRC's leadership. This brings the total number of states with automatic or expedited non-conviction relief to 21. In addition, **Louisiana** clarified that dismissed diversion cases may be expunged; and **Illinois** extended a fee waiver for non-conviction relief.

- **Kentucky** significantly streamlined the expungement of non-conviction records (HB 327). For cases disposed after March 27, 2020, expungement of misdemeanor or felony charges resulting in acquittal or dismissal with prejudice ("not in exchange for a guilty plea to another offense") is automatic upon disposition. Ky. Rev. Stat. Ann. § 431.076. Cases disposed prior to that date, and felony cases in which charges have not resulted in an indictment, may be expunged on petition after 60 days. Cases in which charges were dismissed without prejudice are eligible for expungement three years after disposition for felony charges, and one year after disposition in the case of misdemeanor charge (reduced in both cases from five years). Expungement is mandatory for eligible cases (for unindicted felony cases, the prosecutor may obtain an extension of up to 180 days to file an indictment). Preexisting law required hearings and made expungement discretionary.

- **North Carolina** authorized automatic expungement of many non-conviction records and a streamlined petition process for others (SB 562).
- **Louisiana** made clear that a person can file a motion to expunge records if the district attorney declined to prosecute for the reason that the person successfully completed a pretrial diversion program (HB 129). La. C. Cr. Proc. Art. 976.
- **Illinois** extended the waiver of filing fees in large-counties for the sealing or expungement of non-conviction records (SB 1857).

Marijuana offenses (6 states, 5 laws, 2 ballot measures)

Marijuana expungement continued to accelerate across the country, as expungement has attained a more prominent role in the broader legalization movement. Six states enacted specialized marijuana relief laws in 2020, following 7 states (and D.C.) that did so in 2019, and 4 states in 2018—bringing the total number of states with specialized marijuana expungement laws to 23.

In Congress, the House passed the Marijuana Opportunity Reinvestment and Expungement Act in November. However, the Senate did not bring it up for consideration so it will have to be reintroduced in the new Congress.

Last year, **Arizona** and **Montana** approved ballot measures to authorize expungement for many marijuana offenses. **Vermont** made expungement automatic for marijuana possession of 2 ounces or less. **Michigan** and **Utah** streamlined marijuana relief procedures. **Virginia** restricted access to records of marijuana possession offenses.

- **Arizona** passed a marijuana legalization ballot measure that requires courts, upon petition, to expunge arrests, charges, and convictions for certain marijuana possession, consumption, transportation and cultivation offenses (effective July 2, 2021) (207). Ariz. Rev. Stat. § 36-2862.
- **Michigan** streamlined petitions for marijuana misdemeanors with a presumption in favor of set-aside and sealing for offenses that have been decriminalized (HB 4982); and provided for a rehearing or appeal where set-aside of a marijuana misdemeanor is denied (HB 5120).
- **Montana** passed a marijuana legalization ballot measure that provides that a person serving a sentence—or who has completed a sentence—for an act now legalized or now punishable by a lesser sentence may petition for an expungement, resentencing, and/or redesignation (I-190). I-190 sec. 36 (2020).
- **Utah** made eligibility periods and the requirement of a certificate of eligibility inapplicable to convictions for possession of marijuana for medicinal purposes (SB 121) Utah Code Ann. § 77-40-103(5).
- **Vermont** authorized automatic expungement of convictions involving possession of 2 ounces or less of marijuana entered prior to January 1, 2021, with expungement to be completed no later than January 1, 2022 (234).
- **Virginia** decriminalized marijuana possession, restricted public access to records relating to past arrests, charges, or convictions for this offense, prohibited employers and educational institutions from inquiring about them, and prohibited state and local officials from requiring an applicant for a license,

permit, registration, or governmental service to disclose information about them (SB 2 / HB 972). Va. Code Ann. §§ 18.2-250.1; 19.2-389.3.

Victims of human trafficking (3 states, 3 laws)

Since 2010, when New York authorized victims of human trafficking to vacate certain prostitution and related offenses from their criminal records, in response to the advocacy of sex workers' rights organizations, almost every state has enacted specialized laws for sealing, expunging, or vacating convictions related to being trafficked. While the early laws were narrowly focused on prostitution and related offenses, more recently additional offenses have been added. In 2020, three more states expanded relief in this area, after seven states and the District of Columbia did so in 2019, and 5 states in 2018.

- **Georgia** authorized petitions for vacatur, restriction, and sealing of convictions that occurred while a defendant was a victim of human trafficking (SB 435). Ga. Code Ann. §§ 17-10-21; 35-3-37(j)(6).
- **Maryland** expanded the vacatur authority for victims of human trafficking by authorizing relief for more offenses (previously only prostitution), simplified procedures, and mades convictions that have been vacated eligible for expungement as a non-conviction record (HB 242 / SB 206). Md. Code Ann., Crim. Proc. §§ 8-302, 10-105(a)(13).
- **South Dakota** eliminated the requirement that a victim of human trafficking be over 18 years old to expunge a juvenile record; and authorized the victim to petition the court directly or through a parent, guardian, or guardian ad litem (HB 1047). S.D. Codified Laws § 26-7A-115.1.

Juvenile records (5 states, 6 laws)

- **California** strengthened requirements for the automatic sealing of juvenile records not resulting in an adjudication of guilt (AB 2425). Cal. Welf. & Inst. Code §§ 786.5, 827.95.
- **Michigan** enacted a juvenile clean slate law to make set-aside and sealing automatic for eligible adjudications, effective in mid-2023 (SB 681). Comp. Laws § 712A.18e, *et seq.* The state also enacted SB 682, which makes records of juvenile proceedings confidential to all but "persons having a legitimate interest," defined to include the juvenile, their parents or guardians, law enforcement, and certain agencies with responsibility for juvenile custody. Mich. Comp. Laws § 712A.28.
- **South Dakota** eliminated the requirement that a victim of human trafficking be over 18 years old to expunge a juvenile record; and authorized the victim to petition the court directly or through a parent, guardian, or guardian ad litem (HB 1047). S.D. Codified Laws § 26-7A-115.1.
- **Utah** enacted the Juvenile Expungement Act, which reorganizes earlier law, with a few major changes (HB 397). As under existing law, upon reaching age 18, a person with a juvenile record is eligible for expungement following a one-year waiting period and completion of all sentence requirements (which may be waived by the court). After a hearing, the court may seal all the record if the individual has not, in the five years preceding, been convicted of a violent felony or have any proceedings pending. Utah Code Ann. § 78A-6-1505. Previously, expungement was unavailable to any person convicted of a felony or misdemeanor involving moral turpitude since the juvenile court's jurisdiction terminated. The

bill also simplifies the process to expunge a record with only nonjudicial adjustments, without a hearing. § 78A-6-1504.

- **Washington** facilitated juvenile sealing by omitting the requirement of a hearing if the person is off supervision and has paid restitution (HB 2794). Wash. Rev. Code § 13.50.260.

Miscellaneous

- **Utah** expanded the authority of prosecutors to request that the court enter a judgment to a lower degree of the offense and impose a lower sentence, which is eligible for expungement (HB 441). Utah Code Ann. 77-2-1.2.

Vetoed bills

In 2020, at least five governors vetoed record relief reforms:

- **Florida** governor Ron DeSantis vetoed a bill that would have provided for the non-disclosure of arrest records of minors who have completed diversion (SB 1292).
- **Maryland** governor Larry Hogan vetoed three record relief bills: (1) HB 83 would have prohibited the Maryland Judiciary Case Search from in any way referring to the existence of a District Court criminal case in which possession of marijuana is the only charge in the case and the charge was disposed of before October 1, 2014; (2) HB 1336 would have authorized petitions for a partial expungement, among other things; and (3) SB 314 would have made various juvenile records confidential.
- **Michigan** governor Gretchen Whitmer, who signed 9 record relief bills in 2020, vetoed a 10th

bill that would have authorized expungement of first-time DUI convictions (SB 1254).

- **Mississippi** governor Tate Reeves vetoed a bill that would have allowed expungement of up to three felonies (currently only one is eligible) (SB 658).
- **Washington** governor Jay Inslee vetoed a bill that would have provided automatic vacatur relief for a range of conviction records (HB 2793), predicating the veto on the economic burdens imposed on the state by the pandemic.

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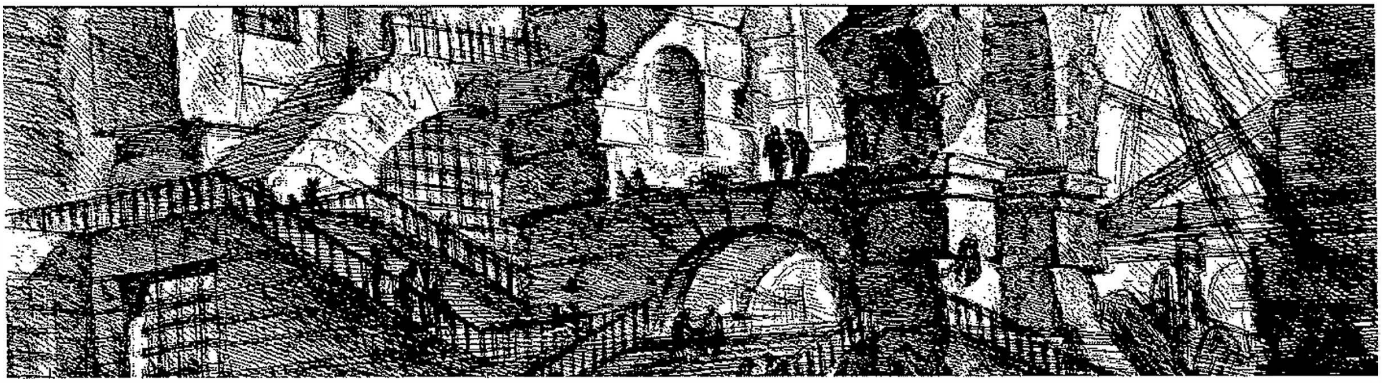

Dozens of new expungement laws already enacted in 2021

| July 7, 2021 | CCRC Staff

This year is turning out to be another remarkable year for new record relief enactments. In just the first six months of 2021, 25 states enacted no fewer than 51 laws authorizing sealing or expungement of criminal records, with another 5 states enrolling 11 bills that await a governor's signature. Three of these states authorized sealing of convictions for the first time, seven states passed laws (or enrolled bills) providing authority for automatic sealing, and a number of additional states substantially expanded the reach of their existing expungement laws.

This post hits the highlights of what may well be the most extraordinary six-month period in the extraordinary modern period of criminal record reform that begin in 2013. The only closely comparable period is the first six months of 2018, when 11 states enacted major reforms limiting consideration of criminal records in occupational licensing. Further details of the laws mentioned below can be found in the relevant state profiles from the Restoration of Rights Project.

(An earlier post noted new occupational licensing laws in 2021, and subsequent ones will describe significant extensions of the right to vote so far this year, and summarize the more than 100 record reforms enacted to date.)

New Laws

Three states enacted particularly significant new record relief schemes. **Alabama** and **Virginia** both authorized petition-based expungement of adult conviction records for the first time, with Virginia making relief for some misdemeanors and non-convictions automatic. Continuing the trend toward automatic expungement, **Connecticut** enacted a major "clean slate" bill authorizing automatic "erasure" of most misdemeanors and many felonies. All three of these important new laws are described in greater detail later in this post.

In other legislative developments, **Maryland** authorized automatic expungement of non-conviction records after a three-year waiting period, and established a work group to study partial expungement of charges not resulting in conviction. **Vermont** took another step toward automation following last year's automatic marijuana expungement law, by authorizing automatic expungement of motor vehicle-related violations. At the same time, Vermont authorized a broad

legislative study of its expungement laws, including the prospects for automation, to be completed by the beginning of the next legislative session. (This study follows on the heels of an inconclusive report from an executive working group charged with a similar study task in 2018.) **South Dakota** reduced the waiting period of its automatic sealing law (applicable to non-conviction records and some misdemeanors) from ten years to five.

Tennessee expanded eligibility for petition-based expungement from misdemeanors and Class E felonies to include Class D and C felonies. It also made the filing fee discretionary with the court clerk, and required courts to both notify defendants of the availability of expungement and give reasons in writing if they deny this relief. **Washington** rewrote its laws applicable to victims of sex trafficking and related sexual abuses, authorizing vacatur for both B and C felonies and misdemeanors, and providing that a petition may be filed either by the victim or by the prosecutor.

Four additional states made more modest improvements in their existing petition-based expungement schemes: **Arkansas** repealed an exclusion for anyone sentenced to prison; **Nevada** limited the power of the prosecutor to object to expungement, and facilitated expungement of pardoned convictions; **North Dakota** changed the condition of its waiting period from "no arrest" to "no conviction," and authorized sealing of DUI convictions; and **Utah** provided that restitution ordered by the parole board would no longer bar eligibility for expungement. Eight additional states extended their juvenile record expungement laws, and four states broadened authorities for diversion leading to expungement.

New Mexico added to its significant 2019 expungement scheme by enacting most of the provisions of the Uniform Collateral Consequences of Conviction Act (UCCCA), giving its courts authority to relieve mandatory collateral consequences as early as sentencing (New York, Vermont, and New Jersey are the only other states with such authority). This same law not only offered this relief to those with convictions from other jurisdictions, it also gave effect to relief granted by other jurisdictions, the only state other than Vermont that has done this (also through its enactment of the UCCCA).

Enrolled bills

As of the end of June, four states had enrolled major record relief laws awaiting the governor's signature, two of which provided for automatic record sealing. The **Delaware** legislature passed Clean Slate legislation, automating sealing for most of the offenses that had been authorized for petition-based mandatory and discretionary sealing in 2019. The bill is to be effective in 2021, but sealing is to begin in August 2024. The **Oregon** legislature made substantial changes to eligibility criteria under its petition-based expungement law, described here, reducing waiting periods and modifying disqualifying priors. **Colorado** expanded eligibility for petition-based sealing and made sealing of non-conviction records automatic. The **Michigan** legislature send to the governor two bills providing for expungement of first DUI convictions, a category omitted from their 2020 package of record relief legislation. Finally, and perhaps most surprisingly, on the final day of its session the **Arizona** legislature for the first time ever passed a record-sealing bill and it is quite broad, applicable to most misdemeanors and felonies. Earlier in the session, the governor signed a bill authorizing courts to issue a "Certificate of Second Chance" when setting aside a conviction, which lifts

mandatory bars to licensure and offers employers and landlords protection from liability.

Marijuana expungement

The first half of 2021 was also an unprecedented period for policymaking at the intersection of marijuana legalization and criminal record reform. Between February and April, four states enacted legislation legalizing recreational marijuana. In conjunction with legalization, these states (**New Jersey, New Mexico, New York,** and **Virginia**) also enacted innovative criminal policy reforms—including the automatic expungement of an exceptionally broad array of past marijuana convictions—along with a variety of social equity provisions. These laws are described in our report on Marijuana Legalization and Expungement in Early 2021. Since that report was published, **Connecticut** authorized petition-based marijuana expungement for a range of misdemeanors and felonies as well as limited automatic relief for some misdemeanors. **Colorado** also expanded petition-based marijuana expungement eligibility.

The particularly significant relief schemes enacted in Alabama, Virginia and Connecticut are described in greater detail below. We will provide further details on the Arizona, Colorado, and Delaware laws when they are signed into law, as appears likely.

Alabama:

Until 2021, Alabama courts had no statutory authority to expunge or seal adult conviction records, with the exception of a narrowly drawn exception for victims of human trafficking. With enactment of Act No. 2021-286 (SB117), the so-called REDEEMER Act, Alabama courts were authorized to expunge non-violent misdemeanors and violations, and pardoned felonies. Eligible misdemeanors and

violations may apply three years after conviction if "all probation or parole requirements have been completed, including payment of all fines, costs, restitution, and other court-ordered amounts, and are evidenced by the applicable court or agency." Pardoned felonies are eligible 180 days after the pardon was granted. Convictions for violent and sexual offenses and "serious traffic offenses" are not eligible. Nor are the dozens of crimes of "moral turpitude" that are grounds for felony disenfranchisement, unless the crime was reclassified as a misdemeanor. There is also an administrative filing fee of $500, which may be waived under with a finding of indigency.

Expunged records must remain available to law enforcement and prosecutors, utilities, the agency engaged in protecting children and vulnerable adults, and "any entities or services providing information to banking, insurance, and other financial institutions as required for various requirements as provided in state and federal law."

The REDEEMER Act also expanded the laws governing expungement of non-conviction records to cover violent felony charges that were dismissed with prejudice, nol prossed or indictment quashed (after limitation period has run or prosecutor confirms charges will not be refiled), and reduced the waiting period for expungement after diversion of misdemeanor charges to one year. A five-year waiting period was retained for felony charges dismissed without prejudice

Virginia

Until 2021, Virginia law made no provision for expunging or sealing conviction records, except those that have been vacated pursuant to a writ of actual innocence, or those which were the subject of an absolute pardon (for innocence).

With enactment of HB 2113 and SB 1406, Virginia gained one of the more progressive record relief systems in the country, with a mixture of automatic and petition-based sealing, both for convictions generally and marijuana offenses specifically.

The general record relief legislation (HB 2113) includes five key provisions:

1. Establishes a system of automatic sealing for misdemeanor non-convictions, nine types of misdemeanor convictions, and deferred dismissals for underage alcohol and marijuana possession.
2. Allows for sealing of felony acquittals and dismissals at disposition with the consent of the prosecuting attorney.
3. Provides for sealing a broad range of misdemeanor and low-level felony convictions and deferred dismissals through a petition-based court process. Notably, court debt will not be a barrier to record clearance under the legislation.
4. Introduces a system of court-appointed counsel for individuals who cannot afford an attorney for the petition-based sealing process.
5. Requires private companies that buy and sell criminal records to routinely delete sealed records and creates a private right of action for individuals against companies that refuse to do so.

The provisions of HB 2113 are scheduled to go into effect in 2025 (or earlier).

A separate bill providing for marijuana legalization and expungement (SB 1406) authorized the automatic expungement of records related to certain misdemeanor marijuana offenses along with petition-based expungement of all other

misdemeanor and many felony marijuana offenses. With the exception of the sealing of certain police records, these provisions are also scheduled to go into effect by 2025.

Connecticut

Public Act 21-42, Connecticut's "Clean Slate" law, establishes a process to automatically erase records of most misdemeanor convictions and certain felony convictions entered after January 1, 2000, after a specified period following the person's most recent conviction for any crime (with an exception for certain drug possession crimes). Class C, D, or E felonies are covered, as are unclassified felonies with up to 10-year prison terms. The bill excludes family violence crimes and offenses requiring sex offender registration. Under the bill, misdemeanors are eligible for erasure seven years after the person's most recent conviction for any crime; class D or E felonies or unclassified felonies with prison terms of five years or less are eligible after 10 years; and class C felonies or unclassified felonies with prison terms greater than five years but no more than 10 years are eligible after 15 years. For offenses before January 1, 2000, the records are erased when the person files a petition on a form prescribed by the Office of the Chief Court Administrator.

Various provisions that now apply to erasure of non-conviction records also apply to erasure under this bill: no fee is charged, and partial expungement is available. That is, if the case contained multiple charges and only some are entitled to erasure, electronic records released to the public must be erased to the extent they reference charges entitled to erasure.

The law requires all purchasers of court records, including background screening providers, to update their records on a regular basis. It extends these

provisions to records of other agencies (State Police, DMV, Department of Correction). The bill prohibits various forms of discrimination based on someone's erased criminal history record information, such as in
employment, public accommodations, the sale or rental of housing, the granting of credit, and several other areas. In several cases, it classifies discrimination based on these erased records as a "discriminatory practice" under the state human rights laws.

The automatic erasure provisions of the law take effect on January 1, 2023.

This year is turning out to be another extraordinary year for new record relief enactments. In just the first six months of 2021, 22 states enacted no fewer than 47 separate laws authorizing sealing or expungement of criminal records, with another 5 states having enrolled 11 bills from awaiting the governor's signature. Three states authorized sealing for adult convictions for the first time, seven states passed laws (or enrolled bills) providing authority for automatic sealing of convictions, and several additional states substantially expanded the reach of their existing expungement laws.

This post hits the highlights of what may well be the most extraordinary single 6-month period in this extraordinary modern period of criminal record reform. (The only one that comes close is the first six months of 2018, when 10 states enacted major reforms to their occupational licensing schemes.)

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New Laws

Three states enacted significant new record relief schemes. **Alabama** and **Virginia** both authorized petition-based expungement of adult conviction records for the first time, with Virginia making some misdemeanors and non-convictions automatic. Continuing the trend toward automatic expungement, **Connecticut** enacted a major "clean slate" bill authorizing automatic "erasure" of most misdemeanors and many felonies. All three of these important new laws are described in greater detail later in this post.

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Tennessee expanded eligibility for petition-based expungement from misdemeanors and Class E felonies to Class D and C felonies, made the filing fee was made discretionary with the court, and required courts to notify defendants of the availability of expungement and give reasons in writing for denying this relief. Four additional states made more modest improvements in their existing petition-based expungement scheme: **Arkansas** repealed an exclusion for anyone sentenced to prison; **Nevada** limited the power of the prosecutor to object to expungement, and facilitated expungement of pardoned convictions; **North Dakota** changed the condition of its waiting period from "no arrest" to "no

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Enrolled bills

As of the end of June, four states had enrolled major record relief laws awaiting the governor's signature, two of which provided for automatic record sealing. The **Delaware** legislature passed its Clean Slate Act, automating sealing for most of the offenses that had been authorized for petition-based mandatory and discretionary sealing in 2019. The bill was to be effective in 2021, but sealing was to begin in August 2024. The **Colorado** legislature sent to the governor a bill expanding eligibility for petition-based sealing and making sealing of non-conviction records automatic. The **Oregon** legislature made substantial changes to eligibility criteria under its petition-based expungement law, described here, reducing waiting periods and modifying disqualifying priors. Finally, and perhaps most surprisingly, the **Arizona** legislature for the first time passed a broad record-sealing bill applicable to most misdemeanors and felonies; it also authorized its courts to issue a "Certificate of Second Chance" when setting aside a conviction, which lifts mandatory bars to licensure and offers employers and landlords protection from liability. The **Michigan** legislature send to the governor two bills providing for expungement of first DUI convictions, a category omitted from their 2019 clean slate law.

Marijuana expungement

The first half of 2021 was also an unprecedented period for policymaking at the intersection of marijuana legalization and

criminal record reform. Between February and April, four states enacted legislation legalizing recreational marijuana. In conjunction with legalization, these states (**New Jersey, New Mexico, New York,** and **Virginia**) also enacted innovative criminal policy reforms—including the automatic expungement of an exceptionally broad array of past marijuana convictions—along with a variety of social equity provisions. These laws are described in our report on Marijuana Legalization and Expungement in Early 2021. **Connecticut** also automated marijuana expungement but at a more modest level. **Colorado** and **Montana** both enacted petition-based marijuana expungement laws

The important record relief schemes enacted in Alabama, Virginia and Connecticut are described in greater detail below. We will provide further details on the Arizona, Colorado, and Delaware laws when they are signed into law, as appears likely.

Alabama:

Until 2021, Alabama courts had no statutory authority to expunge or seal adult conviction records, with the exception of a narrowly drawn exception for victims of human trafficking. With enactment of Act No. 2021-286 (SB117), the so-called REDEEMER Act, Alabama courts were authorized to expunge non-violent misdemeanors and violations, and pardoned felonies. Eligible misdemeanors and violations may apply three years after conviction if "all probation or parole requirements have been completed, including payment of all fines, costs, restitution, and other court-ordered amounts, and are evidenced by the applicable court or agency." Pardoned felonies are eligible 180 days after the pardon was granted. Convictions for violent and sexual offenses and "serious traffic offenses" are not eligible. Nor are the dozens of crimes of "moral turpitude" that are grounds for felony disenfranchisement, unless the crime was

reclassified as a misdemeanor. There is also an administrative filing fee of $500, which may be waived under with a finding of indigency.

Expunged records must remain available to law enforcement and prosecutors, utilities, the agency engaged in protecting children and vulnerable adults, and "any entities or services providing information to banking, insurance, and other financial institutions as required for various requirements as provided in state and federal law."

The REDEEMER Act also expanded the laws governing expungement of non-conviction records to cover violent felony charges that were dismissed with prejudice, nol prossed or indictment quashed (after limitation period has run or prosecutor confirms charges will not be refiled), and reduced the waiting period for expungement after diversion of misdemeanor charges to one year. A five-year waiting period was retained for felony charges dismissed without prejudice.

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misdemeanor convictions, and deferred dismissals for underage alcohol and marijuana possession.
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3. Provides for sealing a broad range of misdemeanor and low-level felony convictions and deferred dismissals through a petition-based court process. Notably, court debt will not be a barrier to record clearance under the legislation.
4. Introduces a system of court-appointed counsel for individuals who cannot afford an attorney for the petition-based sealing process.
5. Requires private companies that buy and sell criminal records to routinely delete sealed records and creates a private right of action for individuals against companies that refuse to do so.

The provisions of HB 2113 are scheduled to go into effect in 2025 (or earlier).

A separate bill providing for marijuana legalization and expungement (SB 1406) authorized the automatic expungement of records related to certain misdemeanor marijuana offenses along with petition-based expungement of all other misdemeanor and many felony marijuana offenses. With one exception, these provisions are also scheduled to go into effect by 2025.

Connecticut

Public Act 21-42, Connecticut's "Clean Slate" law, establishes a process to automatically erase records of most misdemeanor convictions and certain felony convictions entered after January 1, 2000, after a specified period following the person's most recent

conviction for any crime (with an exception for certain drug possession crimes). Class C, D, or E felonies are covered, as are unclassified felonies with up to 10-year prison terms. The bill excludes family violence crimes and offenses requiring sex offender registration. Under the bill, misdemeanors are eligible for erasure seven years after the person's most recent conviction for any crime; class D or E felonies or unclassified felonies with prison terms of five years or less are eligible after 10 years; and class C felonies or unclassified felonies with prison terms greater than five years but no more than 10 years are eligible after 15 years. For offenses before January 1, 2000, the records are erased when the person files a petition on a form prescribed by the Office of the Chief Court Administrator.

Various provisions that now apply to erasure of non-conviction records also apply to erasure under this bill: no fee is charged, and partial expungement is available. That is, if the case contained multiple charges and only some are entitled to erasure, electronic records released to the public must be erased to the extent they reference charges entitled to erasure.

The law requires all purchasers of court records, including background screening providers, to update their records on a regular basis. It extends these provisions to records of other agencies (State Police, DMV, Department of Correction). The bill prohibits various forms of discrimination based on someone's erased criminal history record information, such as in
employment, public accommodations, the sale or rental of housing, the granting of credit, and several other areas. In several cases, it classifies discrimination based on these erased
records as a "discriminatory practice" under the state human rights laws.

The automatic erasure provisions of the law take effect on January 1, 2023.

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State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
AL	Ala. Code § 15-27-1(b) authorizes expungement of non-violent non-sexual misdemeanors, violations and municipal ordinances; §15-27-2(c) authorizes expungement of pardoned non-violent, non-sexual felonies. Crimes of moral turpitude for disenfranchisement purposes are also excluded.		Expungement of misdemeanors and non-violent felonies that did not result in conviction, including felony cases where charges dismissed after successful completion of a drug court program, mental health court program, diversion program, veteran's court program, "or any court-approved deferred prosecution program after one year from successful completion of the program." See Ala. Code § 15-27-1 (misdemeanors); § 15-27-2 (felonies). In addition, following a guilty finding, adjudication may be withheld except for certain drug trafficking offenses, § 13A-12-232, which may lead to dismissal of the charges, including through pretrial diversion. See Ex parte Eason, 929 So.2d 992 (Ala. 2005); § 45-9-82.29.	Expungement for victims of human trafficking convicted of misdemeanors, and of felonies including some designated as violent (prostitution, domestic violence, child pornography). Ala. Code §§ 15-27-1, 15-27-2.	No authority to seal or expunge pardoned convictions.	Records of most delinquency adjudications sealed after final discharge or court order if no pending criminal proceedings. May petition to have records destroyed five years after age of majority. Ala. Code §§ 12-15-136, 12-15-137.	Courts may on petition expunge non-conviction records of felony and misdemeanor charges, including cases where charges dismissed after completion of court-approved diversionary program. In 2021, authority expanded to cover violent felonies. Records remain available to government regulatory or licensing agencies, utilities, banks and financial institutions. Ala. Code §§ 15-27-1, -2. State record repository must remove arrest record from rap sheet after 30 days if not charged or if cleared of the offense. Ala. Code § 41-9-625.

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June 22, 2021

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
AK	No authority to expunge or seal adult convictions.		Court may suspend imposition of sentence and set aside conviction after successful completion of probation for certain offenses. Alaska Stat. § 12.55.085; § 12.55.078. No conviction results and court records may not be published online, § 22.35.030, but no authority to seal. May not be used as predicate, but limited use for enhancement of sentence.		No authority to seal or expunge pardoned convictions.	Records of juvenile adjudications are generally confidential and unavailable to the public, and most may be sealed by court at age 18 or release of jurisdiction if later. Alaska Stat. § 47.12.300(c), (e). Records of juveniles charged as adults may be sealed five years after completion of sentence If charged as adult, most juvenile records sealed five years after completed sentence or after records made public. § 47.12.300(f).	Non-conviction records generally unavailable to the public. Alaska Stat. § 12.62.160(b)(8), . Sealing of non-conviction records only in case of mistaken identity or false accusation. § 12.62.180(b). Courts may not publish online records of cases resulting in acquittal or dismissal. § 22.35.030.
AZ	Effective December 31, 2022, misdemeanors and all but violent and sexual felonies may be sealed after a waiting period ranging from two to ten years after completion of sentence and payment of court debt. Ariz. Rev. Stat. Ann. § 13-911. Set-aside is also available upon discharge for all but violent and sex offenses. Relieves collateral consequences, but does not seal record and conviction must be disclosed. Serves as predicate. Ariz. Rev. Stat. Ann. § 13-907. In 2021, Arizona authorized courts to issue a Certificate to Second Chance to a person whose conviction has been set-aside. Waiting periods apply for class 2-6 felonies. Class 1 felonies are ineligible.		Courts are authorized to establish drug court programs, where people may be offered diversion. See Ariz. Rev. Stat. § 13-3422. If a person admitted to the program fails to comply with the terms of participation, they may be found guilty and the judgment deferred by the court. If the person succeeds, the charges are dismissed. No sealing is authorized.	Prostitution convictions of victims of human trafficking may be vacated, do not serve as prior, and need not be reported unless fingerprint background check authorized. No hearing unless prosecutor objects. § 13-907.01 (E) and (F). Effective July 2, 2021, courts must, upon petition, expunge arrests, charges, and convictions for certain marijuana offenses. § 36-2862.	No authority to seal or expunge pardoned convictions.	If 18 years or older, may apply to set aside juvenile adjudication upon discharge from probation or absolute discharge for certain offenses. Predicate effect. Ariz. Rev. Stat. §§ 8-348; 8-207, 13-501.	Effective December 31, 2022, non-conviction records may be sealed, Ariz. Rev. Stat. § 13-9011. Until then, the only authority is in cases where someone has been wrongfully arrested or charged. § 13-4051.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
AR	Minor felonies and drug convictions eligible for sealing after 5 yrs. if no more than one prior felony. Misdemeanors eligible immediately after completion of sentence. Serious violent and sexual offenses ineligible. Sealed conviction "shall be deemed as a matter of law never to have occurred, and the person may state that the underlying conduct did not occur and that a record of the person that was sealed does not exist." Predicate effect. Ark Code Ann. § 16-90-1401 et seq.		Deferred adjudication for first-time offenders may lead to sealing (serious violent felonies and certain sex offenses ineligible). Ark. Code Ann. §§ 16-93-303, 16-93-314 (b). Pre-adjudication probation program established by court. Both court and prosecutor must agree on admission. Ark. Code Ann. § 5-4-901 et seq.	Sealing of prostitution convictions for victims of human trafficking. Ark. Code Ann. § 16-90-1412. Sealing is mandatory so long as the court finds by a preponderance of the evidence that the conviction was the result of being a victim of human trafficking. In addition to restoring the individual's rights in the manner specified above, the petitioner's name is redacted from all records and files related to arrest and conviction.	If ineligible for sealing may seek pardon, which results in automatic sealing for all but a few serious offenses. Ark Code Ann. § 16-90-1411.	For most offenses, may apply to set aside adjudications upon majority if discharged from probation or absolute discharge and no subsequent conviction or pending charge. Ark. Rev. Stat. § 8-348. Set-aside relieves penalties and disabilities, with exceptions for those imposed by Dept. of Transportation.	Arrest records "shall" be sealed on petition to court if no charges are filed within one year, § 16-90-1409, if charges dismissed, or if no conviction obtained. § 16-90-1410. See § 16-90-1415.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
CA	Courts may issue certificates of rehabilitation for state law offenses, which affect consideration for employment, operate as first step in pardon process. See Cal. Bus. & Prof. § 480(b) and chart #5. Dismissal of charges or set-aside for probationers, misdemeanants, and minor felony offenders sentenced to county jail. Certain minor felonies may be reduced to misdemeanors and become eligible for set-aside/dismissal. Rights restored and use limited in certain contexts, but does not seal or limit public access. May be used as predicate offense and disclosed in certain contexts. Cal. Penal. §§ 1203.4; 1203.4a; 1203.41. Effective January 1, 2021, a new automatic process will take effect for eligible convictions occurring after that date, with limits on dissemination by courts a repositories. Cal. Penal § 1203.425	Misdemeanors if committed under age 18 may be sealed if otherwise eligible. Cal. Penal § 1203.45(a).	Deferred sentencing for felony convictions, treated as misdemeanors following successful completion of probation. No sealing except for certain under-age misdemeanants. Predicate effect. Cal. Penal §§ 17(b), 1203.4, 1203.4a, 1203.41. Post-plea deferred entry of judgement & probation available for first minor drug offense. See Cal. Penal § 1000, et seq. Successful completion results in dismissal of charges and sealing. § 851.90.	Mandatory sealing for records of decriminalized marijuana offenses. Relief made systematic in 2018. Cal. Health & Safety Code § 11361.9. Automatic purging of possession offenses after two years. § 11361.5. Victims of human trafficking may have any non-violent convictions directly related to trafficking (including but not limited to prostitution) vacated and records sealed and expunged (destroyed) after three years. Cal. Penal § 236.14(a), (k).	No authority to seal or expunge pardoned convictions.	Juvenile records generally confidential, with exceptions for serious offenses. Cal Rules of Court, Rule 5.552. Most adjudications may be sealed, subject to the court's discretion, either 5 years after termination of jurisdiction or immediately upon reaching age 18. Cal. Welf. & Inst. § 781. Additional eligibility requirements for certain serious offenses. Records are confidential and destroyed after 5 years. Misdemeanors if committed under age 18 may be sealed if otherwise eligible. Cal. Penal § 1203.45(a). Juvenile victims of human trafficking may have any non-violent convictions directly related to trafficking vacated and records sealed, and expunged after three years. Cal. Penal § 236.14(j), (k).	Mandatory sealing of eligible non-conviction records upon petition. Cal. Penal § 851.91 (effective January 2018). "Arrest records, police investigative reports, and court records that are sealed under this section shall not be disclosed to any person or entity except the person whose arrest was sealed or a criminal justice agency." § 851.92 Previously, sealing discretionary, concurrence of the prosecuting attorney, order that the records be sealed and destroyed. Cal. Penal § 851.8(d). Pre-trial diversion records sealed after 2 years. § 851.87. Effective January 1, 2022, a new automatic process will take effect for eligible non-convictions occurring after that date. Cal. Penal § 851.93.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
CO	Sentencing courts may relieve any collateral consequence ("order of collateral relief"). Colo. Rev. Stat. § 18-1.3-107. Limits use in employment and licensing. 2019 law authorized sealing for misdemeanors and all but most serious felonies, subject to variable waiting period from 1 to five years, expanding what had previously been available only for select controlled substance offenses committed after 2008. Colo. Rev. Stat. § 24-72-706. Uncharged arrests and non-conviction records also added (see far column). May deny conviction in most situations, but records remain available to law enforcement and entities required to conduct background checks. § 24-72-703(4)(d). Felony drug offenses may be knocked down to misdemeanor. § 18-1.3-103.5.		Deferred adjudication, sentencing, and diversion may lead to sealing. Colo. Rev. Stat. §§ 24-72-308(1)(a) (deferred adjudication); §§ 18-1.3-101, 24-72-702 (pretrial diversion); 18-1.3-102 (deferred sentencing); § 18-13-122(a) (deferred adjudication/diversion for underage alcohol offenses). Complex civil sealing procedure replaced in 2016 and 2019 with less formal process available from criminal court. § 24-72-705.	Petty offenses and municipal violations (except for traffic offenses). Colo. Rev. Stat. § 24-72-708. Convictions for decriminalized misdemeanor marijuana possession/use, § 24-72-710 (effective August 2017); posting a private image for harassment or pecuniary gain, § 24-72-709; theft of public transportation services by fare evasion, § 24-72-707; underage possession or consumption of alcohol or marijuana, § 18-13-122(13). May deny conviction in most situations. § 24-72-703(4)(d). Victims of human trafficking may have records of prostitution and related convictions sealed on petition, § 24-72-706.	No authority to seal or expunge pardoned convictions.	Expungement available for all but serious violent offenses. Colo. Rev. Stat. § 19-1-306. Court must advise at time of sentencing. Automatic for minor offenses, and no significant waiting period otherwise, except for repeat/mandatory sentence offenders. The person and court may indicate that no record exists.	Courts must seal upon request at time of disposition, or later on petition, a criminal record in cases that were resolved through diversion, completely dismissed, or resulted in acquittal (cases that were not charged may only be resolved on petition). Colo. Rev. Stat. § 24-72-705. Expedited process for sealing non-conviction records, including where charges dismissed pursuant to diversion or deferred sentencing (see col. at far left). § 24-72-705. May deny record in most cases. § 24-72-702(f)(I). Arrests resulting from mistaken identity may be expunged if no charges were filed. § 24-72-701.5

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
CT	See entry for pardoned convictions, which are routinely available in CT and result in "erasure" of record. Erasure prohibits disclosure by government, bars reliance in any subsequent criminal proceeding, and permits the person to swear under oath that the crime never occurred. Erased records destroyed after three years. Employers may not ask about or discriminate based on erased record. §§ 54-142a(e); 31-51i(c) - (f).		Pretrial diversion is authorized for crimes that are "not of a serious nature." Class C felonies eligible only if the defendant can show "good cause." Defendant may have no prior convictions involving violence. See § 54-56e. Six programs for deferred adjudication may result in "erasure" of record. May deny conviction; predicate unless records destroyed. Conn. Gen. Stat. § 54-142a. See first column for effect of erasure.	Erasure available for those convicted as "youthful offenders" upon reaching age 21 if no subsequent felony conviction. Conn. Gen. Stat. § 54-76o. See first column for effect of erasure. Erasure for decriminalized conduct Conn. Gen. Stat. § 54-142d. Vacation of prostitution conviction on basis of being a victim of trafficking in persons; may lead to erasure as non-conviction record. § 54-95(c).	Pardoned conviction automatically "erased" after 3 years, records physically destroyed; may deny conviction. Conn. Gen. Stat. § 54-142a(d). Pardons routinely available from Board of Pardons and Parole. See first column for effect of erasure.	Juvenile offender at least 17 years of age may petition for erasure of police and court records after 2-4 years, depending on seriousness of offense. Must have no subsequent convictions or pending charges. Conn. Gen. Stat. § 46b-146. See first column for effect of erasure.	Erasure of criminal records where charges have been dismissed or nolled, or where person has been acquitted; may deny arrest under oath. Conn. Gen. Stat. §§ 54-142a; 31-51i(d). Where the erasure statute applies, a court may proceed on its own motion to dismiss charges, and records will automatically be erased. See first column for effect of erasure. In addition, in no case may "records of arrest, which are not followed by a conviction...be used, distributed or disseminated by the state or any of its agencies in connection with an application for employment or for a permit, license, certificate or registration." § 46a-80(e). Partial sealing only where some charges nol prossed. § 54-142a(g).

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
DE	Until December 30, 2019, there was no authority to expunge or seal adult convictions. Effective on that date, some misdemeanors and violations became eligible for mandatory expungement and other convictions - including a single minor felony - are subject to discretionary expungement. Del. Code tit. 11, § 4374. The State Bureau of Identification may not destroy information identifying a person until a person reaches age eighty, or reaches age seventy-five with no criminal activity listed on the person's record in the past forty years. Del. Code Ann. tit. 11, § 8506(c).		Effective December 30, 2019, expungement mandatory in probation before judgment cases where charges dismissed. felonies. See Del. Code tit. 11, §§ 4218, 4373. Also for first offender controlled substances diversion program, tit. 16 § 4767. See also Del. Code Ann. tit. 11 §§ 4372-74 (expungement in non-conviction cases).	A person convicted or adjudicated of any non-violent crime as a direct result of being a victim of human trafficking may file an application for a pardon and expungement; or, the person may file a petition in the court of conviction, and seek expungement under Del. Code Ann. tit. 11 § 43721. Del Code. Ann. tit. 11 § 787(j)(1), (2).	Post December 30, 2019, all pardoned offenses will be eligible for expungement. Del. Code Ann. tit 11, § 4375. Prior to December 30, 2019, expungement was available only for pardoned misdemeanor & violation convictions, and petitioner had to show "manifest injustice."	Mandatory & discretionary expungement for juvenile delinquency records. Del. Code Ann. tit.10, § 1014, et seq.	Mandatory expungement where case results in termination of case in favor of the accused, including in probation before judgement cases. Del. Code Ann. tit. 11 §§ 4372, 4373. An application to the State Bureau of Identification is required to obtain relief. § 4373.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
DC	Sealing available only for selected less serious misdemeanors, plus felony failure to appear. See column to right.	Sealing for selected less serious misdemeanors and one felony (failure to appear) after waiting period that depends upon prior record. May deny conviction in most situations; certain law enforcement, court, employer/licensing access. Court must find that sealing "is in the interests of justice" under balancing test. D.C. Code §§ 16-803, 16-806.	Records in deferred sentencing cases may be sealed unless the defendant has prior "disqualifying" arrest or conviction. D.C. Code §§ 16-803(a). Court must find that sealing "is in the interests of justice" under balancing test.	Sealing for cases of actual innocence, see D.C. Code § 16-802; decriminalized conduct, see § 16-803.02. Fugitive from justice arrests may be sealed under § 16-803.01.	No authority to seal or expunge pardoned convictions.	Upon majority, sealing after a two-year waiting period with no subsequent convictions. D.C. Code § 16-2335(a).	Court authorized to seal eligible non-conviction records (eligibility the same as for convictions) after waiting period ranging from 2 to 10 years, depending upon prior record; records in deferred sentencing cases may not be sealed at all if prior "disqualifying" arrest or conviction. If record sealed, may deny arrest in most situations; certain law enforcement, court, & employer/licensing access. D.C. Code §§ 16-803, 16-806. Court must find that sealing "is in the interests of justice" under balancing test.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
FL	No authority to seal or expunge adult convictions.		Adjudication may be withheld and defendant placed on probation for misdemeanors, and for less serious felonies if requested by prosecutor or if court makes findings of mitigating circumstances; no conviction results and sealing for certain first offenders (no prior record); expungement (destroyed) after 10 years. Fla. Stat. Ann. §§ 948.01(2), 943.0585(2)(h), 775.08435; Fla. Crim. P. Rule 3.670. Sealing defined in § 943045(14); record remains available to law enforcement, certain employment and licensing contexts even after expungement.	Sealing for victims of human trafficking for offenses which offense was committed or reported to have been committed "as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme," including, but not limited to prostitution. Fla. Stat. § 943.0583.	No authority to seal or expunge pardoned convictions.	Records of juvenile adjudications are generally confidential except for serious offenses. See Fla. Stat. § 985.04(2). Expungement for nonjudicial record of minor's arrest (non-violent, first offense) upon successful completion of diversion program. Fla. Stat. Ann. § 943.0582. Expungement defined as destruction of record. § 943045(13). Other records may be destroyed by the court after age 24.	Court has discretion to order sealing or expungement of non-conviction records of first offenders, with certain exceptions. Expungement results in destruction of record; sealing permits limited law enforcement, employment, licensing access. Fla. Stat. Ann. §§ 943.0585, 943.059.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
GA	Per 2020 law, most non-violent misdemeanors eligible for sealing, and pardoned felonies also eligible. Ga. Code Ann. § 35-3-37(j).		Discharge without adjudication after completion of probation under the First Offender Act "completely exonerate[s]" the defendant and has no effect on "civil rights or liberties." Ga. Code Ann. §§ 42-8-60, 42-8-62. Restores firearms privileges. § 16-11-131(f). Limits use of record to deny employment (ex. those dealing with vulnerable populations), § 35-3-34, and since 2016 sealing of court records. § 42-8-62.1,	First offender drug possession convictions may be restricted and sealed. Ga. Code Ann. § 35-3-37(h)(2)(B). A 2020 law authorizes record restriction, sealing, and/or vacatur of convictions of victims of human trafficking, §§ 17-10-21; 35-3-37(j). Sealing also available for juvenile victims of human trafficking (see relevant column to right).	Law enacted in 2020 makes pardoned convictions eligible for record restriction. Ga. Code Ann. § 35-3-37(j)(6).	Sealing upon motion to the court after a two-year waiting period and finding of rehabilitation. Ga. Code Ann. § 15-11-701(b). Records of youthful (under 21) misdemeanor convictions may be "restricted" after five years, making them unavailable to public or licensing boards. § 35-3-37(j)(4)(A). Vacatur and sealing for juvenile victims of human trafficking convicted of "a sexual crime" related to the trafficking. Ga. Code Ann. § 15-11-32(d); § 15-11-701(c).	If released before indictment or acquitted, public access to record may be "restricted" after waiting period depending on seriousness of charges. Ga. Code Ann. § 35-3-37(h)(1). Records dismissed after a charging instrument is filed are automatically restricted if all charges "were dismissed, nolle prossed, or reduced to a violation of a local ordinance." § 35-3-37(h)(2)(A). Exceptions apply for certain dispositions. § 35-3-37(i).

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
HI	No authority to seal or expunge adult convictions.		Deferred adjudication for nonviolent first offenders, Haw. Rev. Stat. § 853-1(e). No conviction results, and expungement after one year upon application to the Attorney General, and to court. § 831-3.2(a)(5), (f). Deferred adjudication for first-time drug possession; expungement if crime committed under age 20. Haw. Rev. Stat.§§ 712-1255, 712-1256,	Convictions for prostitution and related offenses may be vacated on petition after three crime-free years. Haw. Rev. Stat. § 712-1209.6	No authority to seal or expunge pardoned convictions.	Juvenile records confidential and per se sealed. Id. § 571-84(e). Court may expunge juvenile records only if no charges brought or individual held "not responsible." § 571-88(a).	Only criminal justice agencies and agencies authorized by Hawaii's laws may access non-conviction information. In addition, upon application by the affected individual, the Attorney General "shall issue an expungement order annulling" record of arrest if no conviction results. Person "shall be treated as having not been arrested." Haw. Rev. Stat. § 831-3.2(b). Person may apply to the court for expungement of court records. § 831-3.2.(f)
ID	Reduction of felony to misdemeanor after completion of probation, with concurrence of prosecutor if earlier than five years or if crime of violence; offenses requiring sex offender registration not eligible. Idaho Code Ann. § 19-2604(3). No sealing or expungement of record. Certain sex offenders may petition for "expungement" from registry after 10 years. Idaho Code Ann. § 18-8310.		Set-aside of plea where sentence deferred or suspended upon successful completion of probation, or reduction of felony to misdemeanor conviction; restores rights but no authority for sealing (not applicable to serious violence and sex offenses). Idaho Code Ann. §§ 19-2601, 19-2604(1), (2).	Victims of human trafficking arrested or convicted as a "result of acts induced by human traffickers," may petition "to vacate such conviction and/or to expunge the criminal history records taken in connection with the conviction." Idaho Code Ann. § 67-3014.	No authority to seal or expunge pardoned convictions.	Juvenile convictions may be expunged after waiting period (except for serious offenses). Idaho Code Ann. § 20-525A	Non-conviction records may be sealed upon request, except for deferred adjudication. Idaho Code Ann. § 67-3004(10).

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
IL	Sealing for most misdemeanors and felonies after 3 year waiting period. Exceptions for limited number of serious offenses. 20 Ill. Comp. Stat. Ann. 2630/5.2. Must be disclosed to agencies authorized to conduct background checks. Courts authorized to remove employment and licensing bars through certificate of good conduct. 730 Ill. Comp. Stat. Ann. 5/5-5.5-55. In addition, consideration of conviction limited for certain licenses where court issues certificate of relief from disabilities. Id. at 5/5-5-5.		Deferred adjudication for first-time non-violent offenders; expungement five years after successful completion of probation. Predicate offense if within five years. 20 Ill. Comp. Stat. Ann. 2630/5.2; 720 Ill. Comp. Stat. Ann. 570/410, 550/10,5/5-6-3.4. Record destroyed. §2630/5.2(a)(1)(E). 2014 "Second Chance Probation" leading to expungement available to first time felony offenders charged with minor non-violent drug, fraud or theft felony offenses, 730 Ill. Comp. Stat. Ann. 5/5-6-3.4. Yes predicate.	In June 2019, expungement of arrests and convictions for "minor cannabis offenses,"defined as involving not more than 30 grams, Ill. Comp. Stat. Ann. 2630/5.2(i). Immediate sealing for victims of human trafficking upon the completion of his or her last sentence, if his or her participation in the underlying offense was a direct result of human trafficking. Ill. Comp. Stat. Ann. 2630/5.2(h).	Pardon instrument may authorize expungement. 20 Ill. Comp. Stat. Ann. 2630/5.2(e);2630/5.2(a)(1)(E).	Automatic expungement of all but the most serious offenses after 0 to 2 year waiting period. 705 Ill. Comp. Stat. 405/5-915. Otherwise, expungement upon petition after 2 years, except for first degree murder and sex offenses. Id. Automatic sealing of non-expunged records. Id.	Sealing of non-conviction records without qualification on eligibility available immediately upon disposition. 2630/5.2(g). Additionally, charges that resulted in acquittal or dismissal may be expunged upon petition to the court if no prior felony conviction. 20 Ill. Comp. Stat. Ann. 2630/5.2(b). Record destroyed. 2630/5.2(a)(1)(E).

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
IN	"Expungement" of most felony and misdemeanor offenses after waiting periods ranging from five to ten years. Ind. Code § 35-38-9-2 et seq. Expunged records "remain public," although must be "clearly and visibly marked" as being expunged. §35-38-9-7. Records of misdemeanors and minor felonies must be expunged if eligible, and are automatically "sealed" upon expungement, which limits public access without a court order even to a prosecutor. § 35-38-9-6. Admin. Sealing from state police after 15 yrs. § 35-38-5-5.		Deferred adjudication for drug abusers and alcoholics charged with less serious felonies, if one prior and no charges pending. Ind. Code §§ 12-23-5-1 et seq., 12-23-6-1, 12-23-7-1 et seq.	Ind. Code § 35-38-10-2 - A person who committed an offense that did not result in bodily injury to another person is "entitled" to have the person's conviction vacated if the person proves by a preponderance of the evidence that the person was a trafficked person and coerced at the time the person committed the offense. No mention of notice to prosecutor of hearing (unlike statute applicable to trafficked children, below.)	Pardon "wipes out guilt" and automatically becomes basis for judicial expungement. State v. Bergman, 558 N.E.2d 1111 (Ind. Ct. App. 1990).	Court may expunge juvenile records at any time upon petition. Ind. Code § 31-39-8-2. In 2021, court authorized to automatically expunge juvenile convictions (ex. felonies, upon reach age 19. § 31-39-8-3.5. Records are destroyed. Ind. Code § 31-37-22-11 - Minor who was the victim of human trafficking may move to vacate an adjudication if he proves by a preponderance of the evidence that he was a trafficked child and coerced at the time he performed the delinquent act, and the act did not result in bodily injury to another person. Prosecutor must be informed, and a hearing must be held.	Non-conviction records and convictions vacated on appeal may be expunged and sealed after one year § 35-38-9-1. Expungement mandatory if eligible. Once records are sealed "only a criminal justice agency may access the records without the order of a court." § 35-38-9-1(d).
IA	No authority to expunge or seal felony convictions.	2019 enactment of expungement authority applicable to some misdemeanors. Iowa Code 901C.3.	Deferred adjudication followed by expungement for first offenders. Predicate offense. Iowa Code §§ 907.3, 907.9.		No authority to seal or expunge pardoned convictions.	Non-forcible felony records are preemptively non-public. Iowa Code Ann. §§ 232.147(3), 232.149B(1). Forcible felony records may be made non-public upon application. § 232.149A. Sealing at majority upon application to the court after a two-year waiting period if no subsequent offenses. § 232.150(1). Not reported on criminal history from age 21 on if no serious offenses between age 18 and 21. § 692.17(1).	Records of acquittals and dismissed charges (excluding deferred adjudication) "shall" be expunged after 180 days. § 901C.1. All court debt must be paid. § 901C.2. See also Iowa Code Ann. § 692.17(1) (records of acquittal/dismissal may not be stored in computer data system).

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
KS	Waiting period of 3-5 years; serious violent and sex offenses excluded. Also no expungement if required to register under KS offender registration act. Presumption in favor of expungement if court makes certain findings. May deny conviction except for certain law enforcement, employment and licensing contexts. No guns, predicate offense. Kan. Stat. Ann. § 21-6614.		No provision (one of two states)	Any victim of human trafficking convicted of prostitution may petition the convicting court for the expungement of such conviction after one year from completion of sentence, if they can prove they were acting under coercion (meaning threats of bodily harm physical restraint. Kan. Stat. Ann. § 21-6614.	No authority to seal or expunge pardoned convictions.	Expungement of juvenile adjudications, except for serious or violent offenses, following a two-year waiting period if the person is at least age 23 and has no subsequent offenses. Kan. Stat. Ann. § 38-2312(a) - (c).	Record "shall" be expunged on petition where court finds after hearing that no conviction resulted from arrest (including where charges dismissed), subject to certain court-ordered grounds for disclosure. May deny arrest. Kan. Stat. Ann. § 22-2410.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
KY	Specified Class D felonies may be vacated 5 years after completion of sentence, and the record expunged. Effective June 26, 2019, additional Class D felonies made eligible, and filing fee reduced to $50, with additional fee of $250 due upon expungement. Expungement results in destruction of record, except for index kept by court. Ky. Rev. Stat. Ann. § 431.073. Expungement of most misdemeanors/violations after five years with no felony or misdemeanor convictions. Mandatory for single offense history; discretionary for multiple offense history. May deny existence of record. Ky. Rev. Stat. Ann. § 431.078. Sex offenses or offenses against a child are ineligible.		Deferred adjudication and diversion for Class D felonies if no prior felony within 10 years; no conviction results, and expungement available if charges dismissed. Ky. Rev. Stat. Ann. §§ 431.076, 533.250-533.262.	Persons convicted of prostitution not involving violence may move the convicting court, 60 days after final judgment, to expunge all records if they can show that their participation in the offense is the direct result of being a victim of human trafficking. Ky. Rev. Stat. § 529.160.	Pardoned convictions may be set aside and expunged. Ky. Rev. Stat. Ann. § 431.078.	Vacatur and expungement available, upon petition after a two-year waiting period. Ky. Rev. Stat. Ann. § 610.330.	Court has discretion, on petition and after a hearing, to expunge records of misdemeanor or felony cases that result in dismissals with prejudice or acquittals, as well as charges not resulting in indictment after 12 months (effective June 26, 2019, dismissals without prejudice are eligible after five-year waiting period). Ky. Rev. Stat. Ann. §§ 431.076, 510.300.
LA	Most misdemeanors (after five clean years), many felonies (after 10 clean years), and non-conviction records may be expunged. La. Code Crim. Proc. Art. 978 A(2). Record closed to public but remains available for law enforcement and certain licensing purposes. Predicate offense. Effective 2019, those entitled to first offender pardon, including drug but not violent offenses, eligible for expungement. Art 978A(3).		Deferred sentencing resulting in set-aside and dismissal for first felony convictions sentenced to probation. La. C.Cr.P. Art. 893(E). Expungement under Art. 976 upon successful completion.		No authority to seal or expunge pardoned convictions.	Expungement available immediately upon termination of juvenile court jurisdiction for most adjudications. 5 year waiting period for certain serious offenses. La. Ch.C. Art. 918. Expungement of prostitution convictions for juvenile victims of human trafficking. La. Ch. C. Art. 923.	Both felony and misdemeanor non-conviction records may be expunged on petition, but remain available to law enforcement and for certain licensing purposes. La. Code Crim. Proc. Art. 976.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
ME	No authority to seal or expunge adult felony convictions.	Records of convictions for Class E (misdemeanor) crimes committed between 18 and 21 may be sealed after 4 years if the person has not been convicted of any other offenses and has no charges pending. Me. Rev. Stat. Ann. tit. 15, §§ 2251, et seq.	A person who has pled guilty to a Class C, Class D or Class E crime is eligible for a deferred disposition, after which the record is confidential and not available to the public except upon specific request. Me. Rev. Stat. Ann. tit. 17-A, § 1348.		Information re: pardoned convictions considered "non-conviction" data, though may be available to public upon request. Me. Rev. Stat. Ann. tit. 16, §§ 703(2), 705. Can delete from FBI record after 10 years per tit. 15, § 2167; and no sex offender registration if pardoned under tit. 34A, § 1125-A(6)(c).	Sealing, upon petition, for all adjudication records after a three-year, crime-free waiting period. Me. Rev. Stat. Ann. tit. 15 § 3308.	Non-conviction records may not be publicly disseminated after one year, but disclosure may be made to "[a]ny person who makes a specific inquiry . . . as to whether a named individual was summonsed, arrested or detained or had formal criminal charges initiated on a specific date." Me. Rev. Stat. Ann. tit. 16, §§ 703, 705.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
MD	Enumerated felonies (theft, burglary, drugs) and 100 specified misdemeanors may be "expunged" after 10-15 crime-free years. Md. Code Ann., Crim. Proc. § 10-110. Expungement for specified nuisance convictions. Md. Code Ann., Crim. Proc. § 10-105(a)(9), (c)(6). Expunged records destroyed after 3 years. Md. Rule Crim. Proc. 4-511 and 4-512. "Shielding" available for specified misdemeanors after three-year wait. Md. Code Ann., Crim. Proc. § 10-301.		Deferred adjudication (PBJ) available for certain crimes, record may be expunged, destroyed after 3 years. No predicate effect. Md. Code Ann., Crim. Proc. § 6-220; Md. Rule Crim. Proc. 4-511 and 4-512. Jones v. Baltimore City Police Dep't, 606 A.2d 214. Expunged record may be opened only upon court order, with notice to the person concerned and a hearing, or upon ex parte application by the State's attorney and a showing of good cause (including that the record is needed by law enforcement). Md. Code Ann., Crim. Proc. §§ 10-108(a) through (c). Violation a misdemeanor. § 10-108(d). Destruction after three years. See §§ 4-511, 4-512.	Under Second Chance Act of 2015 a handful of minor misdemeanor convictions are eligible for "shielding." Md. Code Ann., Crim. Proc. § 10-301 et seq., Victims of human trafficking eligible for vacatur of several crimes (previously only prostitution) within a reasonable time after conviction, with expungement authorized as a non-conviction record. States attorney must agree to the motion. Md. Code Ann., Crim. Proc. §§ 8-302, 10-105(a)(13). Md. Code Ann., Crim. Proc. § 8-302.	Non-violent first offenders pardoned may petition for judicial expungement. Md. Code Ann., Crim. Proc. § 10-105(a)(8). DNA records may be expunged under Md. Code Ann., Public Safety § 2-511 (through 2013) or Crim. Proc. § 6-232(a) (beginning in 2014). Destruction after 3 years. Md. Rule Crim. Proc. 4-511 and 4-512.	Expungement for charges transferred to juvenile court per Md. Code Ann., Crim. Proc. §§ 10-105(a)(7), 10-106. Destruction after 3 years. Md. Rule Crim. Proc. 4-511 and 4-512. Juvenile court records are generally unavailable to the public. Md. Code Ann., Courts & Judic. Proc. § 3-8A-27. Records may be completely sealed at any time for good cause, and must be sealed at age 21. Md. Code Ann., Courts & Judic. Proc. § 3-8A-27(c)	Arrest records not leading to charges are automatically expunged, and other non-conviction records may be expunged upon disposition; probation before judgment cases must wait 3 years. Expunged records may be opened only upon court order. Md. Code Ann., Crim. Proc. §§ 10-103; 10-105(a)(1)-(4), (c)(1)-(2). Destruction after 3 years. Md. Rule Crim. Proc. 4-511 and 4-512.
MA	Felonies may be sealed after 10 years if no subsequent conviction (misdemeanors 5 years), but no expungement. May deny conviction in employment application, but no guns, predicate offense. Mass. Gen. Laws ch. 276, § 100A; ch. 140, § 122. See also Mass. Gen. Laws ch. 151B, § 4(9) (employers may not inquire into misdemeanor convictions more than 5		Per Mass. Gen. Laws ch. 278, § 18 (2011) ("Continuance Without a Finding"), immediate sealing after successful completion of probation.	Convictions or delinquency adjudications for prostitution or simple drug possession may be vacated, and guilty pleas withdrawn, "upon a finding by the court of a reasonable probability that the defendant's participation in the offense was a result of having	Pardon seals automatically, recipient may deny conviction. May be used as predicate. Mass. Gen. Laws ch. 127, § 152.	Records of adjudication may be sealed after 3-year crime-free waiting period. Mass. Gen. Laws ch. 276, § 100B. See also column on vacatur for victims of human trafficking.	Cases where defendant acquitted "shall" be sealed. Cases where charges dismissed "may" be sealed by court if "substantial justice would best be served." Thereafter may not be used to disqualify a person from public employment. May deny sealed arrest on private

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
				been a human trafficking victim . . . ." Mass. Gen. Laws ch. 265, § 50. Where a child under the age of 18 was adjudicated delinquent for an offense of prostitution, "there shall be a rebuttable presumption that the child's participation in the offense was a result of having been a victim of human trafficking or trafficking in persons." § 50(2). For adult offenders, official documentation from any government agency of the defendant's status as a victim of human trafficking "shall create a rebuttable presumption that the defendant's participation in the offense was a result of having been a victim of human trafficking."			
MI	Prior to April 2021: Set-aside for first felony offenders with no more than two prior misdemeanors; also for two misdemeanors if no felonies. (Traffic & sex offenses excluded). 5-year eligibility period.		Mich. Comp. Laws § 333.7411 (probation before judgment for drug first offenders): nonpublic records kept by state police, available only to law enforcement (including law	A person who is convicted of prostitution or related offenses may apply to have that conviction set aside if offense committed as a direct result of his	No authority to seal or expunge pardoned convictions.	Subject to exceptions, mandatory destruction of diversion records after reaching age 17; all other records at age 30. MCR 3.925(E)(2), (3). Sealing upon petition and finding of good cause. MCR. 8.119(F).	Where an arrested person is released without charges, law enforcement agencies and the Michigan State Police (MSP) are required to "destroy" any

State	General authority (incl. some felonies)	Misdemeanors only	Non-conviction records	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
	Record unavailable to public. May be used by law enforcement and courts. Predicate effect. Mich. Comp. Laws § 780.621. No statutory authority for sealing of court records, but Michigan courts are authorized to seal the record of any case under Michigan Court Rule 8.119(I) for "good cause" shown, after considering the interests of the parties and the public. After April 2021: petition-based eligibility is expanded to an unlimited number of misdemeanors and up to three felonies, provided that no more than two convictions for assaultive crimes may be set-aside in a person's lifetime, and not more than one conviction for the same offense may be set-aside if the offense is punishable by more than 10 years in prison. Crimes in the same 24-hour period arising from the same transaction are counted as a single offense unless they involve violence, guns, or a maximum sentence of 10+ years. Set-aside is not available for felonies punishable by a life sentence; specified sex offenses; traffic offenses if they involved alcohol, injury or commercial licensees; and a felony domestic violence conviction if the person has a misdemeanor	enforcement employment and court adjudication	or her being a victim of a human trafficking violation. Mich. Comp. Laws § 780.621(4)		Set-aside of up to 3 delinquency adjudications upon meeting certain criteria. Mich. Comp. Law. Ann. § 712A.18e.	biometric and arrest records. See Mich. Comp. Laws § 28.243(3)(7). In addition, if charges are brought against the arrested individual but dismissed before trial, and if the court or prosecutor does not object within 60 days, the MSP is required to "remove" the arrest record from the internet records system and "any entry concerning the charge" from the law enforcement information network, "upon receipt of an appropriate order issued by the district court or the circuit court." See §§ 28.243(3)(8), (3)(9); § 764.26a. Moreover, any biometric and arrest records "shall be expunged or destroyed, or both, as appropriate." Id. Finally, if an accused is found not guilty, or if a decision is made not to proceed with a prosecution, "the biometric data and arrest card must be destroyed by the official holding those items when the clerk of the court entering the disposition shall notify the department of any finding of not

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
	domestic violence conviction. New waiting periods: more than one felony requires 7 years; one felony, or 2+ serious or assaultive misdemeanors requires 5 years; other misdemeanors require 3 years. Automatic relief: HB4980, signed in October 2020, authorizes automatic expungement of certain convictions, to be made operational two years after the effective date of the law, "subject to any necessary appropriation," and a potential one-time 180-day extension at the governor's request. An unlimited number of minor misdemeanors would be expunged seven years after imposition of sentence; and, up to four more serious misdemeanors and up to two felonies eligible for relief under the expanded petition-based standards (see above) would be automatically expunged 7 or 10 years after imposition of sentence or release from imprisonment, respectively, provided that certain conditions are met (no pending charges in the state database, no additional convictions in the waiting period). In the case of more serious misdemeanors and felonies, a person with more than one conviction for an assaultive crime						prosecut. § 28.243(3)(10). Michigan Courts have a policy of making their own corresponding records non-public in any situation covered by the statutes applicable to law enforcement agencies and the MSP discussed above.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
	(broadly defined) is ineligible. A broad range of crimes involving violence or dishonesty, or subject to a lengthy sentence, are ineligible. While restitution and other court debt need not be paid for a conviction to be expunged, a court may reinstate a conviction if a person "has not made a good-faith effort to pay" restitution.						

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
MN	Expungement (sealing) available for all misdemeanors and many minor non-violent felonies, after waiting period of 2-5 years. Minn. Stat. §§ 609A.02, subd. 3. Applies to both court and executive branch records. Minor felonies may be reduced to misdemeanors. § 609.13, subd. 1. Sentence reduction Trial court has common law expungement authority; balancing test applied. State v. S.L.H., 755 N.W.2d 271 (Minn. 2008). Sealing of conviction records available for juveniles tried as adults once finally discharged or probation successfully completed (some law enforcement exceptions). Minn. Stat. §§ 609A.02, subd. 2; 609A.03, subd. 7. Minn. Stat. § 13.87 subdiv. 1(b) conviction data maintained by Bureau of Criminal Apprehension is accessible to public only for 15 years following discharge.		Deferred adjudication for first drug offenses. Minn. Stat. §§ 152.18,		"Pardon extraordinary" has effect of "setting aside and nullifying" conviction, but does not expunge or seal record. Recipient may deny conviction.	Adjudication records (other than for felony offense at age 16 or older) generally available only to victim, schools, and government agencies for specified purposes and only until age 28. Minn. Stat. § 260B.171. Expungement of juvenile delinquency adjudications available for certain offenses and case dispositions. § 260B.198, subd. 6.	Expungement upon petition of records resolved favorably to petitioner; presumption in favor of relief. §§ 609A.02, subd. 3; 609A.03, subd. 5. Mandatory destruction of arrest records where no charges filed, if no felony/gross misdemeanor conviction in 10 years prior. Minn. Stat. § 299C.11.
MS	Expungement of first offender misdemeanors, specified felonies, and less-serious youthful felonies. Miss. Code Ann. § 99-19-71. Restores the person's legal status, but employer may inquire about existence of expungement. Id. Law enforcement retains.		Deferred adjudication followed by dismissal for misdemeanors and certain felonies. Miss. Rev. Code § 99-19-26. Expungement "shall" follow successful completion. § 99-19-26(5).	Vacatur of convictions for violating the Human Trafficking Act, which includes but is not limited to convictions for prostitution. § 97-3-54.6.	No authority to seal or expunge pardoned convictions.	Sealing upon reaching age 20 if case dismissed or set aside; judge has discretion to seal and unseal. Miss. Code Ann. § 43-21-263(2).	Expungement of misdemeanor records not resulting in conviction. Miss. Code Ann. §§ 99-15-59. See also deferred adjudication.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
MO	Effective 1/1/2018, expungement available for misdemeanors and most felonies, exceptions for violent, sex and other serious crimes. Mo. Rev. Stat. § 610.140(2). Waiting period for misdemeanors reduced from 10 to 3 years, to 7 for felonies, if no intervening convictions. § 610.140(5)(1). All fines must be paid. Only one felony and two misdemeanors may be expunged in a lifetime. § 610.140(12). Court must make public welfare/safety findings. Records must be disclosed for licensing and certain employment purposes.		Automatic "closure" of suspended & probationary sentences, though records remain available for law enforcement & certain licensing. Mo. Rev. Stat. §§ 557.011, 610.105-610.110. Effective 1/1/2018, expungement of non-conviction records (including deferred cases) available on same basis as for convictions, with same eligibility criteria, waiting periods, and effect.	Bad check felonies and a few public order misdemeanors may be expunged, but limited effect. § 610.140. See expansion effective 1/2018. First time alcohol-related misdemeanors, after 10 yrs. Mo. Rev. Stat. § 610.130. Expungement of prostitution convictions by a minor acting under coercion Mo. Ann. Stat. § 610.131.	No authority to seal or expunge pardoned convictions.	Records generally unavailable to the public. Mo. Rev. Stat. § 211.321.1. Court motion may seal and destroy records after age 17. § 211.321.5. Juvenile driving records may be expunged after two years or upon reaching age 21. § 302.545.	Mo. Rev. Stat. § 610.105 authorizes automatic "closure" of records in all cases disposed of favorably to the defendant (nolle prossed, acquitted, dismissed), or where imposition of sentence is suspended pursuant to § 557.011.2(3), upon conclusion of the case, except that "the court's judgment or order or the final action taken by the prosecutor . . . may be accessed." In addition, closed records remain available for a number of purposes. See § 610.120. Effective 1/1/2018, § non-conviction records (including deferred cases) may be expunged on same basis as convictions, with same eligibility criteria, waiting periods, and effect. Mo. Rev. Stat. § 610.140(6). Immediate expungement for arrest based on false information, most misdemeanor motor vehicle offenses if nolle pros., dismissals,

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
							acquittals. § 610.122.
MT	No authority to seal or expunge adult felony convictions.	Expungement available for all misdemeanors once in a person's lifetime. Mont. Code Ann. § 46-18-1101. Record permanently destroyed/deleted/erased.	Deferred sentencing for first felony offenders and misdemeanants, after which charges dismissed and access to records limited (but not "expunged" or destroyed). Mont. Code Ann. §§ 46-18-201, 46-18-204.	Effective Jan. 1, 2021, a person serving a sentence--or who has completed a sentence--for an marijuana act legalized or punishable by a lesser sentence under the 2020 marijuana initiatives (CI-118; I-190) may petition the sentencing court for an expungement, resentencing, and/or redesignation. I-190 sec. 36 (2020).	No authority to seal or expunge pardoned convictions.	Automatic sealing of youth court and probation records upon reaching majority. Mont. Code Ann. § 41-5-215'216. May seek court order limiting availability prior to majority. Mont. Privacy Rules § 4.60.	Upon request of individual or order of court, all records in possession of law enforcement agencies in cases not resulting in conviction, or where conviction invalidated, must be "returned to the subject." Mont. Code Ann. § 44-5-202.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
NE	No authority to seal or expunge adult convictions. Court may set aside conviction for those sentenced to probation or to a jail term of one year or less, which "nullifies" conviction and removes "all civil disabilities and disqualifications" but does not expunge or seal record. Neb. Rev. Stat. § 29-2264		Deferred judgments leading to sealing authorized by § 29-2292.	A victim of sex trafficking may move sentencing court to set aside any offense committed as a direct result of victim status. Same effect as an order setting aside a conviction except that sealing is also available upon petition. Neb. Rev. Stat. § 29-3523 (4).	Any person who has received a pardon may file a motion with the sentencing court for an order to seal those records. Neb. Rev. Stat. § 29-3523 (5).	Automatic and petition-based sealing. § 43-2,108.01 through 43-2,108.5. Adjudication treated as if it never occurred. Expungement only where an arrest is due to police error. Neb. Rev. Stat. § 29-3523(3).	Mandatory sealing of non-conviction records after brief waiting period. Records not resulting in prosecution may not be disseminated to the public after a period of one year; records where charges were not filed because of completed diversion are not available to the public after two years; and records where charges were filed but later dismissed by the court are removed from the public record immediately. Neb. Rev. Stat. § 29-3523(3). Expungement also available for arrest records resulting from law enforcement error. Neb. Rev. Stat. § 29-3523(6).

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
NV	Sealing available after 2-to-10-year waiting period for felonies (depending on offense) and 1-7-year waiting period for misdemeanors, if no subsequent conviction during waiting period. Conviction may be denied (with law enforcement and firearms exceptions). No predicate effect. Nev. Rev. Stat. §§ 179.245, 179.285, 179.301. Presumption in favor of sealing if eligibility criteria met (unless "dishonorably discharged" from probation or parole).		See specialized authorities.	Sealing available for more minor offenses (misdemeanors & lesser felonies) under various statutes (e.g., first time drug offenders, Nev. Rev. Stat. § 453.3365; persons adjudged addict or alcoholic upon completion of treatment program, § 458.330(1),) Sealing available for prostitution-related offenses by victims of human trafficking. Nev. Rev. Stat. 179.247. S.B. 173 would expand eligible offenses (approved by Senate Judiciary April 11, 2019). Convictions for subsequently decriminalized conduct are presumptively sealed upon written request to the court. AB 192 (2019).	No authority to seal or expunge pardoned convictions.	Automatic sealing upon reaching age 21 for most offenses. Nev. Rev. Stat. § 62H.140. Earlier sealing upon petition and a hearing after a three-year waiting period. Id. Sealing for certain violent/sex offenses available at age 30. § 62H.150.	Defendant may petition court for sealing of non-conviction records at any time after completion of case, may deny arrest. Nev. Rev. Stat. §§ 179.255, 179.285. Presumption in favor of sealing if eligible.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
NH	Convictions for most non-violent offenses may be "annulled" after waiting periods of 1 to 10 yrs., if consistent with rehabilitation and public welfare. Public access to annulled records limited. However, record may be given predicate effect. N.H. Rev. Stat. § 651:5.		Courts may establish a drug court. N.H. Rev. Stat. Ann. § 490-G:2. Upon successful completion a person's case may be disposed of by the judge by withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration. A person sentenced by a drug court may, at least one year after successful completion of all programs and conditions imposed by the drug court, petition for annulment of the charges.	Convictions for prostitution and related offenses may be vacated upon petition, after a hearing, upon a finding, by clear and convincing evidence, that the defendant's participation in the offense was a direct result of being trafficked. N.H. Rev. Stat. § 633:7(VI)(b). Annulment available under § 651:5(II).	No authority to seal or expunge pardoned convictions.	Records closed and placed into an inactive file upon reaching age 21, with access remaining for law enforcement. N.H. Rev. Stat. Ann. § 169-B: 35.	Non-conviction records may also be "annulled" by court subject to "public welfare" standard that applies to convictions; if annulled , arrest deemed never to have occurred. N.H. Rev. Stat. Ann. § 651:5(II). Mandatory expungement upon a finding of a wrongful arrest. See AB 315 (2019) (adding new section to Ch. 179 of NRS).
NJ	Expungement for certain first "indictable offense" after 6 years, reduced effective June 2020 to five years. May deny record except in connection with judicial and law enforcement jobs. N.J. Stat. Ann. §§ 2C:52-2. Expungement of up to 4 disorderly persons offenses after 5 years (may be reduced to 3 years if "in public interest"). 10-year minimum waiting period if person also has a conviction for an indictable offense. May deny record except for judicial and law enforcement jobs. § 2C:52-2. 2019 law directed development of		Court may order expungement of upon successful discharge from a term of special probation under §§ 2C:35-14 if the person completes a substance abuse treatment program and is not convicted of an offense during the term of special probation. N.J. Stat. Ann. § 2C:35-14(m)(1)	Deferred adjudication and sealing for minor drug offenses after 6-month waiting period. § 2C:36A-1. Drug court records may be expunged under N.J. Stat. § 2C:35-14. Expungement of low-level 1st offender drug offense committed before age 21 after 1 year. § 2C:52-5. A person convicted of prostitution or a related offense may file a petition for vacatur at any time after conviction, and seek expungement	Pardon makes eligible for expungement. In re L.B., 848 A.2d 899 (N.J. Super. Ct. 2004). May deny record except in connection with judicial and law enforcement jobs.	Sealing available after 2 years if no subsequent conviction/adjudication, or immediately upon military enlistment. § 2A:4A-62. Expungement available after 2-10 year waiting period, depending on seriousness of offense. N.J. Stat. Ann. § 2C:52-4.1.	Arrest and other non-conviction data "must" be expunged at the time of disposition, with no petition required; episode deemed never to have occurred. N.J. Stat. Ann. § 2C:52-6. § 2C:52-1

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
	"clean slate" provision by which all but certain convictions will be automatically made "inaccessible to the public" ten years after completion of the sentence imposed for the most recent conviction. N.J. Stat. Ann. § 2A:168A-7 (Rehabilitated Convicted Offenders Act, as amended in 2007) provides that a court at the time of sentencing, or thereafter may issue a certificate evidencing rehabilitation "that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses."			of the record at the same time. N.J. Stat. Ann. § 2C:44-1.1(a). Automatic sealing and expungement of certain marijuana offenses. N.J. Stat. Ann. §§ 2C:52-5.1, 2C:52-6.1.			

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
NM	Effective 1/1/2020, broad authority to expunge (seal) both conviction and non-conviction records. N. M. Stat. § 29-3A-5. Waiting periods of between two and 10 years after completion of sentence (including payment of fines and fees) depending upon seriousness of crime, if no intervening convictions and restitution paid. Court must determine "justice will be served" by order to expunge, applying a multi-factor test. Uniform Collateral Consequences of Conviction Act provides for collection, notification, limited relief from mandatory consequences, and standards for discretionary disqualification. Gives effect to out-of-state relief.		Deferred sentencing (following plea resulting in conviction) available except in first degree felony cases; rights restored but conviction remains. Expungement available after 1/1/2020. Conviction has predicate effect, available only once. Does not qualify as "set-aside" for purposes of avoiding federal firearms restrictions. N.M. Stat. Ann. § 31-20-3. Conditional discharge without finding of guilt available once in lifetime except in first degree felony case. § 31-20-13. Record not expunged, but rights are not lost. Predicate effect. Automatic expungement of an offense involving cannabis that is no longer a crime or would have resulted in a lesser offense under the Cannabis Regulation Act. 2021 Special Session N.M. SB 2, Section 5.	In addition to the general conditional discharge authority under N.M. Stat. Ann. § 31-20-13, first time drug possession offenders may also receive a one-time conditional discharge under § 30-31-28(C). Expungement prior to 1/1/2020 only if the offender was 18 or younger at the time of commission, available to all after one year waiting period after that date. 30-31-28(D). A victim of human trafficking who has been "charged with crimes arising out of the actions of someone charged with human trafficking" may petition to have all records sealed, as long as the "charge or conviction is for a non-homicide crime." N.M. Stat. § 30-52-1.2.	No authority to seal or expunge pardoned convictions.	Juvenile records generally confidential. N.M. Stat. Ann. § 32A-2-32. Court must seal records relating to juvenile delinquency petitions after both reaching age 18 (with exceptions) and after 2 year waiting period if no subsequent felony or misdemeanor involving moral turpitude. § 32A-2-26. Treated as though proceeding never took place.	Effective 1/1/2020, non-conviction records may be expunged (sealed) upon petition after one-year waiting period, if no charges pending. No reference to court debt. See HB 370, not yet codified. Repeals administrative authority to expunge arrest records for certain misdemeanors. N.M. Stat. Ann. § 29-3-8.1(a).

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
NY	Sealing of convictions (other than sex offenses and class A felonies and violent felonies) after 10 years. Available for up to two offenses, only one of which may be a felony. N.Y. Crim. Proc. § 160.59. Record remains accessible to agencies authorized to conduct background checks. Conditional sealing of certain felony drug and other specified convictions for participants in judicial diversion program, or in drug treatment program sanctioned by prosecutor or court. N.Y. Crim. Proc. Law § 160.58 (2010) Sealing may also extend to up to three prior misdemeanors. Certificate of Relief from Disabilities, N.Y. Correct. Law §§ 700-706, or a Certificate of Good Conduct, §§ 703-a, 703-b, may be obtained to restore rights, at sentencing for first felony offenders not sentenced to prison, or thereafter for all from Parole Board.		"Adjournment in Contemplation of Dismissal" (ACD) is available for those charged with a misdemeanor. § 170.55. Upon successful completion of a period of probation, the record may be sealed under § 160.50 Deferred adjudication in drug cases includes automatic sealing upon completion unless DA demonstrates "that the interests of justice require otherwise." N.Y. Crim. Proc. Law §§ 160.58, 216.00 et seq.	At any time after the entry of a judgment for a conviction for prostitution, Vacate judgment for prostitution conviction by victim of human trafficking. N.Y. Crim. Proc. Law § 440.10. Automatic expungement of certain marijuana convictions. N.Y. Crim. Proc. Law § 160.50(3)(k).	No statutory authority to seal or expunge pardoned convictions. Youthful offender pardons: Cuomo program to pardon for crimes committed at age 16 or 17, limits access to criminal history by private employers, landlords, other companies.	Youthful offender adjudication records are generally unavailable to the public. N.Y. Crim. Proc. Law § 720.35(2). Delinquency adjudications for non-felony offenses may be sealed once reaching age 16 upon petition. NY CLS Family Ct Act § 375.2. Delinquency proceedings resolved in juvenile's favor are automatically sealed. § 375.1.	Sealing automatic upon termination of the action in favor of a person (including deferred adjudication), unless the district attorney demonstrates "that the interests of justice require otherwise." N.Y. Crim. Proc. Law §§ 160.50, 160.55.
NC	First minor nonviolent felonies & most non-violent misdemeanors eligible for expungement after waiting periods of 10 yrs (felony), 7 yrs (multiple misdemeanors), and 5 years (single misdemeanor). N.C. Gen. Stat.§ 15A-145.5 May deny for most purposes.		Deferred adjudication for first-time minor drug offenders. No conviction results if probation successfully completed. No predicate effect. Expungement of records only if under 22. N.C. Gen. Stat. §§ 90-96(a), 90-113.14(a). Deferred	Youthful offenses: First offender nonviolent felonies and misdemeanors committed under age 18 or 21 may be expunged (4 yrs waiting period for felonies, 2 years under 18 misdemeanors & under 21 alcohol	No statutory authority to seal or expunge pardoned convictions.	Juvenile records generally unavailable to the public. N.C. Gen. St. § 7B-3200(b). May be sealed by court order. § 7B-3200(c). Sealed records may be disclosed by court order. Expungement available upon reaching majority after an 18-month waiting period after	Where charges are dismissed or the person found not guilty, record automatically expunged effective in cases after Dec. 1, 2021. N.C. Gen. Stat. §15A-146(a4). Otherwise may petition the court for expungement, §

State	General authority (incl. some felonies)	Misdemeanors only	Juvenile records	Other specialized authorities	Pardoned convictions	Juvenile records	Note: expunction records
	See also authority to expunge youthful offenses (in specialized offense column) Minor felonies and misdemeanors eligible for judicial Certificate of Relief to remove collateral sanctions; Certificate may be considered favorably in determining whether to disqualify from public employment or licensure. N.C. Gen. Stat.§ 15A-173.2(d).		adjudication for cyberbullying offenses committed under age 18. May be expunged. N.C. Gen. Stat. §§ 15A-145.1, 14-458.1(c).	misdemeanors). N.C. Gen. Stat. §§ 15A-145, 15A-145.4. Certain gang offenses committed by first offender under age 18 may be expunged. N.C. Gen. Stat. §§ 15A-145.1, 14-458.1(c). expunction authorized for victims of human trafficking convicted of most nonviolent misdemeanors or low-level felonies "if the court finds that the person was coerced or deceived into committing the offense as a direct result of having been a trafficking victim." N.C. Gen. Stat. § 15A-145.9; in addition, first convictions for prostitution by victims of human trafficking may be vacated on petition, and expunged as a non-conviction record. §§ 15A-1416.1; 1415(b)(10)	demonstrating good behavior and no subsequent convictions.		15A-146(a). Prior felony eligibility deleted in 2020. Thereafter may deny record. Partial expunction available by petition for dismissed charges in a case involving multiple charges regardless of whether all charges were dismissed. § 15A-146(a1) (as amended by SB-445 (2017)). Other eligibility requirements apply.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
ND	Effective August 1, 2019, misdemeanors and felonies may be sealed upon petition, with waiting periods of three and five years, except that violent felonies must wait 10 years. Sex offenses ineligible. Minor felony convictions (less than one year prison) may be reduced to a misdemeanor after service of sentence. N.D. Cent. Code §§ 12.1-32-02(9)		Deferred imposition of sentence available per N.D. Cent. Code § 12.1-32-02, Record sealed. § 12.1-32-07.2(2). See also N.D. Sup. Ct. Admin. R. 41(5)(b)(9); (6)(a).	First offender marijuana possession may be sealed if not subsequently convicted within 2 years. N.D. Cent. Code 19-03.1-23(9). Prostitution convictions linked to being victim of human trafficking may be vacated and sealed. N.D. Cent. Code § 12.1-41-14.	No statutory authority to seal or expunge pardoned convictions.	Juvenile records generally unavailable to the public. N.D. Cent. Code, § 27-20-51(1); N.D.R. Juv. P. Rule 19(a). May petition for destruction at any time so long as no charges are pending. N.D.R. Juv. P. Rule 19(d). Good cause showing required. Destroyed record treated as if it never existed. N.D. Cent. Code § 27-20-54(2). Adjudications of prostitution, theft and forgery, and drug possession linked to being victim of human trafficking may be vacated and expunged. N.D. Cent. Code § 12.1-41-12, § 12.1-41-14.	There is no statute governing public access to non-conviction records. By court rule, the public may not access records of deferred or diverted dispositions that end in dismissal, and the court may limit public Internet access to non-conviction records upon petition if charges dismissed or defendant acquitted, and court finds the interest of justice will be served, N.D. Sup. Ct. Admin. R. 41(5)(b)(9); (6)(a). Balancing test applies.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
OH	Records sealed for one felony and/or up to 2 misdemeanors, after 1-3 yr. waiting period depending on offense if court finds rehabilitation. Certain serious offenses excluded. Applies to federal and out-of-state convictions. Also new 2018 authority to seal up to five nonviolent minor offenses. May deny conviction w/ some exceptions. Access in law enforcement and licensing contexts. Predicate offense. Ohio Rev, Code Ann. §§ 2953.31 et seq. Ohio judges may also issue a "certificate of qualification for employment" that removes automatic sanctions and allows consideration on the merits. Ohio Rev. Code Ann. § 2953.25.		Intervention in lieu of conviction available for certain non-serious first offenses; successful completion and abstinence results in not being treated as a conviction. Ohio Rev. Code Ann. §2951.041. Effective 2018, also available for victims of human trafficking. Sealing available under Ohio Rev. Code Ann. § 2953.52.	Expungement of convictions and non-conviction records for victims of human trafficking. Ohio Rev. Code Ann. §§ 2953.38, 2953.521.	Courts have no inherent authority to seal record of pardoned conviction. State v. Radcliff (Ohio, 2015).	Sealing of records for delinquency adjudications, except for murder or rape offenses, after 6 months from discharge. Ohio Rev. Code Ann. § 2151.356. Proceedings deemed never to have occurred.	Sealing for records that did not lead to a conviction, or in which conviction was overturned. Prosecutor may object and court applies balancing test: court must " [w]eigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records." Ohio Rev. Code Ann. §§ 2953.52. May deny for most purposes. 2953.55.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
OK	Single nonviolent felony eligible for expungement 5 years after completion of sentence if no charges pending and no prior felonies, or misdemeanor in previous 7 years. Two non-violent convictions may be expunged after 10 years. 2 Okla. Stat. Ann. §§ 18(A)(12), (13). See also pardoned offenses. Misdemeanors eligible for expungement after 5 years if no charges pending and no prior felonies. 22 Okla. Stat. Ann. § 18(A)(11). Misdemeanor with fine under $501 and no prison or suspended sentence may be expunged immediately. 22 Okla. Stat. Ann. § 18(A)(10).		Deferred adjudication and probation leading to expungement (sealing) for misdemeanants and minor felony offenders. 22 Okla. Stat. Ann. § 991c. Additinal authority under id. § 18(8), offering expungement to misdos after one year, felonies after 10. First drug offenders eligible for deferred sentencing and expungement under 63 Okla. Stat. Ann. § 2-410(A). Sealed record may be ordered "obliterated or destroyed" after an additional 10 years.	Deferred sentencing and probation for first-time drug offenders eligible for deferred sentencing leading to automatic expungement. 63 Okla. Stat. Ann. § 2-410(A). Conditions of probation may include participation in a treatment program. Id. Expungement of prostitution-related convictions by victims of human trafficking. 22 Okla. Stat. Ann. § 19c.	Pardoned convictions may be expunged with no waiting period. 22 Okla. Stat. Ann. §§ 18(A)(4), (6).	Expungement available upon reaching age 18 if no subsequent adult arrest or pending charges. Record sealed, and destroyed after 10 years if not unsealed. May deny existence of record. Okla. Stat. tit. 10A, § 2-6-109.	Expungement (sealing) of records of acquittals, reversals, innocence, where charges never filed. 22 Okla. Stat. Ann. § 18(A)(1)-(5), (7). Sealing also authorized where charges dismissed under § 18(A)(7), if no prior felonies and time has expired for recharging. Balancing test applies.
OR	Less serious non-violent offenses may be "set aside" after waiting period of 1 to 7 years. Order must issue unless court finds it would not be in the interest of public safety. Record sealed from public view. May deny conviction, but counts as predicate. Or. Rev. Stat. § 137.225.		Or. Rev. Stat. § 475.245 provides for deferred adjudication in drug cases. First misdemeanor probation without judgment. Or. Rev. Stat. § 137.533.	Courts may vacate state convictions for prostitution if the court finds after a hearing that the person has proven by clear and convincing evidence that the person was the victim of sex trafficking. Or. Rev. Stat. Ann. § 137.221.	As of 2019, pardoned convictions may be sealed.	Expungement and sealing eligibility for most offenses upon reaching majority. Or. Rev. Stat. § 419A.262(2). 5-year waiting period with no subsequent felony or Class A misdemeanor convictions. § 419A.262(2)(a)-(e). Set-aside available for some offenses not eligible for expungement. § 419C.610.	Arrest records may be set aside and sealed on application after 60 days year if no charges filed, or at any time after an acquittal or a dismissal of the charge, Or. Rev. Stat. § 137.225(1)(b). Same procedures as apply to set-aside of convictions.
PA	No general authority for limiting access to records of felony convictions.	Sealing for 2nd & 3rd degree misdemeanors and ungraded offenses under "order of limited access" after 10 crime-free years. Extended in 2018 to some first degree	Expungement for pre-plea probation without verdict (ARD) for non-violent first time drug offenses. 35 Pa. Cons. Stat. §§ 780-117, 780-119. Expungement	Expungement with complete destruction of records available for those over 70 if no arrests for 10 yrs, and 3 yrs after	Pardon basis for judicial expungement. Commonwealth v. C.S., 534 A.2d 1053 (Pa. 1987).	Upon reaching majority, expungement with complete destruction of records available after a five-year waiting period for delinquency	Expungement is available from the court for non-conviction records where no disposition is indicated after 18

State	General authority (incl. some felonies)	Other specific authorities	Deferred adjudications	Pardoned convictions	Juvenile records	Non-conviction records
		misdemeanors. Records unavailable to the public, and as of 2018 no longer available to state agencies, including licensing boards. 18 Pa.C.S. § 9122.1. All financial obligations must be paid (2018). Expungement available for cases disposed of through ARD probation, § 9122(b.1). and for "summary" offenses after 5 yrs. 18 Pa. Cons. Stat. § 9122(b.1).	provided in cases of "probation without verdict" for nonviolent drug dependent first time offenders. 35 P.S. § 780-117; see also § 780-119.	death. 18 Pa. Cons. Stat. § 9122. 234 Pa. Code chs. 4, 7. Expungement available for underage drinking. 234 Pa. Code chs. 4, 7.		adjudications. 18 Pa. Cons. Stat. Ann. § 9123.	months, or otherwise where the court orders it, including in cases handled pursuant to ARD (pre-plea diversion) where the defendant successfully completes the terms of ARD probation (except for certain sex offenses). 18 Pa. Cons. Stat. §§ 9122(a), (b) and (b.1). May not be disclosed to public after three years with no subsequent conviction. 18 Cons. Stat. § 9121(b)(2)(i). Partial expungement available for non-conviction records where no disposition indicated after 18 months, and for pre-plea diversion cases after successful completion of probation). 18 Pa. Cons. Stat. § 9122. Balancing test applies. Comm. v. Armstrong, 434 A.2d 1205 (Pa. 1981). Partial expungement of charges nol prossed also available. Comm. v. Hanna, 964 A.2d 923 (Pa. Super. 2009).

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
PR	Broad expungement authority for all offenses, including violent felonies, after waiting period of six months to 5 years (felony offenders also must provide DNA sample), if applicant demonstrates "good moral reputation in the community." P.R. Laws Ann. tit. 34, §§ 1725a-1 et seq.		Certificate of rehabilitation available to persons who have not completed prison term if deemed totally rehabilitated, psychological recommendation required, court orders conviction not be included in criminal record certificate but may be used for recidivism purposes. P.R. Laws Ann. tit. 4, § 1611 et seq.		No statutory authority to seal or expunge pardoned convictions.		Revoked verdicts may be expunged. P.R. Laws. Tit. 34, § 1725b
RI	Expungement for first felony offenses (ex. specified violent offenses) and up to 6 misdemeanors 5–10 years after completion of sentence. Allows denial except for certain jobs and licenses. Predicate offense. R.I. Gen. Laws §§ 12-1.3-1 et seq. "Certificate of recovery & re-entry" if no more than one non-violent felony conviction relieves petitioner of some collateral consequences. R.I. Gen. Laws § 13-8.2-1.		Expungement available immediately upon completion of deferred sentence. R.I. Gen. Laws §§ 12-19-19(c); R.I. Gen. Laws §§ 12-1.3-2(e). "Filing" complaints must be sealed upon successful completion of one-year probation, three years for domestic violence cases. R.I. Gen. Laws § 12-10-12.	2018 authority authorizes expungement of records "related to an offense that has been decriminalized subsequent to the date of their conviction." R.I. Gen. Laws § 12-1.3-2(g)	No statutory authority to seal or expunge pardoned convictions.	Automatic sealing, with limited exceptions, upon final disposition. R.I. Gen. Laws §§ 14-1-6.1, 14-1-64(b). Juvenile adjudications may be used for sentencing purposes in adult court and does constitute a conviction for impeachment purposes.	Sealing for persons acquitted or "otherwise exonerated" (including charges dismissed), if no prior felony convictions (except in cases of acquittal). R.I. Gen. Laws § 12-1-12.1.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
SC	Youthful Offender Act (2010) provides individuals between 17 and 25 convicted of certain non-violent misdemeanors and minor felonies may be sentenced to probation and/or treatment. S.C. Code Ann. § 24-19-50. Expungement (destruction of record) for first offenders sentenced after five conviction-free years. S.C. Code Ann. § 22-5-920. YOA made retroactive in 2018. Records of first offense misdemeanors (except traffic offenses) may be expunged (destroyed) if no other conviction within 3 years (5 years for domestic violence cases). S.C. Code Ann. § 22-5-910(A).		Deferred adjudication for first-time minor drug offenders. No conviction results and record expunged. S.C. Code Ann. § 44-53-450. Non-violent first offenders eligible for pretrial intervention, non-criminal disposition, and expungement. §§ 17-22-10 et seq. No predicate effect. Certain non-violent offenses committed between 17 & 25 years of age resulting in probation & treatment may be expunged after 5 years if no subsequent conviction. § 22-5-920.	Expungement for first fraudulent check offense; first offense resulting in alcohol education program; and first failure to stop for law enforcement signal. S,C, Code Ann. §§ 34-11-90(e), 17-22-530(A), 56-5-750(F). Victims of human trafficking convicted of prostitution or trafficking may move the court to vacate the conviction and expunge the record. S.C. Code Ann. § 16-3-2020.	No statutory authority to seal or expunge pardoned convictions.	Expungement available upon majority for status and nonviolent offenses, with certain exceptions for serious crimes and repeat offenders. S.C. Code Ann. § 63-19-2050(A).	A person may petition for expungement if charges dismissed or person found not guilty; all records "must be destroyed" except that law enforcement agencies may retain record for 3 1/2 years. S.C. Code Ann. § 17-1-40(B)(1). No fee. Upon acquittal, dismissal, or nolle prosequi in Magistrate or Municipal Court after June 2, 2011, court required to automatically expunge. § 17-22-950.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
SD	No general authority to seal or expunge adult felony convictions.	Effective 2016, arrest and conviction for Class 2 misdemeanors, municipal violations, petty offenses automatically removed from public record after 10 years. S.D. Codified Laws § 23A-3-34. Director of the Bureau of Criminal Statistics may authorize destruction of records of misdemeanors ten years after discharge. S.D. Codified Laws § 23-6-8.1.	Suspended imposition of sentence for first offenders charged with non-serious felony and misdemeanor offenses; results in no conviction, records sealed. S.D. Codified Laws §§ 23A-27-12.2 through 17.	Director of the Bureau of Criminal Statistics may authorize destruction of records of Director of the Bureau of Criminal Statistics may authorize destruction of records of persons seventy-five years of age or older who have been crime-free for at least ten years, and "incidents that are no longer considered crimes." S.D. Codified Laws § 23-6-8.1.	Pardon seals record automatically where statutory process followed. S.D. Codified Laws § 24-14-11	Sealing upon petition after a waiting period and finding of no subsequent convictions and rehabilitation. S.D. Codified Laws § 26-7A-115.	Records may be "expunged" (sealed) upon application after one year if no prosecution; at any time if charges dismissed, if prosecutor consents; or after acquittal. S.D. Codified Laws § 23A-3-27. Court must find that the ends of justice and the best interest of the public as well as the defendant or the arrested person will be served." § 23A-3-30. Seals but does not destroy record.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
TN	Certain less serious non-violent felonies and misdemeanors eligible for expungement 5-to-10 years after discharge, if no more than 2 convictions, both of which must be eligible and only one a felony; Record removed from court files but remains available to law enforcement. Tenn. Code Ann. § 40-32-101(g), (k). Judicial restoration of rights and "certificate of employability" available to all residents, wherever the conviction obtained. §§ 40-29-101, 40-29-107. Certificate limits licensing denials, protects against negligent hiring liability. Tenn. Code Ann. § 40-29-107. (See Chart #5)		Deferred adjudication for misdemeanor/low-level felony if no prior felony/class A misdemeanor resulting in confinement; results in no conviction, no predicate effect (except subsequent related civil actions), records expunged. Tenn. Code Ann. §§ 40-35-313, 40-32-101(b). Misdemeanants and Class D felons who successfully complete diversion probation eligible for expungement under Tenn. Code Ann. § 40-15-102 to 40-15-106.		Pardon may serve as grounds for expungement and thus restoration of firearms privileges. See Tenn. Code Ann. § 40-32-101(h).	Effective July 2017, mandatory expungement of "misdemeanor"-only records upon petition after one-year waiting period. Tenn. Code Ann. § 37-1-153(f). Otherwise, discretionary expungement available at age 17 if one year has passed since most recent adjudication and certain criteria are met. Tenn. Code Ann. § 37-153(f). Records destroyed. Juveniles convicted of prostitution as a result of being a victim of human trafficking may be expunged on petition, § 37-1-153.	The court "shall" order "destruction" of "public records" in case of acquittal, or where charges have been dismissed. Tenn. Code Ann. § 40-32-101(a), (b). Conviction records may be redacted to expunge charges not resulting in conviction. See State v. L.W., 350 S.W.3d 911 (2011)

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
TX	No general authority to seal or expunge adult felony convictions.	First-offender misdemeanants may petition for "order of non-disclosure" (OND) after two years. No waiting period applies for fine-only misdemeanors. See Tex. Gov't Code §§ 411.073, 411.0735. Order of nondisclosure limits public access, but records may be disclosed to law enforcement and certain licensing purposes.	"Deferred adjudication community supervision" available (certain offenses, such as sex and violent offenses, excluded). Results in dismissal of charges and set aside of conviction. ex. Code Crim. Proc. art. 42A.111(c). For first non-violent misdemeanors, court must issue "order of non-disclosure" (OND) upon discharge. Tex. Gov't Code § 411.072; Tex. Code Crim. Proc. art. 42.12. OND otherwise discretionary upon petition. Waiting period may apply (2 years for serious misdemeanors; 5 years for felonies). Tex. Gov't Code § 411.0725.	First-offender DWI convictions eligible for "order of nondisclosure" (OND). 2-5 year waiting period. Tex. Gov't Code §§ 411.0731, 411.0736. OND available for veterans discharged from treatment court , § 411.0727, for first DWI, § 411.0731. OND available for victims of human trafficking convicted of certain marijuana or theft offenses, prostitution, or Class A misdemeanor solicitation, and placed on community supervision, and whose conviction is subsequently set aside, Tex. Gov't Code § 411.0728. Only one OND available.	Pardon entitles recipient to judicial expungement. Tex. Code Crim. Proc. Ann. art. 55.01(a).	Automatic sealing at age 19 for misdemeanor juvenile adjudications. Tex. Fam. Code § 58.253(b). Discretionary sealing upon petition at age 18 or two years after discharge. § 58.256. Treated as if never occurred and may not be used against person in any manner. §§ 58.261(b), 58.258(c). Juvenile court, upon a finding that the allegations are not true, required to immediately seal. § 58.2551.	A person is "entitled to" have all records expunged where an arrest does not result in a conviction, immediately in cases of acquittal or where limitations period has run, and otherwise after a graduated waiting period (180 days to three years) which may be waived by the prosecutor. Tex. Code Crim. Proc. Ann. art. 55.01(a), art. 55.01(2)(B).

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
UT	All except serious violent offenses may be "expunged" after 3-10 yr waiting period. Order must issue unless court finds it would be "contrary to public interest." May deny conviction but otherwise of uncertain effect. Predicate offense. Utah Code Ann. §§ 77-40-101 et seq. Utah's 2019 clean slate law provides for an automated expungement process (effective May 1, 2020) for certain infraction and misdemeanor records. §§ 77-40-114, -115.		Plea in abeyance agreements may result in expungement upon successful completion probation. Utah Code Ann. §77-2a-1 et sq.	Expungement available on petition for a variety of offenses committed while petitioner was result of coercion (including, theft. drug possession, possession of forged documents, and prostitution). Utah Code Ann. §§ 78B-9-104(1)(g), 78B-9-108(2)(b).	Pardon entitles person to expungement. Utah Code Ann. § 77-40-105(5).	Expungement after a one-year waiting period upon reaching majority and filing a petition with the court. Record available only to court thereafter. Utah Code Ann.§§ 78A-6-1105(1)(a)(i) & (ii), (e). In 2019, a authority was enacted, providing for vacatur of juvenile records related to prostitution and other offenses, if subject to "force, fraud, or coercion." See HB 108.	Person arrested may, at least 30 days after arrest, petition for expungement if no charges filed or charges dismissed. No waiting period if acquitted. Utah Code Ann. 77-40-104. Utah's 2019 clean slate law provides for an automated expungement process (effective May 1, 2020) for acquittals, dismissals with prejudice, and certain dismissals due to a plea in abeyance agreement. §§ 77-40-114, -115.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
VT	Non-violent misdemeanors and 3 minor felonies (4 effective July 2018) eligible for expungement after 5 yrs if no further conviction, or for sealing if "better serves the interest of justice." If convicted of misdemeanor during waiting period, 10 year minimum waiting period with no felony conviction in previous 7 yrs, no misdemeanor in previous 5 years. Vt. Stat. Ann. tit. 13, §§ 7601 et seq. Primary difference in two forms of relief is that sealed conviction may be used as predicate; in both cases same official response "no record exists." Upon application, court must seal most convictions for crimes committed prior to age 21 two years after final discharge, if "the person's rehabilitation has been attained to the satisfaction of the court." Vt. Stat. Ann. tit. 33, §§ 5119(g), 5287(d). Convictions for decriminalized conduct immediately eligible for expungement. § 7602(a)(1)(B). Courts may relieve collateral sanctions at and after sentencing for all but the most serious offenders. 13 V.S.A. § 8001 et seq. (Vermont Uniform Collateral Consequences of Conviction Act.)	Sealing available under first offender diversion program 2 years after completion of program. Vt. Stat. Ann. tit. 13, § 164.	Deferred sentencing may result in expungement of record, may deny conviction. No predicate effect. Vt. Stat. Ann. tit. 13, § 7041. The only crime specifically excluded by statute is aggravated sexual assault of a child, see § 7041(c), though many are excluded as a matter of policy.	A person convicted of all but the most serious violent crimes may file a motion to vacate the conviction if it was obtained as a result of the person having been a victim of human trafficking, and if granted the record will be expunged. Vt. Stat. Ann. tit. 13 §§ 2658(b), (d).	No statutory authority to seal or expunge pardoned convictions.	Records generally unavailable to the public. Vt. Stat. Ann. tit. 33, § 5117. Sealing 2 yrs after discharge unless additional charges pending & rehabilitation not attained. § 5119(a). Expungement of diversion cases 2 years after completion, if restitution has been paid, the person has no subsequent convictions or pending proceedings, and rehabilitation attained. § 7601.	Court "shall" grant expungement or sealing of non-conviction records. Vt. Stat. Ann. tit. 13, § 7603. Law expanded in 2018 to include all types of charges. Sealing is an alternative only where crime was committed after age 19.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
VI	No general authority to seal or expunge adult felony convictions.		Deferred adjudication and expungement for non-violent first offenders, and for youthful drug possession. V.I. Code Ann. tit. 19, § 607(b)(1); tit. 5, § 3711(c). Probation and expungement for youthful offenders after 5 yr waiting period. V.I. Code Ann. tit. 5, § 3712.	Expungement of misdemeanor convictions upon petition to court. V.I. Code Ann. tit. 5, § 3734.	No statutory authority to seal or expunge pardoned convictions.	Court may vacate and seal juvenile records 2 years after final discharge if no intervening convictions or pending charges. 5 V.I.C. § 2531. Proceedings treated as if they never occurred. Subsequent adjudication or conviction nullifies sealing order.	Records of arrest that do not result in conviction "must be expunged" where case dismissed, acquittal, nolle prossed. Non-conviction records may be expunged by petition in most other cases. V.I. Code Ann. tit. 5, §§ 3732-3733.
VA	2021 law authorizes petition-based sealing of some felony convictions and automatic sealing of others, effective in 2025. §§19.2-392.6 through 392.8, 392.12. Until then, no general authority to seal or expunge adult felony convictions.	See column #1.	Deferred dispositions for any offense with agreement of court and prosecutor. Va. Code Ann. § 19.2-298.02. Deferred dispositions may be authorized by the court for certain first time drug offenses, misdemeanor property offenses, and offenses by persons with autism or intellectual disabilities. Va. Code Ann. §§ 18.2-251, 19.2-303.2, § 19.2-303.6. No sealing or expungement of deferred dispositions until 2021 law becomes effective in 2025.	Some marijuana convictions and non-convictions expunged automatically under 2021 law, effective in 2025.	Absolute pardon (granted only for innocence) entitles person to judicial expungement. Simple pardon (for forgiveness) does not.	Records generally unavailable to the public. Automatic destruction of records annually if juvenile is at least age 19 and five years have passed since last hearing in any juvenile case, with several exceptions. Va. Code Ann. §§ 16.1-306(A) & 307.	Court "shall" expunge records on petition after acquittals or where charges nolle prossed or dismissed (excepted deferred dispositions with a finding of facts sufficient for guilt). Court must find "manifest injustice" after hearing, except where petition charged with misdemeanor has no prior record. Va. Code Ann. § 19.2-392.2. Record may be denied and employers cannot inquire. § 19.2-392.4. Automatic sealing of non-conviction records under 2021 law, effective in 2025.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
WA	All but most serious felonies and misdemeanors may be "vacated" after waiting period of 3 to 10 yrs, depending on offense. Releases "all penalties and disabilities resulting from the offense," and limits access to agency records (courts have very limited authority to seal their own records). Subject may deny conviction. Limited predicate effect. Wash. Rev. Code § 9.94A.640. Vacated record may be sealed under General Court Rule 15 if the court determines the need for privacy or safety outweighs the public interest in access. Certificate of Restoration of Opportunity after 1 to 5 years. Relieves licensing bars; provides protection from negligent hiring/renting. §§ 9.97.010, .020		Court may suspend or defer sentence and place defendant on probation; may petition to have record vacated and sealed after probation expired. Wash. Rev. Code §§ 3.66.067, 9.95.200.	Victims of sexual trafficking or other sexual abuse may apply to the sentencing court for vacation of the applicant's record of conviction for B and C felonies or misdemeanors. Wash. Rev. Code §§ 9.94A.640(3), 9.96.060(3).	Pardon vacates conviction automatically, prohibits disclosure of administrative record, and may be grounds for sealing of court records. Restores firearms rights. Wash. Rev. Code § 9.94A.030 (11)(b).	Sealing automatic after age 18 (or after release from confinement or supervision) for most offenses if terms of disposition satisfied, unless state objects. Wash. Rev. Code § 13.50.260. Otherwise, available by court order for most offenses after a crime-free waiting period of two to five years depending on the seriousness of the offense. Id.	Courts have very limited authority to seal their own records. Non-conviction records in criminal justice agency files may be sealed administratively two years after disposition favorable to defendant. Wash. Rev. Code § 10.97.060. Record may be sealed under General Court Rule 15 if the court determines the need for privacy or safety outweighs the public interest in access.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
WV	Effective June 2019, qualifying misdemeanors and non-violent felonies may be expunged after waiting period ranging from one to five years. W. Va Code § 61-11-26		Post-plea deferred adjudication in felony or misdemeanor cases. W. Va. Code §61-11-22a. Upon completion, defendant shall be permitted to withdraw his or her plea of guilty and the matter dismissed or, as may be agreed upon by the court and the parties, enter a plea of guilty or no contest to a lesser offense. Id. §61-11-22a(c).Records in cases where the charges were dismissed may be expunged upon petition filed no sooner than 60 days after disposition. Records in DUI cases are ineligible, and a person who has a prior felony conviction is ineligible for relief. See W. Va. Code §§ 61-11-25(a), (b).	An individual convicted of prostitution as a direct result of being a victim of human trafficking, may apply by petition to the circuit court in the county of conviction to vacate the conviction and expunge the record of conviction. W. Va. Code § 61-14-9.	Judicial expungement 1 yr. after pardon and 5 years after discharge if good cause (certain exceptions for violent crimes); may not be considered for licensing and teaching. W. Va. Code § 5-1-16a.	Automatic sealing after later of age 19 or one year after termination of jurisdiction unless case is transferred to adult court. W. Va. Code § 49-5-18(a), (f). Treated as though proceedings never occurred.	Court may expunge records (except those held by the DMV) of acquittals and dismissals, upon petition after a hearing, if person has not previously been convicted of a felony. W.Va. Code § 61-11-25.

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
WI	In sentencing youthful offenders (under 25), court may order misdemeanor and minor first felony convictions expunged upon successful completion of sentence. Wis. Stat. § 973.015. Court records destroyed, but prosecutor may ask that offense conduct be considered in context of new crime. See State v. Leitner, 646 N.W.2d 341, 352 (Wis. 2002). Reliance on expunged conviction to deny employment violates state fair employment law. Staten v. Holton Manor (LIRC, 2018).		Deferred prosecution in domestic violence & some sex offense cases authorized by Wis. Stat. § 971.37, but no provision for expungement of records.	Wis. Stat. § 973.015(2m)(a).A person convicted or adjudicated delinquent for prostitution may move the court to vacate the conviction and expunge the record if the person was a victim of trafficking for the purposes of a commercial sex act, and the person committed the violation as a result of being a victim of trafficking. The court must determine that "the person will benefit and society will not be harmed by a disposition."	No statutory authority to seal or expunge pardoned convictions.	Expungement upon petition after reaching age 17 and a finding that sentencing requirements have been completed and expungement will benefit offender without harming society. Wis. Stat. § 938.355(4m).	Non-conviction records are expungeable under a statute authorizing return of fingerprints if a person is released without charge or "cleared of the offense through court proceedings." Wis. Stat. § 165.84(1).

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
WY	Certain less serious felony and misdemeanor convictions may be expunged 10 years after sentence expires if no other felony convictions, and if court finds applicant is not a danger. Violent and sexual offenses, and those involving firearms, ineligible. Wyo. Stat. Ann. §§ 7-13-1501, 1502. Records sealed but not destroyed. §§ 7-13-1401(j)(1). .		Deferred sentencing for first felony offenders and misdemeanants (certain serious crimes excluded); avoids conviction and expungement authorized. Wyo. Stat. Ann. §§ 7-13-301 et seq., 7-13-1401.	Vacatur for victims of human trafficking: At any time after the entry of a conviction for prostitution, the court in which it was entered may vacate the conviction if the defendant's participation in the offense is found to have been the result of having been a victim. Wyo. Stat. Ann. § 6-2-708. Presumably the record becomes a non-conviction record and may then be expunged. Conviction for the purchase, possession, or use of nicotine products by persons under 21, upon payment of fine "shall be expunged by operation of law... six (6) months after the entry of conviction." Wyo. Stat. Ann. §§ 14-3-304, -305.	No statutory authority to seal or expunge pardoned convictions.	Juvenile records are generally unavailable to the public. Wyo. Stat. § 14-6-203. May apply for expungement (including certain municipal and circuit court cases involving minors) after reaching majority and presenting evidence of rehabilitation and no subsequent felonies. Violent felonies ineligible. § 14-6-241(a). Proceedings deemed never to have occurred. Effective July 1, 2019, expunged juvenile records (and certain municipal and circuit court records involving minors) are destroyed.	Courts "shall" expunge eligible non-conviction records 180 days after dismissal of proceedings. Wyo. Stat. Ann. § 7-13-1401. Records sealed but not destroyed. Wyo. Stat. Ann. §§ 7-13-1501

State	General authority (incl. some felonies)	Misdemeanors only	Deferred adjudication	Other specialized authorities	Pardoned convictions	Juvenile records	Non-conviction records
Fed	No general authority to seal or expunge adult felony convictions.		Deferred adjudication for first misdemeanor drug possession under 18 U.S.C. § 3607(a). See also id. at (c) (expungement available if under 21 years old at time of offense).		No statutory authority to seal or expunge pardoned convictions.		Some federal courts assert inherent ancillary authority to expunge if arrest or conviction is invalid or subject of clerical error. United States v. Sumner, 226 F.3d 1005 (9th Cir. 2000). Also DNA expunged if conviction overturned. 10 U.S.C. § 1565(e); 42 U.S.C. § 14132(d).

NCSL

Record Clearing by Offense

8/14/2020

As summarized in the Criminal Record Clearing Terminology Policy Snapshot, states use a variety of language to describe record clearance, including annulment, destruction, dismissal, erasure, expungement, sealing, set-aside and vacatur. Some states may use the same language, but the terms have drastically different meanings. This chart contains statutory information and prohibitions related to clearing adult conviction records based on the type of offenses including felonies, misdemeanors, offenses related to controlled substances and sexually based offenses. Information in the chart depicts the language and terminology from that state statute.

*This chart does not include information on the possible expungement of criminal records for victims of human trafficking. For that information please go here.

The box allows you to conduct a full text search or type the state name.

Type state name

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Alabama § 15-27-1 et seq.	Expungement is only available for certain offenses that have been dismissed by the court; convictions are not expungable.			
Alaska §12.62180	Adult record sealing only allowed in very limited circumstances: "A person may submit a written request to the head of the agency responsible for maintaining past conviction asking to seal such information about the person that, beyond a reasonable doubt, resulted from mistaken identity or false accusation."			
Arizona §13-905	Cannot expunge, erase or seal an arrest or charge on an Arizona criminal record. However, an individual may be able to have a felony or a misdemeanor conviction set aside. It relieves collateral consequences but does not seal record. Conviction must still be disclosed. Set asides are not applicable for: dangerous offenses; an offense with a finding of sexual motivation; a felony offense in which the victim is under 15; and an offense for driving on a suspended, revoked or canceled license.			Cannot set aside sex offenses.
Arkansas § 16-90-1401 et seq.	Types of felonies eligible for sealing: Class C and D felonies; unclassified felonies; and certain drug convictions.	If all conditions and court orders pertaining to offense have been met, petitioner must wait 60 days to petition for sealing. There is a five-year waiting period for certain offenses including: Class A negligent homicide; battery in the third degree; indecent exposure, public sexual indecency; sexual assault in the fourth degree; domestic battery in the third degree.	Special procedures exist for sealing a controlled substance possession. May petition for sealing if: prior to sentencing, a court-appointed officer determined petitioners' eligibility for residential drug treatment; court placed petitioner on probation with conditions to remain drug-free until completion and petitioner completed all terms and conditions of probation.	Can petition to seal after five years have elapsed since the completion of the person's sentence for the following convictions: indecent exposure; public sexual indecency; sexual assault in the fourth degree; domestic battering in the third degree. Felony sex offenses cannot be sealed. If charges are discharged or dismissed, a person may seek to have the criminal record sealed unless the person has previously been convicted of a sexual offense and the victim was under the age of 18.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
California Cal Penal Code §1203.4, Cal. Health & Safety § 11361.9, Cal. Penal Code § 1000, et seq., Cal. Health & Safety § 11361.5	Felonies that qualify for expungement are those which could have otherwise been charged as misdemeanors, or felonies which are able to be reduced.	Dismissal of charges or set-aside for probationers, misdemeanants and minor felony offenders sentenced to county jail.	Automatic purging of possession offenses after two years.	Convictions of certain sex offenses that involve children are not eligible for expungement.
Colorado § 24-72-701 et seq.	Sealing for misdemeanors and all but most serious felonies, subject to variable waiting period from one to five years.	Can petition for sealing unless: Class 1 or 2 misdemeanor traffic offense; Class A or B traffic infraction; crimes involving a commercial driver's license; domestic violence convictions; sex crimes.	Sealing: drug petty offense may file motion one year after the final disposition; any drug misdemeanor – the motion may be filed two years after the final disposition; level 3 or level 4 drug felony may be filed three years after the final disposition. Not sealable: class 1, 2 or 3 felony or a level 1 drug felony pursuant to any section of title 18 unless knocked down to misdemeanor.	Felony offenses involving unlawful sexual behavior shall not be expunged.
Connecticut § 54-142 et seq.	Limited circumstances for adult erasure. Record may be erased if: charged with a crime but found not guilty; case was dismissed; charges were dropped at least 13 months ago; or case was continued at least 13 months ago and there has been no prosecution or other disposition of the matter.		§ 54-142d authorizes erasure of convictions and other criminal records in cases where the charges resulting in conviction have been decriminalized.	Cannot erase sex offenses.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Delaware 11 Del. C. § 4371 et seq.	Can petition for discretionary expungement if convicted of a felony and at least seven years have passed with certain exceptions.	Mandatory expungement upon application through the State Bureau of Investigation when the person was convicted of one or more misdemeanors relating to the same case; five years have passed since the date of conviction; and the person has no prior or subsequent convictions. Discretionary expungement for misdemeanor with statutory exceptions if at least three years have passed since the date of conviction or the date of release from incarceration, whichever is later. If it is a misdemeanor that falls into the statutory exception, can still petition for expungement after at least seven years have passed.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	No automatic expungement for sex related offenses. A person is not eligible for an expungement if conviction for incest, unlawful sexual contact in the third degree or unlawfully dealing with a child. No felony convictions involving physical or sexual assault crimes are eligible for expungement.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
District of Columbia § 16-801 et seq.	Sealing only available by petition for felony failure to appear convictions after eight years of completion of sentence and no disqualifying arrests or convictions. Must wait eight years after the completion of sentence to petition for sealing and may not have a disqualifying arrest or conviction.	Sealing available by petition after eight years of completion of sentence and no disqualifying arrests or convictions. Examples of ineligible offenses include: interpersonal violence offenses; driving while intoxicated; a misdemeanor that requires sex offender registration; failure to report child abuse, etc.	Only misdemeanor-controlled substance charges may be sealed. Sealing of public records for decriminalized or legalized offenses is available.	No sealing for a misdemeanor offense for which sex offender registration is required, misdemeanor sexual abuse and violating the sex offender registration act.
Florida § 943.059	A person is ineligible for expungement of his or her record if they have been convicted of a felony or any of the statutorily listed misdemeanor offenses. § 943.059(1)(A)(B) Records of "withheld" cases (deferred adjudication) may be sealed if the charges are otherwise eligible, and the person has no prior convictions or expungements.		Offenses ineligible for expungement include: drug trafficking; manufacturing a controlled substance.	Offenses ineligible for expungement include: sexual misconduct; luring or enticing a child; human trafficking; any violation that requires sex offender registration; sexual performance by a child; voyeurism; prostitution of a person less than 18.
Georgia § 42-8-62.1	No authority to seal or expunge most adult convictions, but a statute to limit public access to "first offender" records, including sealing court records under authority of § 35-3-37. The record would be unsealed if first offender status is revoked.			
Hawaii § 706-620 et seq.	Typically, charges with guilty dispositions not expungable except in the following circumstances: Operating a vehicle after consuming a measurable amount of alcohol (persons under the age of 21); sentencing for first-time drug offenders; first-time drug offenders prior to 2004; and sentencing for first-time property offender. Additionally, convictions for prostitution and related offenses may be vacated and sealed by the court after a three-year waiting period if there are no subsequent convictions. Deferred adjudication is available for nonviolent first-time offenses, and the record may be expunged after one year upon if the person applies for expungement.			

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Idaho § 67-3014 et seq.	No statutory authority to seal or expunge adult convictions. § 67-3004 authorizes sealing of non-conviction records upon request to the state police after one year.			
Illinois 20 ILCS 2630/5.2	Records that may be expunged are described in 20 ILCS 2630/5.2(b) and include arrests that resulted in no charges, acquittal or dismissal; and convictions "set aside on direct review or on collateral attack if the court determines by clear and convincing evidence that the petitioner was factually innocent." Limited records may be sealed pursuant to 20 ILCS 2630/5.2(C)(2).			
Indiana § 35-38-9-0.5 et seq.	May petition for expungement eight years after the date of conviction for a Class 6 Felony and other felonies that aren't in the list of "non-expungable." Ineligible for expungement: an elected official convicted of an offense while serving the official's term or as a candidate for public office; a felony that resulted in serious bodily injury to another person; a felony that resulted in death to another person; a person convicted of official misconduct; a felony offense that involved the unlawful use of a deadly weapon, etc.	A person may petition a court to expunge all conviction records five years after the date of conviction for a misdemeanor or a felony reduced to a misdemeanor.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	No expungement for a sex or violent offenses.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Iowa § 901C.1 et seq.	There is no statutory authority to expunge or seal felony convictions.	All misdemeanors (exception for those specifically excluded in statute) if more than eight years have passed since the date of the conviction; the defendant has no pending criminal charges; defendant has not previously been granted two deferred judgments; defendant has paid all court costs.	Substance-related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	No expungement for convictions of sexually based offenses.
Kansas § 21-6614	Class D or E felonies expungable after three years. Class A, B or C felonies can be petitioned for expungement after five years. Serious violent offenses excluded from eligibility.	Any person convicted of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony may petition for expungement if three or more years have passed since the person: (a) satisfied the sentence imposed; (b) was discharged from probation, a community correctional services program, parole, post release supervision, etc.	A severity level 4 drug and level 5 drug crime committed after 07/01/2012 will need a waiting period of at least five years before record expungement.	Sex offenses not eligible for expungement if required to register under Kansas offender registration act.
Kentucky § 431.005 et seq. §218a.275(8)	Certain listed Class D felony convictions may be vacated and expunged after five years of the person's sentence or completion of parole or probation.	Any person who has been convicted of a misdemeanor, a violation or a traffic infraction may petition the court for expungement after five years since the completion of that person's sentence.	First conviction of possession of a controlled substance may be voided, which has the same effect as expunging the conviction.	Sexually based offenses not expungable.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Louisiana C.Cr.P. Art. 971 et seq.	A person may file a motion to expunge if 10 years have elapsed since the completion of the sentence and the person has not been convicted of any felony offense during the 10-year period. Exceptions: crime of violence, sex offense or a criminal offense against a victim who is a minor; carnal knowledge of a juvenile prior to 2011; and a violation of the Uniform Controlled Dangerous Substances Law with some exceptions.	A person may file a motion to expunge if five years have elapsed since the completion of the sentence and the person has not been convicted of any felony offense during the five-year period. Exceptions for sex offenses, domestic abuse, battery and stalking.	No expungement available for felony convictions involving a violation of the Uniform Controlled Dangerous Substance Law with a few exceptions listed in statute.	Misdemeanor and felony convictions are not eligible if they arose from a circumstance involving or are the result of an arrest of a sex offense.
Maine 15 M.R.S. § 3301 et seq.	Maine has no authority for sealing or expunging adult convictions.			
Maryland Crim. Proc. § 10-101 et seq.	Only specific felonies may be expungable including: theft; a prohibition against possession with intent to distribute a controlled dangerous substance; burglary in the first, second and third degree. Must wait 15 years to petition.	100 enumerated misdemeanors are expungable. Examples include: disorderly intoxication; failure to deposit money; bribery of person participating in or connected with athletic contests; illegal dumping or litter control; household violence; etc. Must generally wait 10 years to petition.	Felony and misdemeanor substance related offenses are expungable.	Felony sex offenses are not expungable. Misdemeanor offenses for engaging in prostitution; soliciting prostitution; and house of prostitution are expungable offenses.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Massachusetts [1] Ch. 276, § 100A	Felonies may be sealed after seven years if no subsequent conviction.	Misdemeanors may be sealed after three years if no subsequent convictions.	Substance-related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Sex offenses are not eligible for sealing for 15 years following their disposition provided that any sex offender who has at any time been classified as a level 2 or level 3 sex offender shall not be eligible for sealing of sex offenses.
Michigan [2] § 750.520b § 780.621	A person who is convicted of not more than one felony offense and not more than two misdemeanor offenses may petition the convincing court to set aside the felony offense. Exceptions: a felony with a maximum punishment of life imprisonment; child abuse; a felony conviction for domestic violence, etc.	A person who is convicted of not more than two misdemeanor offenses and no other felony or misdemeanor offenses may petition the convicting court or courts to set aside one or both the misdemeanor convictions.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Criminal sexual conduct; child abuse in any degree; human trafficking are offenses that are ineligible for sealing.
Minnesota § 609A.01 et seq.	Expungement only for specific felony violations listed in § 609A.02(3) and has not been convicted for a new crime for at least five years since discharge of sentence.	Expungement available for all misdemeanors as long as no new convictions and more than two years have passed since discharge of the sentence for the crime. Gross misdemeanors require four years.	All misdemeanor-controlled substance offenses are expungable. For felony-controlled substance offenses, felony offenses in the fifth degree and the sale of simulated controlled substances are expungable.	Offenses that require registration for predatory offenders may not be expunged.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Mississippi § 99-19-71	May expunge one felony conviction five years after successful completion of all terms and conditions of the sentence. Ten enumerated felonies are ineligible, including: a crime of violence as provided in Section 97-3-2; arson in the first degree; trafficking in a controlled substance; felon in the possession of a firearm; failure to register as a sex offender.	Any person who has been convicted of a misdemeanor that is not a traffic violation can petition for expungement.	No expungement for felony trafficking in controlled substances.	No expungement for felonies classified as failure to register as a sex offender or voyeurism.
Missouri § 610.140	Felonies expungable with 11 exceptions. Must wait at least seven conviction-free years from the date the petitioner completed the disposition.	Misdemeanors expungable after three conviction-free years from the date the petitioner completed any authorized disposition.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	No expungement for felony offenses that require registration as a sex offender.
Montana § 46-18-1104 et seq. §46-18-1108	No expungement.	Can only expunge misdemeanor offenses one time.	Misdemeanor controlled substance convictions eligible for expungement, but not felony.	Expungement not presumed for sexual assault but can still be granted upon the court's determination and good cause.
Nebraska § 29-2264	No authority to seal or expunge, but courts may "set aside" conviction for those sentenced to probation for any infraction, misdemeanor or felony. A "set aside" conviction nullifies the conviction and removes all civil disabilities and disqualifications but does not expunge or seal the record.			
Nevada § 179.2405 et seq.	Expungable: Category A felony, a crime of violence or burglary after 10 years. Category B, C or D felonies after five years. Category E felony after five years.	Expungable: Gross misdemeanor after two years. Battery, harassment or stalking after two years. Any other misdemeanor after one year.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	May not petition for a conviction of a crime against a child or a sexually based offense.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
New Hampshire § 651:5	Annulment allowed: Class B felony after five years. Class A felony after 10 years.	Annulment allowed: Class A misdemeanor after three years. Any misdemeanor where the victim was a family member or intimate partner after three years.	For a class A misdemeanor or felony offense after two years.	Annulment allowed: Misdemeanor Sexual Assault after 10 years. Felony indecent exposure or lewdness after 10 years.
New Jersey § 2C:52-1 et seq.	Petition-based expungement for a single "indictable" offense is authorized five years after completion of sentence. Clean Slate law allows entire record of almost all arrests and convictions to be expunged automatically after 10 years. Only allowed to petition for expungement once.	Petition-based expungement of up to three "disorderly persons" offenses after a three-years waiting period running from the last conviction. Clean Slate law allows entire record of almost all arrests and convictions to be expunged automatically after 10 years. Only allowed to petition for expungement once.	Convictions for the sale or distribution of a controlled dangerous substance or possession with the intent to sell cannot be expunged, except in cases where the crime involves: marijuana (less than one ounce); hashish (less than 5 grams); or any controlled dangerous substance, provided that the conviction is of the third of fourth degree where the court finds that compelling circumstances exist to grant the expungement.	Not expungable: Human trafficking; luring or enticing; sexual assault or aggravated sexual assault; aggravated criminal sexual contact; criminal sexual contact (if the victim was a minor); criminal restraint or false imprisonment (if the victim is a minor); endangering the welfare of a child by engaging in sexual conduct that would impair or debauch the morals of the child or causing the child other harm; pornography with a child.
New Mexico § 29-3A-5	Must wait at least four conviction-free years to petition for expungement for a conviction of a fourth-degree felony. Six years if a third-degree felony. Eight years if a second-degree felony. Ten years if a first-degree felony.	Must wait two conviction-free years to petition for expungement for a violation of a municipal ordinance or a misdemeanor. Must wait at least four conviction-free years for a misdemeanor conviction for aggravated battery.	Not specifically listed as ineligible for expungement.	Not expungable: offense committed against a child; sex offense as defined in § 29-11A-3.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
New York Crim. Proc. Law § 160.10 et seq.	Sealing of convictions after 10 years. Available for up to two offenses, only one of which may be a felony. Class A felonies and violent felonies not sealable. Sealing a record means the record remains accessible to agencies authorized to conduct background checks.	Sealing may extend to up to two prior misdemeanors.	Conditional sealing of certain felony drug and other specified convictions for participants in judicial diversion program or in drug treatment program sanctioned by prosecutor or court.	Not sealable: most sex offenses, including those that require sex offender registration.
North Carolina § 15A-145 et seq.	Not eligible: Class A through G felonies; violent felonies. Eligibility waiting period is 10 years after completion of sentence for felonies. Certain offenses statutorily excluded in § 15A-145.5.	Not eligible: Class A1 misdemeanor; violent misdemeanors. Eligibility waiting period is five years after completion of sentence for misdemeanors. Certain offenses statutorily excluded in § 15A-145.5.	Not eligible: any felony offense where the offense involves methamphetamines, heroin or possession with intent to sell or deliver or sell and deliver cocaine.	Not eligible: any of the following sex-related or stalking offenses: statutory rape of person who is 15 or younger; statutory sexual offense with a person who is 15 or younger; dissemination to minors under the age of 16, under the age of 13; secretly peeping into room occupied by another person; duty to report non-compliance of a sex offender; sex offender unlawfully on premises; stalking; prohibit baby-sitting service by sex offender or in the home of a sex offender.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
North Dakota § 12-60.1-02 *Sealing prohibits the disclosure of the existence or contents of court or prosecution records unless authorized by court order.	Sealing for any felony offense upon petition as long as the individual was not charged with a new crime for at least five years from the date of release. Ineligible for sealing: a felony offense involving violence or intimidation during the period in which the offender was ineligible to possess a firearm.	Sealing for any misdemeanor offense as along as the individual was not charged with a new crime for at least three years from the date of release.	Substance-related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Sealing not eligible: any sex offense against a child.
Ohio § 2953.31 et seq.	Sealing available after three years after the offender's final discharge if convicted of one felony in the fourth or fifth degree. After four years after the offender's final discharge if convicted of two felonies, or at the expiration of five years after final discharge if convicted of three, four, or five felonies. If convicted of more than five felonies, ineligible. Must be a non-violent offense to be eligible for sealing.	Sealing available at the expiration of one year after the offender's final discharge if convicted of a misdemeanor.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Felony sex offenses ineligible.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Oklahoma 22 Okl. St. § 18	Expungement available for a single nonviolent felony not specifically listed as ineligible if the person has not been convicted of any other felony; the person has not been convicted of a separate misdemeanor in the last seven years; no felony or misdemeanor charges are pending against the person; and at least five years have passed since the completion of the sentence for the felony conviction. Up to two felony convictions may be expunged after 10 years as long as it is not a sex offense or a serious violent offense.	Expungement available for misdemeanors after five years if the person has not been convicted of a felony and no felony or misdemeanor charges are pending against the person.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Felony offenses that require sex offender registration are not eligible for expungement.
Oregon § 137.225	"Set Aside" available if three years has passed for: Class B felony, except for firearms offense only if 20 years or more have elapsed from the date of the conviction sought to be set aside and the person hasn't been convicted, arrested, or criminally cited for any other offense since. Any Class C felony punishable as a misdemeanor. "Set Aside" does not apply to specific conviction listed in § 137.225(6)(a-f).	Any misdemeanor may be set aside after three years.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Sex crimes are generally ineligible for set-aside with specific exceptions listed in § 137.225(6)(f).

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Pennsylvania 18 Pa.C.S. § 9121 et seq.	Expungement is only available if the person has been dead for three years or if the person is 70 years old and has not been convicted of a new offense within 10 years of completion of the sentence.	Expungement for "qualifying" misdemeanors and ungraded offenses under order for limited access after 10 crime-free years. Ungraded offenses must carry a maximum penalty of no more than five years.	Only misdemeanor offenses eligible.	Sex offenses ineligible.
Rhode Island § 12-1.3-1 et seq.	A person may file a motion for the expungement of records relating to felony convictions (except for crimes of violence) after 10 years. Any person who is a first offender may file a motion for the expungement of all records and records of conviction for a felony or misdemeanor However, crimes of violence not eligible.	Any person convicted of more than one misdemeanor, but fewer than six misdemeanors, and has not been convicted of a felony, may file a motion for the expungement of any or all of those misdemeanors after five years from the date of the completion of his or her sentence. Exception for crimes of violence.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Crimes not eligible for expungement: kidnapping with intent to extort; first- and second-degree sexual assault; first- and second-degree child molestation; assault with intent to commit first degree sexual assault; entering a dwelling house with intent to commit sexual assault.
South Carolina § 22-5-910 et seq.	No expungement available.	Expungement after three conviction-free years for a crime carrying a penalty of not more than 30 days imprisonment or a fine of $1,000. Must wait five conviction-free years for domestic violence misdemeanors.	Expungement for first-time drug possession offenses after a three-year waiting period and to first-time possession with intent to distribute offenses after a 20-year waiting period.	Sex offenses not eligible.
South Dakota § 23A-3-34	No general authority to seal or expunge adult convictions. Any charge or conviction resulting from a case where a petty offense, municipal ordinance violation or a Class 2 misdemeanor was the highest charged offense shall be automatically removed after 10 years if all court-ordered conditions have been satisfied.			

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Tennessee § 40-32-101	Only certain enumerated Class E felonies are eligible for expungement, by petition and at least five years have passed since the completion of the sentence.	All misdemeanors with the exception of 45 enumerated offenses are eligible for expungement after at least five years have passed since the completion of the sentence.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Ineligible for expunction: indecent exposure; violation of community supervision by sex offender; soliciting minor to engage in Class E sexual offense; unlawful sexual contact by authority figure; third or subsequent violation of child rape protection Act; public indecency.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Texas Gov't Code § 411.071 et seq.	May petition for Order of Nondisclosure (OND) following discharge from deferred adjudication community supervision after five years. Ineligible: specified violent offenses listed in § 411.074. Orders of nondisclosure limit public access to record, but records may be disclosed to law enforcement and certain licensing purposes.	OND for first offense misdemeanor convictions after two years. Certain excluded offenses involving intoxication. No waiting period applies for fine-only misdemeanors. If charged with a serious or repeat misdemeanor, may still petition for OND after two years if discharged following deferred adjudication community supervision. There is no waiting period for repeat misdemeanors that would otherwise be eligible for an automatic OND. First-offender DWI convictions eligible after a waiting period of two to five years. OND available for veterans discharged from treatment court.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Not eligible for OND if person is currently or has previously been placed on deferred adjudication community supervision for: an offense requiring registration as a sex offender; aggravated kidnapping.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Utah § 77-40-101 et seq.	To petition for expungement must wait seven years for most felony offenses; five years for felony drug possession. Serious and violent felony offenses not eligible.	To petition for expungement must wait: five years for a Class A Misdemeanor; four years for a Class B Misdemeanor; three years for other misdemeanors or infractions. For a DUI or Reckless Driving, must wait 10 years to petition.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories. However, must wait 10 years to petition for misdemeanor and felony-controlled substances convictions that involve driving while under the influence of a controlled substance.	Registerable Sex Offenses and Registerable Child Abuse Offenses not expungable.
Vermont 13 V.S.A. § 7601 et seq.	Only 12 felony offenses eligible for expungement: burglary, excluding any burglary into an occupied dwelling; uttering a forged or counterfeited instrument; grand larceny; criminal mischief; related to fraud or deceit; and certain possession of controlled substances. At least 10 years have passed since the completion of the sentence for the conviction; person has not been convicted of a felony arising out of a new incident in the last seven years; not been convicted of a misdemeanor during the past five years.	Thirty-one eligible offenses. At least 10 years have passed since the completion of the sentence for the conviction; person has not been convicted of a felony arising out of a new incident in the last seven years; not been convicted of a misdemeanor during the past five years.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Sex offenses not eligible. Cannot seal or expunge violent or sex-related misdemeanors, violation of a protection order, and prostitution.
Virginia § 19.2-392.2	No provisions for expunging adult conviction records.			

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
Washington § 9.94A.640	An offender whose conviction has been vacated may state for all purposes that he or she has not been convicted of that crime. The court file is not destroyed and, unless it is sealed, it is still accessible to the public. Vacated record may be sealed under General Court Rule 15 if the court determines the need for privacy or safety outweighs the public interest in access. Ineligible if convicted of a new crime, if there are any charges pending, or if the offense was a violent offense or a crime against a person (a class A felony, some Class B felonies, and felony DUI offenses). Eligible Class B convictions must wait 10 years after sentence completion to obtain a certificate of discharge, and Class C convictions must wait five years.	Vacating misdemeanors after three years: Except for the offenses in § 9.96.060(2)(e), a sentencing court may vacate a conviction for a misdemeanor or a gross misdemeanor. The offense must not be a violent offense, a DUI offense, a sex offense or an offense involving domestic violence.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Not eligible: a violation, including attempt, of obscenity and pornography; sexual exploitation of children; sex offenses; and failure to register as a sex offender.

State and Statute	Felonies	Misdemeanors	Controlled Substances	Sexually Based Offenses
West Virginia § 61-11-26	Nonviolent felonies eligible for expungement after five years. Only a single felony offense or multiple felony offenses arising from the same transaction or a series of transactions may be expunged.	One misdemeanor: Eligible for expungement after one year from completion of any sentence or period of supervision. Multiple misdemeanors. Eligible for expungement after two years from completion of any sentence or period of supervision. Certain offenses listed as ineligible in § 61-11-26(b).	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Not eligible for expungement: incest; sexual abuse in the second degree; sexual abuse in the third degree.
Wisconsin § 973.015	No general authority for expunging adult convictions, but some expungable offenses if under the age of 25 at the time the offense was committed § 973.015.			
Wyoming § 7-13-1501 et seq.	May petition for expungement of a single felony if at least 10 years have passed since the expiration of the terms of the sentence imposed by the court, the completion of any program ordered by the court; and any restitution ordered by the court has been paid in full. Petitioner is ineligible if they have previously pled guilty or been convicted of a prior felony or if the offense that the petitioner is seeking to expunge involved the use of firearms. List of specifically excluded offenses § 7-13-1502(a)(iv).	May petition for expungement if the misdemeanor did not involve the use or attempted use of a firearm.	Substance related offenses are not specifically listed and would fall into either felony or misdemeanor categories.	Sexual offenses ineligible including but not limited to: sexual assault in the first and second degree; sexual abuse of a minor.

[1] Expungement, which is defined differently than sealing in Massachusetts and is only available for offenses that happened before a person turned 21, with limiting criteria.

[2] 2020 HB 4980 expands eligibility to petition for an expungement in several ways and creates a new process that will automatically seal certain non-violent conviction records if a person has remained conviction-free for a period of time (seven years for misdemeanors, 10 years for felonies). For more information see Automatic Clearing of Records.

Additional Resources

- Corrections and Sentencing Home
- Criminal Records and Reentry Home

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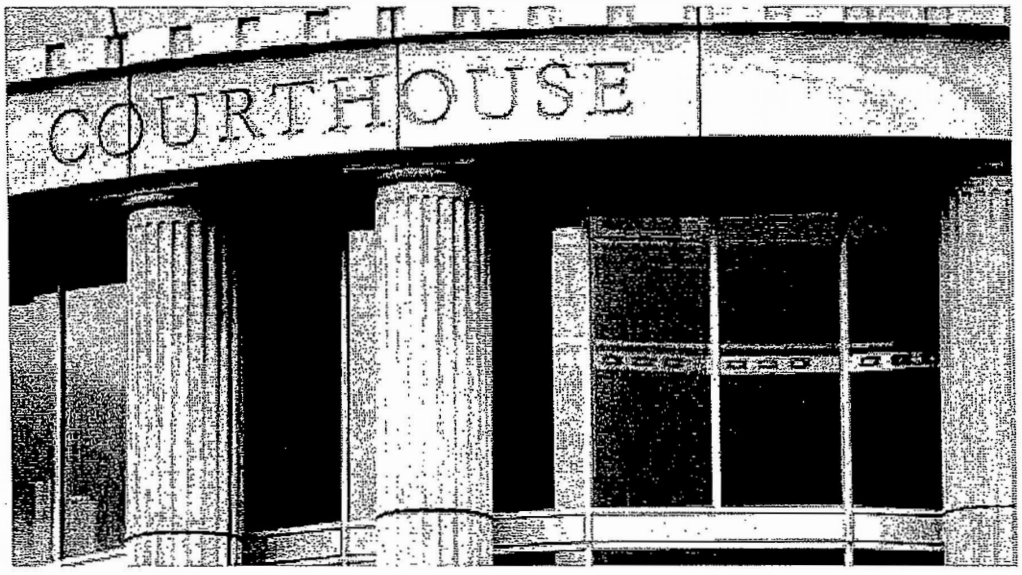
Record Clearing Fees and Waivers

8/14/2020



The typical process for an individual to clear criminal conviction records, as opposed to arrest records, requires the individual to petition the court for relief if they meet eligibility requirements. Although a person may be eligible, fees are sometimes required to clear records. These fees take many forms, such as filing fees, docketing fees, administrative fees, issuance fees, certificate fees, or a combination of fees.

Some states charge different fees based on the type of conviction an individual seeks to clear. For example, felony convictions may cost more in fees than misdemeanor convictions. In certain states, fees may also be waived if the court finds the petitioner is eligible for waiver. Typically, waivers are reserved for indigent individuals.

Not every state has established the fees associated with record clearing through statute. In those states, fees are often established through rulemaking authority of the agencies or judicial branches in charge of record clearing. Fees established through rulemaking are more likely to change frequently.

Recently, some states have introduced automated record clearing which takes place without individuals needing to petition the court for relief. For example, Pennsylvania has an automated system which clears the records of eligible convictions without the individual needing to petition for relief or pay a fee. Often, they do not require judicial hearings which, in part, account for the costs associated with record clearing that many states attempt to recover through fees.

Below is a table with information on the fee states' have established through statute for record clearing. The table does not include non-statutory costs associated with record clearing, such as attorney fees or fees that are created from grants of rulemaking authority. As such, the chart may be an underestimate of the total cost to seek record clearing for criminal convictions.

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Record Clearing Fees and Waivers

State and Citation	Fees	Limits	Waivers/Payment Plans	Notes	Website
Alabama § 15-27-4	$300 plus cost of court or docket fee for filing petition.	No fee limit described in statute.	A person may apply for indigent status by completing an Affidavit of Substantial Hardship and Order. If successful, the court may set forth a payment plan, which shall be paid in full, prior to any order granting an expungement.	Proposed Legislation to prohibit any court costs or filing fees (S.B. 208).	Website

State and Citation	Fees	Limits	Waivers/Payment Plans	Notes	Website
Alaska § 12.62.180	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.	A person may submit a written request to the head of the agency responsible for maintaining past conviction or current offender information, asking the agency to seal such information about the person that, beyond a reasonable doubt, resulted from mistaken identity or false accusation.	Website
Arizona § 13-905	$0	The clerk of the court may not charge a filing fee for an application to have a judgment of guilt set aside.	No waiver/payment plan described in statute.		Website
Arkansas § 16-90-1419	$0	The circuit clerk or district court clerk shall not collect a fee for filing petition.	No waiver/payment plan described in statute.		Website
California Penal Code § 1203.45, Penal Code § 236.14	$37.50 (cannabis offenses, if not automatically done); $0-150 to the court, county and/or city for actual cost of services (certain misdemeanor offenders).	No fee limit described in statute.	No waiver/payment plan described in statute.	California fees for record clearing are complex and based on individuals' specific situations and cannot be generalized. Factors that may change fees include: age at conviction; status as a victim of human trafficking at conviction; and type of conviction.	Website
Colorado § 24-72-705, § 18-13-122	$65; Cost of criminal history to be attached to petition (Underage possession of ethyl alcohol or marijuana convictions).	No fee limit described in statute.	Waived upon determination of indigency.		Website

State and Citation	Fees	Limits	Waivers/Payment Plans	Notes	Website
Connecticut § 54-142a	$0	No fee shall be charged in any court with respect to any petition when found not guilty, pardoned or guilty of an offense which has subsequently become decriminalized.	No waiver/payment plan described in statute.		Website
Delaware 11 Del. C. § 4373, 11 Del. C. § 4374	Reasonable fees.	No fee limit described in statute.	No waiver/payment plan described in statute.	Mandatory expungements: fee set by the State Bureau of Identification. Discretionary expungements: "reasonable fee" set by the Superior Court and Family Court.	Website
District of Columbia § 16-804	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Florida § 943.0583, § 943.0585, § 943.0595	$0 (under automatic sealing for individuals who were adjudicated not guilty, never prosecuted following arrest or arrested contrary to law or by mistake); $75 fee for a certificate of eligibility (under petition procedure, excluding petition of victims of human trafficking).	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Georgia § 35-3-37	Reasonable fees.	Such fee shall not exceed $50.	No waiver/payment plan described in statute.		Website
Hawaii § 706-620 et seq.	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.	A written application is required.	Website

State and Citation	Fees	Limits	Waivers/Payment Plans	Notes	Website
Idaho § 67-3014	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.	Limited to victims of human trafficking.	Website
Illinois 20 ILCS 2630/5.2	Applicable fee.	No fee limit described in statute.	Waiver available for indigency, upon application.		Website
Indiana § 35-38-9-8	Filing fee required in civil cases.	No fee limit described in statute.	May be reduced or waived if the person is indigent.		Website
Iowa § 901C.3	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.	Supreme Court may create rules governing process.	Website
Kansas § 21-6614	$176	Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.	No waiver/payment plan described in statute.	In addition to $176, supreme court may charge $19 per case to fund the costs of non-judicial personnel through June 30, 2025.	Website
Kentucky § 431.073, § 431.078	$50 (certain felonies with an additional $250 fee upon issuance); $100 (misdemeanors & traffic offenses).	No fee limit described in statute.	Installment payment plans available.	A portion of fee goes to the trust and agency account for deputy clerks.	Website
Louisiana C.Cr.P. Art. 983	$250 (to the Louisiana Bureau of Criminal Identification and Information); $50 (to the Sheriff); $50 (to the District Attorney); $200 (to cover the clerk's costs of the expungement).	May not exceed $ 550.	A juvenile who has successfully completed any juvenile drug court program shall be exempt from payment of the processing fees.	If an application for an expungement of a record includes two or more offenses arising out of the same arrest, including misdemeanors, felonies, or both, the applicant shall be required to pay only one fee.	Website
Maine	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.	Maine has no authority for sealing or expunging adult convictions.	Website
Maryland Crim. Proc. § 10-101 et seq.	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website

State and Citation	Fees	Limits	Waivers/Payment Plans	Notes	Website
Massachusetts 276 § 100G	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Michigan § 780.621	$50	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Minnesota § 609A.03	$285	No fee limit described in statute.	Fee waived in cases of indigency.	No fee if prosecutor agrees to the sealing of a criminal record.	Website
Mississippi § 99-19-72	$150	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Missouri § 610.140	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Montana § 46-18-1102 et seq.	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.	Rulemaking authority granted to the department of justice.	Website
Nebraska § 29-2264	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Nevada § 179.271	$0 (for decriminalized convictions)	No fee limit described in statute.	No waiver/payment plan described in statute.	No fee prescribed by statute for other convictions.	Website
New Hampshire § 651:5	$200 (for conviction report); $100 (for police department to remove records).	No fee limit described in statute.	May be waived for indigency or not guilty verdict.		Website
New Jersey § 2C:52-5.4	Automated process being developed.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
New Mexico HB 370 (not yet codified)	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.	The administrative office of the courts and the department of public safety shall develop rules and procedures to implement the Criminal Record Expungement Act.	Website
New York Crim. Proc. Law § 160.59	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website

State and Citation	Fees	Limits	Waivers/Payment Plans	Notes	Website
North Carolina § 15A-145	$175	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
North Dakota § 12-60.1-01 et seq.	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Ohio § 2953.32	$50	No fee limit described in statute.	Waived upon indigency.		Website
Oklahoma 22 Okl.St. § 18a	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.	Fill in the blank form provided through statute.	Website
Oregon § 137.225	$85 + $281 (Filing Fee)	Prosecuting attorney may not charge the defendant a fee.	No waiver/payment plan described in statute.		Website
Pennsylvania 18 Pa.C.S. § 9121	$0	No fee limit described in statute.	No waiver/payment plan described in statute.	Automated.	Website
Rhode Island § 12-1.3-2	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
South Carolina § 22-5-910 et seq.	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
South Dakota § 23A-3-28	Fee equal to filing fee for a civil action (arrest records).	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Tennessee § 40-32-101	$100	$0 if the charge has been dismissed; a no true bill was returned by a grand jury; a not guilty verdict; or the person was arrested and released without being charged.	No waiver/payment plan described in statute.		Website
Texas Gov't Code § 411.0745	$28 plus any other fee that generally applies to the filing of a civil petition.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website

State and Citation	Fees	Limits	Waivers/Payment Plans	Notes	Website
Utah § 77-40-106	Application and Issuance fee for a certificate of eligibility.	No issuance fee if arrest did not lead to a conviction.	No waiver/payment plan described in statute.		Website
Vermont 32 V.S.A. § 1431	$90 (DUI convictions); $0	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Virginia § 19.2-392.2	No fee described in statute.	$0 (misidentification cases)	No waiver/payment plan described in statute.		Website
Washington § 9.96.010 et seq.	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
West Virginia § 61-11-26	$100 (to the records division of the West Virginia State Police) + $200 filing fee.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Wisconsin § 973.015	No fee described in statute.	No fee limit described in statute.	No waiver/payment plan described in statute.		Website
Wyoming § 7-13-1501, § 7-13-1502	$100 (certain misdemeanors); $300 (certain felonies)	No fee limit described in statute.	No waiver/payment plan described in statute.		Website

Additional Resources

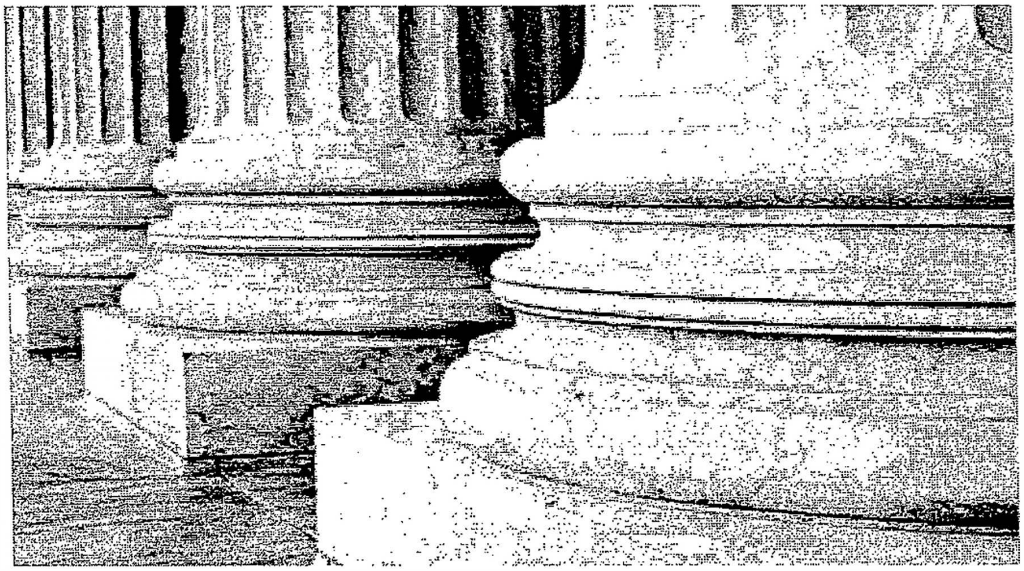
- Corrections and Sentencing Home
- Criminal Records and Reentry Home

TAB 4

NCSL

Automatic Clearing of Records

7/19/2021



State lawmakers are increasingly interested in statutory provisions that automatically clear a person's criminal record. While many states have laws allowing for record relief, these laws typically require the individual to petition the court and pay a fee for clearing a criminal history. Making this procedure automatic, however, removes the need for a petition and is often done free of charge. Currently, 20 states have at least one statutory automatic record clearing provision. Michigan, New Jersey, Pennsylvania, and Utah have enacted legislation that automates the automatic record clearing process, sometimes known as "clean slate laws." This chart has information on states that have an automatic record clearing process in statute, including general eligibility requirements and disqualifications.

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Automatic Clearing of Records

State	Automated	Arrests	Non-Convictions	Convictions	Notes
Alabama	No automatic clearing of records in statute.				
Alaska	No automatic clearing of records in statute.				
Arizona	No automatic clearing of records in statute.				
California Penal Code § 95.193, Penal Code §1203.425 *Applies to arrests, non-convictions and convictions occurring on or after Jan. 1, 2021. Eligible records will be automatically sealed starting July 1, 2022.*	No	An arrested individual who has successfully completed a diversion program is eligible.	A misdemeanor in which the charge was dismissed or the individual was acquitted, or one year has elapsed since the arrest and no criminal proceedings have been started. For a felony charge, the offense must be punishable by imprisonment in county jail (not state prison), the individual was acquitted or three years have elapsed since the arrest and there are no signs of pending criminal proceedings.	If on probation for a conviction that occurred after Jan. 1, 2021, the individual is eligible for automatic relief if the probation term was completed without revocation. If the individual was convicted of an infraction or misdemeanor and the sentence has been completed, automatic relief is available one year following judgment. For certain felonies, the offense must not be punishable by incarceration in state prison; a person must not be required to register as a sex offender; does not have an active record for local, state or federal supervision; is not currently serving a sentence for an offense; and does not have pending criminal charges.	Starting Aug. 1, 2022, the court cannot disseminate information regarding a sealed record except to the person who qualified for relief.
Colorado	No automatic clearing of records in statute.				
Connecticut § 54-421a et seq.	No	No automatic erasure of arrests.	Automatic erasure of all police and court records will apply in any criminal case if the individual is found not guilty, charges are dismissed or dropped and 13 months have passed, or the case was put on hold and 13 months have elapsed.	No automatic erasure of convictions.	
Delaware	No automatic clearing of records in statute.				

State	Automated	Arrests	Non-Convictions	Convictions	Notes
District of Columbia	No automatic clearing of records in statute.				
Florida	No automatic clearing of records in statute.				
Georgia § 35-3-37	No	No automatic clearing of arrests.	Offenses that are not referred for prosecution and have been closed by the arresting law enforcement agency. Criminal history records will be restricted from public access as follows: misdemeanors or misdemeanors of a high and aggravated nature, two years after the date of arrest; nonviolent felonies, four years from the date of arrest; violent and sex-related felonies, seven years from the date of arrest.	No automatic clearing of convictions.	
Hawaii	No automatic clearing of records in statute.				
Idaho	No automatic clearing of records in statute.				
Illinois 20 ILCS 2630/5.2(i)	No	If there are no criminal charges filed or at least one year has passed since the arrest date, and no other charges were associated with the arrest.	The charges were vacated or the individual was acquitted, or less than 30 grams of cannabis was in possession.	Possession of up to 30 grams of cannabis unless the conviction was associated with a violent crime, sexual offense, stalking offense, animal abuse, requirement to register as a sex offender, or violations of local ordinances.	20 ILCS § 2630/5.2(i) outlines the timetable in which records will be expunged according to occurrence date.
Indiana	No automatic clearing of records in statute.				
Iowa	No automatic clearing of records in statute.				

State	Automated	Arrests	Non-Convictions	Convictions	Notes
Kansas	No automatic clearing of records in statute.				
Kentucky § 431.076(1)(a)	No	No automatic clearing of arrests.	On or after July 15, 2020, misdemeanor or felony cases where the court orders an acquittal of criminal charges or an order dismissing all charges with prejudice not in exchange for a guilty plea in another charge.	No automatic clearing of convictions.	
Louisiana	No automatic clearing of records in statute.				
Maine	No automatic clearing of records in statute.				
Maryland	No automatic clearing of records in statute.				
Massachusetts	No automatic clearing of records in statute.				

State	Automated	Arrests	Non-Convictions	Convictions	Notes
Michigan § 28.243(8), § 764.26a, § 780.622, § .623, § .624	In progress	Under § 28.243(8); § 764.26a, biometric data, fingerprints, and the arrest record will be expunged when charges are dismissed before trial and if the prosecutor does not object to the dismissal within 60 days.	If the charges are dismissed before trial, biometric and arrest record data is to be destroyed (§ 28.243(8); § 764.26a).	Per HB 4980, an unlimited number of minor misdemeanors where the maximum prison sentence is 92 days, will be eligible seven years after sentencing; non-assaultive felonies will be eligible 10 years after sentence imposition or release from prison. Up to four misdemeanors and two felonies can be automatically set aside. There cannot be any pending criminal charges against the individual. Automatic set-aside will not apply if: an individual has more than one conviction for an assaultive crime; the crime(s) involve violence or dishonesty; punishment for the offense is 10 or more years in prison, if the offense involves a minor or vulnerable adult, if the offense involves injury, serious impairment, death or human trafficking. Serious misdemeanors and misdemeanor marijuana offenses are ineligible.	A process for automating set-aside relief is scheduled to go into effect October 2022. The courts retain the right to make a set-aside conviction public again if the individual did not make a good faith attempt to pay restitution. According to § 750.224f(8), a conviction that has been expunged or set aside restores an individual's right to possess a firearm "unless the expunction ... expressly provides that the person shall not possess a firearm or ammunition."
Minnesota	No automatic clearing of records in statute.				
Mississippi	No automatic clearing of records in statute.				
Missouri	No automatic clearing of records in statute.				
Montana	No automatic clearing of records in statute.				

State	Automated	Arrests	Non-Convictions	Convictions	Notes
Nebraska § 29-3523	No	Arrest records in which charges were not filed are removed from public view one year following the date of arrest. If charges were not filed as the result of the individual completing a diversion program, the record will be removed from public view two years following the date of the arrest.	In instances of acquittal, deferred judgement or completion of a court-ordered program, the criminal history will be removed from the public record upon notification of a criminal justice agency of the acquittal or when the order dismissing the case is entered.	No automatic clearing of convictions.	
Nevada	No automatic clearing of records in statute.				
New Hampshire	No automatic clearing of records in statute.				

State	Automated	Arrests	Non-Convictions	Convictions	Notes
New Jersey § 2C:52-1, § 2C:52-2(b) and (c), § 2C:52-5.4, § 2C:52-6	In progress	No automatic clearing of arrests.	Acquittals and dismissed charges (not including plea bargains).	With the exception of murder, manslaughter, kidnapping, rape and other serious offenses outlined by § 2C:52-2(b), convictions will be eligible 10 years after the individual's most recent conviction, payment of court-ordered financial assessments has been made (though the court may waive restitution), the individual has been released from prison or completed probation or parole. For convictions involving controlled substances, marijuana offenses involving less than 1 ounce and hashish offenses involving less than 5 grams are eligible. A conviction of the third or fourth degree could qualify if the court finds a compelling reason to grant expungement.	Enacted on Dec. 18, 2019, S4154 requires that provisions related to the automated record-clearing process "become operative on the 180th day following enactment..." When the automated system will become fully operable is currently unknown. According to § 2C:52-5.4(b)(1)(a), a task force has been established to "make recommendations regarding the development and implementation of the automated [clean slate] process."
New Mexico	No automatic clearing of records in statute.				
New York Crim. Proc. Law § 160.50(3)(k)(i)-(iii), Crim. Proc. Law § 160.55, Crim. Proc. Law § 440.10(1)(k), Crim Proc. Law § 440.10(6)	No	No automatic clearing of arrests.	In cases where criminal actions or proceedings against an individual were terminated "in favor of such person" (§ 160.50), the record will be automatically sealed.	Conviction of Criminal Possession of Marijuana in the 5th Degree prior to Aug. 28, 2019, will be automatically expunged. Conviction of Unlawful Possession of Marijuana in the 1st Degree or Unlawful Possession of Marijuana in the 2nd Degree after Aug. 28, 2019, will be automatically expunged, but the individual must still pay the court-ordered fine.	

State	Automated	Arrests	Non-Convictions	Convictions	Notes
North Carolina § 15A-146(a4) & (a5)	No	No automatic clearing of arrests.	Infractions, misdemeanors and felonies disposed of on or after Dec. 1, 2021, will be eligible for automatic expungement if the charges were dismissed without leave, dismissed by the court or the individual was found not guilty or not responsible. Felony charges that are dismissed due to a plea agreement are not eligible.	No automatic clearing of convictions.	Under § 15A-146(a5), investigative records relating to expunged charges may be maintained by the arresting agency.
North Dakota § 12.1-32-07.1, § 12.1-32-07.2(2)	No	No automatic clearing of arrest.	In a case where a deferred sentence results in the dismissal of charges, the record will only be accessible by the clerk, the court judge, the juvenile commissioner, probation officers, the defendant and defendant's counsel, and the state attorney.	No automatic clearing of convictions.	
Ohio	No automatic clearing of records in statute.				
Oklahoma 63 Okl. St. § 2-410	No	No automatic clearing of arrests.	For first-time drug offenses in which deferred sentencing resulted in dismissed charges, the record will be automatically expunged.	No automatic clearing of convictions.	Expunged records are admissible in any future criminal proceedings without needing to obtain a court order.
Oregon	No automatic clearing of records in statute.				

State	Automated	Arrests	Non-Convictions	Convictions	Notes
Pennsylvania 18 Pa. C.S. § 9122.2-9122.3	Yes	No automatic clearing of arrests.	All non-convictions are eligible for automatic sealing with no waiting period.	Third- and second-degree misdemeanors, first-degree misdemeanors that carry a sentence of two years or less in prison, and summary convictions are eligible for automatic sealing with record access limited to judicial officers and law enforcement. Payment of court-ordered restitution is required. Eligible individuals must be free of conviction charges that carry a sentence of one or more years in prison and have fulfilled all court-ordered obligations for at least 10 years prior to record sealing. An individual convicted of a felony, has been convicted of two or more offenses with a prison sentence of two years or greater and/or committed four or more offenses with a prison sentence of one or more years in prison is disqualified. Offenses outlined by 18 Pa. C.S. § 9122.3 which include, but are not limited to, sexual misconduct, violence and firearms are ineligible.	
Rhode Island	No automatic clearing of records in statute.				
South Carolina §17-22-950	No	No automatic clearing of arrests.	Non-convictions in summary courts are eligible for expungement unless the individual was not fingerprinted at the time of arrest, was charged with a Title 50 violation (Fish, Game, and Watercraft), a traffic violation, or violation of a county or municipal ordinance.	No automatic clearing of convictions.	

State	Automated	Arrests	Non-Convictions	Convictions	Notes
South Dakota § 23A-3-34, § 23A-27-14, § 23A-27-17, § 23-6-8.1	No	No automatic clearing of arrests.	First-time offenders with a misdemeanor charge or a felony charge that is not punishable by death or life in prison may have their records automatically sealed upon completion of probation and dismissal of charges.	Petty offenses, municipal ordinance violations, and Class 2 misdemeanors will be automatically removed from an individual's record 10 years following completion of all court-ordered conditions.	The case record will still be available to the court and to those authorized by a court order. Per § 23-6-8.1, records may be destroyed by the director of the bureau of criminal statistics if the final disposition date of the misdemeanor offense occurred 10 years prior to the authorized destruction date.
Tennessee § 40-32-101	No	No automatic clearing of arrests.	If the charges are dismissed or in the instance of acquittal, the judge "shall inquire" whether the individual would like the record destroyed. If the individual would like all public records associated with the charge destroyed, "the court shall so order."	No automatic clearing of convictions.	Though restricted from public view, expunged records do not include arrest histories, investigative reports and appellate court opinions. These records can be released in criminal proceedings upon attorney request.

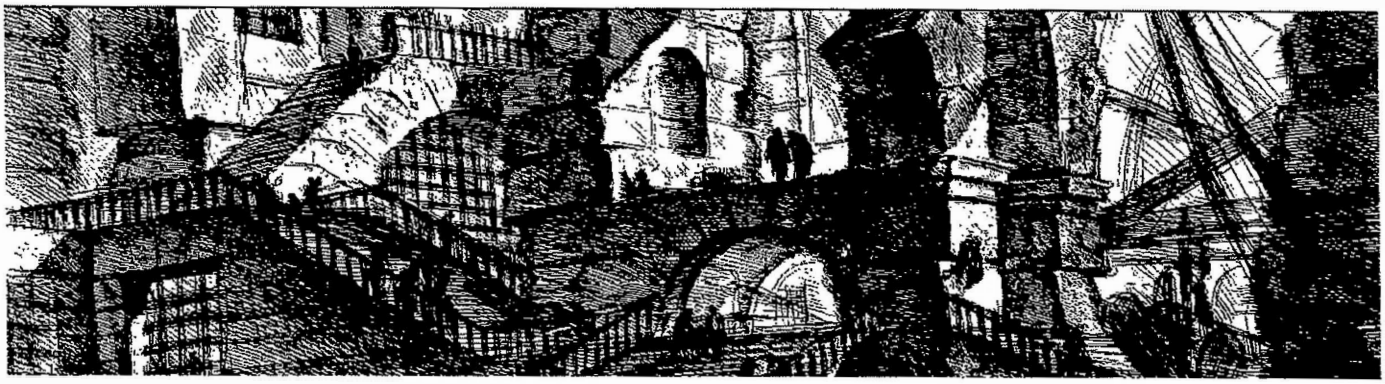
State	Automated	Arrests	Non-Convictions	Convictions	Notes
Texas Gov't Code § 411.072, Gov't Code §441.074, Gov't Code § 441.0729	No	No automatic clearing of arrests.	For several different types of nonviolent misdemeanors, the court is to automatically enter an Order of Non-Disclosure (OND) after the individual has been placed on deferred adjudication community supervision. However, if the court finds that an automatic OND would not be in the interest of justice or the individual has previously been convicted or placed on deferred adjudication community supervision for an offense other than a traffic offense punishable by fine only, the individual may be ineligible.	No automatic clearing of convictions.	Under Gov't. Code § 411.0729, veterans who successfully complete a reemployment program are eligible for automatic OND "regardless of whether the defendant meets other eligibility criteria under this subchapter."

State	Automated	Arrests	Non-Convictions	Convictions	Notes
Utah § 77-40-102(5), § 77-40-105(5) and (6), § 77-40-114, § 77-40-115	Yes	No automatic clearing of arrests.	Acquittals and cases dismissed with prejudice. A case dismissed with prejudice secondary to successful completion of a plea in abeyance must meet the expungement requirements outlined by § 77-40-102(5).	Class A misdemeanor convictions for possession of a controlled substance, most Class B and Class C misdemeanor convictions, certain traffic cases and infractions qualify for automatic expungement. All fines must be paid and there is a waiting period of five years for a Class C misdemeanor or infraction, six years for a Class B misdemeanor, and seven years for a Class A misdemeanor conviction for possession of a controlled substance. The individual must not have any current pending criminal charges or have exceeded the total number of allowable convictions under § 77-40-105(5) and (6). Felonies, offenses that require registration as a sex offender, child abuse, as well as other convictions defined by § 77-40-105 are ineligible.	
Vermont 13 V.S.A. § 7602	No	No automatic clearing of arrests.	No automatic clearing of non-convictions.	Convictions that involved the possession of 2 ounces or less of marijuana and occurred prior to Jan. 1, 2021, will be automatically expunged.	
Virginia § 19.2-389.3	No	No automatic clearing of arrests.	There is no public access to records related to marijuana possession charges that were deferred and dismissed.	There is no public access to records related to marijuana possession convictions.	
Washington	No automatic clearing of records in statute.				
West Virginia	No automatic clearing of records in statute.				
Wisconsin	No automatic clearing of records in statute.				
Wyoming	No automatic clearing of records in statute.				

TAB 5

COLLATERAL CONSEQUENCES RESOURCE CENTER

Collateral Consequences of Criminal Conviction and Restoration of Rights: News, Commentary, and Tools



California becomes third state to adopt "clean slate" record relief

| October 10, 2019 | CCRC Staff

On October 8, Governor Newsom signed into law AB 1076, the so-called "Clean Slate Act," authorizing automatic record relief in the form of set-aside or sealing for individuals with certain convictions and arrests under California law. The new law supplements but does not supplant the existing system of petition-based relief, and applies to convictions and arrests occurring after the bill's effective date of January 1, 2021. Eligibility for automatic relief under the new law is similar to but not precisely coincident with eligibility under existing law. The new law also for the first time prohibits

courts and the state repository from disclosing information about conviction records that have been granted relief, except where specifically authorized, whether under the new automatic process or the older petition-based system.

California is now the third state to adopt general "clean slate" record relief, after Pennsylvania (2018) and Utah (2019). While the automatic feature of the new law has prospective effect only, its limits on disclosure will, when effective, apply to all conviction records that have at any time been dismissed or set aside, whether automatically or by petition, as well as to all arrests and other non-conviction records that have been sealed. The specific features of AB 1076 are described in detail in the following comment posted on October 3.

Governor Newsom also on October 8 signed two other bills that affect collateral consequences: SB 310 amends Section 203 of California's Code of Civil Procedure to make people convicted of a felony eligible to serve of a trial jury unless incarcerated or under supervision, or required to register as a sex offender based upon a felony conviction; and AB 1394 repeals a law requiring that juveniles pay a fee to have their records sealed.

California poised to become third state to adopt "clean slate" record relief

| October 3, 2019 |

On September 23, the California legislature sent AB 1076 to California Governor Gavin Newsom, who has until October 13 to sign or veto this potentially transformative legislation. If enacted, AB 1076

would make California the third state (after Pennsylvania (2018) and Utah (2019)) to authorize "clean slate" record relief, a direction to authorities to seal certain arrest and conviction records automatically. (Illinois, New York, and California have enacted automatic relief for certain marijuana convictions, and several states have automatic relief for non-convictions.) The specific provisions are described generally below, and more fully after the break.

AB 1076 would not modify eligibility for relief under California's existing petition-based scheme of judicial remedies for people with criminal records, primarily via dismissal and set-aside for convictions and sealing for non-conviction records. Rather, effective January 1, 2021, it would create a new automatic process obviating the requirement of an individually-filed petition or motion in most cases. Eligibility for relief under this new automatic process would be similar but not identical to eligibility under the existing petition-based process, both for convictions and for non-convictions. If this bill is signed into law, California would break new ground in becoming the first state to extend automatic "clean slate" relief to felony convictions (other than for marijuana possession).

A less-noted but significant feature of AB 1076 is its expansion of the effect of relief for conviction records: it provides for non-disclosure of records of convictions that have been dismissed or set aside, whether automatically or by petition, and makes this provision applicable both to court records (effective February 1, 2021) and to records in the state repository (effective January 1, 2021), except in certain specified circumstances where disclosure is mandated by law. As it is, and notwithstanding the widespread use of the term "expungement" to describe its general relief scheme for convictions,

California has no law authorizing limits on public access to most conviction records, whether held by the court or by the state repository. This would change in 2021, if this law is enacted. (Most non-conviction records are now eligible for sealing by petition under California law.) Note that, like most state repositories, California's repository permits disclosure only to government agencies and specified private entities, so that the new limits apply within the class of otherwise authorized repository users.

The sponsors of AB 1076 emphasize that making relief automatic without the need for individual action will significantly reduce "barriers to employment and housing opportunities for millions of Californians." They point to the key findings of J.J. Prescott and Sonja Starr's 2019 study of record-sealing in Michigan: 1) people who had their conviction records sealed tended to have improved employment outcomes and lower recidivism rates than the general population; but 2) only a small percentage (6.5%) of those individuals eligible for set-aside and sealing actually applied, likely because of the complexity and burdens of filing a petition for relief with the court. While no comparable study has been done for California, experience with that state's marijuana-sealing law suggests that the low "take-up" rate is similar to the one Prescott and Starr found in Michigan.

If California's new law is enacted, beginning in 2021 the state will automatically grant relief for many arrests not resulting in conviction, for infraction and misdemeanor convictions, and for some less serious felony convictions. For eligible non-convictions—misdemeanor and some felony arrests—sealing will become automatic. (However, a significant set of felony arrests not leading to conviction are excluded, as discussed below, although most of these

dispositions remain eligible for petition-based relief.) For eligible convictions, dismissal and set-aside will be automatic provided that a number of additional eligibility requirements are satisfied, including that a person must not be required to register as a sex offender, or be currently subject to prosecution, supervision, or incarceration for any offense. Prosecutors and probation officers may object to automatic conviction relief in individual cases on "based on a showing that granting such relief would pose a substantial threat to the public safety," and such an objection may be tested in a court hearing.

A major shortcoming of AB 1076 — in contrast to the "clean slate" laws enacted in Pennsylvania and Utah —is that its automatic relief is prospective only. That is, relief is automatic only for arrests and convictions occurring after the law's effective date. Those with arrests and convictions occurring before 2021 would still have to apply to the court for relief. Though the original bill had applied retroactively, the Assembly amended the bill to exclude arrests and convictions occurring before January 1, 1973, and then the Senate further amended it to exclude those occurring before January 1, 2021. Presumably these changes were based on financial and logistical considerations. The annual cost for the California Department of Justice (DOJ) and courts to carry out the final bill is estimated to total between about $2 and $5 million each year. Moreover, the bill's effective date, January 1, 2021, is specifically subject to an appropriation in the annual budget, and the State's Department of Justice has indicated it "would need the implementation date to be delayed to July 1, 2023 for proper implementation." Despite challenges in implementation, we hope that, as the new automated system is developed, it will be feasible to extend relief to records predating 2021.

Of course, as noted, the provisions providing for non-disclosure of conviction records would apply to all cases dismissed or set-aside, without regard to when or by what process this relief was granted.

We will now describe in detail California's clean slate legislation, which would add two new sections to the Penal Code, 851.93 and 1203.425, dealing with arrests and convictions, respectively, and amend the section of the Penal Code that deals with state records systems, 11105.

Arrests

A person arrested on or after January 1, 2021, is eligible for automatic relief if any of the following is true:

- The arrest was for a misdemeanor and either the charge was dismissed, the person was acquitted of any charges, or at least 1 year has elapsed since the arrest and there is no indication that criminal proceedings have been initiated;
- The arrest was for a felony punishable by imprisonment in county jail, and either the person was acquitted of any charges, or at least 3 years have elapsed since the arrest and there is no indication that criminal proceedings have been initiated; or
- The person successfully completed one of various specified diversion programs.

Cal. Penal Code section 851.93. (Note: this excludes an arrest for a felony punishable by imprisonment in state prison and dismissed cases where the arrest was for for a felony punishable by imprisonment, unless the person successfully completed a specified diversion program.)

The DOJ will be required to review the records in the statewide criminal justice databases on a monthly basis to identify persons with arrest records that are eligible for relief, and "shall grant relief" if such information is present in the records. On a monthly basis, the DOJ must submit to the superior court a notice of all cases in that jurisdiction for which relief was granted. The DOJ must annually publish statistics for each county regarding the total number of arrests granted relief and the percentage of arrests for which the state summary criminal history information does not include a disposition.

Effect of relief

Following relief, all state summary criminal history information in all statewide criminal databases "shall include" next to or below the entry "arrest relief granted," and the date. The arrest "is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly," except that relief does not affect:

- a person's obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer;
- the ability of a criminal justice agency to access and use records, or a district attorney to prosecute an offense within the applicable statute of limitations;
- a person's authorization to own or possess a firearm;
- any prohibition from holding public office; or
- the authority to receive, or take adverse action based on, criminal history information or certified court records under various sections of

the Health and Safety Code, or other provisions that incorporate those criteria.

Starting on February 1, 2021, courts "shall not" disclose information concerning the arrest or case to any person or entity, in any format, except to the subject of the arrest, a criminal justice agency, or under one of the exceptions above.

Convictions

A person convicted on or after January 1, 2021, is eligible for automatic relief if otherwise eligible under existing law, and if each of the following conditions are also true:

- the person is not required to register under the Sex Offender Registration Act;
- the person does not have an active record for local, state, or federal supervision;
- based on information in the DOJ record, it does not appear that the person is currently serving a sentence for any offense and there is no indication of pending criminal charges; and
- there is no indication that the conviction resulted in a sentence of incarceration in state prison, and either: (1) the defendant was sentenced to probation, and, based on DOJ's records, appears to have completed probation without revocation; or (2) the defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based on DOJ's records, appears to have completed their sentence, and at least 1 year has elapsed since the judgment.

Cal. Penal Code section 1203.425. Nonetheless, even if a person is eligible, the prosecutor or probation department may file a petition to prohibit automatic relief "based on a showing that granting such relief

would pose a substantial threat to the public safety." The petition must be filed by 90 days before eligibility, and the court must give notice to the defendant and conduct a hearing within 45 days. (A person denied automatic relief can still petition for relief under existing law.)

The DOJ will be required to review the records in the statewide criminal justice databases on a monthly basis to identify persons with conviction records that are eligible for relief, and "shall grant relief, including dismissal of a conviction," if such information is present in the records, unless a petition to prohibit relief has been granted. On a monthly basis, the DOJ must submit to the superior court a notice of all cases in that jurisdiction for which relief was granted. The DOJ must annually publish statistics for each county regarding the total number of convictions granted and prohibited from automatic relief.

Effect of relief

Following relief, all state summary criminal history information in all statewide criminal databases "shall include" next to or below the entry "relief granted" and the date. A person granted relief "shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted," except that the relief does not affect:

- the provisions of Section 13555 of the Vehicle Code;
- the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, public office, or for contracting with the California State Lottery Commission;
- the ability of a criminal justice agency to access and use records;

- the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collaterally attack a conviction;
- a person's authorization to own or possess any firearm;
- a prohibition from holding public office;
- the authority to receive, or take adverse action based on, criminal history information or certified court records under various sections of the Health and Safety Code, or other provisions that incorporate those criteria;
- eligibility to provide, or receive payment for providing, in-home supportive services; or
- pleading and proof of the prior conviction in any subsequent prosecution of the defendant.

Starting on February 1, 2021, courts "shall not" disclose information concerning the conviction to any person or entity, except to the person granted relief, to a criminal justice agency, or under one of the exceptions above. In addition, a sentencing court "shall advise" a defendant of the provisions of this section, as well as the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

Finally, by amendments to Cal. Penal Code section 11105(p)(2)(A) that are effective January 1, 2021, the state records repository system is prohibited from disclosing conviction records that have been dismissed or set aside, whether automatically or by petition, in response to certain requests for background information to be used for employment, licensing or certification. Exceptions in existing law where background checks are authorized by law apply (including law enforcement employment, health care licensure, and a variety of other authorized situations).

When effective, these non-disclosure provisions apply without regard to when or by what process relief was granted.

Both sections of the clean slate law make clear that they do not limit any petitions, motions, or orders for relief authorized or required under existing law.

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October 3, 2019

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February 6, 2020

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February 17, 2021

Criminal Records Expungement/sealing Juveniles New legislation Sixth Amendment

PENAL CODE - PEN

PART 2. OF CRIMINAL PROCEDURE [681 - 1620] *(Part 2 enacted 1872.)*

TITLE 3. ADDITIONAL PROVISIONS REGARDING CRIMINAL PROCEDURE [777 - 883] *(Heading of Title 3 amended by Stats. 1951, Ch. 1674.)*

CHAPTER 5. Arrest, by Whom and How Made [833 - 851.93] *(Chapter 5 enacted 1872.)*

851.93. (a) (1) On a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, shall identify persons with records of arrest that meet the criteria set forth in paragraph (2) and are eligible for arrest record relief.

(2) A person is eligible for relief pursuant to this section, if the arrest occurred on or after January 1, 1973, and meets any of the following conditions:

(A) The arrest was for a misdemeanor offense and the charge was dismissed.

(B) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest.

(C) The arrest was for an offense that is punishable by imprisonment pursuant to paragraph (1) or (2) of subdivision (h) of Section 1170, there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.

(D) The person successfully completed any of the following, relating to that arrest:

(i) A prefiling diversion program, as defined in Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.

(ii) A drug diversion program administered by a superior court pursuant to Section 1000.5, or a deferred entry of judgment program pursuant to Section 1000 or 1000.8.

(iii) A pretrial diversion program, pursuant to Section 1000.4.

(iv) A diversion program, pursuant to Section 1001.9.

(v) A diversion program described in Chapter 2.8 (commencing with Section 1001.20), Chapter 2.8A (commencing with Section 1001.35), Chapter 2.81 (commencing with Section 1001.40), Chapter 2.9 (commencing with Section 1001.50), Chapter 2.9A (commencing with Section 1001.60), Chapter 2.9B (commencing with Section 1001.70), Chapter 2.9C (commencing with Section 1001.80), Chapter 2.9D (commencing with Section 1001.81), or Chapter 2.92 (commencing with Section 1001.85), of Title 6.

(b) (1) The department shall grant relief to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's arrest record, a note stating "arrest relief granted," listing the date that the department granted relief, and this section. This note shall be included in all statewide criminal databases with a record of the arrest.

(3) Except as otherwise provided in subdivision (d), an arrest for which arrest relief has been granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.

(c) On a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in subdivision (d), the court shall not disclose information concerning an arrest that is granted relief pursuant to this section to any person or entity, in any format, except to the person whose arrest was granted relief or a criminal justice agency, as defined in Section 851.92.

(d) Relief granted pursuant to this section is subject to the following conditions:

(1) Arrest relief does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(2) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(3) This section does not limit the ability of a district attorney to prosecute, within the applicable statute of limitations, an offense for which arrest relief has been granted pursuant to this section.

(4) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.

(5) Relief granted pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

(6) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(e) This section does not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law, including, but not limited to, Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9.

(f) The department shall annually publish statistics for each county regarding the total number of arrests granted relief pursuant to this section and the percentage of arrests for which the state summary criminal history information does not include a disposition, on the OpenJustice Web portal, as defined in Section 13010.

(g) This section shall be operative commencing July 1, 2022, subject to an appropriation in the annual Budget Act.

(Amended by Stats. 2021, Ch. 80, Sec. 2. (AB 145) Effective July 16, 2021. Conditionally operative July 1, 2022, by its own provisions.)

AB-1076 Criminal records: automatic relief. (2019-2020)

Date Published: 10/09/2019 09:00 PM

Assembly Bill No. 1076

CHAPTER 578

An act to amend Sections 480, 480.2, and 11345.2 of the Business and Professions Code, to amend Section 432.7 of the Labor Code, to amend Section 11105 of, and to add Sections 851.93 and 1203.425 to, the Penal Code, and to amend Section 13555 of the Vehicle Code, relating to criminal records.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1076, Ting. Criminal records: automatic relief.

Existing law authorizes a person who was arrested and has successfully completed a prefiling diversion program, a person who has successfully completed a specified drug diversion program, a person who has successfully completed a specified deferred entry of judgment program, and a person who has suffered an arrest that did not result in a conviction, under certain conditions, to petition the court to seal the person's arrest record. Under existing law, if a defendant successfully completes certain diversion programs, the arrest for the crime for which the defendant was diverted is deemed to have never occurred.

Existing law authorizes a defendant to petition to withdraw the defendant's plea of guilty or nolo contendere and enter a plea of not guilty, if the defendant has fulfilled the conditions of probation, or if other specified circumstances are met, and the defendant is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense. If relief is granted, existing law requires the court to dismiss the accusation or information against the defendant and release the defendant from all penalties and disabilities resulting from the offense, with exceptions. Existing law also authorizes a defendant to file a similar petition if the defendant was convicted of a misdemeanor and not granted probation, was convicted of an infraction, or completed a sentence for certain felonies, and the defendant met specified conditions.

This bill would, commencing January 1, 2021, and subject to an appropriation in the annual Budget Act, require the Department of Justice, on a monthly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure, as specified. The bill would require the department to grant relief to an eligible person, without requiring a petition or motion. The bill would not limit petitions, motions, or orders for relief, as required or authorized by any other law.

The bill would require an update to the state summary criminal history information to document the relief granted. The bill would require the department, on a monthly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which relief was granted. The bill would prohibit the court from disclosing information concerning an arrest or conviction granted relief, with exceptions.

The bill would authorize the prosecuting attorney or probation department, no later than 90 calendar days before the date of a person's eligibility for relief, to file a petition to prohibit the department from granting automatic relief for criminal conviction records as described above. If the court grants that petition, the bill would prohibit the department from granting relief, but the person would continue to be eligible for relief through other existing procedures, including petitions to the court.

The bill would require the Department of Justice to annually publish statistics regarding relief granted pursuant to the provisions of this bill, as specified.

The bill would require a court, at the time of sentencing, to advise each defendant of their right to conviction relief pursuant to the provisions of this bill, as specified.

The bill would make conforming changes.

This bill would incorporate additional changes to Section 480 of the Business and Professions Code, as added by Section 4 of Chapter 995 of the Statutes of 2018, proposed by AB 1521 to be operative only if this bill and AB 1521 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 480 of the Business and Professions Code, as amended by Section 3 of Chapter 995 of the Statutes of 2018, is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, 1203.41, or 1203.425 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit themselves or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that they have been convicted of a felony if they have obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that they have been convicted of a misdemeanor if they have met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.425 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2. Section 480 of the Business and Professions Code, as added by Section 4 of Chapter 995 of the Statutes of 2018, is amended to read:

480. (a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

(i) Chapter 1 (commencing with Section 5000) of Division 3.

(ii) Chapter 6 (commencing with Section 6500) of Division 3.

(iii) Chapter 9 (commencing with Section 7000) of Division 3.

(iv) Chapter 11.3 (commencing with Section 7512) of Division 3.

(v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.

(vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that the person has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if that person has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of the applicant's complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's internet website and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

SEC. 2.5. Section 480 of the Business and Professions Code, as added by Section 4 of Chapter 995 of the Statutes of 2018, is amended to read:

480. (a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

(i) Chapter 6 (commencing with Section 6500) of Division 3.

(ii) Chapter 9 (commencing with Section 7000) of Division 3.

(iii) Chapter 11.3 (commencing with Section 7512) of Division 3.

(iv) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.

(v) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that the person has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if that person has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a

license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of the applicant's complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's internet website and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

SEC. 3. Section 480.2 of the Business and Professions Code is amended to read:

480.2. (a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

(1) Been convicted of a crime.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit themselves or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that the person has been convicted of a felony if that person has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed by the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board to evaluate the rehabilitation of a person when considering the denial of a license under paragraph (1) of subdivision (f).

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.425 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(f) (1) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to evaluate the rehabilitation of a person either when:

(A) Considering the denial of a license under this section.

(B) Considering suspension or revocation of a license under Section 490.

(2) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(g) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board, in its discretion, may deem proper.

(h) Notwithstanding any other law, in a proceeding conducted by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(i) Notwithstanding Section 7.5, a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, 1203.41, or 1203.425 of the Penal Code.

(j) This section shall become operative on July 1, 2020.

SEC. 4. Section 11345.2 of the Business and Professions Code, as amended by Section 14 of Chapter 995 of the Statutes of 2018, is amended to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. Notwithstanding subdivision (c) of Section 480, if the individual's felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.425 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date the individual has knowledge of that fact.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 5. Section 11345.2 of the Business and Professions Code, as added by Section 15 of Chapter 995 of the Statutes of 2018, is amended to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. If the individual's felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date the individual has knowledge of that fact.

(c) This section shall become operative on July 1, 2020.

SEC. 6. Section 432.7 of the Labor Code is amended to read:

432.7. (a) (1) An employer, whether a public agency or private individual or corporation, shall not ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.425, 1203.45, and 1210.1 of the Penal Code. An employer also shall not seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.425, 1203.45, and 1210.1 of the Penal Code. This section shall not prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on their own recognizance pending trial.

(2) An employer, whether a public agency or private individual or corporation, shall not ask an applicant for employment to disclose, through any written form or verbally, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of the juvenile court. An employer also shall not seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of the juvenile court.

(3) For purposes of this section:

(A) "Conviction" includes a plea, verdict, or finding of guilt, regardless of whether a sentence is imposed by the court.

(B) "Conviction" does not include, and shall not be construed to include, any adjudication by a juvenile court or any other court order or action taken with respect to a person who is under the process and jurisdiction of the juvenile court.

(b) This section shall not prohibit the disclosure of the information authorized for release under Sections 13203 and 13300 of the Penal Code, to a government agency employing a peace officer. However, the employer shall not determine any condition of employment other than paid administrative leave based solely on an arrest report. The information contained in an arrest report may be used as the starting point for an independent, internal investigation of a peace officer in accordance with Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code.

(c) If a person violates this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from that person actual damages or two hundred dollars ($200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars ($500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(d) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law.

(e) Persons seeking employment or persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies as defined in Section 13101 of the Penal Code are not covered by this section.

(f) (1) Except as provided in paragraph (2), this section does not prohibit an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, from asking an applicant for employment either of the following:

(A) With regard to an applicant for a position with regular access to patients, to disclose an arrest under any section specified in Section 290 of the Penal Code.

(B) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under any section specified in Section 11590 of the Health and Safety Code.

(2) (A) An employer specified in paragraph (1) shall not inquire into information concerning or related to an applicant's arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law, unless the information concerns an adjudication by the juvenile court in which the applicant has been found by the court to have committed a felony or misdemeanor offense specified in paragraph (1) that occurred within five years preceding the application for employment.

(B) Notwithstanding any other provision of this subdivision, an employer specified in paragraph (1) shall not inquire into information concerning or related to an applicant's juvenile offense history that has been sealed by the juvenile court.

(3) An employer seeking disclosure of offense history under paragraph (2) shall provide the applicant with a list describing the specific offenses under Section 11590 of the Health and Safety Code or Section 290 of the Penal Code for which disclosure is sought.

(g) (1) A peace officer or employee of a law enforcement agency with access to criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall not knowingly disclose, with intent to affect a person's employment, any information pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(2) Any other person authorized by law to receive criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall not knowingly disclose any information received pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(3) Except for those specifically referred to in Section 1070 of the Evidence Code, a person who is not authorized by law to receive or possess criminal or juvenile justice records information maintained by a local law enforcement criminal or juvenile justice agency, pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, shall not knowingly receive or possess that information.

(h) "A person authorized by law to receive that information," for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal or juvenile offender records maintained by a local law enforcement criminal or juvenile justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal or juvenile justice agency who is required by that employment to receive, analyze, or process criminal or juvenile offender record information.

(i) This section does not require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

(j) As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or 13352.5 of the Vehicle Code, Sections 626, 626.5, 654, or 725 of, or Article 20.5 (commencing with Section 790) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code, or any other program expressly authorized and described by statute as a diversion program.

(k) (1) Subdivision (a) shall not apply to any city, city and county, county, or district, or any officer or official thereof, in screening a prospective concessionaire, or the affiliates and associates of a prospective concessionaire for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

(2) For purposes of this subdivision the following terms apply:

(A) "Screening" means a written request for criminal or juvenile history information made to a local law enforcement agency.

(B) "Prospective concessionaire" means any individual, general or limited partnership, corporation, trust, association, or other entity that is applying for, or seeking to obtain, a public agency's consent to, or approval of,

the acquisition by that individual or entity of any beneficial ownership interest in any public agency's concession, lease, or other property right whether directly or indirectly held. However, "prospective concessionaire" does not include any of the following:

(i) A lender acquiring an interest solely as security for a bona fide loan made in the ordinary course of the lender's business and not made for the purpose of acquisition.

(ii) A lender upon foreclosure or assignment in lieu of foreclosure of the lender's security.

(C) "Affiliate" means any individual or entity that controls, or is controlled by, the prospective concessionaire, or who is under common control with the prospective concessionaire.

(D) "Associate" means any individual or entity that shares a common business purpose with the prospective concessionaire with respect to the beneficial ownership interest that is subject to the consent or approval of the city, county, city and county, or district.

(E) "Control" means the possession, direct or indirect, of the power to direct, or cause the direction of, the management or policies of the controlled individual or entity.

(l) (1) Subdivision (a) does not prohibit a public agency, or any officer or official thereof, from denying consent to, or approval of, a prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest based on the criminal history information of the prospective concessionaire or the affiliates or associates of the prospective concessionaire that show any criminal conviction for offenses involving moral turpitude. Criminal history information for purposes of this subdivision includes any criminal history information obtained pursuant to Section 11105 or 13300 of the Penal Code.

(2) In considering criminal history information, a public agency shall consider the crime for which the prospective concessionaire or the affiliates or associates of the prospective concessionaire was convicted only if that crime relates to the specific business that is proposed to be conducted by the prospective concessionaire.

(3) Any prospective concessionaire whose application for consent or approval to acquire a beneficial interest in a concession, lease, or other property interest is denied based on criminal history information shall be provided a written statement of the reason for the denial.

(4) (A) If the prospective concessionaire submits a written request to the public agency within 10 days of the date of the notice of denial, the public agency shall review its decision with regard to any corrected record or other evidence presented by the prospective concessionaire as to the accuracy or incompleteness of the criminal history information utilized by the public agency in making its original decision.

(B) The prospective concessionaire shall submit the copy or the corrected record of any other evidence to the public agency within 90 days of a request for review. The public agency shall render its decision within 20 days of the submission of evidence by the prospective concessionaire.

(m) (1) Paragraph (1) of subdivision (a) does not prohibit an employer, whether a public agency or private individual or corporation, from asking an applicant about, or seeking from any source information regarding, a particular conviction of the applicant if, pursuant to Section 1829 of Title 12 of the United States Code or any other federal law, federal regulation, or state law, any of the following apply:

(A) The employer is required by law to obtain information regarding the particular conviction of the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

(B) The applicant would be required to possess or use a firearm in the course of their employment.

(C) An individual with that particular conviction is prohibited by law from holding the position sought by the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

(D) The employer is prohibited by law from hiring an applicant who has that particular conviction, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

(2) For purposes of this subdivision, "particular conviction" means a conviction for specific criminal conduct or a category of criminal offenses prescribed by any federal law, federal regulation, or state law that contains

requirements, exclusions, or both, expressly based on that specific criminal conduct or category of criminal offenses.

(n) Nothing in this section shall prohibit an employer, whether a public agency or private individual or corporation, required by state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history from complying with those requirements, or to prohibit the employer from seeking or receiving an applicant's criminal history report that has been obtained pursuant to procedures otherwise provided for under federal, state, or local law. For purposes of this subdivision, federal law shall include rules or regulations promulgated by a self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, pursuant to the authority in Section 19(b) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 11-203).

SEC. 7. Section 851.93 is added to the Penal Code, to read:

851.93. (a) (1) On a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, shall identify persons with records of arrest that meet the criteria set forth in paragraph (2) and are eligible for arrest record relief.

(2) A person is eligible for relief pursuant to this section, if the arrest occurred on or after January 1, 2021, and meets any of the following conditions:

(A) The arrest was for a misdemeanor offense and the charge was dismissed.

(B) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest.

(C) The arrest was for an offense that is punishable by imprisonment pursuant to paragraph (1) or (2) of subdivision (h) of Section 1170, there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.

(D) The person successfully completed any of the following, relating to that arrest:

(i) A prefiling diversion program, as defined in Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.

(ii) A drug diversion program administered by a superior court pursuant to Section 1000.5, or a deferred entry of judgment program pursuant to Section 1000 or 1000.8.

(iii) A pretrial diversion program, pursuant to Section 1000.4.

(iv) A diversion program, pursuant to Section 1001.9.

(v) Any diversion program described in Chapter 2.8 (commencing with Section 1001.20), Chapter 2.8A (commencing with Section 1001.35), Chapter 2.81 (commencing with Section 1001.40), Chapter 2.9 (commencing with Section 1001.50), Chapter 2.9A (commencing with Section 1001.60), Chapter 2.9B (commencing with Section 1001.70), Chapter 2.9C (commencing with Section 1001.80), Chapter 2.9D (commencing with Section 1001.81), or Chapter 2.92 (commencing with Section 1001.85), of Title 6.

(b) (1) The department shall grant relief to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's arrest record, a note stating "arrest relief granted," listing the date that the department granted relief, and this section. This note shall be included in all statewide criminal databases with a record of the arrest.

(3) Except as otherwise provided in subdivision (d), an arrest for which arrest relief has been granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.

(c) On a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on February 1, 2021, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in subdivision (d), the court shall not disclose information concerning an arrest that is granted relief pursuant to this section to any person or entity, in any format, except to the person whose arrest was granted relief or a criminal justice agency, as defined in Section 851.92.

(d) Relief granted pursuant to this section is subject to the following conditions:

(1) Arrest relief does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(2) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(3) This section does not limit the ability of a district attorney to prosecute, within the applicable statute of limitations, an offense for which arrest relief has been granted pursuant to this section.

(4) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control any firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.

(5) Relief granted pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

(6) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(e) This section shall not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law, including, but not limited to, Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9.

(f) The department shall annually publish statistics for each county regarding the total number of arrests granted relief pursuant to this section and the percentage of arrests for which the state summary criminal history information does not include a disposition, on the OpenJustice Web portal, as defined in Section 13010.

(g) This section shall be operative commencing January 1, 2021, subject to an appropriation in the annual Budget Act.

SEC. 8. Section 1203.425 is added to the Penal Code, immediately following Section 1203.42, to read:

1203.425. (a) (1) On a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in paragraph (2) and are eligible for automatic conviction record relief.

(2) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(A) The person is not required to register pursuant to the Sex Offender Registration Act.

(B) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(C) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for any offense and there is no indication of any pending criminal charges.

(D) Except as otherwise provided in clause (iii) of subparagraph (E), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.

(E) The conviction occurred on or after January 1, 2021, and meets either of the following criteria:

(i) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

(ii) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(b) (1) Except as specified in subdivision (h), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(3) Except as otherwise provided in subdivision (d) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(c) On a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on February 1, 2021, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in subdivision (d), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(d) Relief granted pursuant to this section is subject to the following conditions:

(1) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(2) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(3) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(4) Relief granted pursuant to this section does not limit the jurisdiction of the court over any subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(5) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control any firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(6) Relief granted pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

(7) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(8) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section

12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

(9) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the relief had not been granted.

(e) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4 and 1204.4a.

(f) The department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (h), on the OpenJustice Web portal, as defined in Section 13010.

(g) Subdivisions (a) to (f), inclusive, shall be operative commencing January 1, 2021, subject to an appropriation in the annual Budget Act.

(h) (1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting such relief would pose a substantial threat to the public safety.

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 1539, the hearing may be heard and determined upon declarations, affidavits, police investigative reports, copies of state summary criminal history information and local summary criminal history information, or any other evidence submitted by the parties that is material, reliable, and relevant.

(4) The prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting such relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant's record of arrests and convictions.

(5) If the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing such relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant's good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section.

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section.

(i) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

SEC. 9. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys or city prosecutors of a city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and postconviction motions, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, if the information is requested in the course of representation.

(10) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) A city or county, city and county, district, or an officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the state summary criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) A person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) A managing or supervising correctional officer of a county jail or other county correctional facility.

(16) A humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing state summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for a purpose other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving state summary criminal history information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing the officer's duties.

(25) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(26) (A) A state entity, or its designee, that receives federal tax information. A state entity or its designee that is authorized by this paragraph to receive state summary criminal history information also may transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation for the purpose of the state entity or its designee obtaining federal level criminal offender record information from the Department of Justice. This information shall be used only for the purposes set forth in Section 1044 of the Government Code.

(B) For purposes of this paragraph, "federal tax information," "state entity" and "designee" are as defined in paragraphs (1), (2), and (3), respectively, of subdivision (f) of Section 1044 of the Government Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) A public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, the Attorney General shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To a person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To an individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or a foreign nation.

(10) (A) (i) A public utility, as defined in Section 216 of the Public Utilities Code, or a cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and arrests for which the person is released on bail or on their own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) State summary criminal history information is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on their own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. A public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) This section shall not be construed as imposing a duty upon public utilities or cable corporations to request state summary criminal history information on current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means a corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(11) To a campus of the California State University or the University of California, or a four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to a special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) To a foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or a state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting state summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(G) Sentencing information, if present in the department's records at the time of the response.

(l) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or which did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention, or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested.

However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in the successful completion of a diversion program, exoneration, or a grant of relief pursuant to Section 851.91.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) A statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction, except a conviction for which relief has been granted pursuant to Section 1203.49, rendered against the applicant for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 550 of the Financial Code, or a statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of an offense specified in Section 550 of the Financial Code, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sentencing information, if present in the department's records at the time of the response.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in

subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or a statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

SEC. 10. Section 13555 of the Vehicle Code is amended to read:

13555. A termination of probation and dismissal of charges pursuant to Section 1203.4 of, or a dismissal of charges pursuant to Section 1203.4a of, or relief granted pursuant to Section 1203.425 of, the Penal Code does not affect any revocation or suspension of the privilege of the person convicted to drive a motor vehicle under this chapter. Such person's prior conviction shall be considered a conviction for the purpose of revoking or suspending or otherwise limiting such privilege on the ground of two or more convictions.

SEC. 11. Section 2.5 of this bill incorporates amendments to Section 480 of the Business and Professions Code, as added by Section 4 of Chapter 995 of the Statutes of 2018, proposed by both this bill and Assembly Bill 1521. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2020, (2) each bill amends Section 480 of the Business and Professions Code, as added by Section 4 of Chapter 995 of the Statutes of 2018, and (3) this bill is enacted after Assembly Bill 1521, in which case Section 2 of this bill shall not become operative.

(11) Existing law requires the Office of Emergency Services (OES) to establish a protocol for the examination and treatment of victims of sexual abuse and attempted sexual abuse, including child sexual abuse, and the collection and preservation of evidence therefrom. Existing law prohibits the costs incurred by a qualified health care professional, hospital, clinic, sexual assault forensic examination team, or other emergency medical facility for the medical evidentiary examination from being charged to a victim of the assault. Under existing law, the local law enforcement agency in whose jurisdiction the alleged offense was committed is required to reimburse the cost of a medical evidentiary examination within 60 days. Existing law authorizes the local law enforcement agency to seek reimbursement from OES, to be funded with specified federal funds, and to offset the cost of conducting the medical evidentiary examination of a sexual assault victim who is undecided at the time of an examination whether to report to law enforcement.

This bill would authorize the appropriate local law enforcement agency to seek reimbursement from OES, using the specified federal funds, for the cost of conducting the medical evidentiary examination of a sexual assault victim who has decided not to report the assault to law enforcement at the time of the examination. The bill would also authorize local law enforcement to seek, and would require OES to pay at an established rate, reimbursement for the cost of conducting the medical evidentiary examination of a sexual assault victim who has determined, at the time of the examination, to report the assault to law enforcement.

(12) Existing law subjects a minor between 12 and 17 years of age, inclusive, who violates any federal, state, or local law or ordinance, and a minor under 12 years of age who is alleged to have committed specified serious offenses, to the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court. Existing law authorizes the court to commit a minor to a juvenile home, ranch, camp, or forestry camp. Existing law establishes the Division of Juvenile Justice within the CDCR to operate facilities to house specified juvenile offenders.

This bill would authorize a juvenile court to order placement of a ward at the Pine Grove Youth Conservation Camp if specified criteria are met, including if the county has entered into a contract with the Division of Juvenile Justice and the division has found the ward amenable. The bill would authorize the division to enter into contracts with counties to operate the Pine Grove Youth Conservation Camp through a state-local partnership, or other management arrangement, to train justice-involved youth in wildland firefighting, as specified.

(13) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12838.4 of the Government Code is amended to read:

12838.4. The Board of Parole Hearings is hereby created. The Board of Parole Hearings shall be comprised of 21 commissioners, who shall be appointed by the Governor, subject to Senate confirmation, for three-year terms. The Board of Parole Hearings hereby succeeds to, and is vested with, all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the following entities, which shall no longer exist: Board of Prison Terms, Narcotic Addict Evaluation Authority, and Youthful Offender Parole Board. For purposes of this article, the above entities shall be known as "predecessor entities."

SEC. 2. Section 851.93 of the Penal Code is amended to read:

851.93. (a) (1) On a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, shall identify persons with records of arrest that meet the criteria set forth in paragraph (2) and are eligible for arrest record relief.

(2) A person is eligible for relief pursuant to this section, if the arrest occurred on or after January 1, 1973, and meets any of the following conditions:

(A) The arrest was for a misdemeanor offense and the charge was dismissed.

(B) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest.

(C) The arrest was for an offense that is punishable by imprisonment pursuant to paragraph (1) or (2) of subdivision (h) of Section 1170, there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.

(D) The person successfully completed any of the following, relating to that arrest:

(i) A prefiling diversion program, as defined in Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.

(ii) A drug diversion program administered by a superior court pursuant to Section 1000.5, or a deferred entry of judgment program pursuant to Section 1000 or 1000.8.

(iii) A pretrial diversion program, pursuant to Section 1000.4.

(iv) A diversion program, pursuant to Section 1001.9.

(v) A diversion program described in Chapter 2.8 (commencing with Section 1001.20), Chapter 2.8A (commencing with Section 1001.35), Chapter 2.81 (commencing with Section 1001.40), Chapter 2.9 (commencing with Section 1001.50), Chapter 2.9A (commencing with Section 1001.60), Chapter 2.9B (commencing with Section 1001.70), Chapter 2.9C (commencing with Section 1001.80), Chapter 2.9D (commencing with Section 1001.81), or Chapter 2.92 (commencing with Section 1001.85), of Title 6.

(b) (1) The department shall grant relief to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's arrest record, a note stating "arrest relief granted," listing the date that the department granted relief, and this section. This note shall be included in all statewide criminal databases with a record of the arrest.

(3) Except as otherwise provided in subdivision (d), an arrest for which arrest relief has been granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.

(c) On a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in subdivision (d), the court shall not disclose information concerning an arrest that is granted relief pursuant to this section to any person or entity, in any format, except to the person whose arrest was granted relief or a criminal justice agency, as defined in Section 851.92.

(d) Relief granted pursuant to this section is subject to the following conditions:

(1) Arrest relief does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(2) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(3) This section does not limit the ability of a district attorney to prosecute, within the applicable statute of limitations, an offense for which arrest relief has been granted pursuant to this section.

(4) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.

(5) Relief granted pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

(6) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(e) This section does not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law, including, but not limited to, Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9.

(f) The department shall annually publish statistics for each county regarding the total number of arrests granted relief pursuant to this section and the percentage of arrests for which the state summary criminal history information does not include a disposition, on the OpenJustice Web portal, as defined in Section 13010.

(g) This section shall be operative commencing July 1, 2022, subject to an appropriation in the annual Budget Act.

SEC. 3. Section 1170.01 is added to the Penal Code, to read:

1170.01. (a) The County Resentencing Pilot Program (pilot) is hereby established to support and evaluate a collaborative approach to exercising prosecutorial resentencing discretion pursuant to paragraph (1) of subdivision (d) of Section 1170. Participants in the pilot shall include a county district attorney's office, a county public defender's office, and may include a community-based organization in each county pilot site.

(b) Each participating district attorney's office shall do all of the following:

(1) Develop and implement a written policy which, at minimum, outlines the factors, criteria, and processes that shall be used to identify, investigate, and recommend individuals for recall and resentencing. The district attorney's office may take into account any input provided by the participating public defender's office or a qualified contracted community-based organization in developing this policy.

(2) Identify, investigate, and recommend the recall and resentencing of incarcerated persons consistent with its written policy.

(3) Direct all funding provided for the pilot be used for the purposes of resentencing individuals pursuant to the pilot, including, but not limited to, ensuring adequate staffing of deputy district attorneys, paralegals, and data analysts who will coordinate obtaining records and case files, support data entry, assist in the preparation and filing of pleadings, coordinate with victim services, and any other tasks required to complete the processing and facilitation of resentencing recommendations and to comply with the requirements of the pilot.

(c) A participating district attorney's office may contract with a qualifying community-based organization for the duration of the pilot. The community-based organization shall have experience working with currently or formerly incarcerated individuals and their support networks, and shall have expertise in at least two of the following areas:

(1) Supporting and developing prerelease and reentry plans.

(2) Family reunification services.

(3) Referrals to postrelease wraparound programs, including, but not limited to, employment, education, housing, substance use disorder, and mental health service programs.

(4) Restorative justice programs.

(d) Nothing in this section shall be construed to limit the discretion or authority granted to prosecutors under paragraph (1) of subdivision (d) of Section 1170.

(e) All funding provided to a participating public defender's office shall be used for the purposes of supporting the resentencing of individuals pursuant to the pilot, including, but not limited to, ensuring adequate staffing of deputy public defenders and other support staff to represent incarcerated persons under consideration for resentencing, identifying and recommending incarcerated persons to the district attorney's office for resentencing consideration, and developing reentry and release plans. A participating public defender's office may provide input to the county district attorney's office regarding the factors, criteria, and processes to be used by the district attorney in their exercise of discretion under paragraph (1) of subdivision (d) of Section 1170.

TAB 6

Connecticut

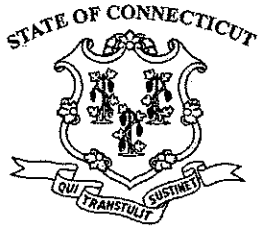
Public Act 21-42, Connecticut's "Clean Slate" law, establishes a process to automatically erase records of most misdemeanor convictions and certain felony convictions entered after January 1, 2000, after a specified period following the person's most recent conviction for any crime (with an exception for certain drug possession crimes). Class C, D, or E felonies are covered, as are unclassified felonies with up to 10-year prison terms. The bill excludes family violence crimes and offenses requiring sex offender registration. Under the bill, misdemeanors are eligible for erasure seven years after the person's most recent conviction for any crime; class D or E felonies or unclassified felonies with prison terms of five years or less are eligible after 10 years; and class C felonies or unclassified felonies with prison terms greater than five years but no more than 10 years are eligible after 15 years. For offenses before January 1, 2000, the records are erased when the person files a petition on a form prescribed by the Office of the Chief Court Administrator.

Various provisions that now apply to erasure of non-conviction records also apply to erasure under this bill: no fee is charged, and partial expungement is available. That is, if the case contained multiple charges and only some are entitled to erasure, electronic records released to the public must be erased to the extent they reference charges entitled to erasure.

The law requires all purchasers of court records, including background screening providers, to update their records on a regular basis. It extends these provisions to records of other agencies (State Police, DMV, Department of Correction). The bill prohibits various forms of discrimination based on someone's erased criminal history record information, such as in employment, public accommodations, the sale or rental of housing, the granting of credit, and several other areas. In several cases, it classifies discrimination based on these erased records as a "discriminatory practice" under the state human rights laws.

The automatic erasure provisions of the law take effect on January 1, 2023.

From Collateral Consequences Resource Center, https://ccresourcecenter.org/2021/07/07/dozens-of-new-expungement-laws-already-enacted-in-2021



Substitute Senate Bill No. 1019

Public Act No. 21-32

AN ACT CONCERNING THE BOARD OF PARDONS AND PAROLES, ERASURE OF CRIMINAL RECORDS FOR CERTAIN MISDEMEANOR AND FELONY OFFENSES, PROHIBITING DISCRIMINATION BASED ON ERASED CRIMINAL HISTORY RECORD INFORMATION AND CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION WITH RESPECT TO MISDEMEANOR SENTENCES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (l) of section 54-124a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

(l) The chairperson and executive director shall establish:

(1) In consultation with the Department of Correction, a parole orientation program for all parole-eligible inmates upon their transfer to the custody of the Commissioner of Correction that will provide general information on the laws and policies regarding parole release, calculation of time-served standards, general conditions of release, supervision practices, revocation and rescission policies, and procedures for administrative review and panel hearings, and any other information that the board deems relevant for preparing inmates for parole;

(2) An incremental sanctions system for parole violations including, but not limited to, reincarceration based on the type, severity and frequency of the violation and specific periods of incarceration for certain types of violations; [and]

(3) A formal training program for members of the board and parole officers, to be completed annually by each member, that shall include, but not be limited to, an overview of the criminal justice system, the parole system including factors to be considered in granting parole, victim rights and services, reentry strategies, risk assessment, case management and mental health issues; [. Each member shall complete such training annually.] and

(4) A formal training program to be completed annually by each member of the board on the pardons process, including information concerning collateral consequences a person with a criminal record may face due to having a criminal record, such as when applying for housing or employment.

Sec. 2. Section 54-130a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

(a) Jurisdiction over the granting of, and the authority to grant, commutations of punishment or releases, conditioned or absolute, in the case of any person convicted of any offense against the state and commutations from the penalty of death shall be vested in the Board of Pardons and Paroles.

(b) The board shall have authority to grant pardons, conditioned, provisional or absolute, or certificates of rehabilitation for any offense against the state at any time after the imposition and before or after the service of any sentence.

(c) The board may accept an application for a pardon three years after an applicant's conviction of a misdemeanor or violation and five

years after an applicant's conviction of a felony, except that the board, upon a finding of extraordinary circumstances, may accept an application for a pardon prior to such dates.

(d) Whenever the board grants an absolute pardon to any person, the board shall cause notification of such pardon to be made in writing to the clerk of the court in which such person was convicted, or the Office of the Chief Court Administrator if such person was convicted in the Court of Common Pleas, the Circuit Court, a municipal court, or a trial justice court.

(e) Whenever the board grants a provisional pardon or a certificate of rehabilitation to any person, the board shall cause notification of such provisional pardon or certificate of rehabilitation to be made in writing to the clerk of the court in which such person was convicted. The granting of a provisional pardon or a certificate of rehabilitation does not entitle such person to erasure of the record of the conviction of the offense or relieve such person from disclosing the existence of such conviction as may be required.

(f) In the case of any person convicted of a violation for which a sentence to a term of imprisonment may be imposed, the board shall have authority to grant a pardon, conditioned, provisional or absolute, or a certificate of rehabilitation in the same manner as in the case of any person convicted of an offense against the state.

(g) The board shall not deny any application for a pardon, unless the board provides a statement in writing to the applicant of the factors considered when determining whether the applicant qualified for the pardon and an explanation as to which factors were not satisfied.

Sec. 3. Section 54-142a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

(a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect.

(b) Whenever in any criminal case prior to October 1, 1969, the accused, by a final judgment, was found not guilty of the charge or the charge was dismissed, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased by operation of law and the clerk or any person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased; provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition for erasure with the court granting such not guilty judgment or dismissal, or, where the matter had been before a municipal court, a trial justice, the Circuit Court or the Court of Common Pleas [with the records center of the Judicial Department] <u>in the Superior Court where venue would exist for criminal prosecution</u> and thereupon all police and court records and records of the state's attorney, prosecuting attorney or prosecuting grand juror pertaining to such charge shall be erased. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect.

(c) (1) Whenever any charge in a criminal case has been nolled in the

Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, except that in cases of nolles entered in the Superior Court, Court of Common Pleas, Circuit Court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased, provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition to the court [or to the records center of the Judicial Department, as the case may be,] to have such records erased, in which case such records shall be erased.

(2) Whenever any charge in a criminal case has been continued at the request of the prosecuting attorney, and a period of thirteen months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the charge shall be nolled upon motion of the arrested person and such erasure may thereafter be effected or a petition filed therefor, as the case may be, as provided in this subsection for nolled cases.

(d) (1) Whenever prior to October 1, 1974, any person who has been convicted of an offense in any court of this state has received an absolute pardon for such offense, such person or any one of his heirs may, at any time subsequent to such pardon, file a petition with the [superior court] Superior Court at the location in which such conviction was effected, or with the [superior court] Superior Court at the location having custody of the records of such conviction or [with the records center of the Judicial Department] if such conviction was in the Court of Common Pleas, Circuit Court, municipal court or by a trial justice court, in the Superior Court where venue would exist for

criminal prosecution, for an order of erasure, and the Superior Court [or records center of the Judicial Department] shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such [case to] offense be erased.

(2) Whenever such absolute pardon was received on or after October 1, 1974, such records shall be erased.

(e) (1) Except as provided in subdivision (2) of this subsection, whenever any person has been convicted in any court of this state of a classified or unclassified misdemeanor offense, or a class D or E felony or an unclassified felony offense carrying a term of imprisonment of not more than five years, any police or court record and record of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such conviction, or any record pertaining to court obligations arising from such conviction held by the Board of Pardons and Paroles shall be erased as follows: (A) For any classified or unclassified misdemeanor offense, such records shall be erased seven years from the date on which the court entered the convicted person's most recent judgment of conviction (i) by operation of law, if such offense occurred on or after January 1, 2000, or (ii) upon the filing of a petition on a form prescribed by the Office of the Chief Court Administrator, if such offense occurred prior to January 1, 2000; and (B) for any class D or E felony or an unclassified felony offense carrying a term of imprisonment of not more than five years, such records shall be erased ten years from the date on which the court entered the convicted person's most recent judgment of conviction (i) by operation of law, if such offense occurred on or after January 1, 2000, or (ii) upon the filing of a petition on a form prescribed by the Office of the Chief Court Administrator, if such offense occurred prior to January 1, 2000.

(2) Convictions for the following offenses shall not be eligible for erasure pursuant to this subsection:

(A) Any conviction designated as a family violence crime, as defined in section 46b-38a; or

(B) Any offense that is a nonviolent sexual offense or a sexually violent offense, each as defined in section 54-250.

(3) If a person has been convicted of a violation of subsection (c) of section 21a-279 prior to October 1, 2015, such conviction shall not be considered as a most recent offense when evaluating whether a sufficient period of time has elapsed for an offense to qualify for erasure pursuant to this subsection.

(4) Nothing in this subsection shall limit any other procedure for erasure of criminal history record information, as defined in section 54-142g, as amended by this act, or prohibit a person from participating in any such procedure, even if such person's criminal history record information has been erased pursuant to this section.

(5) Nothing in this subsection shall be construed to require the Department of Motor Vehicles to erase criminal history record information on an operator's driving record. When applicable, the Department of Motor Vehicles shall make such criminal history record information available through the Commercial Driver's License Information System.

(f) (1) Whenever a person was convicted of one or more misdemeanors committed while such person was under eighteen years of age, and the offense or offenses occurred on or after January 1, 2000, and before July 1, 2012, all police and court records and records of the state's or prosecuting attorney shall be (A) erased, if such record is in an electronic record other than a scanned copy of a physical document, or (B) deemed erased by operation of law if such record is a scanned copy of a physical document or another record that is not electronic. This subdivision shall not apply to a motor vehicle offense, a violation

under title 14 or a violation of section 51-164r. The clerk of the court or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under this subdivision and such clerk shall forward a notice of such erasure to any law enforcement agency and the state's or prosecuting attorney to which he or she knows information concerning the arrest has been disseminated directing that all law enforcement and records of the state's or prosecuting attorney pertaining to such case to be so erased or so deemed erased by operation of law.

(2) Whenever a person was convicted of one or more misdemeanors committed while such person was under eighteen years of age, and the offense or offenses occurred before January 1, 2000, such person may file a petition with the Superior Court at the location in which such conviction was effected for an order of erasure, and the Superior Court shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.

(3) Notwithstanding subsection (i) of this section, the provisions of this subsection shall not apply in cases in which there has been a conviction for any charge for which erasure would not apply arising from the same information as any erased conviction.

[(e)] (g) (1) The clerk of the court [or any person charged with retention and control of such records in the records center of the Judicial Department] or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk

[or person charged with the retention and control of such records] shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk [or such person, as the case may be,] shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk [or such person] shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.

[(2) No fee shall be charged in any court with respect to any petition under this section.]

[(3)] (2) Any person who shall have been the subject of such an erasure shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

[(f)] (h) Upon motion properly brought, the court or a judge of such court, if such court is not in session, shall order disclosure of such records (1) to a defendant in an action for false arrest arising out of the proceedings so erased, or (2) to the prosecuting attorney and defense counsel in connection with any perjury charges which the prosecutor alleges may have arisen from the testimony elicited during the trial, or any false statement charges, or any proceeding held pursuant to section 53a-40b, or (3) counsel for the petitioner and the respondent in connection with any habeas corpus or other collateral civil action in which evidence pertaining to a nolled or dismissed criminal charge may become relevant. Such disclosure of such records is subject also to any records destruction program pursuant to which the records may have been destroyed. The jury charge in connection with erased

offenses may be ordered by the judge for use by the judiciary, provided the names of the accused and the witnesses are omitted therefrom.

[(g)] (i) The provisions of this section shall not apply to any police or court records or the records of any state's attorney or prosecuting attorney with respect to any information or indictment containing more than one count (1) while the criminal case is pending, or (2) when the criminal case is disposed of unless and until all counts are entitled to erasure in accordance with the provisions of this section, except that when the criminal case is disposed of, electronic records or portions of electronic records released to the public that reference a charge that would otherwise be entitled to erasure under this section shall be erased in accordance with the provisions of this section. Nothing in this section shall require the erasure of any information contained in the registry of protective orders established pursuant to section 51-5c. For the purposes of this subsection, "electronic record" means any police or court record or the record of any state's attorney or prosecuting attorney that is an electronic record, as defined in section 1-267, or a computer printout.

(j) An attorney of any person (1) who is the subject of any immigration matter in which disclosure of such person's criminal history record information may be required under federal law, (2) who has been convicted of an offense in any court of this state, and (3) whose criminal history record information has been erased pursuant to this chapter for such offense, may petition the Superior Court at the location in which such conviction was effected, or the Superior Court at the location having custody of the records of such conviction or if such conviction was in the Court of Common Pleas, Circuit Court, municipal court or by a trial justice court, the Superior Court where venue would exist for criminal prosecution, for such records, and the Superior Court shall direct that all police and court records and

records of the state's or prosecuting attorney pertaining to such offense be made available to such person's attorney, to the degree that such information has been retained.

(k) No fee shall be charged in any court with respect to any petition under this section.

[(h)] (l) For the purposes of this section, "court records" shall not include a record or transcript of the proceedings made or prepared by an official court reporter, assistant court reporter or monitor.

Sec. 4. Section 54-142d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

Whenever any person has been convicted of an offense in any court in this state and such offense has been decriminalized subsequent to the date of such conviction, such person may file a petition with the superior court at the location in which such conviction was effected, or with the superior court at the location having custody of the records of such conviction [or with the records center of the Judicial Department] if such conviction was in the Court of Common Pleas, Circuit Court, municipal court or by a trial justice, in the Superior Court where venue would currently exist for criminal prosecution, for an order of erasure, and the Superior Court [or records center of the Judicial Department] shall immediately direct all police and court records and records of the state's or prosecuting attorney pertaining to such [case] offense to be physically destroyed.

Sec. 5. (NEW) (*Effective January 1, 2023*) (a) The Department of Emergency Services and Public Protection, in consultation with the Judicial Branch and the Criminal Justice Information System Governing Board established pursuant to section 54-142q of the general statutes, shall develop and implement automated processes for erasure pursuant to section 54-142a of the general statutes, as amended

by this act.

(b) The department may, within available appropriations, disseminate information, including posting information on its Internet web site, regarding records that are subject to erasure under the provisions of this section.

(c) Nothing in this section shall be construed to require the destruction of paper records.

Sec. 6. Section 54-142e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

(a) Notwithstanding the provisions of subsection [(e)] (g) of section 54-142a, as amended by this act, and section 54-142c, with respect to any person, including, but not limited to, a consumer reporting agency as defined in subsection (i) of section 31-51i, as amended by this act, or a background screening provider or similar data-based service or company, that purchases criminal matters of public record, as defined in said subsection (i), from the Judicial Department or any criminal justice agency pursuant to subsection (b) of section 54-142g, as amended by this act, the department shall make available to such person information concerning such criminal matters of public record that have been erased pursuant to section 54-142a, as amended by this act. Such information may include docket numbers or other information that permits the person to identify and permanently delete records that have been erased pursuant to section 54-142a, as amended by this act.

(b) Each person, including, but not limited to, a consumer reporting agency or background screening provider or similar data-based service or company, that has purchased records of criminal matters of public record from the Judicial Department or any criminal justice agency shall, prior to disclosing such records, (1) purchase from the Judicial

Department or such criminal justice agency, on a monthly basis or on such other schedule as the Judicial Department or such criminal justice agency may establish, any updated criminal matters of public record or information available for the purpose of complying with this section, and (2) update its records of criminal matters of public record to permanently delete such erased records not later than thirty calendar days after receipt of information on the erasure of criminal records pursuant to section 54-142a, as amended by this act. Such person shall not further disclose such erased records.

Sec. 7. Subsection (c) of section 29-11 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

(c) (1) The Commissioner of Emergency Services and Public Protection shall charge the following fees for the service indicated: [(1)] (A) Name search, thirty-six dollars; [(2)] (B) fingerprint search, seventy-five dollars; [(3)] (C) personal record search, seventy-five dollars; [(4)] (D) letters of good conduct search, seventy-five dollars; [(5)] (E) bar association search, seventy-five dollars; [(6)] (F) fingerprinting, fifteen dollars; [(7)] and (G) criminal history record information search, seventy-five dollars. Except as provided in subsection (b) of this section, the provisions of this subsection shall not apply to any federal, state or municipal agency.

(2) The commissioner may waive fees imposed under subparagraph (G) of subdivision (1) of this subsection for any applicant requesting a criminal history record information search for the purpose of applying for a pardon authorized pursuant to section 54-124a, as amended by this act, provided such applicant completes a form prescribed by the Department of Emergency Services and Public Protection representing such person's indigency.

Sec. 8. Subsection (d) of section 54-142k of the general statutes is

repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

(d) Nonconviction information shall be available to the subject of the information and to the subject's attorney pursuant to this subsection and subsection (e) of this section. Any person shall, upon satisfactory proof of the person's identity, be entitled to inspect, for purposes of verification and correction, any nonconviction information relating to the person and upon the person's request shall be given a computer printout or photocopy of such information for which a reasonable fee may be charged, provided no erased record may be released except as provided in subsection [(f)] (h) of section 54-142a, as amended by this act. Before releasing any exact reproductions of nonconviction information to the subject of the information, the agency holding such information may remove all personal identifying information from such reproductions.

Sec. 9. (NEW) (*Effective January 1, 2023*) For purposes of this section, sections 11, 12, 16 to 24, inclusive, and 26 of this act, sections 8-265c and 8-315 of the general statutes, as amended by this act, subsection (b) of section 10a-6 of the general statutes, as amended by this act, and sections 31-51i, 38a-358, 38a-447, 46a-74, 46a-79, 46a-80 and 46a-81 of the general statutes, as amended by this act:

(1) "Commission" means the Commission on Human Rights and Opportunities created by section 46a-52 of the general statutes;

(2) "Criminal history record information" means court records and information obtained from the Judicial Department or any criminal justice agency relating to arrests, releases, detentions, indictments, informations or other formal criminal charges or any events and outcomes arising from those arrests, releases, detentions, including pleas, trials, sentences, appeals, incarcerations, correctional supervision, paroles and releases, outstanding judgments and any

other conviction information, as defined in section 54-142g of the general statutes, as amended by this act;

(3) "Employer" includes the state and all political subdivisions of the state and means any person or employer with one or more persons in such person's or employer's employ;

(4) "Erased criminal history record information" means (A) criminal history record information that has been erased pursuant to section 54-142a of the general statutes, as amended by this act, or section 54-76o of the general statutes, or any other provision of the general statutes or other operation of law; (B) information relating to persons granted youthful offender status pursuant to section 46b-146 of the general statutes; and (C) continuances of a criminal case that are more than thirteen months old; and

(5) "Place of public accommodation, resort or amusement" means any establishment that caters or offers its services or facilities or goods to the general public, including, but not limited to, any commercial property or building lot on which it is intended that a commercial building will be constructed or offered for sale or rent.

Sec. 10. Subdivisions (7) and (8) of section 46a-51 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

(7) "Discriminatory employment practice" means any discriminatory practice specified in subsection (b), (d), (e) or (f) of section 31-51i, as amended by this act, or section 46a-60 or 46a-81c;

(8) "Discriminatory practice" means a violation of section 4a-60, 4a-60a, 4a-60g, 31-40y, subsection (b) of section 31-51i, as amended by this act, subsection (d), (e) or (f) of section 31-51i, as amended by this act, subparagraph (C) of subdivision (15) of section 46a-54, subdivisions (16) and (17) of section 46a-54, section 46a-58, 46a-59, 46a-60, 46a-64,

46a-64c, 46a-66, 46a-68, 46a-68c to 46a-68f, inclusive, or 46a-70 to 46a-78, inclusive, subsection (a) of section 46a-80, as amended by this act, or sections 46a-81b to 46a-81o, inclusive, and sections 11, 12, 16, 17, 23, 24 and section 26 of this act;

Sec. 11. (NEW) (*Effective October 1, 2021*) On and after January 1, 2023, it shall be a discriminatory practice for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of a person's erased criminal history record information.

Sec. 12. (NEW) (*Effective October 1, 2021*) (a) On and after January 1, 2023, it shall be a discriminatory practice:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person on the basis of the erased criminal history record information of (A) such buyer or renter, (B) a person residing in or intending to reside in such dwelling after it is so sold, rented or made available, or (C) any person associated with such buyer or renter;

(2) To discriminate against any person in the terms, conditions or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of the erased criminal history record information of (A) such buyer or renter, (B) a person residing in or intending to reside in such dwelling after it is so sold, rented or made available, or (C) any person associated with such buyer or renter;

(3) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or

discrimination, or to intend to make any such preference, limitation or discrimination, based on the erased criminal history record information of (A) a potential buyer or renter, (B) a person intending to reside in such dwelling after it is sold, rented or made available, or (C) any person associated with such potential buyer or renter;

(4) To represent to any person that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available, on the basis of the erased criminal history record information of (A) a potential buyer or renter, (B) a person intending to reside in such dwelling after it is so sold, rented or made available, or (C) any person associated with such potential buyer or renter;

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons with erased criminal history record information;

(6) For any person or other entity engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, on the basis of the erased criminal history record information of (A) the other party in the transaction, (B) a person residing in or intending to reside in a dwelling with such other party, or (C) any person associated with such other party;

(7) To deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against that person in the terms or conditions of such access, membership or participation, on account of that person's erased criminal history record information; or

(8) To coerce, intimidate, threaten or interfere with any person in the

exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

(b) The provisions of this section shall not apply to (1) the rental of a room or rooms in a unit in a dwelling if the owner actually maintains and occupies part of such unit as the owner's residence, or (2) a unit in a dwelling containing not more than four units if the owner actually maintains and occupies one of such other units as the owner's residence.

(c) Nothing in this section limits the applicability of any reasonable state statute or municipal ordinance restricting the maximum number of persons permitted to occupy a dwelling.

(d) Nothing in this section prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors, other than a person's erased criminal history record.

Sec. 13. Section 8-265c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

The authority shall require that occupancy of all housing financed or otherwise assisted under this chapter be open to all persons regardless of race, creed, color, national origin or ancestry, sex or gender identity or expression or erased criminal history record information, as defined in section 9 of this act, and that the contractors and subcontractors engaged in the construction or rehabilitation of such housing shall take affirmative action to provide equal opportunity for employment without discrimination as to race, creed, color, national origin or ancestry, sex, [or] gender identity or expression or erased criminal history record information.

Sec. 14. Section 8-315 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

The municipality shall take all necessary steps to insure that occupancy of all housing financed or otherwise assisted pursuant to this chapter be open to all persons regardless of race, creed, color, national origin or ancestry, sex, gender identity or expression, age, [or] physical disability or erased criminal history record information, as defined in section 9 of this act.

Sec. 15. Section 31-51i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

(a) For the purposes of this section, "employer" means [any person engaged in business who has one or more employees, including the state or any political subdivision of the state] employer, as defined in section 9 of this act.

(b) No employer shall inquire about a prospective employee's prior arrests, criminal charges or convictions on an initial employment application, unless (1) the employer is required to do so by an applicable state or federal law, or (2) a security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment.

(c) No employer or employer's agent, representative or designee may require an employee or prospective employee to disclose the existence of [any arrest, criminal charge or conviction, the records of which have been erased pursuant to section 46b-146, 54-76o or 54-142a] erased criminal history record information, as defined in section 9 of this act.

(d) An employment application form that contains any question concerning the criminal history of the applicant shall contain a notice, in clear and conspicuous language: (1) That the applicant is not

required to disclose the existence of any [arrest, criminal charge or conviction, the records of which have been erased pursuant to section 46b-146, 54-76o or 54-142a] erased criminal history record information, (2) that [criminal records subject to erasure pursuant to section 46b-146, 54-76o or 54-142a] erased criminal history record information are records pertaining to a finding of delinquency or that a child was a member of a family with service needs, an adjudication as a youthful offender, a criminal charge that has been dismissed or nolled, a criminal charge for which the person has been found not guilty or a conviction for which the person received an absolute pardon or criminal records that are erased pursuant to statute or by other operation of law, and (3) that any person [whose criminal records have been erased pursuant to section 46b-146, 54-76o or 54-142a] with erased criminal history record information shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

(e) No employer or employer's agent, representative or designee shall deny employment to a prospective employee solely on the basis that the prospective employee [had a prior arrest, criminal charge or conviction, the records of which have been erased pursuant to section 46b-146, 54-76o or 54-142a] has erased criminal history record information or that the prospective employee had a prior conviction for which the prospective employee has received a provisional pardon or certificate of rehabilitation pursuant to section 54-130a, as amended by this act, or a certificate of rehabilitation pursuant to section 54-108f.

(f) No employer or employer's agent, representative or designee shall discharge, or cause to be discharged, or in any manner discriminate against, any employee solely on the basis that the employee [had, prior to being employed by such employer, an arrest, criminal charge or conviction, the records of which have been erased pursuant to section 46b-146, 54-76o or 54-142a] has erased criminal

history record information or that the employee had, prior to being employed by such employer, a prior conviction for which the employee has received a provisional pardon or certificate of rehabilitation pursuant to section 54-130a, as amended by this act, or a certificate of rehabilitation pursuant to section 54-108f.

(g) The portion of an employment application form that contains information concerning the criminal history record of an applicant or employee shall only be available to the members of the personnel department of the company, firm or corporation or, if the company, firm or corporation does not have a personnel department, the person in charge of employment, and to any employee or member of the company, firm or corporation, or an agent of such employee or member, involved in the interviewing of the applicant.

(h) Notwithstanding the provisions of subsection (g) of this section, the portion of an employment application form that contains information concerning the criminal history record of an applicant or employee may be made available as necessary to persons other than those specified in said subsection (g) by:

(1) A broker-dealer or investment adviser registered under chapter 672a in connection with (A) the possible or actual filing of, or the collection or retention of information contained in, a form U-4 Uniform Application for Securities Industry Registration or Transfer, (B) the compliance responsibilities of such broker-dealer or investment adviser under state or federal law, or (C) the applicable rules of self-regulatory organizations promulgated in accordance with federal law;

(2) An insured depository institution in connection with (A) the management of risks related to safety and soundness, security or privacy of such institution, (B) any waiver that may possibly or actually be sought by such institution pursuant to section 19 of the Federal Deposit Insurance Act, 12 USC 1829(a), (C) the possible or

actual obtaining by such institution of any security or fidelity bond, or (D) the compliance responsibilities of such institution under state or federal law; and

(3) An insurance producer licensed under chapter 701a in connection with (A) the management of risks related to security or privacy of such insurance producer, or (B) the compliance responsibilities of such insurance producer under state or federal law.

(i) (1) For the purposes of this subsection: (A) "Consumer reporting agency" means any person who regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a fee, which reports compile and report items of information on consumers that are matters of public record and are likely to have an adverse effect on a consumer's ability to obtain employment, but does not include any public agency; (B) "consumer report" means any written, oral or other communication of information bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living; and (C) "criminal matters of public record" means information obtained from the Judicial Department or any criminal justice agency, as defined in section 54-142g, as amended by this act, relating to arrests, indictments, convictions, outstanding judgments [,] and any other conviction information, as defined in section 54-142g, as amended by this act.

(2) Each consumer reporting agency that issues a consumer report that is used or is expected to be used for employment purposes and that includes in such report criminal matters of public record concerning the consumer shall:

(A) At the time the consumer reporting agency issues such consumer report to a person other than the consumer who is the subject of the report, provide the consumer who is the subject of the

consumer report (i) notice that the consumer reporting agency is reporting criminal matters of public record, and (ii) the name and address of the person to whom such consumer report is being issued;

(B) Maintain procedures designed to ensure that any criminal matter of public record reported is complete and up-to-date as of the date the consumer report is issued, which procedures shall, at a minimum, conform to the requirements set forth in section 54-142e, as amended by this act.

(3) This subsection shall not apply in the case of an agency or department of the United States government seeking to obtain and use a consumer report for employment purposes if the head of the agency or department makes a written finding pursuant to 15 USC 1681b(b)(4)(A).

(j) An employee or prospective employee may file a complaint with the Labor Commissioner alleging an employer's violation of subsection (a), (c), (g), (h) or (i) of this section. For any alleged violation by an employer of subsection (b), (d), (e) or (f) of this section, an employee or prospective employee may file a complaint with the Commission on Human Rights and Opportunities pursuant to section 46a-82 or may bring an action in the Superior Court against the employer for violating this section for declaratory or injunctive relief, damages or any other remedy available under law, at the sole election of the employee or prospective employee.

Sec. 16. (NEW) (*Effective October 1, 2021*) On and after January 1, 2023, it shall be a discriminatory practice for: (1) An employer or employer's agent, representative or designee to discriminate against that person in compensation or in terms, conditions or privileges of employment on the basis of that person's erased criminal history record information, (2) any employment agency to fail or refuse to classify properly or refer for employment or otherwise to discriminate

against any person on the basis of that person's erased criminal history record information, (3) a labor organization, on the basis of the erased criminal history record information of any person, to exclude from full membership rights or to expel from its membership that person or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, or (4) any person, employer, employment agency or labor organization, to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against persons on the basis of their erased criminal history record information.

Sec. 17. (NEW) (*Effective October 1, 2021*) (a) On and after January 1, 2023, it shall be a discriminatory practice for any association, board or other organization the principal purpose of which is the furtherance of the professional or occupational interests of its members, whose profession, trade or occupation requires a state license, to refuse to accept a person as a member of such association, board or organization solely on the basis of that person's erased criminal history record information.

(b) Any association, board or other organization that violates the provisions of this section shall be fined not less than one hundred dollars or more than five hundred dollars.

Sec. 18. (NEW) (*Effective October 1, 2021*) On and after January 1, 2023, state officials and supervisory personnel shall recruit, appoint, assign, train, evaluate and promote state personnel on the basis of merit and qualifications, without regard for erased criminal history record information.

Sec. 19. (NEW) (*Effective October 1, 2021*) On and after January 1, 2023, no state department, board or agency may grant, deny or revoke the license or charter of any person on the basis of that person's erased criminal history record information, except that the Department of

Motor Vehicles may consider erased criminal history record information to the extent required by 49 CFR 384, as amended from time to time.

Sec. 20. (NEW) (*Effective October 1, 2021*) On and after January 1, 2023, all educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs of state agencies, or in which state agencies participate, shall be open to all qualified persons, without regard to a person's erased criminal history record information.

Sec. 21. (NEW) (*Effective October 1, 2021*) On and after January 1, 2023, erased criminal history record information shall not be considered as a limiting factor in state-administered programs involving the distribution of funds to qualify applicants for benefits authorized by law.

Sec. 22. (NEW) (*Effective October 1, 2021*) On and after January 1, 2023, services of every state agency shall be performed without discrimination on the basis of erased criminal history record information.

Sec. 23. (NEW) (*Effective October 1, 2021*) On and after January 1, 2023, it shall be a discriminatory practice to:

(1) Deny any person within the jurisdiction of this state full and equal accommodations in any place of public accommodation, resort or amusement on the basis of that person's erased criminal history record information, subject only to the conditions and limitations established by law and applicable alike to all persons; or

(2) Discriminate, segregate or separate on account of erased criminal history record information.

Sec. 24. (NEW) (*Effective October 1, 2021*) On and after January 1,

2023, it shall be a discriminatory practice for the state system of higher education to deny a person the opportunity for higher education on the basis of erased criminal history record information.

Sec. 25. Subsection (b) of section 10a-6 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

(b) Within the limits of authorized expenditures, the policies of the state system of higher education shall be consistent with (1) the following goals: (A) To ensure that no qualified person be denied the opportunity for higher education on the basis of age, sex, gender identity or expression, ethnic background or social, physical or economic condition, or erased criminal history record information, as defined in section 9 of this act, (B) to protect academic freedom, (C) to provide opportunities for education and training related to the economic, cultural and educational development of the state, (D) to assure the fullest possible use of available resources in public and private institutions of higher education, (E) to maintain standards of quality ensuring a position of national leadership for state institutions of higher education, (F) to apply the resources of higher education to the problems of society, and (G) to foster flexibility in the policies and institutions of higher education to enable the system to respond to changes in the economy, society, technology and student interests; and (2) the goals for higher education in the state identified in section 10a-11c. Said board shall review recent studies of the need for higher education services, with special attention to those completed pursuant to legislative action, and to meet such needs shall initiate additional programs or services through one or more of the constituent units.

Sec. 26. (NEW) (*Effective October 1, 2021*) On and after January 1, 2023, it shall be a discriminatory practice for any creditor to discriminate on the basis of erased criminal record history information, against any person eighteen years of age or over in any credit

transaction.

Sec. 27. Section 38a-358 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

The declination, cancellation or nonrenewal of a policy for private passenger nonfleet automobile insurance is prohibited if the declination, cancellation or nonrenewal is based: (1) On the race, religion, nationality or ethnicity of the applicant or named insured; (2) solely on the lawful occupation or profession of the applicant or named insured, except that this provision shall not apply to any insurer which limits its market to one lawful occupation or profession or to several related lawful occupations or professions; (3) on the principal location of the insured motor vehicle unless such decision is for a business purpose which is not a mere pretext for unfair discrimination; (4) solely on the age, sex, gender identity or expression, [or] marital status or erased criminal history record information, as defined in section 9 of this act, of an applicant or an insured, except that this subdivision shall not apply to an insurer in an insurer group if one or more other insurers in the group would not decline an application for essentially similar coverage based upon such reasons; (5) on the fact that the applicant or named insured previously obtained insurance coverage through a residual market; (6) on the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured; (7) the first or second accident within the current experience period in relation to which the applicant or insured was not convicted of a moving traffic violation and was not at fault; or (8) solely on information contained in an insured's or applicant's credit history or credit rating or solely on an applicant's lack of credit history. For the purposes of subdivision (8) of this section, an insurer shall not be deemed to have declined, cancelled or nonrenewed a policy if coverage is available through an affiliated insurer.

Sec. 28. Section 38a-447 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

No life insurance company doing business in this state may: (1) Make any distinction or discrimination between persons on the basis of race or erased criminal history record information, as defined in section 9 of this act, as to the premiums or rates charged for policies upon the lives of such persons; (2) demand or require greater premiums from persons of one race than such as are at that time required by that company from persons of another race of the same age, sex, general condition of health and hope of longevity; (3) demand or require greater premiums from persons with erased criminal history record information than such as are at that time required by that company from persons without erased criminal history record information of the same age, sex, general conditions of health and hope of longevity; or [(3)] (4) make or require any rebate, diminution or discount on the basis of race or erased criminal history record information upon the sum to be paid on any policy in case of the death of any person insured, nor insert in the policy any condition, nor make any stipulation whereby such person insured shall bind himself, his heirs, executors, administrators or assigns to accept any sum less than the full value or amount of such policy, in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed upon all persons in similar cases; and each such stipulation or condition so made or inserted shall be void.

Sec. 29. Section 46a-74 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

No state department, board or agency may permit any discriminatory practice in violation of section 46a-59, 46a-64, [or] 46a-64c or section 11, 12, 16, 17, 23, 24 or 26 of this act.

Sec. 30. Section 46a-79 of the general statutes is repealed and the

following is substituted in lieu thereof (*Effective January 1, 2023*):

The General Assembly finds that the public is best protected when criminal offenders are rehabilitated and returned to society prepared to take their places as productive citizens and that the ability of returned offenders to find meaningful employment is directly related to their normal functioning in the community. It is therefore the policy of this state to encourage all employers to give favorable consideration to providing jobs to qualified individuals, including those who may have [criminal conviction records] conviction information, as defined in section 54-142g, as amended by this act. Nothing in this section shall be construed to permit any employer to refuse to hire or employ or to bar or to discharge from employment or to discriminate against an individual in compensation or in terms on the basis of that person's erased criminal history record information, as defined in section 9 of this act.

Sec. 31. Section 46a-80 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

(a) Except as provided in subsection (c) of this section, subsection (b) of section 46a-81, as amended by this act, and section 36a-489, and notwithstanding any other provisions of law to the contrary, a person shall not be disqualified from employment by the state or any of its agencies, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business for which a license, permit, certificate or registration is required to be issued by the state or any of its agencies solely [because of a prior conviction of a crime] on the basis of that person's conviction information, as defined in section 54-142g, as amended by this act.

(b) Except for a position for which any provision of the general statutes specifically disqualifies a person from employment by the state or any of its agencies [because of a prior conviction of a crime] on

the basis of that person's conviction information, no employer, as defined in section [5-270] 9 of this act, shall inquire about a prospective employee's [past convictions] conviction information until such prospective employee has been deemed otherwise qualified for the position in accordance with the provisions of section 31-51i, as amended by this act.

(c) A person may be denied employment by the state or any of its agencies, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, profession or business [by reason of the prior conviction of a crime] on the basis of that person's conviction information if, after considering (1) the nature of the crime and its relationship to the job for which the person has applied, (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release, the state or any of its agencies determines that the applicant is not suitable for the position of employment sought or the specific occupation, trade, vocation, profession or business for which the license, permit, certificate or registration is sought. In making a determination under this subsection, the state or any of its agencies shall give consideration to a provisional pardon issued pursuant to section 54-130e, or a certificate of rehabilitation issued pursuant to section 54-108f or 54-130e, and such provisional pardon or certificate of rehabilitation shall establish a presumption that such applicant has been rehabilitated. If an application is denied based on [a] conviction information for which the applicant has received a provisional pardon or certificate of rehabilitation, the state or any of its agencies, as the case may be, shall provide a written statement to the applicant of its reasons for such denial.

(d) If [a conviction of a crime] conviction information is used as a basis for rejection of an applicant, such rejection shall be in writing and

specifically state the evidence presented and reasons for rejection. A copy of such rejection shall be sent by registered mail to the applicant.

(e) In no case may [records of arrest, which are not followed by a conviction, or records of convictions, which have been erased] erased criminal history record information, as defined in section 9 of this act, nonconviction information, as defined in section 54-142g, as amended by this act, or criminal history record information, as defined in section 54-142g, as amended by this act, apart from conviction information, be used, distributed or disseminated by the state or any of its agencies in connection with an application for employment or for a permit, license, certificate or registration.

(f) Nothing in this section shall permit any employer to discriminate on the basis of erased criminal history record information in violation of section 31-51i, as amended by this act, or section 17 of this act.

Sec. 32. Subsection (a) of section 46a-81 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

(a) Except as provided in section 36a-489, the provisions of sections 46a-79 to 46a-81, inclusive, as amended by this act, shall prevail over any other provisions of law which purport to govern the denial of licenses, permits, certificates, registrations, or other means to engage in an occupation, trade, vocation, business or profession, on the grounds of a lack of good moral character, or which purport to govern the suspension or revocation of a license, permit, certificate or registration on the grounds of conviction [of a crime] information, as defined in section 54-142g, as amended by this act.

Sec. 33. Subsection (b) of section 54-142g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

(b) "Criminal justice agency" means any court with criminal jurisdiction, the Department of Motor Vehicles or any other governmental agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice, including, but not limited to, organized municipal police departments, the Division of Criminal Justice, the Department of Emergency Services and Public Protection, including the Division of State Police, the Department of Correction, the Court Support Services Division, the Office of Policy and Management, the state's attorneys, assistant state's attorneys and deputy assistant state's attorneys, the Board of Pardons and Paroles, the Chief Medical Examiner and the Office of the Victim Advocate. "Criminal justice agency" includes any component of a public, noncriminal justice agency if such component is created by statute and is authorized by law and, in fact, engages in activities constituting the administration of criminal justice as its principal function.

Sec. 34. Section 52-180b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):

There shall be a rebuttable presumption against admission of evidence of the prior criminal conviction of an applicant or employee in an action alleging that an employer has been negligent in hiring an applicant or retaining an employee, or in supervising the employer's agent, representative or designee with respect to hiring an applicant or retaining an employee, if the applicant or employee held a valid provisional pardon or certificate of rehabilitation at the time such alleged negligence occurred and a party establishes, by a preponderance of the evidence, that the employer knew that the applicant or employee held a valid provisional pardon or certificate of rehabilitation at the time such alleged negligence occurred. For the purposes of this section, "employer" has the same meaning as provided in section [31-51i] 9 of this act.

Sec. 35. (NEW) (*Effective October 1, 2021*) (a) Notwithstanding any provision of the general statutes, any offense which constitutes a breach of any law of this state for which a person may be sentenced to a term of imprisonment of up to but not exceeding one year shall be punishable by imprisonment for a period not to exceed three hundred sixty-four days. A misdemeanor conviction for which a person was sentenced to a term of imprisonment of one year shall continue to be deemed a misdemeanor conviction after the maximum term of imprisonment is reduced pursuant to this section.

(b) The provisions of this section apply to any term of imprisonment for which a person was sentenced to before, on or after October 1, 2021.

(c) Any person sentenced to a term of imprisonment of one year, prior to October 1, 2021, for any offense previously punishable by a term of imprisonment of up to but not exceeding one year, may apply to the court that entered the judgment of conviction to have the term of sentence modified to the maximum term of imprisonment for a period not to exceed three hundred sixty-four days. Any such application may be filed at any time and the court shall issue such modification regardless of the date of conviction, provided the record of such sentence has not been destroyed.

Approved June 10, 2021

TAB 7

News & Events

CRIMINAL RECORD SET ASIDES

Clean Slate

Criminal record set asides (sometimes referred to as "expungement") can help more people have the opportunity to find good jobs and secure safe and affordable housing. A "clean slate" can help strengthen families, communities, local economies across the state, and promote public safety. For example, a study by two University of Michigan Law School professors found that those whose criminal records are set aside experience "a sharp upturn in their wage and employment trajectories."

Setting aside a conviction is the process that clears a public criminal record. In Michigan, there is one process to set aside a conviction on an adult record and a different process to set aside a **juvenile conviction, called an adjudication.**

Use the Michigan Legal Help links below for more information on how to set aside a criminal record.

HOW TO SET ASIDE A CRIMINAL RECORD

MI LEGAL HELP: Setting Aside an Adult Conviction (article)
MI LEGAL HELP: I Have a Juvenile Adjudication to Set Aside (how-to)
MI LEGAL HELP: I Have an Adult Adjudication to Set Aside (how-to)

'CLEAN SLATE' LEGISLATION

Recent legislation makes Michigan a national leader in helping residents more easily set aside criminal records and a get a "clean slate." The new laws make set asides automatic for certain offenses; however, for some offenses, parties will need to apply for a set aside.

While these new laws take effect on April 11, 2021, court and law enforcement authorities were allowed two years to secure funding and coordinate plans to allow for automatic set aside of some offenses. **That means automatic set asides will not be implemented until April 2023, at the earliest.**

Highlights of the "Clean Slate" package include:

- Creating an automatic process for setting aside eligible misdemeanors after seven years and eligible non-assaultive felonies after 10 years. [NOTE: Not implemented until April 2023.]
- Expanding the number and revises the types of felonies and misdemeanors eligible to be set aside by application. [NOTE: A revised application form will be available on this page prior to the effective date of April 11, 2021.]
- Revising the waiting periods before being eligible to apply for a set aside.
- Treating multiple felonies or misdemeanor offenses arising from the same transaction as a single felony or misdemeanor conviction, provided the offenses happened within 24 hours of one another and are not assaultive crimes, or involves possession or use of a dangerous weapon, or is a crime that carries penalty of 10 or more years in prison.
- Expanding set aside eligibility to various traffic offenses.
- Allowing a person to petition to set aside one or more marijuana offenses if the offense would not have been a crime if committed after the use of recreational marijuana by adults became legal in the state.

FORMS FOR THE PUBLIC

Application to Set Aside Adjudication(s)
For juvenile cases

Application to Set Aside Conviction (updated June 8, 2021)
For adult cases

Application to Set Aside Misdemeanor Marihuana Conviction/s (updated June 8, 2021)

Application for Human Trafficking Victim to Set Aside Conviction/s (updated June 8, 2021)

FORMS FOR COURTS

Order on Application to Set Aside Adjudication(s)

Order on Application to Set Aside Conviction/s (updated June 8, 2021)

Order on Application to Set Aside Misdemeanor Marihuana Conviction/s (updated June 8, 2021)

Order on Application by Human Trafficking Victim to Set Aside Conviction/s (updated June 8, 2021)

SCAO TOOLS

MEMO: New and Revised Forms for Set Aside of Adult Convictions (June 8, 2021)
Pertains to the following forms: MC 227, MC 227a, MC 227b, MC 228, MC 228a, MC 228b

Michigan Clean Slate Legislation Overview

In October 2020, the Legislature enacted a group of bills collectively known as the "Clean Slate" package. These bills impact the rules and procedures an individual may use to have a prior conviction set aside. In addition to making several changes to the existing paper application processes and eligible offenses, the Clean Slate package also created a new automatic process to set aside eligible offenses without requiring an individual to file an application. Due to the necessary technical changes, implementation of the automatic set aside process is contingent upon appropriation for the necessary technology. The legislation also provides for a two-year development process before implementation of the automatic set aside process.

This resource provides an overview of the legislation included in the Clean Slate package and is divided into general topic areas. You can use the table of contents below to explore a particular topic area. Please be sure to review the text of the Public Act itself for the complete details of the legislation.

Description *(click to jump section below)*	**Bill No.**	**Public Act**	**Effective Date**	**Impacted Statues**
Paper Application Set Aside Process	HB 4984	2020 PA 191	4/11/21	MCL 780.621
Offenses That Cannot be Set Aside	HB 4981	2020 PA 187	4/11/21	MCL 780.621c (new)
"One Bad Night"–Counting Multiple Offenses within 24hrs	HB 4985	2020 PA 188	4/11/21	MCL 780.621b (new)
Timing for Filing Set Aside Application	HB 4983	2020 PA 190	4/11/21	MCL 780.621d (new)
Nonpublic Status of Set Aside Convictions	HB 4980	2020 PA 193	4/11/21	MCL 780.623
Treatment of Convictions that Are Set Aside	HB 4980	2020 PA 193	4/11/21	MCL 780.622
Marihuana Related Set Asides	HB 4982	2020 PA 192	4/11/21	MCL 780.621e (new)
Marihuana Set Aside, No Resentencing	HB 5120	2020 PA 189	4/11/21	MCL 780.621f (new)
Number of Offenses to Set Aside	HB 4980	2020 PA 193	4/11/21	MCL 780.624
Automatic Set Aside	HB 4980	2020 PA 193	4/11/21[1]	MCL 780.621g (new)
Reinstatement of Convictions	HB 4980	2020 PA 193	4/11/21	MCL 780.621h (new)
Michigan Set Aside Fund	HB 4980	2020 PA 193	4/11/21	MCL 780.621i (new)

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[1] The implementation of the automatic set aside will occur subject to the necessary appropriations, but not until 2 years after the effective date of the bill. Therefore, the earliest implementation of the automatic set aside process is April 2023.

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Paper Application Set Aside

Statute Citation (pre-2020 amendments):	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621(1) 2020 PA 191 HB 4984	A person may apply to set aside 1 felony and 2 misdemeanor convictions under certain circumstances. Certain offenses were excluded.	Increases the number of felony offenses that can be set aside from 1 to 3 and establishes that not more than 2 can be for an assaultive crime. MCL 780.621(1)(a)-(b). Prohibits an applicant from having more than 1 felony conviction for the same offense set aside if it is punishable by more than 10 years in prison. MCL 780.621(1)(c). Allows an applicant to apply to have a conviction for a violation or attempted violation of MCL 750.520e set aside if the conviction was before January 12, 2015, and the person has not been convicted of more than two minor offenses.[2] MCL 780.621(1)(d).
MCL 780.621(2)	Provided that a misdemeanor or felony conviction that was deferred and dismissed is considered a misdemeanor conviction under MCL 780.621(1) for purposes of determining whether the person is eligible to have any conviction set aside under the act.	The amended text of subsection (2) is substantially the same as the pre-amendment text.
MCL 780.621(3)	This subsection specified that a person could not apply for and a judge could not grant the setting aside of a conviction for a list of specified convictions. This subsection was removed from this section of the statute.	The previous text of subsection (3) was amended, and is now included in MCL 780.621c.

[2] MCL 780.621(1)(d) defines a "minor offense" for the purposes of this section as a misdemeanor or ordinance violation for which the maximum permissible term of imprisonment does not exceed 90 days, the maximum permissible fine is not more than $1,000, and the person who committed the offense is not more than 21 years old.

MCL 780.621(4)	This subsection provided for the process of setting aside convictions for victims of human trafficking.	The previous text of this subsection was renumbered as subsection (3). The amended subsection (4) includes definitions used throughout the statute, which were formerly in MCL 780.621(16).
MCL 780.621(5)	This subsection provided that an application to be set aside could only be filed 5 or more years after completion of the sentence of the conviction the person wished to set aside.	This subsection was removed from MCL 780.621, was amended, and is now included in MCL 780.621d.
MCL 780.621(6)	The person could not file a new application to set aside convictions less than 3 years after the convicting court denied the previous petition unless the court specified a lesser period of time.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(5). The text remains the same.
MCL 780.621(7)	A person who committed 1 or more crimes as a victim of human trafficking could apply to have 1 or more convictions set aside at any time.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(6). The text remains the same.
MCL 780.621(8)	This subsection detailed the information required to submit a valid application to set aside a conviction.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(7). The text remains substantially the same.
MCL 780.621(9)	The subsection required an applicant to submit a copy of the application and fingerprints to the MSP, who was required to provide a criminal history to the court.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(8). The text remains the same.
MCL 780.621(10)	The subsection required a $50 fee be paid to the MSP to process the application.	This subsection was removed from MCL 78.621 and is now included in MCL 780.621d(9). The text remains the same.
MCL 780.621(11)	The subsection required that a copy of the application be served on the attorney general and each prosecuting attorney who prosecuted the crime(s). It provided an opportunity for the AG and PA to contest the application and provided that the victim had a right to appear and make a statement.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(10). The text remains substantially the same.
MCL 780.621(12)	The court could require the filing of affidavits and the taking of proofs on an application.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(11). The text remains substantially the same.

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MCL 780.621(13)	The court could enter an order setting aside the conviction of an applicant if the applicant proves by a preponderance of the evidence that he or she was a victim of human trafficking when committing the crime.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(12). The text remains substantially the same.
MCL 780.621(14)	The court may set aside the conviction if the court determines it is consistent with the public welfare.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(13). The text remains substantially the same.
MCL 780.621(15)	The subsection stated that the setting aside of a conviction was a privilege and conditional and not a right.	This subsection was removed from MCL 780.621 and is now included in MCL 780.621d(14). The text remains the same.
MCL 780.621(16)	This subsection contained the definitions relevant throughout this statute.	The contents of this subsection, along with additional statutory references, were moved into MCL 780.621(4) when the statute was renumbered.

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Offenses That Cannot be Set Aside

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621c 2020 PA 187 HB 4981	This is a new section.	Convictions for the following cannot be set aside: 1. A felony or attempted felony where the punishment is life imprisonment. 2. Certain offenses related to the exploitation and delinquency of minors.[3] 3. A violation or attempted violation of fourth-degree CSC if convicted on or after January 12, 2015. 4. Certain traffic offenses, including operating while intoxicated, committing a traffic offense as a person with a CDL operating a commercial vehicle, or any traffic offense that involves injury or death.

[3] Offenses listed are MCL 750.136b(3), 750.136d(1)(b) or (c), 750.145c, 750.145d, 750.520c, 750.520d, and 750.520g. MCL 780.621c(1)(b).

		5. Felony domestic violence, if the applicant has a previous misdemeanor conviction for domestic violence. 6. Human trafficking offenses.[4] MCL 780.621c(1)(a)-(f). These prohibitions on setting aside a conviction also apply to the automatic set aside provision of MCL 780.621g. MCL 780.621c(2). An order setting aside a traffic offense does not require the SOS to remove it from the defendant's driving record. MCL 780.621c(3).

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"One Bad Night" – Counting Multiple Offenses within 24 Hours

Statute Citation:	**What the statute required prior to the 2020 amendments:**	**What the new statute requires post the 2020 amendments:**
MCL 780.621b 2020 PA 188 HB 4985	This is a new section.	Also known as "One Bad Night." Multiple felony or misdemeanor convictions must be treated as one felony or one misdemeanor conviction if they occurred with a 24-hour period and arose out of the same transaction. Exceptions include: 1. an assaultive crime, 2. a crime involving the use or possession of a dangerous weapon, 3. a crime with a maximum penalty of 10 years or more imprisonment, and 4. a conviction for a crime that if it had been obtained in this state would be for an assaultive crime.

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[4] Offenses listed are a violation of former MCL 750.462i or MCL 750.462j and MCL 750.462a to 750.462h and 750.543a to 750.543z. MCL 780.621c(1)(f).

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Timing for Filing Set Aside Application

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621d 2020 PA 190 HB 4983	This is a new section.	This is a new section that contains many provisions from the pre-2020 amendments version of MCL 780.621 noted above. Changes include: 1. An application to set aside more than 1 felony conviction shall only be filed 7 or more years after whichever occurs last: imposition of the sentence, completion of probation, discharge from parole, or completion of any term of imprisonment. MCL 780.621d(1)(a)-(d). 2. An application to set aside 1 or more serious misdemeanor or 1 felony conviction(s) shall only be filed 5 or more years after whichever occurs last: imposition of the sentence, completion of probation, discharge from parole, or completion of any term of imprisonment. MCL 780.621d(2)(a)-(d). 3. An application to set aside 1 or more misdemeanor convictions shall only be filed 3 or more years after whichever occurs last: the imposition of a sentence, completion of any term of imprisonment, or completion of probation. MCL 780.621d(3)(a)-(c). Amended subsections 4 – 14 are substantially the same as the pre-2020 amendment version of MCL 780.621(5) – (15).

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Nonpublic Status of Set Aside Convictions

Statute Citation (pre-2020 amendments):	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.623 2020 PA 193 HB 4980	Makes a conviction that was set aside a nonpublic record.	Includes reference to MCL 780.621e and MCL 780.621g; allows the use of a nonpublic record for making determinations about charging, plea offers, and sentencing; and creates a liability exception for reporting a conviction that was set aside if it was in the public record on the date of the report.
MCL 780.623(1)	Upon entry of an order under MCL 780.621, the court must send a copy of the order to the arresting agency and MSP.	Includes an order entered under MCL 780.621e (misdemeanor marihuana).
MCL 780.623(2)	MSP must retain a nonpublic record of the order setting aside a conviction, and of the records of the arrest, fingerprints, conviction, and sentence of the person.	Also includes any other notification regarding a conviction that was automatically set aside under MCL 780.621g.
MCL 780.623(2)(g)	Subsection (2) provides who a nonpublic record can be made available to. Subdivision (g) is new.	Clarifies that the nonpublic record may be made available for consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general for use in making determinations regarding charging, plea offers, and sentencing.
MCL 780.623(6)	New subsection.	Creates an exception that an entity is not liable for reporting a public record of conviction that was set aside, as described in MCL 780.623(5), if that record was available as a public record on the date of the report.

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Treatment of Convictions That Are Set Aside

Statute Citation (pre-2020 amendments):	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.622 2020 PA 193 HB 4980	Clarified how convictions that were set aside were supposed to be treated.	Adds new language regarding restitution, using a set aside conviction as evidence, and using for purposes of charging a second or subsequent crime.

MCL 780.622(1)	Upon entry of an order setting aside a conviction under MCL 780.621, the applicant is considered not to have been previously convicted, except as provided in MCL 780.622 and MCL 780.623.	Also includes orders for convictions set aside under MCL 780.621e (misdemeanor marihuana) and MCL 780.621g (automatic set aside).
MCL 780.622(3)	If the conviction was set aside under MCL 780.621 and involves a listed offense under the sex offender registration act, the applicant is considered to have been convicted for that offense for purposes of SORA.	Also includes orders for convictions set aside under MCL 780.621e (misdemeanor marihuana) and MCL 780.621g (automatic set aside).
MCL 780.622(7)	New subsection.	Clarifies that the act does not relieve any obligation to pay restitution owed to the victim, nor does it affect the jurisdiction of the court regarding enforcement of an order of restitution.
MCL 780.622(8)	New subsection.	A conviction that was set aside cannot be used as evidence in any action for negligent hiring, admission, or licensure against any person.
MCL 780.622(9)	New subsection.	A conviction set aside under MCL 780.621, MCL 780.621e (misdemeanor marihuana), or MCL 780.621g (automatic set aside) may be considered a prior conviction for purposes of charging a crime as a second or subsequent offense.
MCL 780.622(10)	New subsection.	Defines "applicant" as an individual who has applied under the act to have his or her conviction(s) set aside or an individual whose conviction(s) was set aside without an application under MCL 780.621g.

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Marihuana Related Set Aside

Statute Citation:	**What the statute required prior to the 2020 amendments:**	**What the new statute requires post the 2020 amendments:**
MCL 780.621e 2020 PA 192 HB 4982	This is a new section.	Creates a set aside process for certain marihuana-related offenses.

Questions:	Answers with Citation Reference:
Are misdemeanor marihuana convictions automatically set aside, or will an application have to be submitted?	A person convicted of 1 or more misdemeanor marihuana offenses may **apply** to set aside the conviction(s). MCL 780.621e(1).
How is a misdemeanor marihuana conviction different than other misdemeanor convictions that can be set aside under MCL 780.621 or MCL 780.621g?	The statute specifies that there is a rebuttable presumption that a conviction for a misdemeanor marihuana offense sought to be set aside by an applicant was based on activity that would not have been a crime if committed on or after December 6, 2018. This rebuttable presumption arises upon filing of an application listed under subsection (1). MCL 780.621e(4).
How does a prosecuting attorney rebut the presumption?	The prosecuting attorney must present evidence that demonstrates by a preponderance of the evidence that the conduct on which the applicant's conviction(s) was based *would* constitute a criminal violation of the laws of this state or political subdivision if it had been committed on or after December 6, 2018. The prosecuting attorney must present this evidence in an answer filed no later than 60 days from the date of service of the application. MCL 780.621e(4).
If the prosecuting attorney files an answer rebutting the presumption, what does the court have to do?	The court must promptly set the matter for a hearing no later than 30 days from its receipt of the prosecuting attorney's answer. MCL 780.621e(6).
What happens at the hearing on the rebuttable presumption?	The prosecuting attorney must prove by a preponderance of the evidence that the conviction(s) sought to be set aside were based on conduct that *would* constitute a criminal violation of the laws of this state or political subdivision if it had been committed on or after December 6, 2018. The applicant is **not required** to present evidence. The evidentiary burden rests solely on the prosecuting attorney. MCL 780.621e(6).
After the hearing, how long does the court have to enter an order denying or granting the application?	The court must enter an order denying or granting the application no later than 14 days after completion of the hearing and serve the order on the parties, including MSP. MCL 780.621e(6).
Do the rules of evidence apply during the hearing?	The rules of evidence do not apply to a hearing under this subsection. MCL 780.621e(6).
What if the prosecutor does not file an answer rebutting the presumption before expiration of the 60-day period?	The convicting court must enter an order setting aside the conviction(s) within 21 days and serve a copy on the applicant, arresting agency, prosecuting attorney, and MSP. MCL 780.621e(5).

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misdemeanor marihuana conviction under this section?	"Misdemeanor marihuana offense" means a violation of MCL 333.7403(2)(d) (possession), MCL 333.7404(2)(d) (use), or MCL 333.7453 (selling marihuana paraphernalia), or a violation of a local ordinance substantially corresponding to one of those statutes. MCL 780.621e(7).

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Marihuana Set Aside, No Resentencing

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621f 2020 PA 189 HB 5120	This is a new section.	It clarifies that misdemeanor marihuana convictions that were set aside under MCL 780.621e do not entitle the applicant to resentencing in another criminal case where the conviction(s) were used in determining an appropriate sentence; that an applicant is not entitled to the return of any fines, costs, or fees imposed as part of the applicant's sentence; and requires the conviction to be maintained as a nonpublic record.

Questions:	Answers with Citation Reference:
Are misdemeanor marihuana conviction(s) that are set aside under MCL 780.621e maintained as a nonpublic record like other set aside convictions?	The arresting agency and MSP must maintain the nonpublic record just the same as provided in MCL 780.623. MCL 780.621f(1).
Can an applicant seek resentencing in another criminal case if the misdemeanor marihuana conviction(s) was used in determining an appropriate sentence for that offense?	The applicant may not seek resentencing in another criminal case if the misdemeanor marihuana conviction(s) at issue was used in determining an appropriate sentence in that case. MCL 780.621f(2).
What if an aggrieved party (of the court's ruling to set aside the conviction) wants to challenge the set aside?	The party aggrieved by the ruling of the convicting court may seek rehearing or reconsideration under the applicable rules of the convicting court. The aggrieved party may also file an appeal with the circuit court or, if applicable, the court of appeals. MCL 780.621f(3).

Can an applicant request the return of fines, costs, or fees related to the misdemeanor marihuana conviction(s) that is set aside?	The applicant is not entitled to the return of any fines, costs, or fees imposed as part of the applicant's sentence for the misdemeanor marihuana conviction(s), or any money or property forfeited by the prosecuting agency or any law enforcement agency as a result of the conduct leading to the conviction or the misdemeanor marihuana conviction itself. MCL 780.621f(4).

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Number of Offenses to Set Aside

Statute Citation (pre-2020 amendments):	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.624 2020 PA 193 HB 4980	Provides that, except as provided in MCL 780.621, a person may only have 1 conviction set aside.	Now states that, except as provided in MCL 780.621 AND MCL 780.621e (misdemeanor marihuana) and MCL 780.621g (automatic set aside), a person may only have 1 conviction set aside. MCL 780.624.

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Automatic Set Aside (New)

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621g 2020 PA 193 HB 4980	This is a new section. There was no automatic set aside process prior to this new statute. Every request for set aside had to be requested by application.	Requires MSP and courts to automatically set aside certain convictions without the filing of an application.

Questions:	Answers with Citation Reference:
When does the automatic set aside statute become effective?	The statue becomes effective beginning two years after the effective date of the amendatory act, subject to appropriation. MCL 780.621g(1)-(4), (14).
When will a **felony** conviction be automatically set aside by MSP?	A felony conviction will be automatically set aside 10 years after either imposition of the sentence for the conviction or completion of any term of imprisonment with MDOC, whichever occurs later and the conviction is otherwise eligible. MCL 780.621g(2).
When will a **93-day or more misdemeanor** be automatically set aside by MSP?	MSP will automatically set aside all 93-day or more misdemeanors 7 years after the imposition of sentence. MCL 780.621g(4).

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When will a **92-day or less misdemeanor** be automatically set aside by MSP (e.g. fingerprints were submitted to MSP)?	If the conviction is recorded and maintained in the MSP database, MSP will set aside the conviction 7 years after the imposition of sentence. MCL 780.621g(3).
When will a **92-day or less misdemeanor** be automatically set aside by the court (e.g. no fingerprints were submitted to MSP)?	If the conviction is maintained only in the court's case management system, the court must set aside the conviction 7 years after the imposition of sentence. MCL 780.621g(1).
If the court automatically sets aside a 92-day or less misdemeanor, how will the arresting agency be notified?	The court must notify the arresting law enforcement agency of each conviction set aside on or before the tenth day of each month for the preceding month. MCL 780.621g(1).
How many convictions can be automatically set aside?	Not more than 2 felony convictions and 4 misdemeanor (≥93 days) convictions total can be automatically set aside. The limit on the number of misdemeanor convictions that may be set aside does not apply to 92-day or less misdemeanors set aside under subsection (1) or (3). MCL 780.621g(5).
What convictions (including attempt) cannot be automatically set aside?	1) An assaultive crime;[5] 2) A serious misdemeanor;[6] 3) A crime of dishonesty;[7] 4) Any other offense, not otherwise listed in this subsection that is punishable by 10 or more years' imprisonment; 5) A crime with elements involving a minor, vulnerable adult, injury or serious impairment, or death; or 6) Any violation related to human trafficking[8]. MCL 780.621g(10).
How will the court know what convictions have been set aside by MSP?	DTMB will develop a computer-based program for the setting aside of convictions. Also, MSP will create and maintain an electronically accessible record of each conviction recorded and maintained in the state's database that was set aside and will make it accessible by each court in the state. MCL 780.621g(11) and (13).

[5] MCL 780.621(4)(a) defines assaultive crime.
[6] MCL 780.621(4)(h) defines serious misdemeanor.
[7] MCL 780.621g(15) defines crime of dishonesty.
[8] MCL 780.621(4)(d) defines human trafficking violation.

What other requirements are necessary to automatically set aside a felony or 93-day or more misdemeanor?	1) The applicable time period (felony - 10 years) or (≥93 day misdemeanor - 7 years) has elapsed; 2) There are no criminal charges pending in LEIN; and 3) The applicant has not been convicted of any criminal offense during the applicable time period required under subsection (2) or (4). MCL 780.621g(6).

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Reinstatement of Convictions

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621h 2020 PA 193 HB 4980	This is a new section.	Allows for a conviction(s) set under MCL 780.621g (automatic set aside) to be reinstated if it was improperly set aside or if the court determines that the individual has not made a good-faith effort to pay the ordered restitution.

Questions:	Answers with Citation Reference:
What happens if a conviction was improperly or erroneously set aside?	If it is determined that a conviction was improperly set aside under MCL 780.621g (automatic) because the conviction was not eligible, the court, on its own motion, must reinstate the conviction. MCL 780.621h(1)-(2).
What happens if a conviction was set aside, but the defendant still owes restitution?	If a conviction was set aside under MCL 780.621g (automatic), and a motion by a person owed restitution is filed, or on the court's own motion, the court must reinstate the conviction if it determines that the individual has not made a good-faith effort to pay the ordered restitution. MCL 780.621h(3).

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Michigan Set Aside Fund

Statute Citation:	What the statute required prior to the 2020 amendments:	What the new statute requires post the 2020 amendments:
MCL 780.621i 2020 PA 193 HB 4980	This is a new section.	Creates the Michigan set aside fund[9].

[9] 2020 PA 400 provides that for the fiscal year ending September 30, 2021, $24,000,000 of the money in the marihuana registry fund will be transferred to and deposited into the Michigan set aside fund created under MCL 780.621i. See MCL 333.26426*(l)*.

Questions:	Answers with Citation Reference:
How will the court know what convictions to set aside?	SCAO will work with MSP and DTMB to implement system upgrades necessitated by the automatic set aside process. MCL 780.621i.

Frequently Asked Questions
Michigan's Clean Slate Legislation

Disclaimer: Safe & Just Michigan does not provide legal services, and the information provided below is not legal advice. If you have specific legal questions about the new law and how it applies to a particular criminal record, we recommend that you contact an attorney.

Q: What is an expungement or "set-aside" under Michigan law?

A: Michigan law (as of January 2021) permits a person with no more than one felony or two misdemeanor convictions on their record to petition a court to remove their conviction(s) from the public record. This process is generally referred to as an expungement, or sometimes as "record-sealing" or a "set-aside." In Michigan, law enforcement retains a non-public record of the conviction; in some other states, "expungement" means all records of the conviction are destroyed.

Q: What does the new "Clean Slate" law do?

A: The new law expands eligibility to petition for an expungement in several ways, and creates a new process that will automatically seal certain non-violent conviction records if a person has remained conviction-free for a period of time (seven years for misdemeanors; 10 years for felonies). Note, however, that the Clean Slate law is not effective yet as of January 2021.

Q: When will the new law become effective?

A: There are different answers for the bills related to the petition process and the automatic expungement.

Expanded eligibility to petition (H.B. 4981-85 & 5120): These bills become effective 180 days from the day they are signed by the governor. *Because they were signed on October 12, 2020, the expected effective date of these bills is April 10, 2021.*

Automatic Expungement (H.B. 4980): This bill has a two-year implementation period. That means *the earliest it will become effective is December 30, 2022.*

Q: What if I don't want to wait until the automatic expungement is effective?

A: You may be eligible to apply for expungement under current law. If it has been five years since the end of your sentence and community supervision, and you have no more than one felony and two misdemeanors on your record, you are eligible to apply to seal most kinds of convictions.

Questions? Contact Safe & Just Michigan at 517.258.1134 or info@safeandjustmi.org

Safe & Just Michigan

Last updated Jan. 14, 2021

Frequently Asked Questions
Michigan's Clean Slate Legislation

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Q: Are some convictions ineligible for expungement?

A: Yes. Sex offenses, offenses punishable by a maximum of life in prison, second-offense domestic violence and human trafficking offenses are all ineligible to be sealed. In addition, traffic offenses will not be eligible until the new law goes into effect in April 2021, and drunk driving (any kind) and moving violations causing injury or death are not eligible for expungement under the new law.

Q: Why is clearance limited in the number of felonies and misdemeanors eligible for clearance?

A: The short answer is that it wasn't up to us. At Safe & Just Michigan, we believe that every person who has remained crime-free for the statutory waiting period should be eligible for public record clearance. This position is strongly supported by the existing research on record clearance and recidivism, and — consistent with that — we will always advocate for the broadest possible expungement policy. However, many legislators and other stakeholders do not share this view, and pushed for narrower eligibility. So while we believe this bill package is an important step forward, we will continue to fight for broader record clearance in the future.

Q: How can I determine whether I am eligible for the automatic expungement?

A: The automatic expungement applies to up to two non-violent felony convictions and four misdemeanors ("serious misdemeanor" convictions are not eligible). Certain financial crimes, defined by the bill as "crimes of dishonesty," are also ineligible. Safe & Just Michigan will be releasing guidance to assist people in determining their eligibility closer to the effective date of the automatic expungement, which is **December 30, 2022.**

Q: How will I know if my record has been automatically sealed?

A: Because the automatic process will go forward without any involvement of the individuals whose records are being sealed, it is possible that a person may have their record sealed but not realize it. Safe & Just Michigan will be working with the state of Michigan, local governments and many partner organizations to do outreach related to the Clean Slate law to make sure people know about its impact and effective date, and to provide resources that assist people in determining whether their records have been cleared. However, at this time, these resources are still in development.

Questions? Contact Safe & Just Michigan at 517.258.1134 or info@safeandjustmi.org

Safe & Just Michigan

Last updated Jan. 14, 2021

SETTING ASIDE CONVICTIONS
Act 213 of 1965

AN ACT to provide for setting aside the conviction in certain criminal cases; to provide for the effect of such action; to provide for the retention of certain nonpublic records and their use; to prescribe the powers and duties of certain public agencies and officers; and to prescribe penalties.

History: 1965, Act 213, Imd. Eff. July 16, 1965;—Am. 1982, Act 495, Eff. Mar. 30, 1983.

The People of the State of Michigan enact:

780.621 Application for order setting aside conviction; felony or misdemeanor conviction; setting aside of certain convictions prohibited; victim of human trafficking violation; definitions.

Sec. 1. (1) Except as otherwise provided in this act, a person who is convicted of 1 or more criminal offenses may file an application with the convicting court for the entry of an order setting aside 1 or more convictions as follows:

(a) Except as provided in subdivisions (b) and (c), a person convicted of 1 or more criminal offenses, but not more than a total of 3 felony offenses, in this state, may apply to have all of his or her convictions from this state set aside.

(b) An applicant may not have more than a total of 2 convictions for an assaultive crime set aside under this act during his or her lifetime.

(c) An applicant may not have more than 1 felony conviction for the same offense set aside under this section if the offense is punishable by more than 10 years imprisonment.

(d) A person who is convicted of a violation or an attempted violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, before January 12, 2015 may petition the convicting court to set aside the conviction if the individual has not been convicted of another offense other than not more than 2 minor offenses. As used in this subdivision, "minor offense" means a misdemeanor or ordinance violation to which all of the following apply:

(*i*) The maximum permissible term of imprisonment does not exceed 90 days.

(*ii*) The maximum permissible fine is not more than $1,000.00.

(*iii*) The person who committed the offense is not more than 21 years old.

(2) A conviction that was deferred and dismissed under any of the following, whether a misdemeanor or a felony, is considered a misdemeanor conviction under subsection (1) for purposes of determining whether a person is eligible to have any conviction set aside under this act:

(a) Section 703 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703.

(b) Section 1070(1)(b)(*i*) or 1209 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1070 and 600.1209.

(c) Section 13 of chapter II or section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 762.13 and 769.4a.

(d) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.

(e) Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(f) Any other law or laws of this state or of a political subdivision of this state similar in nature and applicability to those listed in this subsection that provide for the deferral and dismissal of a felony or misdemeanor charge.

(3) A person who is convicted of a violation of section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, or a local ordinance substantially corresponding to section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to have that conviction set aside if he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.

(4) As used in this act:

(a) "Assaultive crime" includes any of the following:

(*i*) A violation described in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(*ii*) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90h, not otherwise included in subparagraph (*i*).

(*iii*) A violation of section 110a, 136b, 234a, 234b, 234c, 349b, or 411h(2)(a) of the Michigan penal code, 1931 PA 328, MCL 750.110a, 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, or 750.411h, or any other

violent felony.

(*iv*) A violation of a law of another state or of a political subdivision of this state or of another state that substantially corresponds to a violation described in subparagraph (*i*), (*ii*), or (*iii*).

(b) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(c) "Felony" means either of the following, as applicable:

(*i*) For purposes of the offense to be set aside, felony means a violation of a penal law of this state that is punishable by imprisonment for more than 1 year or that is designated by law to be a felony.

(*ii*) For purposes of identifying a prior offense, felony means a violation of a penal law of this state, of another state, or of the United States that is punishable by imprisonment for more than 1 year or is designated by law to be a felony.

(d) "Human trafficking violation" means a violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h, or of former section 462i or 462j of that act.

(e) "Indian tribe" means an Indian tribe, Indian band, or Alaskan native village that is recognized by federal law or formally acknowledged by a state.

(f) "Misdemeanor" means a violation of any of the following:

(*i*) A penal law of this state, another state, an Indian tribe, or the United States that is not a felony.

(*ii*) An order, rule, or regulation of a state agency that is punishable by imprisonment for not more than 1 year or a fine that is not a civil fine, or both.

(*iii*) A local ordinance of a political subdivision of this state substantially corresponding to a crime listed in subparagraph (*i*) or (*ii*) that is not a felony.

(*iv*) A violation of the law of another state or political subdivision of another state substantially corresponding to a crime listed under subparagraph (*i*) or (*ii*) that is not a felony.

(*v*) A violation of the law of the United States substantially corresponding to a crime listed under subparagraph (*i*) or (*ii*) that is not a felony.

(g) "Operating while intoxicated" means a violation of any of the following:

(*i*) Section 625 or 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625 and 257.625m.

(*ii*) A local ordinance substantially corresponding to a violation listed in subparagraph (*i*).

(*iii*) A law of an Indian tribe substantially corresponding to a violation listed in subparagraph (*i*).

(*iv*) A law of another state substantially corresponding to a violation listed in subparagraph (*i*).

(*v*) A law of the United States substantially corresponding to a violation listed in subparagraph (*i*).

(h) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

(i) "Victim" means that term as defined in sections 2, 31, and 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.752, 780.781, and 780.811.

(j) "Violent felony" means that term as defined in section 36 of the corrections code of 1953, 1953 PA 232, MCL 791.236.

History: 1965, Act 213, Imd. Eff. July 16, 1965;—Am. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 1993, Act 342, Eff. May 1, 1994;—Am. 1996, Act 573, Eff. Apr. 1, 1997;—Am. 2002, Act 472, Eff. Oct. 1, 2002;—Am. 2011, Act 64, Imd. Eff. June 23, 2011;—Am. 2014, Act 335, Eff. Jan. 14, 2015;—Am. 2014, Act 463, Imd. Eff. Jan. 12, 2015;—Am. 2016, Act 336, Eff. Mar. 14, 2017;—Am. 2020, Act 191, Eff. Apr. 11, 2021.

780.621a Definitions.

Sec. 1a. As used in this act:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere, or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) "Traffic offense" means a violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding to that act, which violation involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

History: Add. 1982, Act 495, Eff. Mar. 30, 1983.

780.621b Setting aside multiple criminal offenses arising out of same transaction; exceptions.

Sec. 1b. (1) For purposes of a petition to set aside a conviction under section 1 or 1e, more than 1 felony offense or more than 1 misdemeanor offense must be treated as a single felony or misdemeanor conviction if the felony or misdemeanor convictions were contemporaneous such that all of the felony or misdemeanor offenses occurred within 24 hours and arose from the same transaction, provided that none of those felony or misdemeanor offenses constitute any of the following:

(a) An assaultive crime.

(b) A crime involving the use or possession of a dangerous weapon.

(c) A crime with a maximum penalty of 10 or more years' imprisonment.

(d) A conviction for a crime that if it had been obtained in this state would be for an assaultive crime.

(2) As used in this section, "dangerous weapon" means that term as defined in section 110a of the Michigan penal code, 1931 PA 328, MCL 750.110a.

History: Add. 2020, Act 188, Eff. Apr. 11, 2021.

780.621c Prohibition on setting aside convictions for certain criminal cases; applicability to MCL 780.621g; inapplicable to secretary of state driving record.

Sec. 1c. (1) A person shall not apply to have set aside, and a judge shall not set aside, a conviction for any of the following:

(a) A felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum punishment is life imprisonment.

(b) A violation or attempted violation of section 136b(3), 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c, 750.145d, 750.520c, 750.520d, and 750.520g.

(c) A violation or attempted violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction occurred on or after January 12, 2015.

(d) The following traffic offenses:

(*i*) A conviction for operating while intoxicated by any person.

(*ii*) Any traffic offense committed by an individual with an indorsement on his or her operator's or chauffeur's license to operate a commercial motor vehicle that was committed while the individual was operating the commercial motor vehicle or was in another manner a commercial motor vehicle violation.

(*iii*) Any traffic offense that causes injury or death.

(e) A felony conviction for domestic violence, if the person has a previous misdemeanor conviction for domestic violence.

(f) A violation of former section 462i or 462j or chapter LXVIIA or chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h and 750.543a to 750.543z.

(2) The prohibition on the setting aside of the convictions under subsection (1) upon application also applies to the setting aside of convictions without application under section 1g.

(3) An order setting aside a conviction for a traffic offense under this act must not require that the conviction be removed or expunged from the applicant's driving record maintained by the secretary of state as required under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

History: Add. 2020, Act 187, Eff. Apr. 11, 2021.

780.621d Application and procedures for setting aside felonies and serious misdemeanor convictions.

Sec. 1d. (1) An application under section 1 to set aside more than 1 felony conviction shall only be filed 7 or more years after whichever of the following events occurs last:

(a) Imposition of the sentence for the convictions that the applicant seeks to set aside.

(b) Completion of any term of felony probation imposed for the convictions that the applicant seeks to set aside.

(c) Discharge from parole imposed for the convictions that the applicant seeks to set aside.

(d) Completion of any term of imprisonment imposed for the convictions that the applicant seeks to set aside.

(2) An application under section 1 to set aside 1 or more serious misdemeanor convictions or 1 felony conviction shall only be filed 5 or more years after whichever of the following events occurs last:

(a) Imposition of the sentence for the conviction or convictions that the applicant seeks to set aside.

(b) Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.

(c) Discharge from parole imposed for the conviction that the applicant seeks to set aside, if applicable.

(d) Completion of any term of imprisonment imposed for the conviction or convictions that the applicant seeks to set aside.

(3) An application under section 1 to set aside 1 or more misdemeanor convictions, other than an application to set aside a serious misdemeanor or any other misdemeanor conviction for an assaultive crime, shall only be filed 3 or more years after whichever of the following events occurs last:

(a) Imposition of the sentence for the conviction that the applicant seeks to set aside.

(b) Completion of any term of imprisonment imposed for the conviction that the applicant seeks to set

aside.

(c) Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.

(4) For an application under section 1, a court shall not enter an order setting aside a conviction or convictions unless all of the following apply:

(a) The applicable time period required under subsection (1), (2), or (3) has elapsed.

(b) There are no criminal charges pending against the applicant.

(c) The applicant has not been convicted of any criminal offense during the applicable time period required under subsection (1), (2), or (3).

(5) If a petition under this act is denied by the convicting court, a person shall not file another petition concerning the same conviction or convictions with the convicting court until 3 years after the date the convicting court denies the previous petition, unless the court specifies an earlier date for filing another petition in the order denying the petition.

(6) An application under section 1(3) may be filed at any time following the date of the conviction to be set aside. A person may apply to have more than 1 conviction set aside under section 1(3).

(7) An application under section 1 is invalid unless it contains the following information and is signed under oath by the person whose conviction is or convictions are to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of each conviction that is to be set aside.

(c) For an application under section 1(1), a statement that the applicant has not been convicted of an offense during the applicable time period required under subsection (1), (2), or (3).

(d) A statement listing all actions enumerated in section 1(2) that were initiated against the applicant and have been dismissed.

(e) A statement as to whether the applicant has previously filed an application to set aside this or other conviction and, if so, the disposition of the application.

(f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(g) If the person is seeking to have 1 or more convictions set aside under section 1(3), a statement that he or she meets the criteria set forth in section 1(3), together with a statement of the facts supporting his or her contention that the conviction was a direct result of his or her being a victim of human trafficking.

(h) A consent to the use of the nonpublic record created under section 3 to the extent authorized by section 3.

(8) The applicant shall submit a copy of the application and 1 complete set of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under section 3, and shall forward an electronic copy of a complete set of fingerprints to the Federal Bureau of Investigation for a comparison with the records available to that agency. The department of state police shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant and shall report to the court any similar information obtained from the Federal Bureau of Investigation. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(9) The copy of the application submitted to the department of state police under subsection (8) must be accompanied by a fee of $50.00 payable to the state of Michigan that must be used by the department of state police to defray the expenses incurred in processing the application.

(10) A copy of the application must be served upon the attorney general and upon the office of each prosecuting attorney who prosecuted the crime or crimes the applicant seeks to set aside, and an opportunity must be given to the attorney general and to the prosecuting attorney to contest the application. If a conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney shall notify the victim of the assaultive crime or serious misdemeanor of the application under section 22a or 77a of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The notice must be by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under this act concerning that conviction and to make a written or oral statement.

(11) For an application under section 1(1), upon the hearing of the application the court may require the filing of affidavits and the taking of proofs as it considers proper.

(12) For an application under section 1(3), if the applicant proves to the court by a preponderance of the evidence that the conviction was a direct result of his or her being a victim of human trafficking, the court may, subject to the requirements of subsection (13), enter an order setting aside the conviction.

(13) If the court determines that the circumstances and behavior of an applicant under section 1(1) or (3),

from the date of the applicant's conviction or convictions to the filing of the application warrant setting aside the conviction or convictions, and that setting aside the conviction or convictions is consistent with the public welfare, the court may enter an order setting aside the conviction or convictions.

(14) The setting aside of a conviction or convictions under this act is a privilege and conditional and is not a right.

History: Add. 2020, Act 190, Eff. Apr. 11, 2021.

780.621e Application to set aside misdemeanor marihuana offenses; requirements; rebuttable presumption; order; "misdemeanor marihuana offense" defined.

Sec. 1e. (1) Beginning on January 1, 2020, a person convicted of 1 or more misdemeanor marihuana offenses may apply to set aside the conviction or convictions under this subsection.

(2) An application under subsection (1) must contain all of the following information:

(a) The full name and current address of the applicant.

(b) A certified record of each conviction that is to be set aside.

(3) A copy of the application under subsection (1) must be served upon the agency that prosecuted the offense or offenses the applicant seeks to set aside.

(4) A rebuttable presumption that a conviction for a misdemeanor marihuana offense sought to be set aside by an applicant was based on activity that would not have been a crime if committed on or after December 6, 2018 arises upon the filing of an application under subsection (1). The presumption described in this subsection may be rebutted by the presentation of evidence by the prosecuting agency that prosecuted the case that demonstrates by a preponderance of the evidence that the conduct on which the applicant's conviction was or convictions were based would constitute a criminal violation of the laws of this state or a political subdivision of this state if it had been committed on or after December 6, 2018. An answer made under this subsection must be filed no later than 60 days from the date of service of the application. If an answer is filed with the convicting court, the answering party must serve the answer upon the other parties to the matter.

(5) Upon the expiration of the 60-day period under subsection (4), if the prosecuting agency has not filed an answer to the application addressing the rebuttable presumption described in subsection (4), the convicting court must within 21 days enter an order setting aside the conviction or convictions and serve a copy of the order upon the applicant, the arresting agency, the prosecuting agency, and the department of the state police.

(6) If the prosecuting agency files an answer addressing the rebuttable presumption in subsection (4), the convicting court must promptly set the matter for a hearing no later than 30 days from its receipt of the answer, and serve a notice of the hearing upon the applicant. At the hearing, the prosecuting agency must prove by a preponderance of the evidence that a conviction or convictions sought to be set aside by an applicant were based upon conduct that would constitute a criminal violation of the laws of this state or a political subdivision of this state if it had been committed on or after December 6, 2018. An applicant is not required to present evidence that his or her conviction was based upon conduct that would not constitute a criminal violation of the laws of this state or a political subdivision of this state on or after December 6, 2018. The evidentiary burden under this subsection rests solely on the objecting prosecuting agency. After a hearing under this subsection, the court shall enter an order denying or granting the application no later than 14 days after completion of the hearing and serve any written opinions and orders, including an order setting aside the conviction or convictions, upon the parties, including the department of state police. The rules of evidence do not apply to a hearing under this subsection.

(7) As used in this section, "misdemeanor marihuana offense" means a violation of section 7403(2)(d), 7404(2)(d), or a marihuana paraphernalia violation of section 7453 of the public health code, 1978 PA 368, MCL 333.7403, 333.7404, and 333.7453, or a violation of a local ordinance substantially corresponding to section 7403(2)(d), 7404(2)(d), or the prohibition regarding marihuana paraphernalia of section 7453 of the public health code, 1978 PA 368, MCL 333.7403, 333.7404, and 333.7453.

History: Add. 2020, Act 192, Eff. Apr. 11, 2021.

780.621f Procedures for setting aside certain marihuana offenses under MCL 780.621e.

Sec. 1f. (1) If an application to set aside a conviction or convictions under section 1e is granted, the arresting agency and the department of the state police shall maintain the nonpublic record created under section 3 for use as authorized under section 3.

(2) If an application to set aside a conviction or convictions is granted under section 1e, the applicant may not thereafter seek resentencing in another criminal case the applicant was sentenced for during which the conviction or convictions at issue were used in determining an appropriate sentence for the applicant, whether or not the setting aside of the conviction or convictions would have changed the scoring of a prior record variable for purposes of the sentencing guidelines or otherwise.

(3) A party aggrieved by the ruling of the convicting court considering an application under section 1e may seek a rehearing or reconsideration under the applicable rules of the convicting court or may file an appeal with the circuit court or, if applicable, the court of appeals in accordance with the rules of those courts.

(4) The setting aside of a conviction under section 1e does not entitle the applicant to the return of any fines, costs, or fees imposed as part of the applicant's sentence for the conviction or convictions or of any money or property forfeited by the prosecuting agency or any law enforcement agency as a result of the conduct leading to the conviction or as a result of the conviction itself.

History: Add. 2020, Act 189, Eff. Apr. 11, 2021.

780.621g Setting aside certain convictions without application; requirements; exceptions; implementation date; reinstatement; "crime of dishonesty" defined.

Sec. 1g. (1) Beginning 2 years after the effective date of the amendatory act that added this section and subject to any necessary appropriation, a misdemeanor conviction for an offense for which the maximum punishment is imprisonment for not more than 92 days is set aside under this section without the filing of an application under section 1 if 7 years have passed from the imposition of the sentence. Each court shall notify the arresting law enforcement agency of each conviction on or before the tenth day of each month that is set aside under this subsection for the preceding month. Each law enforcement agency need not retain and shall make nonpublic the notification that the conviction has been set aside, and the record of the arrest, fingerprinting, conviction, and sentence of the person in the case to which the notification applies.

(2) Beginning 2 years after the effective date of the amendatory act that added this section and subject to any necessary appropriation and subsections (5), (6), (7), and (10), a felony conviction that is recorded and maintained in the department of state police database is set aside under this section without the filing of an application under section 1 if both of the following apply:

(a) Ten years have passed from whichever of the following events occurs last:

(*i*) Imposition of the sentence for the conviction.

(*ii*) Completion of any term of imprisonment with the department of corrections for the conviction.

(b) The conviction or convictions are otherwise eligible to be set aside under section 1.

(3) Beginning 2 years after the effective date of the amendatory act that added this section and subject to any necessary appropriation and subsection (10), a conviction for a misdemeanor offense for which the maximum punishment is imprisonment for not more than 92 days that is recorded and maintained in the department of state police database is set aside under this section without the filing of an application under section 1 if 7 years have passed from the imposition of the sentence.

(4) Beginning 2 years after the effective date of the amendatory act that added this section and subject to any necessary appropriation and subsections (5), (6), (7), and (10), a conviction for a misdemeanor offense for which the maximum punishment is imprisonment for 93 days or more that is recorded and maintained in the department of state police database is set aside under this section without the filing of an application under section 1 if 7 years have passed from the imposition of the sentence.

(5) Except as otherwise provided in this subsection, not more than 2 felony convictions and 4 misdemeanor convictions total that are recorded and maintained in the department of state police database may be set aside under this section during the lifetime of an individual. The limit on the number of misdemeanor convictions that may be set aside under this subsection does not apply to the setting aside of convictions described under subsection (1) or (3).

(6) A conviction is not set aside under subsection (2) or (4) unless all of the following apply:

(a) The applicable time period required under subsection (2) or (4) has elapsed.

(b) There are no criminal charges pending in the department of state police database against the applicant.

(c) The applicant has not been convicted of any criminal offense that is recorded and maintained in the department of state police database during the applicable time period required under subsection (2) or (4).

(7) Subsections (2) and (4) do not apply to an individual who has more than 1 conviction for an assaultive crime or an attempt to commit an assaultive crime that is recorded and maintained in the department of state police database.

(8) If the governor determines that the process for setting aside a conviction without an application under this section cannot be implemented by the date required under subsections (1), (2), (3), and (4) because of technological limitations, the governor may issue a directive delaying the implementation of this section for not more than 180 days. The attorney general, the state court administrator, or the director of the department of state police may recommend a delay of implementation to the governor under this subsection.

(9) An individual whose conviction is set aside under this section impliedly consents to the creation of the nonpublic record under section 3.

(10) Subsections (2) and (4) do not apply to a conviction recorded and maintained in the department of

state police database for the commission of or attempted commission of any of the following:

(a) An assaultive crime.

(b) A serious misdemeanor.

(c) A crime of dishonesty.

(d) Any other offense, not otherwise listed under this subsection, that is punishable by 10 or more years' imprisonment.

(e) A violation of the laws of this state listed under chapter XVII of the code of criminal procedure, 1927 PA 175, MCL 777.1 to 777.69, the elements of which involve a minor, vulnerable adult, injury or serious impairment, or death.

(f) Any violation related to human trafficking.

(11) The department of technology, management, and budget shall develop and maintain a computer-based program for the setting aside of convictions under this section. In fulfilling its duty under this subsection, the department of technology, management, and budget may contract with a private technical consultant as needed.

(12) The setting aside of a conviction without an application under this section is subject to reinstatement under section 1h.

(13) The department of state police shall create and maintain an electronically accessible record of each conviction recorded and maintained in the department of state police database that was set aside under this section that must be provided to or accessible by each court in this state. An electronic record created as required under this section may only be used as authorized under section 3 and by a court for purposes of updating locally maintained court records.

(14) The implementation of the section is subject to appropriation. The department of state police and the department of technology, management, and budget shall begin work to implement the section immediately upon appropriation.

(15) As used in this section, "crime of dishonesty" includes a felony violation of chapters XXVA and XLI, felony violations of sections 174, 174a, 175, 176, 180, and 181 of the Michigan penal code, 1931 PA 328, MCL 750.159f to 750.159x, 750.248 to 750.265a, 750.174, 750.174a, 750.175, 750.176, 750.180, and 750.181, and a violation of 1979 PA 53, MCL 752.791 to 752.797.

History: Add. 2020, Act 193, Eff. Apr. 11, 2021.

780.621h Reinstatement of conviction set aside without application.

Sec. 1h. (1) Upon the occurrence of 1 of the circumstances under subsection (2) or (3), a conviction that was set aside by operation of law under section 1g shall be reinstated by the court as provided in this section.

(2) If it is determined that a conviction was improperly or erroneously set aside under section 1g because the conviction was not eligible to be set aside under section 1g or any other provision of this act, the court shall, on its own motion, reinstate the conviction.

(3) Upon a motion by a person owed restitution, or on its own motion, the court shall reinstate a conviction that was set aside under section 1g for which the individual whose conviction was set aside was ordered to pay restitution if the court determines that the individual has not made a good-faith effort to pay the ordered restitution.

History: Add. 2020, Act 193, Eff. Apr. 11, 2021.

780.621i Michigan set aside fund; creation; expenditures.

Sec. 1i. (1) The Michigan set aside fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The state treasurer shall be the administrator of the fund for auditing purposes.

(5) The department of state police, the department of technology, management, and budget, and the state court administrative office shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) Implementation costs associated with changes made to this act by the amendatory act that added this section.

(b) System upgrades necessitated by the changes made to this act by the amendatory act that added this section.

(c) Staffing needs necessitated by the changes made to this act by the amendatory act that added this

section.

History: Add. 2020, Act 193, Eff. Apr. 11, 2021.

780.622 Entry of order; effect; use of set aside conviction; "applicant" defined.

Sec. 2. (1) Upon the entry of an order under section 1 or 1e, or upon the automatic setting aside of a conviction under section 1g, the applicant, for purposes of the law, is considered not to have been previously convicted, except as provided in this section and section 3.

(2) The applicant is not entitled to the remission of any fine, costs, or other money paid as a consequence of a conviction that is set aside.

(3) If the conviction set aside under section 1(1), 1e, or 1g is for a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the applicant is considered to have been convicted of that offense for purposes of that act.

(4) This act does not affect the right of the applicant to rely upon the conviction to bar subsequent proceedings for the same offense.

(5) This act does not affect the right of a victim of a crime to prosecute or defend a civil action for damages.

(6) This act does not create a right to commence an action for damages for incarceration under the sentence that the applicant served before the conviction is set aside under this act.

(7) This act does not relieve any obligation to pay restitution owed to the victim of a crime nor does it affect the jurisdiction of the convicting court or the authority of any court order with regard to enforcing an order for restitution.

(8) A conviction, including any records relating to the conviction and any records concerning a collateral action, that has been set aside under this act cannot be used as evidence in an action for negligent hiring, admission, or licensure against any person.

(9) A conviction that is set aside under section 1, 1e, or 1g may be considered a prior conviction by court, law enforcement agency, prosecuting attorney, or the attorney general, as applicable, for purposes of charging a crime as a second or subsequent offense or for sentencing under sections 10, 11, and 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

(10) As used in this section, "applicant" includes an individual who has applied under this act to have his or her conviction or convictions set aside and an individual whose conviction or convictions have been set aside without an application under section 1g.

History: 1965, Act 213, Imd. Eff. July 16, 1965;—Am. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 1993, Act 342, Eff. May 1, 1994;—Am. 1994, Act 294, Eff. Oct. 1, 1995;—Am. 2014, Act 335, Eff. Jan. 14, 2015;—Am. 2020, Act 193, Eff. Apr. 11, 2021.

780.623 Sending copy of order to arresting agency and department of state police; retention and availability of nonpublic record of order and other records; providing copy of nonpublic record to person whose conviction set aside; fee; nonpublic record exempt from disclosure; prohibited conduct; misdemeanor; penalty; liability; "victim" defined.

Sec. 3. (1) Upon the entry of an order under section 1 or 1e, the court shall send a copy of the order to the arresting agency and the department of state police.

(2) The department of state police shall retain a nonpublic record of the order setting aside a conviction, or other notification regarding a conviction that was automatically set aside under section 1g, and of the record of the arrest, fingerprints, conviction, and sentence of the person in the case to which the order or other notification applies. Except as provided in subsection (3), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, the department of corrections, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) Consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) To show that a person who has filed an application to set aside a conviction has previously had a conviction set aside under this act.

(c) The court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(d) Consideration by the governor if a person whose conviction has been set aside applies for a pardon for another offense.

(e) Consideration by the department of corrections or a law enforcement agency if a person whose conviction has been set aside applies for employment with the department of corrections or law enforcement agency.

(f) Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general in determining whether an individual required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, has violated that act, or for use in a prosecution for violating that act.

(g) Consideration by a court, law enforcement agency, prosecuting attorney, or the attorney general for use in making determinations regarding charging, plea offers, and sentencing, as applicable.

(3) A copy of the nonpublic record created under subsection (2) must be provided to the person whose conviction is set aside under this act upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

(4) The nonpublic record maintained under subsection (2) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Except as provided in subsection (2), a person, other than the person whose conviction was set aside or a victim, who knows or should have known that a conviction was set aside under this section and who divulges, uses, or publishes information concerning a conviction set aside under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(6) An entity is not liable for damages or subject to criminal penalties under this section for reporting a public record of conviction that has been set-aside by court order or operation of law, if that record was available as a public record on the date of the report.

(6) As used in this section, "victim" means any individual who suffers direct or threatened physical, financial, or emotional harm as the result of the offense that was committed by the applicant.

History: Add. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 1988, Act 11, Imd. Eff. Feb. 8, 1988;—Am. 1993, Act 342, Eff. May 1, 1994;—Am. 1994, Act 294, Eff. Oct. 1, 1995;—Am. 2014, Act 463, Imd. Eff. Jan. 12, 2015;—Am. 2020, Act 193, Eff. Apr. 11, 2021.

Compiler's note: Subsection (6) beginning with "As used in this section," evidently should be numbered (7).

780.624 Setting aside of convictions; limitation.

Sec. 4. Except as provided in sections 1, 1e, and 1g, a person may have only 1 conviction set aside under this act.

History: Add. 1982, Act 495, Eff. Mar. 30, 1983;—Am. 2014, Act 335, Eff. Jan. 14, 2015;—Am. 2020, Act 193, Eff. Apr. 11, 2021.

STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021

Introduced by Reps. Yancey, Bellino, Filler, Sabo, Steckloff and Cavanagh

ENROLLED HOUSE BILL No. 4219

AN ACT to amend 1965 PA 213, entitled "An act to provide for setting aside the conviction in certain criminal cases; to provide for the effect of such action; to provide for the retention of certain nonpublic records and their use; to prescribe the powers and duties of certain public agencies and officers; and to prescribe penalties," by amending section 1 (MCL 780.621) as amended by 2020 PA 191.

The People of the State of Michigan enact:

Sec. 1. (1) Except as otherwise provided in this act, a person who is convicted of 1 or more criminal offenses may file an application with the convicting court for the entry of an order setting aside 1 or more convictions as follows:

(a) Except as provided in subdivisions (b) and (c), a person convicted of 1 or more criminal offenses, but not more than a total of 3 felony offenses, in this state, may apply to have all of his or her convictions from this state set aside.

(b) An applicant may not have more than a total of 2 convictions for an assaultive crime set aside under this act during his or her lifetime.

(c) An applicant may not have more than 1 felony conviction for the same offense set aside under this section if the offense is punishable by more than 10 years imprisonment.

(d) A person who is convicted of a violation or an attempted violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, before January 12, 2015 may petition the convicting court to set aside the conviction if the individual has not been convicted of another offense other than not more than 2 minor offenses. As used in this subdivision, "minor offense" means a misdemeanor or ordinance violation to which all of the following apply:

(*i*) The maximum permissible term of imprisonment does not exceed 90 days.

(*ii*) The maximum permissible fine is not more than $1,000.00.

(*iii*) The person who committed the offense is not more than 21 years old.

(2) A conviction that was deferred and dismissed under any of the following, whether a misdemeanor or a felony, is considered a misdemeanor conviction under subsection (1) for purposes of determining whether a person is eligible to have any conviction set aside under this act:

(a) Section 703 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703.

(b) Section 1070(1)(b)(*i*) or 1209 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1070 and 600.1209.

(c) Section 13 of chapter II or section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 762.13 and 769.4a.

(d) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.

(e) Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(f) Any other law or laws of this state or of a political subdivision of this state similar in nature and applicability to those listed in this subsection that provide for the deferral and dismissal of a felony or misdemeanor charge.

(3) A person who is convicted of a violation of section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, or a local ordinance substantially corresponding to section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to have that conviction set aside if he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.

(4) As used in this act:

(a) "Assaultive crime" includes any of the following:

(*i*) A violation described in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a.

(*ii*) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90h, not otherwise included in subparagraph (*i*).

(*iii*) A violation of section 110a, 136b, 234a, 234b, 234c, 349b, or 411h(2)(a) of the Michigan penal code, 1931 PA 328, MCL 750.110a, 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, or 750.411h, or any other violent felony.

(*iv*) A violation of a law of another state or of a political subdivision of this state or of another state that substantially corresponds to a violation described in subparagraph (*i*), (*ii*), or (*iii*).

(b) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(c) "Felony" means either of the following, as applicable:

(*i*) For purposes of the offense to be set aside, felony means a violation of a penal law of this state that is punishable by imprisonment for more than 1 year or that is designated by law to be a felony.

(*ii*) For purposes of identifying a prior offense, felony means a violation of a penal law of this state, of another state, or of the United States that is punishable by imprisonment for more than 1 year or is designated by law to be a felony.

(d) "First violation operating while intoxicated offense" means a violation of any of the following committed by an individual who at the time of the violation has no prior convictions for violating section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625:

(*i*) Section 625(1), (2), (3), (6), or (8) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

(*ii*) A local ordinance substantially corresponding to a violation listed in subparagraph (*i*).

(*iii*) A law of an Indian tribe substantially corresponding to a violation listed in subparagraph (*i*).

(*iv*) A law of another state substantially corresponding to a violation listed in subparagraph (*i*).

(*v*) A law of the United States substantially corresponding to a violation listed in subparagraph (*i*).

(e) "Human trafficking violation" means a violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h, or of former section 462i or 462j of that act.

(f) "Indian tribe" means an Indian tribe, Indian band, or Alaskan native village that is recognized by federal law or formally acknowledged by a state.

(g) "Misdemeanor" means a violation of any of the following:

(*i*) A penal law of this state, another state, an Indian tribe, or the United States that is not a felony.

(*ii*) An order, rule, or regulation of a state agency that is punishable by imprisonment for not more than 1 year or a fine that is not a civil fine, or both.

(*iii*) A local ordinance of a political subdivision of this state substantially corresponding to a crime listed in subparagraph (*i*) or (*ii*) that is not a felony.

(*iv*) A violation of the law of another state or political subdivision of another state substantially corresponding to a crime listed under subparagraph (*i*) or (*ii*) that is not a felony.

(*v*) A violation of the law of the United States substantially corresponding to a crime listed under subparagraph (*i*) or (*ii*) that is not a felony.

(h) "Operating while intoxicated" means a violation of any of the following that is not a first violation operating while intoxicated offense:

(*i*) Section 625 or 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625 and 257.625m.

(*ii*) A local ordinance substantially corresponding to a violation listed in subparagraph (*i*).

(*iii*) A law of an Indian tribe substantially corresponding to a violation listed in subparagraph (*i*).

(*iv*) A law of another state substantially corresponding to a violation listed in subparagraph (*i*).

(*v*) A law of the United States substantially corresponding to a violation listed in subparagraph (*i*).

(i) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

(j) "Victim" means that term as defined in sections 2, 31, and 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.752, 780.781, and 780.811.

(k) "Violent felony" means that term as defined in section 36 of the corrections code of 1953, 1953 PA 232, MCL 791.236.

Enacting section 1. This amendatory act takes effect 180 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4220 of the 101st Legislature is enacted into law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved_____

Governor

STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021

Introduced by Reps. Bellino, Yancey, Filler, Sabo, Steckloff and Cavanagh

ENROLLED HOUSE BILL No. 4220

AN ACT to amend 1965 PA 213, entitled "An act to provide for setting aside the conviction in certain criminal cases; to provide for the effect of such action; to provide for the retention of certain nonpublic records and their use; to prescribe the powers and duties of certain public agencies and officers; and to prescribe penalties," by amending section 1c (MCL 780.621c), as added by 2020 PA 187.

The People of the State of Michigan enact:

Sec. 1c. (1) A person shall not apply to have set aside, and a judge shall not set aside, a conviction for any of the following:

(a) A felony for which the maximum punishment is life imprisonment or an attempt to commit a felony for which the maximum punishment is life imprisonment.

(b) A violation or attempted violation of section 136b(3), 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c, 750.145d, 750.520c, 750.520d, and 750.520g.

(c) A violation or attempted violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction occurred on or after January 12, 2015.

(d) The following traffic offenses:

(*i*) Subject to subsections (3) and (4), a conviction for operating while intoxicated committed by any person.

(*ii*) Any traffic offense committed by an individual with an indorsement on his or her operator's or chauffeur's license to operate a commercial motor vehicle that was committed while the individual was operating the commercial motor vehicle or was in another manner a commercial motor vehicle violation.

(*iii*) Any traffic offense that causes injury or death.

(e) A felony conviction for domestic violence, if the person has a previous misdemeanor conviction for domestic violence.

(f) A violation of former section 462i or 462j or chapter LXVIIA or chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h and 750.543a to 750.543z.

(2) The prohibition on the setting aside of the convictions under subsection (1) upon application also applies to the setting aside of convictions without application under section 1g.

(3) The prohibition on setting aside a conviction for operating while intoxicated under subsection (1)(d)(*i*) does not apply to a conviction for a first violation operating while intoxicated offense if the person applying to have the first violation operating while intoxicated offense conviction set aside has not previously applied to have and had

a first violation operating while intoxicated offense conviction set aside under this act. However, a conviction for a first violation operating while intoxicated offense that may be set aside upon application is not eligible for and shall not be set aside without application under section 1g.

(4) In making a determination whether to grant the petition to set aside a first violation operating while intoxicated offense conviction the reviewing court may consider whether or not the petitioner has benefited from rehabilitative or educational programs, if any were ordered by the sentencing court, or whether such steps were taken by the petitioner before sentencing for the first violation operating while intoxicated offense conviction he or she is seeking to set aside. The reviewing court is not constrained by the record made at sentencing. The reviewing court may deny the petition if it is not convinced that the petitioner has either availed himself or herself of rehabilitative or educational programming or benefited from rehabilitative or educational programming he or she has completed.

(5) An order setting aside a conviction for a traffic offense under this act must not require that the conviction be removed or expunged from the applicant's driving record maintained by the secretary of state as required under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

Enacting section 1. This amendatory act takes effect 180 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4219 of the 101st Legislature is enacted into law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

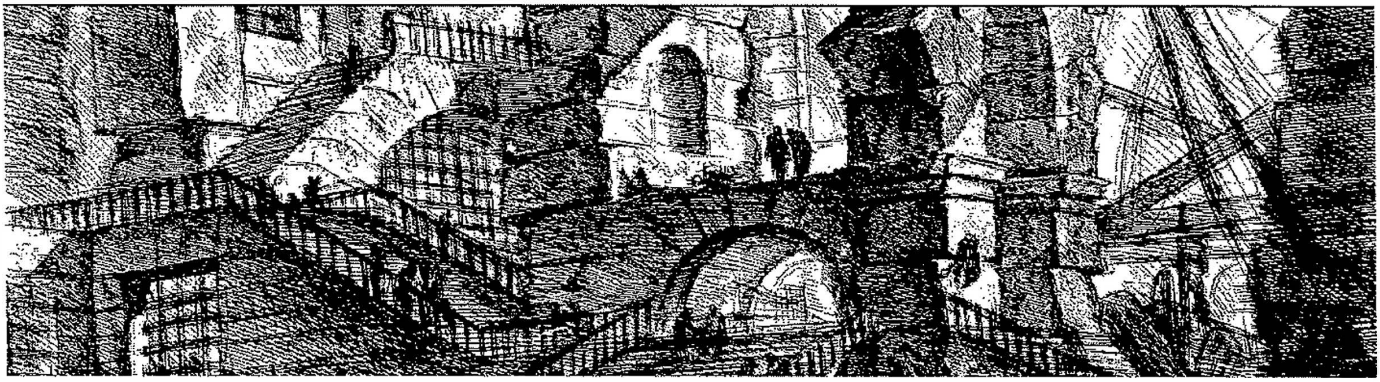
Approved_____

Governor

TAB 8

COLLATERAL CONSEQUENCES RESOURCE CENTER

Collateral Consequences of Criminal Conviction and Restoration of Rights: News, Commentary, and Tools



New Jersey Launches Electronic Filing System for Expungements

January 28, 2021 | Akil Roper

Editor's note: In 2019, New Jersey enacted a "clean slate" expungement authority that will eventually be automatic and is now available by petition. The same law directed the development of an e-filing system that is expected to eliminate many access barriers in the existing petition-based process. A detailed description of New Jersey's expungement authorities, including its new "clean slate" law, can be found in the NJ profile from the Restoration of Rights Project.

The New Jersey Courts recently announced the statewide launch of its eCourts Expungement System developed in accordance with recent amendments in the law to help increase efficiency of the expungement process. The new system allows attorneys and pro se petitioners to create and file petitions for traditional, "clean slate," and cannabis-related expungements. It introduces a number of efficiencies, including accessibility of state records databases, document creation for expungement petitions, and automatic service of applications on numerous parties.

Electronic filing is an important step as the state moves towards an automated expungement system, embracing the development of a "clean slate" model. Under the new law, the state will develop and implement an automated process to expunge conviction records after a period of ten years from the most recent conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration whichever is later. A task force will be established to examine, evaluate and make recommendations on its implementation.

But for now, the Expungement System should make the expungement process much easier for many who have access to computers and the internet. Previously, petitioners, even those who were filing through the JEDS system, were required to file several copies of their written or typed expungement applications and then serve copies on many other parties via certified mail, with return receipt requested, at a substantial cost. The court, however, will still accept paper expungement applications, important for those who may not have access to a computer or the internet.

Attorneys can access the system through eCourts, and pro se users can create an account through the

New Jersey Court's Self-Help Center ("Submit Expungement Petition Online" under "COVID-19 Self-Help Resources").

Users can enter a municipal or superior court case number, and the expungement system will search and pull the petitioner's court records from criminal, municipal and family court databases. Petitioners will have the ability to enter additional information not captured by the expungement system database; review and upload additional or supportive documents; and select or deselect which cases should be included on the proposed final order.

Once the petition is submitted and verified by the petitioner, the system will automatically create an order for hearing and serve the necessary parties with the documentation. It will also serve those parties if a final order of expungement is entered, and will provide a copy of the order to the petitioner.

The Expungement System does not provide eligibility advice or inform users as to whether any particular cases or any application is eligible for expungement. Users should consult with attorneys or advocates as to their eligibility prior to using the system or use other eligibility resources such as LSNJ's CYRO eligibility interview. After filing, the prosecutor's office will continue to be responsible for review of the petitioner's application to confirm eligibility for expungement and will object if it determines that an application is ineligible.

Expungement System user guides are available on the Court's website. LSNJ's eligibility tools and resources are available at LSNJLAW's Clearing Your Record Online.

Akil Roper is Chief Counsel for Reentry at Legal Services of New Jersey. Legal Services of New Jersey coordinates and supports the statewide system of

legal services providing civil legal assistance to low-income individuals.

About the Author | Latest Posts

Akil Roper

More

Dozens of new expungement laws already enacted in 2021 This year is turning out to be another remarkable year for new record
July 7, 2021

New Jersey steps out as Reintegration Champion of 2019 Editors' note: CCRC recently released its report on 2019 criminal record
February 27, 2020

Record-breaking number of new expungement laws enacted in 2019
February 6, 2020

Criminal Records Expungement/sealing Legislation

AN ACT concerning expungement eligibility and procedures, amending and supplementing various parts of the statutory law and making an appropriation.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.2C:52-1 is amended to read as follows:

2C:52-1. Definition of Expungement. a. Except as otherwise provided in this chapter, expungement shall mean the extraction, sealing, [and] impounding, or isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.

b. Expunged records shall include complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, "rap sheets" and judicial docket records.

(cf: N.J.S.2C:52-1)

2. N.J.S.2C:52-2 is amended to read as follows:

2C:52-2. Indictable Offenses.

a. In all cases, except as herein provided, a person may present an expungement application to the Superior Court pursuant to this section if:

the person has been convicted of one crime under the laws of this State, and does not otherwise have any [prior or] subsequent conviction for another crime, whether within this State or any other jurisdiction. 1[A] Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a1 prior conviction for another crime shall not bar presenting an application seeking expungement relief for the criminal conviction that is the subject of the application; or

the person has been convicted of one crime and [less than four] no more than three disorderly persons or petty disorderly persons offenses under the laws of this State, and does not otherwise have any [prior or] subsequent conviction for another crime, or any [prior or] subsequent conviction for another disorderly persons or petty disorderly persons offense such that the total number of convictions for disorderly persons and petty disorderly persons offenses would exceed three, whether any such crime or offense conviction was within this State or any other jurisdiction. 1[A] Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a1 prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense shall not bar presenting an application seeking expungement relief for the one criminal conviction and no more than three convictions for disorderly persons or petty disorderly persons offenses that are the subject of the application; or

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, all of which are listed in a single judgment of conviction, and does not otherwise have any [prior or] subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. 1[A] Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a1 prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense that is not listed in a single judgement of conviction shall not bar presenting an application seeking expungement relief for the convictions listed in a single judgment of conviction that are the subject of the application; or

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual crime or offense, and the person does not otherwise have any [prior or] subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. 1[A] Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a1 prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense that was not interdependent or closely related in circumstances and was not committed within a comparatively short period of time as described above shall not bar presenting an application seeking expungement relief for the convictions of crimes or crimes and offenses that were interdependent or closely related and committed within a comparatively short period of time, and that are the subject of the application.

For purposes of determining eligibility to present an expungement application to the Superior Court pursuant to this section, a conviction for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining or possessing marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for an equivalent crime in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime within this State or any other jurisdiction but shall instead be considered a conviction of a disorderly 1[person] persons1 offense within this State or an equivalent

category of offense within the other jurisdiction, and a conviction for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2, or for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction within this State or any other jurisdiction.

The person, if eligible, may present the expungement application after the expiration of a period of [six] five years from the date of his most recent conviction, payment of [fine] any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term ["fine"] "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other [court-ordered] form of financial assessment imposed by the court as part of the sentence for the conviction [1]or convictions that are the subject of the application[1], for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the most recent conviction for [the] a crime was adjudged, [which contains a separate,] which includes a duly verified petition as provided in N.J.S.2C:52-7 [for each conviction sought to be expunged,] praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be expunged. The petition [for each conviction] appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

Notwithstanding the provisions concerning the [six-year] five-year time requirement, if, at the time of application, a [fine which is currently] court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of [six] five years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement; provided, however, that if expungement is granted [under this paragraph,] the court shall [provide for the continued collection of any outstanding amount owed that is necessary to satisfy the fine or the entry of] enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collections and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

Additionally, an application may be filed and presented, and the court may grant an expungement pursuant to this section, although less than [six] five years have expired in accordance with the time requirements when the court finds:

(1) the [fine] court-ordered financial assessment is satisfied but less than [six] five years have expired from the date of satisfaction, and the time requirement of [six] five years is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting his ability to satisfy the [fine] assessment; or

(2) at least [five] four but less than [six] five years have expired from the date of the most recent conviction, payment of [fine] any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

the person has not been otherwise convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the most recent conviction; and the court finds in its discretion that [expungement is in the public interest, giving due consideration to the nature of the offense or offenses, and the applicant's character and conduct since the conviction or convictions] compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section [1][10] 11[1] of P.L., c. (C.) (pending before the Legislature as this bill), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

In determining whether compelling circumstances exist for the purposes of paragraph (1) of this subsection, a court may consider the amount of [the fine or fines] any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

b. Records of conviction pursuant to statutes repealed by this Code for the crimes of murder, manslaughter, treason, anarchy, kidnapping, rape, forcible sodomy, arson, perjury, false swearing, robbery, embracery, or a conspiracy or any attempt to commit any of the foregoing, or aiding, assisting or concealing persons accused of the foregoing crimes, shall not be expunged.

Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except death by auto as specified in N.J.S.2C:11-5 and strict liability vehicular homicide as specified in section 1 of P.L.2017, c.165 (C.2C:11-5.3); N.J.S.2C:13-1 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual Assault); subsection a. of N.J.S.2C:14-3 (Aggravated Criminal Sexual Contact); if the victim is a minor, subsection b. of N.J.S.2C:14-3 (Criminal Sexual Contact); if the victim is a minor and the offender is not the parent of the victim, N.J.S.2C:13-2 (Criminal Restraint) or N.J.S.2C:13-3 (False Imprisonment); N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related Offenses); subsection a. of N.J.S.2C:24-4 (Endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child, or causing the child other harm); paragraph (4) of subsection b. of N.J.S.2C:24-4 (Photographing or filming a child in a prohibited sexual act or for portrayal in a sexually suggestive manner); paragraph (3) of subsection b. of N.J.S.2C:24-4 (Causing or permitting a

child to engage in a prohibited sexual act or the simulation of an act, or to be portrayed in a sexually suggestive manner); subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Distributing, possessing with intent to distribute or using a file-sharing program to store items depicting the sexual exploitation or abuse of a child); subparagraph (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Possessing or viewing items depicting the sexual exploitation or abuse of a child); section 8 of P.L.2017, c.141 (C.2C:24-4.1) (Leader of a child pornography network); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing); paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly promoting the prostitution of the actor's child); section 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical Weapons, Biological Agents or Nuclear or Radiological Devices); and conspiracies or attempts to commit such crimes.

Records of conviction for any crime committed by a person holding any public office, position or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof and any conspiracy or attempt to commit such a crime shall not be subject to expungement if the crime involved or touched such office, position or employment.

c. In the case of conviction for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell, expungement shall be denied except where the crimes involve:

(1) Marijuana, where the total quantity sold, distributed or possessed with intent to sell was less than one ounce;

(2) Hashish, where the total quantity sold, distributed or possessed with intent to sell was less than five grams; or

(3) Any controlled dangerous substance provided that the conviction is of the third or fourth degree, where the court finds that [expungement is consistent with the public interest, giving due consideration to the nature of the offense and the petitioner's character and conduct since conviction] compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section [1][10] 11[1] of P.L. , c. (C.) (pending before the Legislature as this bill), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

d. In the case of a State licensed physician or podiatrist convicted of an offense involving drugs or alcohol or pursuant to section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the [court] [1][applicant] petitioner[1] shall notify the State Board of Medical Examiners upon [receipt of a petition] filing an application for expungement [of the conviction and records and information pertaining thereto] and provide the board with a copy thereof. The [1][applicant] petitioner[1] shall also provide to the court a certification attesting that the requirements of this subsection were satisfied. Failure to satisfy the requirements of this subsection shall be grounds for denial of the expungement application and, if applicable, administrative discipline by the board.

(cf: P.L.2017, c.244, s.1)

3. N.J.S.2C:52-3 is amended to read as follows:

2C:52-3. Disorderly persons offenses and petty disorderly persons offenses.

a. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has not been convicted of any crime, whether within this State or any other jurisdiction, may present an expungement application to [1][the Superior Court] a court[1] pursuant to this section. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has also been convicted of one or more crimes shall not be eligible to apply for an expungement pursuant to this section, but may present an expungement application to the Superior Court pursuant to N.J.S.2C:52-2.

b. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has not been convicted of any crime, whether within this State or any other jurisdiction, may present an expungement application [1]pursuant to this section[1] to [1][the Superior Court pursuant to this section] any court designated by the Rules of Court[1] if:

the person has been convicted, under the laws of this State, on the same or separate occasions of no more than [four] five disorderly persons offenses, no more than [four] five petty disorderly persons offenses, or a combination of no more than [four] five disorderly persons and petty disorderly persons offenses, and the person does not otherwise have any [prior or] subsequent conviction for a disorderly persons or petty disorderly persons offense, whether within this State or any other jurisdiction, such that the total number of convictions for disorderly persons and petty disorderly persons offenses would exceed [four] five. [1][A] Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a[1] prior conviction for another disorderly persons offense or petty disorderly persons offense shall not bar presenting an application seeking expungement relief for the convictions that are the subject of the application, which may include convictions for no more than five disorderly persons or petty disorderly persons offenses, or combination thereof; or

the person has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses under the laws of this State, or a combination of multiple disorderly persons and petty disorderly persons offenses under the laws of this State, which convictions were entered on the same day, and does not otherwise have any [prior or] subsequent conviction for another offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction, [1][A] Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a[1] prior conviction for another disorderly persons or petty disorderly persons offense that was not entered on the same day shall not bar presenting an application seeking expungement relief for the convictions entered on the same day that are the subject of the application; or

the person has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses under the laws of this State, or a combination of multiple disorderly persons and petty disorderly persons offenses under the laws of this State, which offenses or combination of offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual offense, and the person does not otherwise have any [prior or] subsequent conviction for another offense in addition to those convictions included in the expungement application, whether within this State or any other jurisdiction. [1][A] Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a[1] prior conviction for another disorderly persons offense or petty disorderly persons offense that was not interdependent or closely related in circumstances and was not committed within a comparatively short period of time as described above shall not bar presenting an application seeking expungement relief for the convictions of offenses that were interdependent or closely related and committed within a comparatively short period of time, and that are the subject of the application.

For purposes of determining eligibility to present an expungement application to the [1][Superior Court] court[1] pursuant to this section, a conviction for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining or possessing marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for an equivalent crime in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime within this State or any other jurisdiction but shall instead be considered a conviction of a disorderly [1][person] persons[1] offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2, or for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction within this State or any other jurisdiction.

The person, if eligible, may present the expungement application after the expiration of a period of five years from the date of his most recent conviction, payment of [fine] any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term ["fine"] "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other [court-ordered] form of financial assessment imposed by the court as part of the sentence for the conviction [1]or convictions that are the subject of the application[1], for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to [1][the Superior Court] a court[1] in the county in which the most recent conviction for a disorderly persons or petty disorderly persons offense was adjudged, [which contains a separate,] which includes a duly verified petition as provided in N.J.S.2C:52-7 [for each conviction sought to be expunged,] praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be expunged. The petition [for each conviction] appended to an application shall comply with the requirements of N.J.S.2C:52-1 et seq.

Notwithstanding the provisions of the five-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of five years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement; provided, however, that the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collections and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

Additionally, an application may be filed and presented, and the court may grant an expungement pursuant to this section, although less than five years have expired in accordance with the time requirements when the court finds:

(1) the [fine] court-ordered financial assessment is satisfied but less than five years have expired from the date of satisfaction, and the five-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting his ability to satisfy the [fine] assessment; or

(2) at least three but less than five years have expired from the date of the most recent conviction, payment of [fine] any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

the person has not been otherwise convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the most recent conviction; and the court finds in its discretion that [expungement is in the public interest, giving due consideration to

the nature of the offense or offenses, and the applicant's character and conduct since the conviction or convictions] compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section [1][10] 11[1] of P.L. , c. (C.) (pending before the Legislature as this bill), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

In determining whether compelling circumstances exist for the purposes of paragraph (1) of this subsection, a court may consider the amount of [the fine or fines] any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

(cf: P.L.2017, c.244, s.2)

4. N.J.S.2C:52-6 is amended to read as follows:

2C:52-6. Arrests not resulting in conviction.

a. When a person has been arrested or held to answer for a crime, disorderly persons offense, petty disorderly persons offense, or municipal ordinance violation under the laws of this State or of any governmental entity thereof and proceedings against the person were dismissed, the person was acquitted, or the person was discharged without a conviction or finding of guilt, the Superior Court shall, at the time of dismissal, acquittal, or discharge, or, in any case set forth in paragraph (1) of this subsection, [upon receipt of an application from the person,] order the expungement of all records and information relating to the arrest [1][or charge][1].

(1) If proceedings took place in municipal court, the municipal court shall [provide the person, upon request, with appropriate documentation to transmit to the Superior Court to request expungement pursuant to] follow procedures developed by the Administrative [Office] Director of the Courts. [Upon receipt of the documentation, the Superior Court shall enter an ex parte order expunging all records and information relating to the person's arrest or charge.]

(2) The provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14 shall not apply to an expungement pursuant to this subsection [and no fee shall be charged to the person making such application].

(3) An expungement under this subsection shall not be ordered where the dismissal, acquittal, or discharge resulted from a plea bargaining agreement involving the conviction of other charges. This bar, however, shall not apply once the conviction is itself expunged.

(4) The [Superior Court] court shall forward a copy of the expungement order to [the appropriate court and to] the county prosecutor. The county prosecutor shall promptly distribute copies of the expungement order to appropriate law enforcement agencies and correctional institutions who have custody and control of the records specified in the order so that they may comply with the requirements of N.J.S.2C:52-15.

(5) An expungement related to a dismissal, acquittal, or discharge ordered pursuant to this subsection shall not bar any future expungement.

(6) Where a dismissal of an offense is based on an eligible servicemember's successful participation in a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), the county prosecutor, on behalf of the eligible servicemember, may move before the court for the expungement of all records and information relating to the arrest [1][or charge,][1] and the diversion at the time of dismissal pursuant to this section.

b. When a person did not apply or a prosecutor did not move on behalf of an eligible servicemember for an expungement of an arrest [1][or charge][1] not resulting in a conviction pursuant to subsection a. of this section, the person may at any time following the disposition of proceedings, present a duly verified petition as provided in N.J.S.2C:52-7 to the Superior Court in the county in which the disposition occurred praying that records of such arrest and all records and information pertaining thereto be expunged. [No fee shall be charged to the person for applying for an expungement of an arrest or charge not resulting in a conviction pursuant to this subsection.]

c. (1) Any person who has had charges dismissed against him pursuant to a program of supervisory treatment pursuant to N.J.S.2C:43-12, or conditional discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et al.), shall be barred from the relief provided in this section until six months after the entry of the order of dismissal.

(2) A servicemember who has successfully participated in a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.) may apply for expungement pursuant to this section at any time following the order of dismissal if an expungement was not granted at the time of dismissal.

d. Any person who has been arrested or held to answer for a crime shall be barred from the relief provided in this section where the dismissal, discharge, or acquittal resulted from a determination that the person was insane or lacked the mental capacity to commit the crime charged.

(cf: P.L.2017, c.42, s.7)

5. (New section) a. (1) Notwithstanding the requirements of N.J.S.2C:52-2 and N.J.S.2C:52-3 or any other provision of law to the contrary, beginning on the effective date of this section, the following persons may file a petition for an expungement with [1][the Superior Court] any court designated by the Rules of Court[1] at any time, provided they have satisfied, except as otherwise set forth in this subsection, payment of any court-ordered financial assessment as defined in section 8 of P.L.2017, c.244 (C.2C:52-23.1), satisfactorily completed probation or parole, been released from incarceration, or been discharged from legal custody or supervision at the time of application:

(a) any person who, prior to the [1][effective date of this] development of a system for sealing records from the public pursuant to[1] section [1]6 of P.L. , c. (C.) (pending before the Legislature as this bill)[1], was charged with, convicted of, or adjudicated delinquent for, any number of offenses [1][, which in the case of a] for, or[1] delinquent [1]acts which[1] if committed by an adult would constitute, unlawful distribution of, or possessing or having

under control with intent to distribute, marijuana or hashish in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or a violation of that paragraph and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building; or

(b) any person who, prior to the [1][effective date of this] development of a system for sealing records from the public pursuant to[1] section [1]6 of P.L. , c. (C.) (pending before the Legislature as this bill)[1], was charged with, convicted of, or adjudicated delinquent for, any number of offenses [1][, which in the case of a] for, or[1] delinquent [1]acts which[1] if committed by an adult would constitute, obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10; or

(c) any person who, prior to the [1][effective date of this] development of a system for sealing records from the public pursuant to[1] section [1]6 of P.L. , c. (C.) (pending before the Legislature as this bill)[1], was charged with, convicted of, or adjudicated delinquent for, any number of offenses [1][, which in the case of a] for, or[1] delinquent [1]acts which[1] if committed by an adult would constitute, a violation involving marijuana or hashish as described in subparagraph (a) or (b) of this paragraph and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

(2) If, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the provisions of paragraph (1) of this subsection are otherwise satisfied, the person may submit the expungement application and the court shall grant an expungement in accordance with subsection c. of this section; provided, however, that at the time the expungement is granted the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collection and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52:23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

b. (1) Notwithstanding the requirements of N.J.S.2C:52-2 and N.J.S.2C:52-3 or any other provision of law to the contrary, beginning on the effective date of this section, a person who, prior, on, or after that effective date is charged with, convicted of, or adjudicated delinquent for, any number of offenses [1][, which in the case of a] for, or[1] delinquent [1]acts which[1] if committed by an adult would constitute, unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, may file a petition for an expungement with [1][the Superior Court] a court[1] after the expiration of three years from the date of the most recent conviction, payment of any court-ordered financial assessment as defined in [1][N.J.S.2C:52-2] section 8 of P.L.2017, c.244 (C.2C:52-23.1)[1], satisfactory completion of probation or parole, release from incarceration, or discharge from legal custody or supervision, whichever is later.

(2) (a) Notwithstanding the provisions concerning the three-year time requirement set forth in paragraph (1) of this subsection, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement is otherwise satisfied, the person may submit the expungement application and the court shall grant an expungement in accordance with subsection c. of this section; provided, however, that at the time the expungement is granted the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collection and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52:23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

(b) Additionally, an application may be filed and presented, and an expungement granted pursuant to subsection c. of this section, although less than three years have expired in accordance with the time requirement set forth in paragraph (1) of this subsection, when the court finds that the court-ordered financial assessment is satisfied but less than three years have expired from the date of satisfaction, and the time requirement of three years is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting the person's ability to satisfy the financial assessment.

c. (1) The provisions of N.J.S.2C:52-8 through N.J.S.2C:52-14 shall not apply to an expungement as set forth in this section.

(2) Upon review of the petition, the court shall immediately grant an expungement for each [1][charge] arrest[1], conviction, or adjudication of delinquency as described in subsection a. or b. of this section, as applicable. The court shall provide copies of the expungement order to the person who is the subject of the petition [1]or that person's representative[1].

(3) A court order vacating an expungement that is granted to a person pursuant to this subsection may be issued upon an action filed by a county prosecutor with the court that granted the expungement, if filed no later than 30 days after the expungement order was issued, with notice to the person, and a hearing is scheduled at which the county prosecutor

shows proof that the expungement was granted in error due to a statutory disqualification to expungement that existed at the time the relief was initially granted.

d. Any public employee or public agency that provides information or records pursuant to this section shall be immune from criminal and civil liability as a result of an act of commission or omission by that person or entity arising out of and in the course of participation in, or assistance with, in good faith, an expungement. The immunity shall be in addition to and not in limitation of any other immunity provided by law.

6. (New section) a. [1][Unless] (1) No later than three months after the effective date of this section, the Administrative Office of the Courts shall develop and maintain a system for sealing records from the public, upon order of a court, pertaining to offenses or delinquent acts involving marijuana or hashish as described in this section. Once the system is developed, unless[1] otherwise provided by law, a court shall order the nondisclosure [1]to the public[1] of the records of the court and probation services, and records of law enforcement agencies with respect to any arrest, [1][charge,][1] conviction, or adjudication of delinquency, and any proceedings related thereto, upon disposition of any case occurring on or after the [1][date] development[1] of [1][this section] the system for sealing records[1] that solely includes the following convictions or adjudications of delinquency:

[1][(1)] (a)[1] any number of offenses for, or [1][juvenile] delinquent[1] acts which if committed by an adult would constitute, unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or a violation of that paragraph and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building;

[1][(2)] (b)[1] any number of offenses for, or [1][juvenile] delinquent[1] acts which if committed by an adult would constitute, obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10; or

[1][(3) a violation] (c) any number of offenses for, or delinquent acts which if committed by an adult would constitute, a violation[1] involving marijuana or hashish as described in [1][paragraph (1)] subparagraph (a)[1] or [1][(2)] (b)[1] of this [1][subsection] paragraph[1] and [1][any number of offenses for, or juvenile acts which if committed by an adult would constitute,][1] using or possessing with intent to use drug paraphernalia [1]with that marijuana or hashish[1] in violation of N.J.S.2C:36-2 [1][if the drug paraphernalia appears to be for use, intended for use, or designed for use with marijuana or hashish, unless the owner or anyone in control of the object was in possession of one ounce or more of marijuana, five grams or more of hashish, or another illegal controlled dangerous substance or controlled substance analog, or the object was in proximity of one ounce or more of marijuana, five grams or more of hashish, or another illegally possessed controlled dangerous substance or controlled substance analog to indicate its use, intended use, or design for use with that controlled dangerous substance or controlled substance analog] .

(2) If the disposition of the case includes a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.), then at the time of issuing the sealing order, the court shall also enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collections and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The term "court-ordered financial assessment" as used herein means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the sealing order, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment[1].

b. Notice of the sealing order issued pursuant to subsection a. of this section shall be provided to:

(1) The Attorney General, county prosecutor, or municipal prosecutor handling the case; and

(2) The State Police and any local law enforcement agency having custody of the files and records.

c. Upon the entry of a sealing order issued pursuant to subsection a. of this section, the proceedings in the case shall be sealed and all index references shall be marked "not available" or "no record." Law enforcement agencies shall reply to requests for information or records of a person subject to a sealing order that there is no information or records. The person may also reply to any inquiry that there is no information or record, except that information subject to a sealing order shall be revealed by that person if seeking employment within the judicial branch or with a law enforcement or corrections agency, and the information shall continue to provide a disability to the extent provided by law.

d. Records subject to a sealing order issued pursuant to subsection a. of this section may be maintained for purposes of prior offender status, identification [1],[1] and law enforcement purposes, provided that the records shall not be considered whenever the Pretrial Services Program established by the Administrative Office of the Courts pursuant to section 11 of P.L.2014, c.31 (C.2A:162-25) conducts a risk assessment on an eligible defendant for the purpose of making recommendations to the court concerning an appropriate pretrial release

decision in accordance with sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.) or used for sentencing purposes in any other case.

7. (New section) "Clean slate" expungement by petition. a. A person, who is not otherwise eligible to present an expungement application pursuant to any other section of chapter 52 of Title 2C of the New Jersey Statutes or other section of law, may present an expungement application to the Superior Court pursuant to this section if the person has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, or a combination of one or more crimes and offenses under the laws of this State, unless the person has a conviction for a crime which is not subject to expungement pursuant to subsection b. or c. of N.J.S.2C:52-2. The person may present an application pursuant to this section regardless of whether the person would otherwise be ineligible pursuant to subsection e. of N.J.S.2C:52-14 for having had a previous criminal conviction expunged, or due to having been granted an expungement pursuant to this or any other provision of law.

b. The person, if eligible, may present the expungement application after the expiration of a period of ten years from the date of the person's most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction [1]or convictions that are the subject of the application[1], for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the most recent conviction for a crime or offense was adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that all the person's convictions, and all records and information pertaining thereto, be expunged. The petition appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

c. Notwithstanding the provisions concerning the ten-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of ten years is otherwise satisfied, the person may submit the expungement application and the court shall grant an expungement in accordance with this section; provided, however, that at the time of the expungement the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collection and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

d. No expungement applications may be filed pursuant to this section after the establishment of the automated [1]"clean slate"[1] process pursuant to subsection a. of section 8 of P.L. c. (C.)(pending before the Legislature as this bill).

8. (New section) Automated "clean slate" process. a. [1][The following provisions set forth in this subsection shall become operative on the 180th day following enactment of this section:][1]

(1) The State shall develop and implement an automated process, based, to the greatest extent practicable, on the recommendations of the task force established pursuant to subsection b. of this section, by which all convictions, and all records and information pertaining thereto, shall be rendered inaccessible to the public, through sealing, expungement, or some equivalent process, for any person who has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, or a combination of one or more crimes and offenses under the laws of this State, unless the person has a conviction for a crime which is not subject to expungement pursuant to subsection b. or c. of N.J.S.2C:52-2, upon the expiration of a period of ten years from the date of the person's most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction [1]or convictions that are subject to being rendered inaccessible to the public[1], for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes.

(2) The automated process shall be designed to restore a person's convictions and other [1]information contained in the person's[1] criminal history [1][on the State Police Criminal History] record information files[1] if the person is subsequently convicted of a crime, for which the conviction is not subject to expungement pursuant to subsection b. or c. of N.J.S.2C:52-2. A prosecutor may submit the restored criminal history [1]record information[1] to the court for consideration at sentencing for the subsequent conviction.

(3) Upon establishment of the automated process pursuant to this subsection, any pending "clean slate" expungement petitions filed pursuant to section 7 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be rendered moot and shall be withdrawn or dismissed in accordance with procedures established by the Supreme Court.

b. (1) (a) There is established a task force for the purpose of examining, evaluating, and making recommendations regarding the development and implementation of the automated process described in subsection a. of this section, by which all of a person's convictions, and all records and information pertaining thereto, shall be rendered inaccessible to the public.

(b) The task force shall consist of at least the following members:

The Chief Technology Officer of the Office of Information Technology, or a designee or designees;

The Attorney General, or a designee or designees, one or more of whom may be members of the State Bureau of Identification and the Information Technology Bureau in the Division of State Police designated by the Superintendent of the State Police;

The Administrative Director of the Courts, or a designee or designees;

The Director of Information Technology for the Administrative Office of the Courts, or a designee or designees;

The Commissioner of the Department of Corrections, or a designee or designees;

The President of the New Jersey County Jail Wardens Association, or a designee or designees;

The President of the New Jersey State Association of Chiefs of Police, or a designee or designees;

Two members of the Senate, who shall each be of different political parties, appointed by the Governor upon the recommendation of the Senate President;

Two members of the General Assembly, who shall each be of different political parties, appointed by the Governor upon the recommendation of the Speaker of the General Assembly;

Two members of academic institutions or non-profit entities [1]appointed by the Governor[1] who [1]each[1] have a background in, or special knowledge of, computer technology, database management, or recordkeeping processes; and

Four members of the public appointed by the Governor who each have a background in, or special knowledge of, the technological, criminal record or legal processes of expungement, or criminal history recordkeeping, of which two of whom shall be appointed by the Governor upon recommendation of the Senate President and two of whom shall be appointed by the Governor upon recommendation of the Speaker of the General Assembly.

(c) Appointments to the task force shall be made within 30 days of the effective date of this section. Vacancies in the membership of the task force shall be filled in the same manner as the original appointments were made.

(d) Members of the task force shall serve without compensation, but shall be reimbursed for necessary expenditures incurred in the performance of their duties as members of the task force within the limits of funds appropriated or otherwise made available to the task force for its purposes.

(e) The task force shall organize as soon as practicable, but no later than 30 days following the appointment of its members. The task force shall choose a chairperson from among its members and shall appoint a secretary who need not be a member of the task force.

(f) The Department of Law and Public Safety shall provide such stenographic, clerical, and other administrative assistants, and such professional staff as the task force requires to carry out its work. The task force shall also be entitled to call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, bureau, commission, or agency as it may require and as may be available for its purposes.

(2) It shall be the duty of the task force to identify, analyze and recommend solutions to any technological, fiscal, resource, and practical issues that may arise in the development and implementation of the automated process described in subsection a. of this section. In carrying out these responsibilities, the task force shall to the extent feasible:

(a) examine and evaluate the effectiveness of the design and implementation of automated processes in Pennsylvania and California and other jurisdictions that have implemented similar programs, and consult with officials in those jurisdictions concerning their processes and any technological, fiscal, resource, and practical issues that they may have encountered, contemplated, or addressed in developing and implementing those systems; and

(b) consult with non-profit computer programming organizations such as "Code for America" with expertise in assisting in the implementation of automated processes and expungement processing generally, to the extent those organizations make themselves available for this purpose; and

(c) identify the necessary systemic changes, required technology, cost estimates, and possible sources of funding for developing and implementing the automated process described in subsection a. of this section.

(3) (a) The task force shall issue a final report of its findings and recommendations to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), no later than 180 days after the task force organizes.

(b) The task force shall expire 30 days after the issuance of its report.

9. N.J.S.2C:52-8 is amended to read as follows:

2C:52-8. Statements to accompany petition. There shall be attached to a petition for expungement:

a. A statement with the affidavit or verification that there are no disorderly persons, petty disorderly persons or criminal charges pending against the petitioner at the time of filing of the petition for expungement.

b. In those instances where the petitioner is seeking the expungement of a criminal conviction [, or the expungement of convictions] pursuant to [N.J.S.2C:52-3 for multiple disorderly persons or petty disorderly persons offenses, all of which were entered the same day, or which were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time] N.J.S.2C:52-2, a statement with affidavit or verification that he has never been granted expungement, sealing or similar relief regarding a criminal conviction [or convictions for multiple disorderly persons or petty disorderly persons offenses, all of which were entered the same day, or which were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time] by any court in this State or other state or by any Federal court. "Sealing" refers to the relief previously granted pursuant to P.L.1973, c.191 (C.2A:85-15 et seq.).

c. In those instances where a person has received a dismissal of a criminal charge because of acceptance into a supervisory treatment or any other diversion program, a

statement with affidavit or verification setting forth the nature of the original charge, the court of disposition and date of disposition.

d. A statement as to whether the petitioner has legally changed the petitioner's name, the date of judgment of name change, and the previous legal name. If applicable, the petitioner shall provide a copy of the order for name change.

(cf: P.L.2017, c.244, s.4)

[1]10. N.J.S.2C:52-10 is amended to read as follows:

2C:52-10. [A] a. Until the date that the e-filing system is established by the Administrative Office of the Courts pursuant to section 11 of P.L. , c. (C.) (pending before the Legislature as this bill), a copy of each petition, together with a copy of all supporting documents, shall be served pursuant to the rules of court upon the Superintendent of State Police; the Attorney General; the county prosecutor of the county wherein the court is located; the chief of police or other executive head of the police department of the municipality wherein the offense was committed; the chief law enforcement officer of any other law enforcement agency of this State which participated in the arrest of the individual; the superintendent or warden of any institution in which the petitioner was confined; and, if a disposition was made by a municipal court, upon the magistrate of that court. Service shall be made within 5 days from the date of the order setting the date for the hearing upon the matter.

b. On and after the date that the e-filing system is established pursuant to section 11 of P.L. , c. (C.) (pending before the Legislature as this bill), a copy of each petition, together with a copy of all supporting documents, shall, upon their filing, be served electronically pursuant to the rules of court upon the Superintendent of State Police, the Attorney General, the county prosecutor of the county wherein the court is located, and the county prosecutor of any county in which the petitioner was convicted, using the e-filing system.[1]

(cf: N.J.S.2C:52-10)

[1][10.] 11.[1] (New section) a. (1) No later than twelve months after the effective date of this section, the Administrative Office of the Courts shall develop and maintain a system for petitioners to electronically file expungement applications pursuant to N.J.S.2C:52-1 et seq. The e-filing system shall be available Statewide and include electronic filing, electronic service of process, and electronic document management.

(2) The system shall, [1][within 30 days of the person filing the application for expungement] in accordance with N.J.S.2C:52-10[1], electronically notify [1][relevant law enforcement and criminal justice agencies, if applicable, pursuant to N.J.S.2C:52-10] and serve copies of the petition and all supporting documents upon the Superintendent of State Police, the Attorney General, and each county prosecutor as described in that section[1].

(3) The system shall electronically compile a listing of all possibly relevant Judiciary records for an expungement petitioner and transmit this information to [1][the appropriate criminal justice agencies subject to notice of] all parties served with copies of[1] the petition [1]and all supporting documents[1] in accordance with [1][N.J.S.2C:52-10] paragraph (2) of this subsection[1].

b. Upon receipt of the information from the court pursuant to paragraphs (2) and (3) of subsection a. of this section, the Superintendent of State Police, the Attorney General, and the county prosecutor of any county in which the person was convicted shall, within 60 days, review and confirm, as appropriate, the information against the [1][Criminal Case History] person's criminal history record information files[1] and notify the court of any inaccurate or incomplete data contained in the information [1]files,[1] or of any other basis for ineligibility, if applicable, pursuant to N.J.S.2C:52-14.

c. The court shall provide copies of an expungement order to the person who is the subject of the petition and electronically transmit the order to the [1][previously noticed parties, or parties otherwise entitled to notice,] law enforcement and criminal justice agencies which, at the time of the hearing on the petition, possess any records specified in the order[1] in accordance with N.J.S.2C:52-15.

[1][11.] 12.[1] N.J.S.2C:52-14 is amended to read as follows:

2C:52-14. A petition for expungement filed pursuant to this chapter shall be denied when:

a. Any statutory prerequisite, including any provision of this chapter, is not fulfilled or there is any other statutory basis for denying relief.

b. The need for the availability of the records outweighs the desirability of having a person freed from any disabilities as otherwise provided in this chapter. An application may be denied under this subsection only following objection of a party given notice pursuant to N.J.S.2C:52-10 and the burden of asserting such grounds shall be on the objector [, except that in regard to expungement sought for third or fourth degree drug offenses pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2, the court shall consider whether this factor applies regardless of whether any party objects on this basis].

c. In connection with a petition under N.J.S.2C:52-6, the acquittal, discharge or dismissal of charges resulted from a plea bargaining agreement involving the conviction of other charges. This bar, however, shall not apply once the conviction is itself expunged.

d. The arrest or conviction sought to be expunged is, at the time of hearing, the subject matter of civil litigation between the petitioner or his legal representative and the State, any governmental entity thereof or any State agency and the representatives or employees of any such body.

e. [A] Except as set forth in subsection a. of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill) concerning a "clean slate" expungement petition, the person has had a previous criminal conviction expunged regardless of the lapse of time between the

prior expungement, or sealing under prior law, and the present petition. This provision shall not apply:

(1) When the person is seeking the expungement of a municipal ordinance violation or,

(2) When the person is seeking the expungement of records pursuant to N.J.S.2C:52-6.

f. (Deleted by amendment, P.L.2017, c.244)

(cf: P.L.2017, c.244, s.5)

[1][12.] 13.[1] N.J.S.2C:52-15 is amended to read as follows:

2C:52-15. a. Except as provided in subsection b. of this section, if an order of expungement of records of arrest or conviction under this chapter is granted by the court, all the records specified in said order shall be removed from the files of the [1]law enforcement and criminal justice[1] agencies which [1][have been noticed of the pendency of petitioner's motion and which are, by the provisions of this chapter, entitled to notice][1], [1]at the time of the hearing of the petition, possess the records[1] and shall be placed in the control of a person who has been designated by the head of each such agency [1][which, at the time of the hearing, possesses said records][1]. That designated person shall, except as otherwise provided in this chapter, ensure that such records or the information contained therein are not released for any reason and are not utilized or referred to for any purpose. In response to requests for information or records of the person who was arrested or convicted, all [1][noticed][1] officers, departments and agencies shall reply, with respect to the arrest, conviction or related proceedings which are the subject of the order, that there is no record information. [1]The court shall provide proof of expungement to the person whose records have been expunged or to that person's representative.[1]

b. Records of the Probation Division of the Superior Court related to [restitution, a fine, or other] any court-ordered financial assessment that remains due at the time the court grants an expungement [may be retained as confidential, restricted-access records in the Judiciary's automated system to facilitate the collection and distribution of any outstanding assessments by the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) as ordered by the court. The Administrative Director of the Courts shall ensure that such records are not released to the public. Such records shall be removed from the Judiciary's automated system upon satisfaction of court-ordered financial assessments or by order of the court] [1]or sealing of records[1] shall be transferred to the New Jersey Department of Treasury for the collection and disbursement of future payments and satisfaction of judgments in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction [1]or convictions that are the subject of the expungement or sealing order[1], for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole authority to amend the judgment concerning the amount of any court-ordered financial assessment that remains due at the time the court grants an expungement [1]or sealing of records[1].

(cf: P.L.2017, c.244, s.6)

[1][13.] 14.[1] Section 8 of P.L.2017, c.244 (C.2C:52-23.1) is amended to read as follows:

8. a. Notwithstanding any provision in this act to the contrary, expunged [1]or sealed[1] records may be used [by the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.)] to [collect restitution, fines and other] facilitate the State Treasurer's collection of any court-ordered financial assessments that remain due at the time an expungement [1]or sealing of records[1] is granted by the court. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction [1]or convictions that are the subject of the expungement or sealing order[1], for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. Information regarding the nature of such financial assessments or their derivation from expunged [1][criminal convictions] or sealed records[1] shall not be disclosed to the public. Any record of a civil judgment for the unpaid portion of any court-ordered financial [obligations] assessment that may be docketed after the court has granted an expungement [1][of the underlying criminal conviction] or sealing of records[1] shall be entered in the name of the Treasurer, State of New Jersey. The State Treasurer shall thereafter administer such judgments [in cooperation with the comprehensive enforcement program] without disclosure of any information related to the underlying [1][criminal][1] nature of the assessments.

b. [The court, after providing appropriate due process, may nullify an expungement granted to a person pursuant to subsection a. of N.J.S.2C:52-2 if the person willfully fails to comply with an established payment plan or otherwise cooperate with the comprehensive enforcement program to facilitate the collection of any outstanding restitution, fines, and other court-ordered assessments, provided that prior to nullifying the expungement the person shall be afforded an opportunity to comply with or restructure the payment plan, or otherwise cooperate to facilitate the collection of outstanding restitution, fines, and other court-ordered assessments. In the event of nullification, the court may restore the previous expungement granted if the person complies with the payment plan or otherwise cooperates to facilitate the collection of any outstanding restitution, fines, and other court-ordered assessments.] (Deleted by amendment, P.L. c.) (pending before the Legislature as this bill)

(cf: P.L.2017, c.244, s.8)

[1][14.] 15.[1] N.J.S.22A:2-25 is amended to read as follows:

22A:2-25. Law Division filing fees

Upon the filing, entering or docketing with the deputy clerk of the Superior Court in the various counties of the herein-mentioned papers or documents by either party to any action or proceeding in the Law Division of the Superior Court, other than a civil action in which a summons or writ must be issued, he shall pay the deputy clerk of the court the following fees:

Entering of complaint or first paper of any action or proceeding ..... $ 9.00

Filing complaint..... $ 3.00

Filing answer or appearance..... $ 6.00

Filing any other pleading, any amended pleading or any amendment to a pleading ..... $ 3.00

Filing and entering each order or judgment of court, including order to show cause..... $ 6.00

Filing and entering a voluntary dismissal, either by stipulation or order of court..... $ 7.50

Filing notice of appeal $15.00

Filing proceedings or papers on appeal ..... $ 6.00

[Filing first paper on petition for expungement ..... $22.50]

Filing any other paper or document not herein stated ..... $ 4.50

Signing and sealing habeas corpus ..... $ 7.50

Signing and issuing subpena..... $ 1.50

(cf: P.L.1985, c.422, s.1)

[1][15.] 16.[1] N.J.S.2C:52-29 is amended to read as follows:

2C:52-29. Any person who files an application pursuant to this chapter shall [pay to the State Treasurer] not be charged a fee [of $30.00 to defer administrative costs in processing an application hereunder] for applying for an expungement, and any fee set forth in the Rules of Court, which was, based on the Supreme Court's temporary authority pursuant to sections 12 through 15, and 17 through 19 of P.L.2014, c.31 (C.2B:1-7 through C.2B:1-13), a revision or supplement by the Supreme Court to the fee charged pursuant to this section prior to its amendment by P.L. , c. (C.) (pending before the Legislature as this bill), is void.

(cf: N.J.S.2C:52-29)

[1][16.] 17.[1] There is appropriated from the General Fund to the Department of Law and Public Safety the sum of $15,000,000 to implement the provisions of this act.

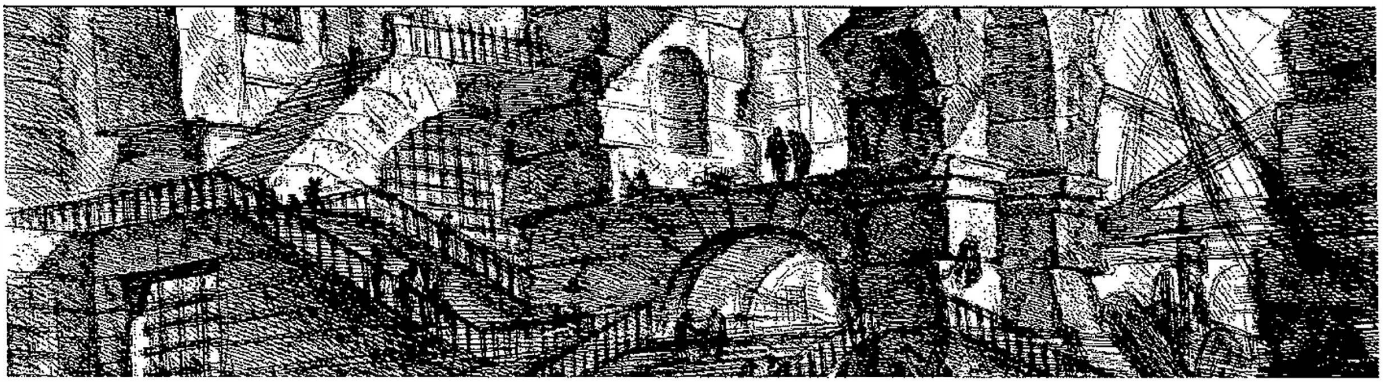
[1][17.] 18.[1] Section 8 of this act, concerning the automated "clean slate" process and the task force assisting with its development and implementation, sections [1][14 and][1] 15 [1]and 16[1] of this act, eliminating expungement filings fees, and section [1][16] 17[1] of this act, making an appropriation, shall take effect immediately, and the remaining sections of this act shall take effect on the 180th day following enactment. Concerning those sections which do not take effect immediately, the Attorney General and the Administrative Director of the Courts may take any anticipatory administrative action as may be necessary to effectuate those provisions.

Revises expungement eligibility and procedures, including new "clean slate" automated process to render convictions and related records inaccessible; creates e-filing system for expungements; eliminates expungement filing fees; appropriates $15 million to DLPS for implementation.

TAB 9

COLLATERAL CONSEQUENCES RESOURCE CENTER

Collateral Consequences of Criminal Conviction and Restoration of Rights: News, Commentary, and Tools



North Carolina enacts Second Chance Act

| July 2, 2020 | CCRC Staff

CCRC Board member John Rubin of the University of North Carolina faculty has provided us with a detailed account of NC's brand new Second Chance Act, and we are pleased to post it below. We are particularly pleased to see North Carolina join the 13 other states that have enacted automatic record relief for dismissals and acquittals, and remove its prior felony bar to eligibility. It appears that only a handful of states still retain this unfortunate provision, including Rhode Island, Oklahoma, and West Virginia. We look forward to studying the new law in detail, and will shortly incorporate its

provisions into the NC profile and 50-state charts from the Restoration of Rights Project.

We are also pleased to introduce our new 50-state chart on "Process for expunging or sealing non-convictions," which indicates that there are now a total of 20 states that deliver relief for dismissals and acquittals that is either automatic or expedited at time of disposition. At least half of these laws have been enacted in the past two years. But there are still 24 states and D.C. that require people to file petitions, satisfy complex eligibility requirements, and jump through a variety of procedural hoops to limit public access to these records, and one state (Arizona) and the federal system offer no relief at all. There is no excuse for allowing these records to remain publicly available and the source of discrimination, when the government was unwilling or unable to prosecute their charges to conviction. We will continue to work for reforms based on the Model Law on Non-Conviction Records, and are happy to offer advice and assistance to any jurisdiction that decides to take on these issues.

A Second Chance in North Carolina Through Expanded Record Clearance

John Rubin

North Carolina continues to make gradual strides in helping people clear their criminal records and enhance their opportunities going forward. Last week the Governor signed the Second Chance Act, S.L. 2020-35 (S 562), which passed the General Assembly unanimously. The Second Chance Act expands expunction opportunities and streamlines the process for people trying to clear their records. The product of negotiation and compromise, it reflects the interests of prosecutors, law enforcement, and court administrators as well. The

act illustrates many of the record clearance issues being considered around the country, including automatic expunction of nonconviction records (to begin in North Carolina at the end of 2021), removal of barriers to expunctions of nonconviction records (most notably, no longer will prior convictions, whether for a felony or misdemeanor, be a bar), somewhat greater opportunities to expunge older convictions if "nonviolent," and greater access by prosecutors and law enforcement to expunged case information. This summary does not try to explore the many nooks and crannies in the legislation. It is a first pass at describing the changes.

Convictions of Juveniles before "Raise the Age"

Section 1 of the Second Chance Act addresses an unresolved discrepancy resulting from North Carolina's passage of "Raise the Age" legislation—namely, the difference in treatment of 16- and 17-year olds convicted as adults before the "Raise the Age" legislation took effect December 1, 2019, and juveniles who are charged with similar offenses after that date and whose cases remain in the juvenile system, shielded from public view. My School of Government colleague, Jacqui Greene, wrote a blog about the interrelationship between the Raise the Age provisions and the new juvenile expunction provisions.

New G.S. 15A-145.8 applies to convictions of all Class H and I felonies and all misdemeanors for offenses committed before December 1, 2019, with two exceptions. A person may not obtain an expunction under G.S. 15A-145.8 of a conviction of a violation of the motor vehicle laws under Chapter 20 of the North Carolina General Statutes, including impaired driving offenses, or of a conviction of an offense requiring registration as a sex offender under Article

27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

To be eligible for an expunction, the person must meet the following requirements:

- the offense occurred before December 1, 2019;
- the offense occurred when the person was less than 18 years old and at least 16 years old;
- any active sentence, period of probation, and post-release supervision ordered for the offense has been served; and
- the person has no restitution orders for the offense or outstanding civil judgments representing amounts ordered for restitution for the offense.

If the person meets these criteria, expunction is mandatory. *See* G.S. 15A-145.8(c) (stating that court "shall" order an expunction).

The statute contains no limit on the number of expunctions that may be obtained or the number of convictions that may be expunged. *See also* G.S. 15A-145.8(d) (allowing expunction of multiple convictions). The statute imposes no bar to relief based on convictions of other offenses and no waiting period before filing. Because the statute applies to offenses committed before December 1, 2019, a person can obtain an expunction whether the conviction occurs before or after that date.

A petition for expunction under G.S. 15A-145.8 may be filed by the person with the conviction or by the District Attorney. If the affected person files for an expunction and is not indigent, a $175 fee is due on filing. If a petition is filed by the District Attorney, no filing fee is due. The authorization for District Attorney filing enables interested prosecutors to petition on behalf of all juveniles eligible for relief.

The victim has the right to be heard at the hearing on a petition; however, expunction is mandatory if the petition satisfies the statutory criteria. No later than September 1, 2020, the Administrative Office of the Courts must develop expunction forms to implement G.S. 15A-145.8.

Dismissals and Acquittals

Section 3 of the Second Chance Act eliminates barriers to the expunction of nonconviction records —that is, dismissals and acquittals—and streamlines the expunction process.

Automatic expunction of dismissals and acquittals. Effective for charges disposed of on or after December 1, 2021, new G.S. 15A-146(a4) provides for automatic expunction of dismissals and acquittals if all charges in the case are dismissed by the prosecutor without leave (for charges that may be dismissed with "leave," see G.S. 15A-932); all charges are dismissed by the court; or all charges result in a finding of not guilty or not responsible. The new automatic expunction statute imposes no other preconditions—no waiting period, no limit on the number of expunctions, and no disqualification based on prior convictions, whether for a felony or misdemeanor. This last circumstance is particularly significant. Previously, a person could not obtain an expunction of a dismissal if he or she had a prior felony conviction.

Automatic expunction covers both a narrower and broader range of cases than expunctions by petition. G.S. 15A-146(a4) provides that no case with a felony charge that was dismissed pursuant to a plea agreement is subject to automatic expunction. A person must proceed by petition, discussed below. Automatic expunction is available for both criminal charges and for charges of infractions. In contrast, for expunctions by petition (under the previous and

current version of G.S. 15A-146), infractions can be expunged in only one circumstance, a violation of certain alcohol laws before December 1, 1999.

G.S. 15A-150(b) has required the clerk of court to notify law enforcement and other agencies of expunction orders. The revised subsection states that these notice requirements do not apply to automatic expunctions. *See also* G.S. 15A-146(c) (stating in revised subsection that notice requirements do not apply). An uncodified part of Section 3 of the Second Chance Act directs the Department of Public Safety, Department of Justice, and Administrative Office of the Courts to report to the General Assembly by October 1, 2021, on the feasibility of automating implementation of expunction orders by state agencies. The provision does not address automated expunction by local agencies.

Expunction of dismissals and acquittals by petition. Revised G.S. 15A-146 contains three different provisions for petitioning for expunctions, effective for petitions filed on or after December 1, 2020. As with the new expunction provisions for juvenile convictions, a petition may be filed by the affected person or by the District Attorney. As with automatic expunctions, the statute imposes no waiting period, no limit on the number of expunctions, and no disqualification based on prior convictions, whether for a misdemeanor or felony. There is no requirement of notice to the alleged victim. As under current law, there is no filing fee except for dismissals pursuant to a deferred prosecution agreement or a conditional discharge. *See* G.S. 15A-146(d). Effective June 25, 2020, a judge may grant a petition for an expunction of a dismissal or acquittal without a hearing. *See* G.S. 15A-146(a6). This hearing provision therefore applies to expunction petitions

under current G.S. 15A-146 and, once effective, revised G.S. 15A-146.

Subsection (a) of G.S. 15A-146 applies to dismissals in cases involving a single charge. The court must grant an expunction petition when a single charge is dismissed. *Id.* (stating that court "shall" order an expunction).

Subsection (a1) of G.S. 15A-146 applies to cases involving multiple charges. If all charges are dismissed, the court must grant an expunction petition. The subsection states that if any charge resulted in a conviction on the day of dismissal or has not yet reached final disposition, the court may order expunction of any charges that were dismissed. *Id.* (stating that court "shall" order an expunction in the first instance and "may" order an expunction in the second instance).

Subsection (a2) of G.S. 15A-146 applies to acquittals in cases involving single or multiple charges. If a person is found not guilty of any charges and any related criminal charges have reached final disposition, the court must grant an expunction petition. *Id.* (stating that court "shall" order expunction).

G.S. 15A-146(a5) states that in all these instances an arresting agency may maintain its investigative records related to an expunged charge.

Convictions of Older Nonviolent Felonies and Nonviolent Misdemeanors

G.S. 15A-145.5 has authorized expunctions of convictions of older nonviolent felonies and nonviolent misdemeanors. The definition of "nonviolent" offense is unchanged. It means an offense that is not one of a number of listed offenses in G.S. 15A-145.5(a), including Class A through G felonies, Class A1 misdemeanors, offenses having

assault as an essential element, impaired driving offenses, and others. Although the types of offenses subject to expunction remain the same, the Second Chance Act expands the ability of people to obtain an expunction for these offenses, effective for petitions filed on or after December 1, 2020.

Section 4 of the act revises G.S. 145.5 to create three categories of expunctions:

- for one nonviolent misdemeanor conviction after five years;
- for more than one nonviolent misdemeanor conviction after seven years; and
- for one nonviolent felony conviction after ten years.

For all three categories, multiple convictions count as "one" conviction if the convictions occurred during the same session of court. *See* G.S. 15A-145.5(b). Eliminated is the previous sequencing provision treating multiple convictions as one conviction only if the offenses occurred before service of process for other offenses. For all three categories, a prior expunction is a bar to relief if the expunction was granted under G.S. 15A-145.5, not other expunction statutes, and the offense was committed after the date of the previous order of expunction. The District Attorney must give notice of the petition to the victim, who has the right to be heard. If the judge denies the petition, he or she must make findings about the reason for the denial.

Several preconditions apply to all three categories, such as a requirement that the petitioner is of good moral character and has no pending criminal charges. Each category has its own conviction-related criteria.

One nonviolent misdemeanor conviction after five years. The conviction-related criteria for expunction

of one nonviolent misdemeanor conviction are:

- The petition may not be filed earlier than five years after the date of the conviction or when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. This phrasing of the waiting period remains the same as the previous phrasing of the waiting period. *See* Frequently Asked Questions in John Rubin, Relief from a Criminal Conviction (2018 ed.).
- The person must not have a conviction for a felony or misdemeanor other than for a traffic offense during the five-year waiting period. *See* S. 15A-145.5(c2)(4).
- Other than the conviction to be expunged, the person must not have a conviction at any time for a felony or misdemeanor other than for a traffic violation. G.S. 15A-145.5(c2)(6)a.

More than one nonviolent misdemeanor conviction after seven years. The conviction-related criteria for expunction of more than one nonviolent misdemeanor conviction are:

- The petition may not be filed earlier than seven years after the date of the person's last conviction, other than for a traffic offense, or seven years after any active sentence, period of probation, or post-release supervision has been served, whichever occurs later. This phrasing seems to mean that the person will need to wait at least seven years after serving any sentence, which necessarily will end on or after the date of the conviction.
- The person must not have a conviction for a felony or misdemeanor other than for a traffic offense during the seven-year period. *See* S. 15A-145.5(c2)(4).

- The person must not have a conviction for a misdemeanor or felony at any time that is an exception to the term "nonviolent" felony or misdemeanor. *See* S. 15A-145.5(c2)(6)b.

One nonviolent felony conviction after ten years. The conviction-related criteria for expunction of one nonviolent felony conviction are:

- The petition may not be filed earlier than ten years after the date of the conviction or ten years after any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.
- The person must not have a conviction for a felony or misdemeanor other than for a traffic offense during the ten-year period. *See* S. 15A-145.5(c3)(4).
- The person must not have a conviction for another felony at any time or a conviction for a misdemeanor at any time that is an exception to the term "nonviolent" misdemeanor. *See* S. 15A-145.5(c3)(6).

Access by Prosecutors and Law Enforcement to Record of Expunction

Along with prior expansions of expunction opportunities, the General Assembly enacted G.S. 15A-151.5 to give prosecutors access to the record of expunctions in most circumstances for expunctions granted on or after July 1, 2018. That statute specified that prosecutors could use an expunged conviction to determine a person's prior record level if sentenced for a new offense.

Effective December 1, 2020, Section 2 of the Second Chance Act revises G.S. 15A-151.5 in two main respects. First, it gives prosecutors access to the record of expunctions granted under G.S. 15A-145.8,

the new statute on expunctions of juvenile convictions, and under G.S. 15A-145.7, a statute passed in 2019 on expunction of certain offenses by first offenders under 20 years old. Second, revised G.S. 15A-151.5 expands the purposes for which a prosecutor may use an expunged conviction to include: calculating prior conviction level in a misdemeanor case as well as prior record level in a felony case; serving as a prior conviction in an indictment for an habitual offense under G.S. 14-7.1 and G.S. 14-7.26; when a prior conviction raises a subsequent offense to a higher level; determining eligibility for a conditional discharge under G.S. 90-96(a); and when permissible in a criminal case under Rule 404(b) or Rule 609 of the North Carolina Rules of Evidence. The revised statute also states that the expunction of a conviction is not a basis for challenging a conviction or sentence entered before the expunction.

G.S. 15A-151(a) has allowed the Administrative Office of the Courts to provide records of expunctions to law enforcement agencies and boards for employment and certification purposes. Effective December 1, 2020, the statute is revised to include expunctions under G.S. 15A-145.8, the new statute on expunctions of juvenile convictions.

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Editorial staff of the Collateral Consequences Resource Center

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Yesterday, the Clean Slate Initiative, a bipartisan national effort to
February 17, 2021

Dozens of new expungement laws already enacted in 2021 This year is turning out to be another remarkable year for new record
July 7, 2021

Record-breaking number of new expungement laws enacted in 2019
February 6, 2020

Criminal Records Expungement/sealing

Legislation New legislation

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2020-35
SENATE BILL 562

AN ACT TO MAKE VARIOUS REVISIONS TO THE EXPUNCTION LAWS OF THIS STATE.

The General Assembly of North Carolina enacts:

PART I. EXPUNCTIONS FOR OFFENSES COMMITTED PRIOR TO THE EFFECTIVE DATE OF THE LEGISLATION KNOWN AS RAISE THE AGE

SECTION 1.(a) Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.8. Expunction of records for offenders under the age of 18 at the time of commission of certain misdemeanors and felonies upon completion of the sentence.**

(a) A person or the district attorney may file, in the court of the county where the person was convicted, a petition for expunction from the person's criminal record of any misdemeanor or Class H or I felony not excluded by subsection (b) of this section if the offense was committed prior to December 1, 2019, and while the person was less than 18 years of age, but at least 16 years of age. The petition shall not be filed until (i) any active sentence, period of probation, and post-release supervision ordered for the offense has been served and (ii) the person has no restitution orders for the offense or outstanding civil judgments representing amounts ordered for restitution for the offense.

(b) An offense is not eligible for expunction under this section if it is (i) a violation of the motor vehicle laws under Chapter 20 of the General Statutes, including any offense involving impaired driving as defined in G.S. 20-4.01(24a) or (ii) an offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

(c) If the petition was not filed by the district attorney, the petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing. Upon request by the victim, the victim has a right to be present at any hearing on the petition for expunction and the victim's views and concerns shall be considered by the court at such hearing.

(d) If the court, after hearing, finds that (i) the offense was a misdemeanor or Class H or I felony eligible for expunction under this section, (ii) the offense was committed prior to December 1, 2019, and while the person was less than 18 years of age, but at least 16 years of age, (iii) any active sentence, period of probation, and post-release supervision ordered for the offense was completed, and (iv) the person has no restitution orders for the offense or outstanding civil judgments representing amounts ordered for restitution for the offense, the court shall order that the person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information, and that the record be expunged from the records

of the court. A person convicted of multiple offenses shall be eligible to have those convictions expunged pursuant to this section.

(e) Any petition for expunction under this section shall be on a form approved by the Administrative Office of the Courts and shall be filed with the clerk of superior court in the county where the person was convicted. Upon order of expunction, the clerk shall forward the order to the Administrative Office of the Courts.

(f) No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose.

(g) The court shall also order that the conviction be expunged from the records of the court. The court shall direct all law enforcement agencies, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(h) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars ($175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents ($122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents ($52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent."

SECTION 1.(b) This section becomes effective December 1, 2019, and applies to offenses committed before that date. The Administrative Office of the Courts shall develop and disseminate the forms required by this section no later than September 1, 2020.

PART II. PROSECUTOR AND LAW ENFORCEMENT ACCESS TO EXPUNGED FILES

SECTION 2.(a) G.S. 15A-151.5 reads as rewritten:

"**§ 15A-151.5. Prosecutor access to expunged files.**

(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under any of the following:

(1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

(2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

(3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

(4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.

(5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.

(6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.

(7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
(7a) G.S. 15A-145.7. Expunction of records for first offenders under 20 years of age at the time of the offense of certain offenses.
(7b) G.S. 15A-145.8. Expunction of records for offenders under the age of 18 at the time of conviction of certain misdemeanors and felonies upon completion of the sentence.
(8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
(9) G.S. 15A-146(a1). Expunction of records when charges are dismissed.

(b) For any expungement granted on or after July 1, 2018, the ~~expunged criminal records~~ record of a criminal conviction expunged under subdivisions (1) through ~~(7)~~ (7b) of subsection (a) of this section may be ~~used~~ considered a prior conviction and used for any of the following purposes:

(1) ~~to~~ To calculate prior record level and prior conviction level if the named person is convicted of a subsequent criminal offense.
(2) To serve as a basis for indictment for a habitual offense pursuant to G.S. 14-7.1 or G.S. 14-7.26.
(3) When a conviction of a prior offense raises the offense level of a subsequent offense.
(4) To determine eligibility for relief under G.S. 90-96(a).
(5) When permissible in a criminal case under Rule 404(b) or Rule 609 of the North Carolina Rules of Evidence.

(c) For any expungement granted on or after July 1, 2018, the information maintained by the Administrative Office of the Courts, and made available under subsection (a) of this section, shall be prima facie evidence of the expunged conviction for the purposes ~~of calculating prior record level of the named person~~ provided in subsection (b) of this section and shall be admissible into ~~evidence at a subsequent criminal sentencing hearing.~~evidence. The expungement of a conviction shall not serve as a basis to challenge a conviction or sentence entered before the expungement of that conviction."

SECTION 2.(b) G.S. 15A-151(a) reads as rewritten:

"(a) The Administrative Office of the Courts shall maintain a confidential file for expungements containing the petitions granted under this Article and the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

...

(4) Upon request of State or local law enforcement, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, ~~or 15A-145.6~~ 15A-145.6, 15A-145.8, or 15A-146 or employment purposes only.
(5) Upon the request of the North Carolina Criminal Justice Education and Training Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, ~~or 15A-145.6~~ 15A-145.6, 15A-145.8, or 15A-146 for certification purposes only.
(6) Upon request of the North Carolina ~~Sheriff's~~ Sheriffs' Education and Training Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, ~~or 15A-145.6~~ 15A-145.6, 15A-145.8, or 15A-146 for certification purposes only.

...."

SECTION 2.(c) This section becomes effective December 1, 2020.

PART III. STREAMLINE EXPUNCTIONS FOR CHARGES NOT RESULTING IN CONVICTION

SECTION 3.(a) G.S. 15A-146 reads as rewritten:

"§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

(a) Dismissal of Single Charge. – If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, that person or the district attorney may petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to ~~his~~ that person's apprehension or trial. ~~The court shall hold a hearing on the petition and, upon finding that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state,~~ Upon a finding that the sole charge was dismissed, the court shall order the expunction. ~~No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.~~

(a1) Multiple Dismissals. – ~~Notwithstanding subsection (a) of this section, if~~ If a person is charged with multiple offenses and ~~the~~ any charges are dismissed, then ~~a~~ that person or the district attorney may petition to have each of the dismissed charges expunged. ~~The court shall hold a hearing on the petition.~~ If the court finds that all of the ~~person had not previously been convicted of any felony under the laws of the United States, this State, or any other state,~~ charges were dismissed, the court shall order the expunction. If the court finds that any charge resulted in a conviction on the day of the dismissal or had not yet reached final disposition, the court may order the expunction of any charge that was dismissed.

(a2) Finding of Not Guilty. – If any person is charged with ~~a crime,~~ one or more crimes, either a misdemeanor or a felony, or an infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not responsible is ~~entered,~~ entered for any or all of the charges, that person or the district attorney may petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to apprehension or trial of that crime. ~~The court shall hold a hearing on the petition and upon finding that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of failure to recite or acknowledge any expunged entries concerning that crime. If a person is charged with multiple offenses and findings of not guilty or not responsible are made on charges, then a person may petition to have each of the charges disposed by a finding of not guilty or not responsible expunged. The court shall hold a hearing on the petition. If the court finds that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state,~~ Upon determining that a finding of not guilty or not responsible was entered and all related criminal charges have reached final disposition, the court shall order the ~~expunction.~~expunction of any charges disposed by a finding of not guilty or not responsible.

(a3) ~~No~~ Effect of Expunction. – Except as provided in G.S. 15A-151.5(b)(5), no person as to whom ~~such~~ an order has been entered by a court or by operation of law under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of ~~his~~ the person's failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(a4) Dismissal, Not Guilty, or Not Responsible on or After December 1, 2021. – If any person is charged with a crime, either a misdemeanor or a felony, or is charged with an infraction, the charges in the case are expunged by operation of law if all of the following apply:

(1) All charges in the case are disposed on or after December 1, 2021.

(2) All charges in the case are dismissed without leave, dismissed by the court, or result in a finding of not guilty or not responsible.

Notwithstanding the provisions of this subsection, no case with a felony charge that was dismissed pursuant to a plea agreement will be expunged pursuant to this subsection. Prior to December 1, 2021, the Administrative Office of the Courts shall develop and have in place procedures to automate the expunction of records pursuant to this subsection.

(a5) Notwithstanding the provisions of subsections (a), (a1), and (a2) of this section, an arresting agency may maintain investigative records related to a charge that has been expunged pursuant to this section.

(a6) Hearing. – Except as otherwise specifically provided in this section, a court may grant a petition for expunction under this section without a hearing.

...

(c) Any petition required to be filed for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. ~~Upon~~ Excluding any expunction granted by operation of law pursuant to subsection (a4) of this section, upon order of ~~expungement,~~ expungement by a court, the clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150 and forward the petition to the Administrative Office of the Courts.

...."

SECTION 3.(b) G.S. 15A-150(b) reads as rewritten:

"(b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of this section for the electronic or facsimile transmission of information, the clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to (i) all of the agencies listed in this subsection and (ii) the ~~person.~~ person granted the expunction. Expunctions granted pursuant to G.S. 15A-146(a4) are excluded from all notice provisions of this subsection. An agency receiving an order under this subsection shall purge from its records all entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

(1) The sheriff, chief of police, or other arresting agency.
(2) When applicable, the Division of Motor Vehicles.
(3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.
(4) The Department of Public Safety, Combined Records Section.
(5) The State Bureau of Investigation."

SECTION 3.(c) By October 1, 2021, the Department of Public Safety, in conjunction with the Department of Justice and the Administrative Office of the Courts, shall jointly develop and submit a report to the Joint Legislative Oversight Committee on Justice and Public Safety on recommendations and the costs involved to automate the expunction process for all State agencies with records subject to expunction orders and ensure the efficacy of the record expunction.

SECTION 3.(d) Subsections (a) through (a3) and (a5) of G.S. 15A-146, as amended by subsection (a) of this section, become effective December 1, 2020, and apply to petitions filed on or after that date. Subsection (a4) of G.S. 15A-146, as amended by subsection (a) of this section, becomes effective on December 1, 2021, and applies to charges disposed of on or after that date. The remainder of this section is effective when it becomes law.

PART IV. MODIFY EXPUNCTION OF NONVIOLENT MISDEMEANOR AND FELONY CONVICTIONS

SECTION 4.(a) G.S. 15A-145.5 reads as rewritten:

"**§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

(1) A Class A through G felony or a Class A1 misdemeanor.

(2) An offense that includes assault as an essential element of the offense.

(3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

(4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.

(5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.

(6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).

(7) An offense under G.S. 14-401.16.

(7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.

(8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).

(9) Any offense that is an attempt to commit an offense described in subdivisions (1) through (8a) of this subsection.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of ~~court and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor,~~ court, then the multiple nonviolent felony or nonviolent misdemeanor convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in accordance with this section.

(c) A person may file a petition, in the court of the county where the person was convicted, for expunction of ~~a~~ one or more nonviolent misdemeanor convictions or one nonviolent felony conviction from the person's criminal ~~record if the person has no other misdemeanor or felony convictions, other than a traffic violation. The petition shall not be filed earlier than 10 years after the date of the conviction for a nonviolent felony or five years for a nonviolent misdemeanor or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later.~~ record. The petition shall not be filed earlier than one of the following:

(1) For expunction of one nonviolent misdemeanor, five years after the date of the conviction or when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.

(2) For expunction of more than one nonviolent misdemeanor, seven years after the date of the person's last conviction, other than a traffic offense not listed in the petition for expunction, or seven years after any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.

(3) For expunction of one nonviolent felony, 10 years after the date of the conviction or 10 years after any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.

A person previously granted an expunction under this section is not eligible for relief under this section for any offense committed after the date of the previous order for expunction.

(c1) ~~The~~ A petition filed pursuant to this section shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner ~~has been~~ is of good moral character ~~since the date of conviction for the nonviolent misdemeanor or nonviolent felony~~ and has not been convicted of any other felony or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other ~~state.~~state during the applicable five-year, seven-year, or 10-year waiting period set forth in subsection (c) of this section.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

Upon filing of the petition, the petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing. Upon request by the victim, the victim has a right to be present at any hearing on the petition for expunction and the victim's views and concerns shall be considered by the court at such hearing.

The presiding judge is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct since the conviction. The court shall review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of crimes committed by the petitioner.

(c2) ~~If the~~ The court, after ~~hearing,~~ hearing a petition for expunction of one or more nonviolent misdemeanors, shall order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information, except as provided in G.S. 15A-151.5, if the court finds all of the following:

(1) ~~finds that the~~ The petitioner has not ~~previously~~ been granted an expunction under this ~~section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or~~

~~15A-145.4;~~ section prior to the date of any offense the current petition requests be expunged.

(2) ~~the~~ The petitioner ~~has remained~~ is of good moral ~~character;~~ character.

(3) ~~the~~ The petitioner has no outstanding warrants or pending criminal ~~cases;~~ cases.

(4) ~~the~~ The petitioner has no other felony or misdemeanor ~~convictions~~ convictions, other than a traffic ~~violation;~~ violation not listed in the petition for expunction, during the applicable five-year or seven-year waiting period set forth in subsection (c) of this section.

(5) ~~the~~ The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the ~~petitioner; and~~ petitioner.

(6) The petitioner meets one of the following criteria:

a. For a petition for expunction of one nonviolent misdemeanor, the petitioner has no convictions for any other felony or misdemeanor, other than a traffic offense.

b. For a petition for expunction of more than one nonviolent misdemeanor, the petitioner has no convictions for a misdemeanor or felony that is listed as an exception to the terms "nonviolent misdemeanor" or "nonviolent felony" as provided in subsection (a) of this section.

(7) ~~the~~ The petitioner was convicted of an offense or offenses eligible for expunction under this ~~section and was convicted of, and completed any sentence received for, a nonviolent felony at least 10 years prior to the filing of the petition or a nonviolent misdemeanor at least five years prior to the filing of the petition, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information, except as provided in G.S. 15A-151.5.~~section.

(8) The petitioner has completed the applicable five-year or seven-year waiting period set forth in subsection (c) of this section.

If the court denies the petition, the order shall include a finding as to the reason for the denial.

(c3) The court, after hearing a petition for expunction of one nonviolent felony, may order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information, except as provided in G.S. 15A-151.5, if the court finds all of the following:

(1) The petitioner has not been granted an expunction under this section prior to the date of any offense the current petition requests be expunged.

(2) The petitioner is of good moral character.

(3) The petitioner has no outstanding warrants or pending criminal cases.

(4) The petitioner has no other felony or misdemeanor convictions, other than a traffic violation not listed in the petition for expunction, during the applicable 10-year waiting period set forth in subsection (c) of this section.

(5) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

(6) The petitioner has no convictions for a misdemeanor that is listed as an exception to the term "nonviolent misdemeanor" as provided in subsection (a) of this section or any other felony offense.

(7) The petitioner was convicted of an offense eligible for expunction under this section.

(8) The petitioner has completed the 10-year waiting period set forth in subsection (c) of this section.

If the court denies the petition, the order shall include a finding as to the reason for the denial.

...

(e) The court shall also order that the conviction or convictions be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order, as provided in G.S. 15A-150.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction or convictions ordered expunged under this section upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

...."

SECTION 4.(b) This section becomes effective December 1, 2020, and applies to petitions filed on or after that date.

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of June, 2020.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 2:15 p.m. this 25th day of June, 2020

TAB 10

Clean slate, expungement and limited access

Frequently Asked Questions

What is Clean Slate?

Under Clean Slate, criminal history record information pertaining to eligible criminal and summary records, and non-conviction records will be automatically shielded from public view when individuals have been free from conviction of offenses punishable by a year or more in prison and have completed all court-ordered obligations for 10 years. These records will NOT be expunged, and will still be accessible to law enforcement and judicial officers.

Processing of cases automatically will begin on June 28, 2019. Due to a large volume of cases, there will likely be a backlog of cases during the first year of the Clean Slate program. An individual who believes their record was not sealed due to a backlog, or was not sealed in error, may file an Act 5 petition for limited access. Sample Act 5 petition

Individuals convicted of the following offenses are eligible for Clean Slate:

- Second and third degree misdemeanors, and misdemeanors punishable by two years or less in prison
- Summary convictions
- Charges not resulting in convictions

Individuals convicted of the following offenses are not eligible for Clean Slate:

- Crimes involving danger to persons
- Crimes against families
- Firearm offenses
- Full list of ineligible offenses

Also, individuals convicted of any of the following are not eligible for Clean Slate at any time:

- A felony
- Two or more offenses punishable by more than two years in prison
- Four or more offenses punishable by one or more years in prison
- Indecent exposure, sexual intercourse with animals, failure to register upon conviction of certain sexual offenses, weapons or implements for escape, abuse of a corpse and unlawful paramilitary training.

What is Act 5 limited access?

Recent changes to the law effective on December 26, 2018.

Act 5 limited access is similar to Clean Slate, but it is not automatic. It is applicable to criminal history record information pertaining to a broader list of offenses than Clean Slate. Act 5 limited access allows individuals who serve their punishment and complete court-ordered obligations to petition the court to seal the record from public view. Individuals must remain free of arrest or prosecution for 10 years for offenses punishable by one or more years in prison.

Many of the same records that will be automatically sealed via Clean Slate when it becomes effective in 2019 can be sealed sooner under Act 5. Individuals with criminal history record information eligible for Clean Slate might wish to petition under Act 5 instead. Additionally, criminal history record information for certain

offenses not automatically sealable under Clean Slate is eligible for sealing under Act 5. See Clean Slate Ineligible convictions and eligible exclusions

Individuals convicted of "qualifying misdemeanors" or ungraded offenses punishable by five years or less in prison are eligible for Act 5 limited access to criminal history record information pertaining to the offenses.

Individuals convicted of the following offenses *when graded as a misdemeanor of the first degree* are not eligible for Act 5 limited access:

- Crimes involving danger to persons, crimes against families and firearm offenses
- Tiered sexual offenses or those requiring registration as a sexual offender
- Corruption of minors
- Attempt, conspiracy, or solicitation to commit any exempted offense
- List of ineligible offenses

Additionally, individuals convicted of any of the following are not eligible for Act 5 limited access at any time:
Murder, first degree felonies and offenses punishable by 20 or more years in prison
In the previous 20 years:

- Felony crimes involving danger to persons and crimes against the family, firearm offenses, tiered sexual offenses or those requiring registration as a sexual offender, or
- Four or more misdemeanors graded as second degree or higher

In the previous 15 years:

- Two or more misdemeanors of the first degree or higher, or
- Indecent exposure, sexual intercourse with an animal, failure to comply with registration as a sexual offender, weapons or implements of escape, abuse of a corpse, and unlawful paramilitary training.

Source: https://www.pacourts.us/learn/learn-about-the-judicial-system/clean-slate-expungement-and-limited-access

Ineligible convictions and eligible exclusions

Individuals convicted of the following offenses are NOT ELIGIBLE for Clean Slate

Offenses relating to criminal homicide, including:

Murder
Voluntary manslaughter
Involuntary manslaughter
Causing or aiding suicide
Drug delivery resulting in death.
Criminal homicide of law enforcement officer
See **Chapter 25** of the Crimes Code

Offenses relating to crimes against an unborn child, including:

Criminal homicide of unborn child
Murder of unborn child
Voluntary manslaughter of unborn child
Aggravated assault of unborn child
See Chapter 26 of the Crimes Code

Offenses related to assault, including:

Simple assault
Aggravated assault
Assault of law enforcement officer
Assault by prisoner
Aggravated harassment by prisoner
Assault by life prisoner
Recklessly endangering another person
Terroristic threats
Propulsion of missiles into an occupied vehicle or onto a roadway
Discharge of a firearm into an occupied structure
Paintball guns and paintball markers
Use of tear or noxious gas in labor disputes
Harassment
Stalking
Ethnic intimidation
Assault on sports official
Neglect of care-dependent person
Abuse of care-dependent person
Unauthorized administration of intoxicant
Threat to use weapons of mass destruction
Weapons of mass destruction

Strangulation
See Chapter 27 of the Crimes Code

Offenses related to kidnapping, including:

Kidnapping
Unlawful restraint
False imprisonment
Interference with custody of children
Interference with custody of committed persons
Criminal coercion
Disposition of ransom
Concealment of whereabouts of a child
Luring a child into a motor vehicle or structure
See Chapter 29 of the Crimes Code

Offenses related to human trafficking:

Trafficking in individuals.
Involuntary servitude
Patronizing a victim of sexual servitude
Unlawful conduct regarding documents
Nonpayment of wages
Obstruction of justice
See Chapter 30 of the Crimes Code

Sexual offenses, including:

Rape
Statutory sexual assault
Involuntary deviate sexual intercourse
Sexual assault
Institutional sexual assault
Sexual assault by sports official, volunteer or employee of nonprofit association
Aggravated indecent assault
Indecent assault
Indecent exposure
Sexual intercourse with animal
Conduct relating to sex offenders
Unlawful dissemination of intimate image
Tiered sexual offenses and sexual offenses requiring registration, including: corruption of minors, sexual abuse of children, invasion of privacy, prostitution, obscene and other sexual materials, unlawful contact with minors, sexual exploitation of children and numerous federal sexual offenses
See Chapter 31 of the Crimes Code

Violations relating to abortion, including:

Medical consultation and judgment.
Informed consent
Determination of gestational age
Abortion on unborn child of 24 or more weeks gestational age
Infanticide
Payments and referral fees

Failure to file reports
Ordering an abortion
Fetal experimentation
False statements
See Chapter 32 of the Crimes Code

Offenses against the family, including:

Bigamy
Incest
Concealing death of child
Endangering welfare of children
Dealing in infant children
Newborn protection
See **Chapter 43** of the Crimes Code

Offenses involving firearms, including:

Persons not to possess, use, manufacture, control, sell or transfer firearms
Firearms not to be carried without a license
Carrying loaded weapons other than firearms
Carrying firearms during emergency
Carrying firearms in public in Philadelphia
Licenses
Possession of firearm by minor
Possession of firearm with altered manufacturer's number
Sale or transfer of firearms
Retail dealer required to be licensed
Licensing of dealers
Loans on, or lending or giving firearms prohibited
False evidence of identity
Altering or obliterating marks of identification
Use/possession prohibited bullets
Proof of license and exception
Locking devices
Carrying explosives on conveyances
Shipping explosives
See Chapter 61 of the Crimes Code

Miscellaneous offenses:

Cruelty to animals (not eligible for Clean Slate, but eligible for Act 5 Limited Access) – see Section 5533 of the Crimes Code

Selected offenses NOT ELIGIBLE for Clean Slate, but ELIGIBLE for Act 5

Simple assaults graded as second and third degree misdemeanors
Reckless endangerment
Harassment
Criminal coercion
Sale or transfer of firearms graded as second degree misdemeanors
Corruption of minors graded as summary offenses

Carrying loaded weapons other than firearms
Sale or transfer of firearms

This list is not exhaustive. Individuals interested in seeking Act 5 limited access should consult legal counsel to determine eligibility.

The Path to Clean Slate

Act 56 of 2018 ("Clean Slate") goes into effect on June 28, 2019. Clean Slate uses an automated computer process to identify and shield from public view (1) offenses with dispositions that are not convictions, (2) summary convictions more than 10 years old and for which payment of all court-ordered financial obligations is complete, and (3) convictions graded as a misdemeanor of the 2nd or 3rd degree, or ungraded wherein the defendant has been free from any other felony or misdemeanor conviction for 10 years and completed the financial obligations of the sentence.

Cases and offenses that qualify for Clean Slate in CPCMS and the MDJS are identified.

Pennsylvania State Police reviews identified misdemeanor convictions and reports any objections back to the AOPC.

Validated CPCMS and MDJS offenses display in CPCMS in batches.

Batches are processed through a new CPCMS screen to produce a court order and final report.

Judges can review a report listing each case and offense in a batch prior to issuing an order.

Public docket sheets no longer display the cases or offenses.

Prepared: May 15, 2019

Clean Slate Processing Details

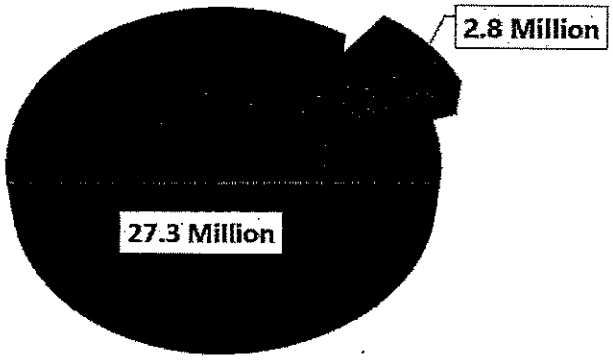
- The AOPC will automatically identify the eligibility of all offenses statewide. Eligible misdemeanor conviction offenses will be sent to the Pennsylvania State Police (PSP) in monthly batches. Eligible non-convictions and summary convictions are automatically pre-approved and are not sent for review. Processing the backlog of all offenses is anticipated to take a year.
- PSP has 30 days to validate the eligibility of the misdemeanor conviction offenses sent in each batch. Non-eligible offenses, those with incorrect or incomplete data, or where no match was found, will be removed from the batch.
- Each county will receive batches of offenses on cases in their county on the new Clean Slate Administration screen in CPCMS. These batches contain the offenses that were automatically eligible and the misdemeanor conviction offenses that were validated by PSP. The top five counties with the greatest number of eligible offenses will require two batches per month.
- Over the first year, the size of the batches for each county will vary in order to process the total number of eligible offenses in the most efficient manner.
- A batch in CPCMS is processed by (1) Generating a blank order for the judge to sign and a report listing all eligible offenses in the batch. This step is optional for counties using electronic signatures and, if used, only the report is created. (2) Completing the batch by designating it as approved. For counties using electronic signatures, this step generates the signed order and the report listing all eligible offenses in the batch.
- An Administrative Docket case, which is referenced in the report and the order, is created during processing; the order and report are not saved to individual cases. When approved, counties using ERMS can save the report and order to the Administrative Docket case.
- Once the batch is approved in CPCMS, the following happens automatically: docket entries for the order are recorded on each case, each eligible offense is marked as Limited Access and removed from docket sheets in CPCMS, and all appropriate offenses are also updated in the MDJS.
- Case participants requesting documentation on their case must go to the Court of Common Pleas in the county, regardless of the type of case. The new Clean Slate History screen is used to find cases that have been processed and regenerate portions of the report containing those cases.

By the Numbers (as of May 2019)

over **30** **Million**
Cases with eligible offenses statewide

over **40** **Million**
Eligible offenses statewide

Complete vs. Partial Limited Access*

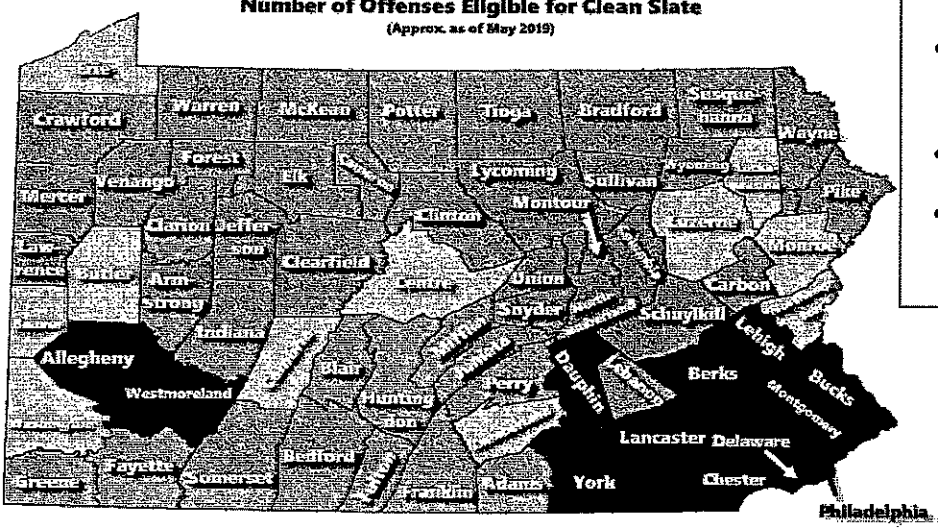


*Totals are based on cases with eligible offenses statewide.

Business Process Considerations

- Consider setting up electronic signatures in CPCMS for judges that will sign orders for Clean Slate batches to streamline the process.
- Due to the number of offenses being processed, the report could be hundreds to thousands of pages long. If not using ERMS, consider how and where to store lengthy reports.
- Due to the anticipated volume of Clean Slate offenses, it may no longer be practical to individually mark physical case files. Switch to using CPCMS to evaluate public access requests.

Number of Offenses Eligible for Clean Slate
(Approx. as of May 2019)



Visibility of Clean Slate in the Case Management Systems

- Three case search screens in CPCMS and MDJS display the Sealed icon when at least one offense is Limited Access. Hovering the mouse over the icon will distinguish between sealed and Limited Access cases or offenses.
- The Clean Slate History screen in CPCMS can be used to search for Common Pleas and lower court cases that have had at least one offense processed for Clean Slate.
- Users with secure case access in CPCMS or MDJS will continue to see limited access offenses and cases on secure docket sheets and other relevant reports.
- Limited Access on the individual offenses for cases can be viewed on the offenses screen.
- When a case is opened in either CPCMS or MDJS, the Case Bar turns red and displays the Sealed icon when at least one offense is Limited Access.

AOPC

Processed Clean Slate Counts By County (June 28, 2019 - June 30, 2021)							Petition Granted (11/2016 - 6/2021)	
County Name	NonConviction Cases	NonConviction Offenses	Conviction Summary Cases	Conviction Summary Offenses	Conviction Misdemeanor Cases	Conviction Misdemeanor Offenses	Limited Access Cases	Limited Access Offenses
Adams	69,491	123,725	165,633	166,119	1,342	1,486	2	5
Allegheny	2,179,423	3,154,262	1,698,693	1,733,280	7,705	11,723	183	434
Armstrong	80,162	165,735	90,514	91,726	181	198	0	0
Beaver	294,841	467,347	294,263	295,257	672	707	9	12
Bedford	43,736	88,108	156,498	157,445	584	627	0	0
Berks	610,471	948,026	895,161	898,079	4,143	4,590	31	123
Blair	107,230	200,334	157,785	159,948	1,150	1,327	32	96
Bradford	50,619	131,055	91,171	93,852	690	755	6	48
Bucks	822,236	1,193,511	1,037,515	1,043,859	3,295	5,595	100	353
Butler	194,166	377,126	288,740	291,943	1,616	1,841	15	19
Cambria	156,541	358,744	229,774	235,134	631	696	14	46
Cameron	4,943	10,690	17,141	17,260	27	31	0	0
Carbon	86,554	127,360	185,616	186,035	955	1,012	1	1
Centre	138,194	278,337	403,536	406,376	1,317	1,534	13	20
Chester	651,412	1,527,653	1,264,446	1,266,647	6,884	7,274	77	158
Clarion	53,513	121,774	124,001	125,265	296	326	1	2
Clearfield	41,182	102,420	157,089	165,058	533	619	6	9
Clinton	38,951	73,051	105,477	105,606	616	648	9	44
Columbia	87,134	144,477	163,247	163,894	1,350	1,456	12	30
Crawford	62,840	119,344	126,567	129,418	1,506	1,627	4	6
Cumberland	206,813	335,821	588,313	591,763	1,961	2,133	32	70
Dauphin	450,928	636,956	830,647	841,214	3,331	4,375	63	124
Delaware	1,366,427	2,058,537	956,452	958,161	4,802	5,106	127	373
Elk	23,106	52,219	52,840	53,789	277	378	4	10
Erie	296,651	419,659	337,497	342,475	2,037	2,197	53	150
Fayette	146,647	221,568	170,058	174,036	658	1,004	0	0
Forest	6,903	12,343	10,614	10,898	66	77	0	0
Franklin	102,360	179,851	193,001	194,592	1,358	1,470	17	32
Fulton	17,969	33,202	93,472	93,698	262	286	0	0
Greene	41,837	66,164	65,411	69,061	375	611	0	0
Huntingdon	24,794	84,798	56,584	57,004	175	179	5	13
Indiana	78,921	161,504	137,396	138,162	770	955	4	6
Jefferson	42,056	131,884	122,563	123,662	472	665	6	8
Juniata	12,279	26,783	44,482	45,238	224	258	1	1
Lackawanna	341,006	514,995	291,745	296,013	2,073	2,206	4	6
Lancaster	546,346	691,681	976,294	992,536	6,300	9,096	71	276
Lawrence	109,125	183,576	125,509	127,273	508	548	9	21
Lebanon	89,578	136,031	257,813	267,248	2,195	3,501	9	19
Lehigh	488,135	691,216	721,211	726,994	3,514	4,487	67	164
Luzerne	505,215	750,044	464,913	468,089	1,998	2,954	27	58
Lycoming	95,411	208,161	199,994	205,217	2,747	3,743	15	33
McKean	36,773	74,911	73,558	76,903	349	552	0	0
Mercer	114,544	233,847	181,796	184,336	2,644	3,180	8	20
Mifflin	29,173	56,872	70,923	71,775	430	458	3	8
Monroe	201,530	369,492	290,437	291,628	1,788	1,891	23	57
Montgomery	1,643,991	2,910,269	1,582,704	1,586,657	6,649	7,291	129	213
Montour	11,321	22,610	37,519	37,759	252	272	1	4
Northampton	340,807	471,554	551,534	552,920	2,313	2,565	31	82
Northumberland	67,479	128,416	136,444	139,707	956	996	4	9
Perry	35,807	61,853	82,324	83,372	287	330	3	4
Philadelphia	1,880,670	5,229,417	52,580	72,138	2,535	3,370	595	949
Pike	41,002	68,442	98,889	99,668	924	986	1	1
Potter	15,077	40,760	30,956	32,060	213	307	0	0
Schuylkill	146,985	253,977	256,104	259,268	1,419	1,941	9	17
Snyder	27,149	67,558	111,320	112,180	629	763	9	22
Somerset	68,115	150,039	207,139	208,487	593	669	1	7
Sullivan	6,035	13,455	21,031	21,070	103	103	1	1
Susquehanna	36,334	73,156	54,179	55,006	567	585	3	5
Tioga	28,610	61,218	80,829	81,145	459	479	1	1
Union	24,368	53,333	77,146	77,830	446	476	3	5
Venango	48,914	91,439	91,950	92,689	742	816	8	9
Warren	28,632	58,835	42,808	46,142	568	717	0	0
Washington	346,071	513,546	401,659	403,704	972	1,243	39	92
Wayne	29,786	66,965	63,992	65,471	711	781	5	25
Westmoreland	409,749	621,589	643,762	648,862	1,240	1,960	27	98
Wyoming	30,722	75,451	63,889	64,394	705	724	5	9
York	337,068	550,922	906,117	913,776	6,354	7,857	57	93
Totals:	**16,752,858**	**29,629,998**	**20,561,265**	**20,788,271**	**106,444**	**131,613**	**1,995**	**4,501**
			Grand Total Cases:	**37,422,562**				
			Grand Total Offenses:	**50,554,383**				

2018 Act 56

CRIMES CODE (18 PA.C.S.) AND JUDICIAL CODE (42 PA.C.S.) - OMNIBUS AMENDMENTS

Act of Jun. 28, 2018, P.L. 402, No. 56 Cl. 18

Session of 2018
No. 2018-56

HB 1419

AN ACT

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in criminal history record information, further providing for general regulations and for order for limited access and providing for clean slate limited access, for exceptions, for order to vacate order for limited access, for effects of expunged records and records subject to limited access and for employer immunity from liability; and, in juvenile matters, further providing for inspection of court files and records and for law enforcement records.

The General Assembly finds and declares as follows:

(1) Individuals with charges not leading to convictions may be inherently harmed by the maintenance of that record and have a constitutional presumption of innocence.

(2) Individuals convicted of crimes in this Commonwealth should serve their sentences as ordered by the courts of this Commonwealth.

(3) After less violent individuals convicted of crimes have served their sentences and remained crime free long enough to demonstrate rehabilitation, the individuals' access to employment, housing, education and other necessities of life should be fully restored.

(4) Criminal justice agencies need access to all criminal history record information in order to effectively carry out the agencies' duties to protect the public.

(5) The Commonwealth shall provide a clean slate remedy, as set forth under this act, to:

(i) Create a strong incentive for avoidance of recidivism by offenders.

(ii) Provide hope for the alleviation of the hardships of having a criminal record by offenders who are trying to rehabilitate themselves.

(iii) Save the Commonwealth money that must be spent in the administration of criminal justice when offenders recidivate.

(iv) Ensure appropriate access to criminal history information by criminal justice agencies.

(6) The clean slate remedy should be implemented without cost to the former offender of filing a petition with a court.

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

Section 1. Sections 9121(b) introductory paragraph, (2) and (3), (b.1) and (b.2) and 9122.1 heading, (a) and (b) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 9121. General regulations.

* * *

(b) Dissemination to noncriminal justice agencies and individuals.--Criminal history record information shall be disseminated by a State or local police department to any individual or noncriminal justice agency only upon request. [Except as provided in subsection (b.1):] **The following apply:**

* * *

(2) [Before] **Except as provided for in subsections (b.1) and (b.2), before** a State or local police department disseminates criminal history record information to an individual or noncriminal justice agency, it shall extract from the record the following:

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

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

(B) no [conviction has occurred] **disposition is indicated in the record;** and

(C) [no proceedings are pending seeking a conviction.] **nothing in the record indicates that proceedings seeking conviction remain pending.**

(ii) All information relating to a conviction and the arrest, indictment or other information leading thereto, which is the subject of a court order for limited access as provided in section 9122.1 (relating to [order] **petition** for limited access).

(iii) All information relating to a conviction or nonconviction final disposition and the arrest, indictment or other information leading to the arrest or indictment which is subject to a court order for limited access as provided for in section 9122.2 (relating to clean slate limited access).

(3) A court or the Administrative Office of Pennsylvania Courts may not disseminate to an individual, a noncriminal justice agency or an Internet website any information [relating to a conviction, arrest, indictment or other information leading to a conviction, arrest, indictment or other information,] which is the subject of a court order for limited access as provided in section 9122.1 **or 9122.2.**

(b.1) Exception.--Subsection (b)(1) and (2) shall not apply if the request is made by a county children and youth agency or the Department of [Public Welfare] **Human Services** in the performance of duties relating to children and youth under the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, section 2168 of the act of August 9, 1955 (P.L.323, No.130), known as The County Code, the act of June 13, 1967 (P.L.31, No.21), known as the [Public Welfare] **Human Services** Code, 23 Pa.C.S. Ch. 63 (relating to child protective services) or 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(b.2) Additional exceptions.--

(1) Subsection (b)(2)(ii) and [(3)] **(iii)** shall not apply if the request is made [by a State agency to be used only as authorized under section 9124 (relating to use of records by licensing agencies).] **under a court order:**

(i) In a case brought under 23 Pa.C.S. Ch. 53 (relating to child custody) or 61 (relating to protection from abuse).

(ii) By an employer against whom a claim of civil liability has been brought as described under section 9122.6 (relating to employer immunity from liability) for purposes of defending against a claim of civil liability

P352

purposes of defending against a claim of civil liability.

(2) Subsection (b)(2) shall not apply:

(i) To the verification of information provided by an applicant if Federal law, including rules and regulations promulgated by a self-regulatory organization that has been created under Federal law, requires the consideration of an applicant's criminal history for purposes of employment.

(ii) To the verification of information provided to the Supreme Court, or an entity of the Supreme Court, in its capacity to govern the practice, procedure and conduct of all courts, the admission to the bar, the practice of law, the administration of all courts and supervision of all officers of the judicial branch.

* * *

§ 9122.1. [Order] **Petition** for limited access.

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

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

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

Subject to the exceptions in subsection (b) and notwithstanding any other provision of this chapter, upon petition of a person who has been free from conviction for a period of 10 years for an offense punishable by one or more years in prison and has completed each court-ordered financial obligation of the sentence, the court of common pleas in the jurisdiction where a conviction occurred may enter an order that criminal history record information maintained by a criminal justice agency pertaining to a qualifying misdemeanor or an ungraded offense which carries a maximum penalty of no more than five years be disseminated only to a criminal justice agency or as provided in section 9121(b.1) and (b.2) (relating to general regulations).

(b) Exceptions.--An order for limited access under this section shall not be granted [to an individual who has been convicted at any time of any of the following:

(1) An offense punishable by imprisonment of more than two years.

(2) Four or more offenses punishable by imprisonment of one or more years.

(3) A violation of section 2701 (relating to simple assault), except when the offense is graded as a misdemeanor of the third degree.

(4) A violation of section 3129 (relating to sexual intercourse with animal).

(5) A violation of section 4912 (relating to impersonating a public servant).

(6) A violation of section 4952 (relating to intimidation of witnesses or victims).

(7) A violation of section 4953 (relating to retaliation against witness, victim or party).

(8) A violation of section 4958 (relating to intimidation, retaliation or obstruction in child abuse cases).

(9) An offense which requires registration under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).] **for any of the following:**

(1) A conviction for an offense punishable by more than two years in prison which is any of the following or an attempt, conspiracy or solicitation to commit any of the following:

(i) An offense under Article B of Part II (relating to offenses involving danger to the person).

(ii) An offense under Article D of Part II (relating to offenses against the family).

(iii) An offense under Chapter 61 (relating to firearms and other dangerous articles).

(iv) An offense specified in 42 Pa.C.S. §§ 9799.14 (relating to sexual offenses and tier system) and 9799.55 (relating to registration).

(v) An offense under section 6301(a)(1) (relating to corruption of minors).

(2) An individual who meets any of the following:

(i) Has been convicted of murder, a felony of the first degree or an offense punishable by imprisonment of 20 or more years.

(ii) Has been convicted within the previous 20 years of:

(A) a felony or an offense punishable by imprisonment of seven or more years involving:

(I) an offense under Article B of Part II;

(II) an offense under Article D of Part II;

(III) an offense under Chapter 61; or

(IV) an offense specified in 42 Pa.C.S. §§ 9799.14 and 9799.55; or

(B) four or more offenses punishable by imprisonment of two or more years.

(iii) Has, within the previous 15 years, been convicted of:

(A) two or more offenses punishable by more than two years in prison; or

(B) any of the following:

(I) An offense under section 3127 (relating to indecent exposure).

(II) An offense under section 3129 (relating to sexual intercourse with animal).

(III) An offense under section 4915.1 (relating to failure to comply with registration requirements) or 4915.2 (relating to failure to comply with 42 Pa.C.S. Ch. 97 Subch. I registration requirements).

(IV) An offense under section 5122 (relating to weapons or implements for escape).

(V) An offense under section 5510 (relating to abuse of corpse).

(VI) An offense under section 5515 (relating to prohibiting of paramilitary training).

* * *

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

§ 9122.2. Clean slate limited access.

(a) General rule.--The following shall be subject to limited access:

(1) Subject to the exceptions under section 9122.3 (relating to exceptions) or if a court has vacated an order for limited access under section 9122.4 (relating to order to vacate order for limited access), criminal history record information pertaining to a conviction of a misdemeanor of the second degree, a misdemeanor of the third degree or a misdemeanor offense punishable by imprisonment of no more than

two years if a person has been free for 10 years from conviction for any offense punishable by imprisonment of one or more years and if completion of each court-ordered financial obligation of the sentence has occurred.

(2) Criminal history record information pertaining to charges which resulted in a final disposition other than a conviction.

(3) Criminal history record information pertaining to a conviction for a summary offense when 10 years have elapsed since entry of the judgment of conviction and completion of all court-ordered financial obligations of the sentence has occurred.

(b) Procedures.--

(1) On a monthly basis, the Administrative Office of Pennsylvania Courts shall transmit to the Pennsylvania State Police central repository the record of any conviction eligible for limited access under subsection (a)(1).

(2) The Administrative Office of Pennsylvania Courts shall transmit to the Pennsylvania State Police repository:

(i) The record of charges subject to limited access under subsection (a)(2) within 30 days after entry of the disposition and payment of each court-ordered obligation.

(ii) The record of any conviction under subsection (a)(3) within 30 days after the record becomes subject to limited access.

(3) If the Pennsylvania State Police central repository determines through a validation process that a record transmitted is not eligible for limited access relief under subsection (a) or does not match data held in the repository, the Pennsylvania State Police shall notify the Administrative Office of Pennsylvania Courts of this determination within 30 days of receiving the information.

(4) Upon the expiration of the 30-day period, the Administrative Office of Pennsylvania Courts shall remove from the list of eligible records any record for which the Administrative Office of Pennsylvania Courts received a notification of ineligibility or nonmatch with repository data.

(5) Each court of common pleas shall issue monthly an order for limited access for any record in its judicial district for which no notification of ineligibility was received by the Administrative Office of Pennsylvania Courts.

(c) Limitation on release of records.--A criminal history record that is the subject of an order for limited access under this section shall be made available to a noncriminal justice agency only as provided for in section 9121(b), (b.1) and (b.2) (relating to general regulations).

§ 9122.3. Exceptions.

(a) Limited access not applicable.--Limited access to records under section 9122.2(a)(1) (relating to clean slate limited access) shall not be granted for any of the following:

(1) A conviction for any of the following or an attempt, conspiracy or solicitation to commit any of the following:

(i) An offense under Article B of Part II (relating to offenses involving danger to the person).

(ii) An offense under Article D of Part II (relating to offenses against the family).

(iii) An offense under Chapter 61 (relating to firearms and other dangerous articles).

(iv) An offense specified under 42 Pa.C.S. §§ 9799.14 (relating to sexual offenses and tier system) and 9799.55 (relating to registration).

(v) An offense under section 5533 (relating to cruelty to animal).

(vi) An offense under section 6301 (relating to corruption of minors).

(2) An individual who at any time has been convicted of:

(i) A felony.

(ii) Two or more offenses punishable by imprisonment of more than two years.

(iii) Four or more offenses punishable by imprisonment of one or more years.

(iv) An offense under the following:

(A) Section 3127 (relating to indecent exposure).

(B) Section 3129 (relating to sexual intercourse with animal).

(C) Section 4915.1 (relating to failure to comply with registration requirements) or 4915.2 (relating to failure to comply with 42 Pa.C.S. Ch. 97 Subch. I registration requirements).

(D) Section 5122 (relating to weapons or implements for escape).

(E) Section 5510 (relating to abuse of corpse).

(F) Section 5515 (relating to prohibiting of paramilitary training).

(b) Limited access to same case.--Limited access under this section shall not apply to an otherwise qualifying conviction if a conviction for an offense punishable by imprisonment of five or more years or an offense enumerated in subsection (a) arose out of the same case.

(c) Filing.--Nothing in this section shall preclude the filing of a petition for limited access under section 9122.1 (relating to petition for limited access) if limited access is available under that section.

§ 9122.4. Order to vacate order for limited access.

(a) General rule.--Upon petition of the prosecuting attorney to the court where a conviction occurred, and with notice to the defendant and opportunity to be heard, the court shall vacate an order for limited access granted under section 9122.2 (relating to clean slate limited access) if the court determines that the order was erroneously entered and not in accordance with section 9122.2.

(b) Conviction.--Upon conviction of a misdemeanor or felony offense and motion of the prosecuting attorney, the court shall enter an order vacating any prior order for limited access pertaining to a record of the defendant, except under section 9122.2(a)(2).

(c) Transmission to repository.--An order under subsection (a) or (b) shall be transmitted to the central repository of the Pennsylvania State Police.

§ 9122.5. Effects of expunged records and records subject to limited access.

(a) Disclosure.--

(1) Except if requested or required by a criminal justice agency, or if disclosure to noncriminal justice agencies is authorized or required by section 9121(b.1) and (b.2) (relating to general regulations), an individual may not be required or requested to disclose information about the individual's criminal history record that has been expunged or provided limited access under section 9122.1 (relating to petition for limited access) or 9122.2 (relating to clean slate limited access). An individual required or requested to provide information in violation of this section may respond as if the offense did not occur.

(2) This subsection shall not apply if Federal law, including rules and regulations promulgated by a self-regulatory organization that has been created under Federal law, requires the consideration of an applicant's criminal history for purposes of employment.

(b) Disqualification by law.--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 this Commonwealth or under Federal laws that prohibit employment based on State convictions to the extent permitted by Federal law.

§ 9122.6. Employer immunity from liability.

An employer who employs or otherwise engages an individual whose criminal history record has been expunged or to which limited access has been applied under section 9122.1 (relating to petition for limited access) or 9122.2 (relating to clean slate limited access) shall be immune from liability for any claim arising out of the misconduct of the individual, if the misconduct relates to the portion of the criminal history record that has been expunged or provided limited access.

Section 3. Sections 6307(b) and 6308(b) of Title 42 are amended to read:

§ 6307. Inspection of court files and records.

* * *

(b) Public availability.--

[(1) The contents of court records and files concerning a child shall not be disclosed to the public unless any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts committed:

(A) when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult; or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1) (relating to arson and related offenses).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(ii) A petition alleging delinquency has been filed alleging that the child has committed an act or acts subject to a hearing pursuant to section 6336(e) (relating to conduct of hearings) and the child previously has been adjudicated delinquent by a court as a result of an act or acts committed:

(A) when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult; or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.]

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(1.1) The contents of court records and files concerning a child shall not be disclosed to the public unless any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts committed when the child was 14 years of age or older and the conduct would have constituted one or more of the following offenses if committed by an adult:

(A) Murder.

(B) Voluntary manslaughter.

(C) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(D) Sexual Assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(F) Arson as defined in 18 Pa.C.S. § 3301(a)(1) (relating to arson and related offenses).

(G) Burglary as a felony in the first degree as defined in 18 Pa.C.S. § 3502(c)(1) (relating to burglary).

(H) Involuntary deviate sexual intercourse.

(I) Kidnapping.

(J) Rape.

(K) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(L) Robbery of motor vehicle.

(M) Violation of 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles).

(N) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(ii) A petition alleging delinquency has been filed alleging that the child has committed an act or acts subject to a hearing pursuant to section 6336(e) (relating to conduct of hearings) and the child previously has been adjudicated delinquent by a court as a result of an act or acts committed when the child was 14 years of age or older and the conduct would have constituted one or more of the following offenses if committed by an adult:

(A) Murder.

(B) Voluntary manslaughter.

(C) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2).

(D) Sexual Assault as defined in 18 Pa.C.S. § 3124.1.

(E) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125.

(F) Arson as defined in 18 Pa.C.S. § 3301(a)(1).

(G) Burglary as a felony in the first degree as defined in 18 Pa.C.S. § 3502(c)(1).

(H) Involuntary deviate sexual intercourse.

(I) Kidnapping.

(J) Rape.

(K) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii).

(L) Robbery of motor vehicle.

(M) Violation of 18 Pa.C.S. Ch. 61.

(N) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(2) If the conduct of the child meets the requirements for disclosure as set forth in paragraph [(1)] **(1.1)**, then the court shall disclose the name, age and address of the child, the offenses charged and the disposition of the case. The judge who adjudicates a child delinquent shall specify the particular offenses and counts thereof which the child is found to have committed, and such information shall be inserted on any court

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or law enforcement records or files disclosed to the public as provided for in this section or in section 6308(b)(2) (relating to law enforcement records).

* * *

§ 6308. Law enforcement records.

* * *

(b) Public availability.--

[(1) The contents of law enforcement records and files concerning a child shall not be disclosed to the public unless any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts committed:

(A) when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult; or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1) (relating to arson and related offenses).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(ii) A petition alleging delinquency has been filed alleging that the child has committed an act or acts subject to a hearing pursuant to section 6336(e) (relating to conduct of hearings) and the child previously has been adjudicated delinquent by a court as a result of an act or acts committed:

(A) when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult; or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.]

(1.1) The contents of law enforcement records and files concerning a child shall not be disclosed to the public unless any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts committed when the child was 14 years of age or older and the conduct would have constituted one or more of the following offenses if committed by an adult:

(A) Murder.
(B) Voluntary manslaughter.
(C) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).
(D) Sexual Assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).
(E) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).
(F) Arson as defined in 18 Pa.C.S. § 3301(a)(1) (relating to arson and related offenses).
(G) Burglary as a felony in the first degree as defined in 18 Pa.C.S. § 3502(c)(1) (relating to burglary).
(H) Involuntary deviate sexual intercourse.
(I) Kidnapping.
(J) Rape.
(K) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).
(L) Robbery of motor vehicle.
(M) Violation of 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles).
(N) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(ii) A petition alleging delinquency has been filed alleging that the child has committed an act or acts subject to a hearing pursuant to section 6336(e) (relating to conduct of hearings) and the child previously has been adjudicated delinquent by a court as a result of an act or acts committed when the child was 14 years of age or older and the conduct would have constituted one or more of the following offenses if committed by an adult:
(A) Murder.
(B) Voluntary manslaughter.
(C) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2).
(D) Sexual Assault as defined in 18 Pa.C.S. § 3124.1.
(E) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125.
(F) Arson as defined in 18 Pa.C.S. § 3301(a)(1).
(G) Burglary as a felony in the first degree as defined in 18 Pa.C.S. § 3502(c)(1).
(H) Involuntary deviate sexual intercourse.
(I) Kidnapping.
(J) Rape.
(K) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii).
(L) Robbery of motor vehicle.
(M) Violation of 18 Pa.C.S. Ch. 61.
(N) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(2) If the conduct of the child meets the requirements for disclosure as set forth in paragraph [(1)] **(1.1)**, then the law enforcement agency shall disclose the name, age and address of the child, the offenses charged and the disposition of the case.

* * *

Section 4. The following shall apply:

(1) The Pennsylvania State Police and the Administrative Office of Pennsylvania Courts shall identify and complete the processing of records that are eligible, on the effective date of this paragraph, for limited access under 18 Pa.C.S. § 9122.2, within 365 days following the effective date of this paragraph.

(2) A petition for limited access under 18 Pa.C.S. § 9122.1 may be filed beginning 180 days after the effective date

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9122.1 may be filed beginning 180 days after the effective date of this paragraph.

Section 5. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) This section.

(ii) Section 4(2) of this act.

(2) The amendment of 18 Pa.C.S. § 9122.1 shall take effect in 180 days.

(3) The remainder of this act shall take effect in 365 days.

APPROVED--The 28th day of June, A.D. 2018.

TOM WOLF

CRIMES CODE (18 PA.C.S.) AND JUDICIAL CODE (42 PA.C.S.) - EXPUNGEMENT, PETITION FOR LIMITED ACCESS, CLEAN SLATE LIMITED ACCESS, EFFECTS OF EXPUNGED RECORDS AND RECORDS SUBJECT TO LIMITED ACCESS AND ATTACHMENT AND SUMMARY PUNISHMENT FOR CONTEMPTS

Act of Oct. 29, 2020, P.L. 718, No. 83 **Cl. 18**

Session of 2020
No. 2020-83

HB 440

AN ACT

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in criminal history record information, further providing for expungement, for petition for limited access, for clean slate limited access and for effects of expunged records and records subject to limited access; and, in administration of justice, further providing for attachment and summary punishment for contempts.

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

Section 1. Sections 9122(a) and 9122.1(a) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 9122. Expungement.

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

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

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

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

(4) a judicial determination has been made that a person is acquitted of an offense, if the person has been acquitted of all charges based on the same conduct or arising from the same criminal episode following a trial and a verdict of not guilty. This paragraph shall not apply to a partial acquittal. A judicial determination under this paragraph may only be made after the following:

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

(ii) Upon receipt of the notice under subparagraph (i), the Commonwealth shall have 60 days to object to the automatic expungement on the basis that the person has not been acquitted of all charges relating to the same conduct, arising from the same criminal episode or otherwise relating to a partial acquittal.

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

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

* * *

§ 9122.1. Petition for limited access.

(a) General rule.--Subject to the exceptions in subsection (b) and notwithstanding any other provision of this chapter, upon petition of a person who has been free from conviction for a period of 10 years for an offense punishable by one or more years in prison and has completed [each court-ordered financial obligation of the sentence] **payment of all court-ordered restitution and the fee previously authorized to carry out the limited access and clean slate limited access provisions,** the court of common pleas in the jurisdiction where a conviction occurred may enter an order that criminal history record information maintained by a criminal justice agency pertaining to a qualifying misdemeanor or an ungraded offense which carries a maximum penalty of no more than five years be disseminated only to a criminal justice agency or as provided in section 9121(b.1) and (b.2) (relating to general regulations). **A court may not enter an order under this subsection unless the person who filed the petition, upon payment of all court-ordered restitution, also paid the fee previously authorized to carry out the limited access and clean slate limited access provisions.**

* * *

Section 2. Section 9122.2(a)(1) and (3) and (b)(2)(i) of Title 18 are amended and subsection (a) is amended by adding a paragraph to read:

§ 9122.2. Clean slate limited access.

(a) General rule.--The following shall be subject to limited access:

(1) Subject to the exceptions under section 9122.3 (relating to exceptions) or if a court has vacated an order for limited access under section 9122.4 (relating to order to vacate order for limited access), criminal history record information pertaining to a conviction of a misdemeanor of the second degree, a misdemeanor of the third degree or a misdemeanor offense punishable by imprisonment of no more than two years if a person has been free for 10 years from conviction for any offense punishable by imprisonment of one or more years and if [completion of each court-ordered financial obligation of the sentence] **payment of all court-ordered restitution** has occurred. **Upon payment of all court-ordered restitution, the person whose criminal history record**

information is subject to limited access under this paragraph shall also pay the fee previously authorized to carry out the limited access and clean slate limited access provisions.

* * *

(3) Criminal history record information pertaining to a conviction for a summary offense when 10 years have elapsed since entry of the judgment of conviction and [completion of all court-ordered financial obligations of the sentence] **payment of all court-ordered restitution** has occurred. **Upon payment of all court-ordered restitution, the person whose criminal history record information is subject to limited access under this paragraph shall also pay the fee previously authorized to carry out the limited access and clean slate limited access provisions.**

(4) Criminal history record information pertaining to a conviction for which a pardon was granted.

(b) Procedures.--

* * *

(2) The Administrative Office of Pennsylvania Courts shall transmit to the Pennsylvania State Police repository:

(i) The record of charges subject to limited access under subsection (a)(2) within 30 days after entry of the disposition and payment of [each court-ordered obligation] **any ordered restitution.**

* * *

Section 3. Section 9122.5 of Title 18 is amended by adding subsections to read:

§ 9122.5. Effects of expunged records and records subject to limited access.

* * *

(c) Use for sentencing.--Notwithstanding any other provision of this chapter, a record subject to limited access under section 9122.1 or 9122.2 shall remain part of a person's criminal history record information and shall be disclosed to a court for any relevant purpose in accordance with law, including sentencing.

(d) Use and disclosure of information.--Notwithstanding any other provision of this chapter, the Pennsylvania Commission on Sentencing may maintain a list of the names and other criminal history record information of persons whose records are required by law, court rule or court order to be expunged or subject to limited access under this chapter. The information:

(1) shall be used solely for the purposes of conducting research and collecting and reporting statistical data under 42 Pa.C.S. § 2153 (relating to powers and duties of commission); and

(2) may not be disclosed unless authorized or required by section 9121(b.1) and (b.2).

Section 4. Section 4132 of Title 42 is amended to read:

§ 4132. Attachment and summary punishment for contempts.

The power of the several courts of this Commonwealth to issue attachments and to impose summary punishments for contempts of court shall be restricted to the following cases:

(1) The official misconduct of the officers of such courts respectively.

(1.1) The willful failure of the officers of such courts to disclose a person's complete criminal history record information when requested.

(2) Disobedience or neglect by officers, parties, jurors or witnesses of or to the lawful process of the court.

(3) The misbehavior of any person in the presence of the court, thereby obstructing the administration of justice.

Section 5. Within 365 days of the effective date of this section, the Administrative Office of Pennsylvania Courts, the Pennsylvania Board of Pardons and the Pennsylvania State Police shall identify and complete the processing of records that are

eligible for clean slate limited access under 18 Pa.C.S. § 9122.2(a)(1), (3) and (4).

Section 6. This act shall take effect in 60 days.

APPROVED--The 29th day of October, A.D. 2020.

TOM WOLF

TAB 11

Background on Utah's Clean Slate Law
Updated March 2021

Why This Matters: 1 in 3 Utahns has some type of criminal record. Criminal records—even ones of very old and minor crimes—disappear only if an individual goes through the legal expungement process. While Utah has had a petition-based expungement process for a long time, this process is so costly and complicated that 90% of those eligible for relief never make it through the process. This leaves a lot of people to live with the collateral consequences of a criminal record for years, being shut out of safe housing, employment, and other opportunities.

Summary: Utah's Clean Slate law passed unanimously in the Utah State Legislature and was signed into law by Governor Gary Herbert on March 28, 2019. On this date, Utah became the second state in the nation to automate the criminal record expungement process for individuals with qualifying misdemeanor records. Under this law, individuals with eligible records no longer need to apply for an expungement, pay fees, hire lawyers, or petition the court. Instead, with no action from the individual, the government will identify and expunge all eligible records. Here is a link to a short story of our campaign.

Status: The law went into effect on May 1, 2020, but implementation was temporarily stalled due to COVID-19. Utah stakeholders are now back on track, and anticipate automated record clearing will begin this summer.

Link to Law: Here is a link to HB 431, Utah's Clean Slate Law, sponsored by Rep. Eric Hutchings and Sen. Daniel Thatcher.

Eligible Records:

Under Utah's Clean Slate law, the criminal record expungement process will be automated for:

- Dismissal records (180 days from the date of dismissal order)
- All acquittals (after 60 days)
- All "Clean Slate" eligible conviction records

List of Clean Slate Eligible Convictions:

Offense Level	Waiting Period*
Class A misdemeanor convictions for possession of a controlled substance (note: this is the only Class A eligible offense)	7 years
Most Class B misdemeanor convictions	6 years
Most Class C misdemeanor convictions	5 years
Infractions and Traffic	3 years

*Unlike the petition-based process, waiting periods run from the date of adjudication.

Conviction Exclusions:

- Any cases ineligible for expungement under the petition based process
- All felonies
- All Class A misdemeanor offenses other than drug possession
- Certain person on person crimes (due to victim notification requirements)
- Sex offenses requiring registration
- Weapons offenses
- Driving Under the Influence (DUI)
- Reckless driving offenses
- Domestic violence cases
- Anyone who owes fines, fees, or restitution

Projected Impact on Criminal Records:

We estimate that 1 in 3 Utahns has a criminal record, but that close to 90% of those eligible to expunge their records never make it through the petition-based expungement process.

According to very preliminary and confidential estimates from Code for America, we predict that over 200,000 people in Utah have a Clean Slate eligible conviction record. When combined with non-conviction records, it is estimated that close to 10% of all Utahns will be eligible for some form of Clean Slate relief.

Notification: while the law is projected to have high impact, it does not have a notification requirement, meaning people with eligible records will not be directly notified that one or all of their criminal case records have been cleared. In addition, survey data from statewide expungement events shows that 65% of people with records report that they have not heard of Utah's Clean Slate law. As a result, we will need to work

diligently during the implementation phase of the campaign to spread the word and notify individuals of Clean Slate's potential impact to their lives.

EXPUNGEMENT ACT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill modifies the Utah Expungement Act.

Highlighted Provisions:

This bill:

- allows for automatic expungement or deletion of charges for which an individual is acquitted, charges that are dismissed with prejudice, and certain convictions;
- creates processes for automatic expungement and deletion, which include:
  - defining terms;
  - requiring identification of cases that may be eligible for automatic expungement or deletion;
  - requiring a prosecuting agency to be notified before the record of a case is automatically expunged;
  - providing for the Department of Public Safety to make rules to implement procedures for processing an automatic expungement; and
  - providing for the Judicial Council to make rules to implement procedures to processing an automatic expungement or deletion;
- modifies the circumstances under which the state may petition a court to open an expunged record; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

77-40-102, as last amended by Laws of Utah 2017, Chapter 356

77-40-103, as last amended by Laws of Utah 2014, Chapter 263

77-40-104, as last amended by Laws of Utah 2018, Chapter 266

77-40-104.1, as enacted by Laws of Utah 2018, Chapter 278

77-40-105, as last amended by Laws of Utah 2018, Chapter 266

77-40-107, as last amended by Laws of Utah 2018, Chapter 266

77-40-108, as last amended by Laws of Utah 2017, Chapter 356

77-40-108.5, as enacted by Laws of Utah 2017, Chapter 447

77-40-109, as last amended by Laws of Utah 2017, Chapter 356

77-40-110, as last amended by Laws of Utah 2013, Chapter 41

77-40-111, as enacted by Laws of Utah 2010, Chapter 283

ENACTS:

77-40-114, Utah Code Annotated 1953

77-40-115, Utah Code Annotated 1953

77-40-116, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-40-102** is amended to read:

77-40-102. Definitions.

As used in this chapter:

(1) "Administrative finding" means a decision upon a question of fact reached by an administrative agency following an administrative hearing or other procedure satisfying the requirements of due process.

(2) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for

which expungement may be ordered.

(3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.

(4) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.

(5) (a) "Clean slate eligible case" means a case:

(i) where, except as provided in Subsection (5)(c), each conviction within the case is:

(A) a misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);

(B) a class B or class C misdemeanor conviction; or

(C) an infraction conviction;

(ii) that involves an individual:

(A) whose total number of convictions in Utah state courts, not including infractions, traffic offenses, or minor regulatory offenses, does not exceed the limits described in Subsections 77-40-105(5) and (6) without taking into consideration the exception in Subsection 77-40-105(8); and

(B) against whom no criminal proceedings are pending in the state; and

(iii) for which the following time periods have elapsed from the day on which the case is adjudicated:

(A) at least five years for a class C misdemeanor or an infraction;

(B) at least six years for a class B misdemeanor; and

(C) at least seven years for a class A conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

(b) "Clean slate eligible case" includes a case that is dismissed as a result of a successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b) if:

(i) except as provided in Subsection (5)(c), each charge within the case is:

(A) a misdemeanor for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);

(B) a class B or class C misdemeanor; or

(C) an infraction;

(ii) the individual involved meets the requirements of Subsection (5)(a)(ii); and

(iii) the time periods described in Subsections (5)(a)(iii)(A) through (C) have elapsed from the day on which the case is dismissed.

(c) "Clean slate eligible case" does not include a case:

(i) where the individual is found not guilty by reason of insanity;

(ii) where the case establishes a criminal judgment accounts receivable, as defined in Section 77-32a-101, that:

(A) has been entered as a civil judgment and transferred to the Office of State Debt Collection; or

(B) has not been satisfied according to court records;

(iii) that resulted in one or more pleas held in abeyance or convictions for the following offenses:

(A) any of the offenses listed in Subsection 77-40-105(2)(a);

(B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against the Person;

(C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;

(D) sexual battery in violation of Section 76-9-702.1;

(E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;

(F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(G) damage to or interruption of a communication device in violation of Section 76-6-108;

(H) a domestic violence offense as defined in Section 77-36-1; or

(I) any other offense classified in the Utah Code as a felony or a class A misdemeanor

other than a class A misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

[~~(5)~~] (6) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

[~~(6)~~] (7) "Department" means the Department of Public Safety established in Section 53-1-103.

[~~(7)~~] (8) "Drug possession offense" means an offense under:

(a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana, any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another;

(b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

(c) Section 58-37b-6, possession or use of an imitation controlled substance; or

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection [~~(7)~~] (8).

[~~(8)~~] (9) "Expunge" means to seal or otherwise restrict access to the [~~petitioner's~~] individual's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.

[~~(9)~~] (10) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

[~~(10)~~] (11) "Minor regulatory offense" means any class B or C misdemeanor offense, [~~as well as~~] and any local ordinance, except:

(a) any drug possession offense;

(b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(c) Sections 73-18-13 through 73-18-13.6;

(d) those offenses defined in Title 76, Utah Criminal Code; or

(e) any local ordinance that is substantially similar to those offenses listed in

Subsections [~~(10)~~] (11)(a) through (d).

[~~(11)~~] (12) "Petitioner" means [~~a person seeking~~] an individual applying for expungement under this chapter.

[~~(12)~~] (13) (a) "Traffic offense" means:

(i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41, Chapter 6a, Traffic Code;

(ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;

(iii) Title 73, Chapter 18, State Boating Act; and

(iv) all local ordinances that are substantially similar to those offenses.

(b) "Traffic offense" does not mean:

(i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(ii) Sections 73-18-13 through 73-18-13.6; or

(iii) any local ordinance that is substantially similar to the offenses listed in Subsections [~~(12)~~] (13)(b)(i) and (ii).

Section 2. Section **77-40-103** is amended to read:

77-40-103. Petition for expungement procedure overview.

The process for a petition for the expungement of records under this chapter regarding the arrest, investigation, detention, and conviction of a petitioner is as follows:

(1) The petitioner shall apply to the bureau for a certificate of eligibility for expungement and pay the application fee established by the department.

(2) Once the eligibility process is complete, the bureau shall notify the petitioner.

(3) If the petitioner is qualified to receive a certificate of eligibility for expungement, the petitioner shall pay the issuance fee established by the department.

(4) (a) The petitioner shall file the certificate of eligibility with a petition for expungement in the court in which the proceedings occurred.

(b) If there were no court proceedings, or the court no longer exists, the petitioner may file the petition [~~may be filed~~] in the district court where the arrest occurred.

(c) If a [~~certificate is filed~~] petitioner files a certificate of eligibility electronically, the

petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded. [~~If the original certificate is filed~~]

(d) If the petitioner files the original certificate of eligibility with the petition, the clerk or the court shall scan [~~it~~] and return [~~it~~] the original certificate to the petitioner or the petitioner's attorney, who shall keep [~~it~~] the original certificate until the proceedings are concluded.

(5) (a) The petitioner shall deliver a copy of the petition and certificate of eligibility to the prosecutorial office that handled the court proceedings.

(b) If there were no court proceedings, the petitioner shall deliver the copy of the petition and certificate [~~shall be delivered~~] to the county attorney's office in the jurisdiction where the arrest occurred.

[~~(6) If an objection to the petition is filed by the prosecutor or victim, a hearing shall be set by the court and the prosecutor and victim notified of the date.~~]

(6) If the prosecutor or the victim files an objection to the petition, the court shall set a hearing and notify the prosecutor and the victim of the date set for the hearing.

(7) If the court requests a response from Adult Probation and Parole and a response is received, the petitioner may file a written reply to the response within 15 days of receipt of the response.

(8) [~~An expungement may be granted~~] A court may grant an expungement without a hearing if no objection is received.

(9) Upon receipt of an order of expungement, the petitioner shall deliver copies to all government agencies in possession of records relating to the expunged matter.

Section 3. Section **77-40-104** is amended to read:

77-40-104. Requirements to apply for certificate of eligibility to expunge records of arrest, investigation, and detention.

[~~(1) A person~~] An individual who is arrested or formally charged with an offense may apply to the bureau for a certificate of eligibility to expunge the records of arrest, investigation, and detention that may have been made in the case, subject to the following conditions:

[~~(a)~~] (1) at least 30 days have passed since the day of the arrest for which a certificate of eligibility is sought;

[~~(b)~~] (2) there are no criminal proceedings pending against the [~~petitioner~~] individual; and

[~~(c)~~] (3) one of the following occurs:

[~~(i)~~] (a) charges are screened by the investigating law enforcement agency and the prosecutor makes a final determination that no charges will be filed in the case;

[~~(ii)~~] (b) the entire case is dismissed with prejudice;

[~~(iii)~~] (c) the entire case is dismissed without prejudice or without condition and:

[~~(A)~~] (i) the prosecutor consents in writing to the issuance of a certificate of eligibility; or

[~~(B)~~] (ii) at least 180 days have passed since the day on which the case is dismissed;

[~~(iv) the person~~]

(d) the individual is acquitted at trial on all of the charges contained in the case; or

[~~(v)~~] (e) the statute of limitations expires on all of the charges contained in the case.

[~~(2) Notwithstanding Subsection (1)(a), the bureau shall issue a certificate of eligibility on an expedited basis to a petitioner seeking expungement under Subsection (1)(c)(iv).~~]

Section 4. Section **77-40-104.1** is amended to read:

77-40-104.1. Eligibility for removing the link between personal identifying information and court case dismissed.

(1) As used in this section:

(a) "Domestic violence offense" means the same as that term is defined in Section 77-36-1.

(b) "Personal identifying information" means:

(i) a current name, former name, nickname, or alias; and

(ii) date of birth.

(2) [~~A person~~] An individual whose criminal case is dismissed may move the court for an order to remove the link between the [~~person's~~] individual's personal identifying information

from the dismissed case in any publicly searchable database of the Utah state courts and the court shall grant that relief if:

(a) 30 days have passed from the day on which the case is dismissed;

(b) no appeal is filed for the dismissed case within the 30-day period described in Subsection (2)(a); and

(c) no charge in the case was a domestic violence offense.

(3) Removing the link to personal identifying information of a court record under Subsection (2) does not affect a prosecuting, arresting, or other agency's records.

(4) A case history, unless expunged under this chapter, remains public and accessible through a search by case number.

Section 5. Section **77-40-105** is amended to read:

77-40-105. Requirements to apply for a certificate of eligibility to expunge conviction.

(1) [~~A person~~] An individual convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.

(2) [~~A petitioner~~] An individual is not eligible to receive a certificate of eligibility from the bureau if:

(a) the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

(iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) felony automobile homicide;

(v) a felony violation of Subsection 41-6a-501(2);

(vi) a registerable sex offense as defined in Subsection 77-41-102(17); or

(vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);

(b) a criminal proceeding is pending against the petitioner; or

(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.

(3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) the petitioner has paid in full all fines and interest ordered by the court related to the conviction for which expungement is sought [~~have been paid in full~~];

(b) the petitioner has paid in full all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6[~~, has been paid in full~~]; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) The bureau may not count pending or previous infractions, traffic offenses, or minor regulatory offenses, or fines or fees arising from the infractions, traffic offenses, or minor regulatory offenses, when determining expungement eligibility.

(5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following, except as provided in Subsection (8):

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession

offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.

(6) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or

(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

(7) If the petitioner's criminal history contains convictions for both a drug possession offense and a non drug possession offense arising from the same criminal episode, that criminal episode shall be counted as provided in Subsection (5) if any non drug possession offense in that episode:

(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (3) than any drug possession offense in that episode.

(8) If at least 10 years have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions, then each eligibility limit defined in Subsection (5) shall be increased by one.

(9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes pursuant to Section 77-27-5.1.

Section 6. Section **77-40-107** is amended to read:

77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing -- Standard of proof -- Exception.

(1) (a) The petitioner shall file a petition for expungement and the certificate of eligibility in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to the prosecuting agency.[~~-If the certificate is filed~~]

(b) If the petitioner files the certificate of eligibility electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded.[~~-If the original certificate is filed~~]

(c) If the petitioner files the original certificate of eligibility with the petition, the clerk of the court shall scan [~~it~~] and return [~~it~~] the original certificate to the petitioner or the petitioner's attorney, who shall keep [~~it~~] the original certificate until the proceedings are concluded.

(2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting attorney shall provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.

(b) The notice shall:

(i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable to the petition;

(ii) state that the victim has a right to object to the expungement; and

(iii) provide instructions for registering an objection with the court.

(3) The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 35 days after receipt of the petition.

(4) (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.

(b) If requested, the response prepared by the Division of Adult Probation and Parole shall include:

(i) the reasons probation was terminated; and

(ii) certification that the petitioner has completed all requirements of sentencing and probation or parole.

(c) The Division of Adult Probation and Parole shall provide a copy of the response to the petitioner and the prosecuting attorney.

(5) The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by the Division of Adult Probation and Parole within 14 days after receipt.

(6) (a) (i) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing.

(ii) The prosecuting attorney shall notify the victim of the date set for the hearing.

(b) The petitioner, the prosecuting attorney, the victim, and any other [~~person~~] individual who has relevant information about the petitioner may testify at the hearing.

(c) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.

(7) If no objection is received within 60 days from the date the petition for expungement is filed with the court, the expungement may be granted without a hearing.

(8) The court shall issue an order of expungement if the court finds by clear and convincing evidence that:

(a) the petition and certificate of eligibility are sufficient;

(b) the statutory requirements have been met;

(c) if the petitioner seeks expungement after a case is dismissed without prejudice or without condition, the prosecutor provided written consent and has not filed and does not intend to refile related charges;

(d) if the petitioner seeks expungement of drug possession offenses allowed under Subsection 77-40-105(6), the petitioner is not illegally using controlled substances and is successfully managing any substance addiction; and

(e) it is not contrary to the interests of the public to grant the expungement.

(9) (a) If the court denies a petition described in Subsection (8)(c) because the prosecutor intends to refile charges, the [~~person~~] individual seeking expungement may again apply for a certificate of eligibility if charges are not refiled within 180 days of the day on which the court denies the petition.

(b) A prosecutor who opposes an expungement of a case dismissed without prejudice or without condition shall have a good faith basis for the intention to refile the case.

(c) A court shall consider the number of times that good faith basis of intention to refile by the prosecutor is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (8)(c).

(10) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

Section 7. Section **77-40-108** is amended to read:

77-40-108. Distribution of order -- Redaction -- Receipt of order -- Bureau requirements -- Administrative proceedings.

(1) (a) [~~A person~~] (i) An individual who receives an order of expungement under [~~this chapter~~] Section 77-40-107 or Section 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected criminal justice agencies and officials including the court, arresting agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.

(ii) The provisions of Subsection (1)(a)(i) do not apply to an individual who receives an automatic expungement under Section 77-40-114.

(b) [~~A person~~] An individual who receives an order of expungement under Section 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process in Section 63J-1-504, before the bureau's record may be expunged.

(2) Unless otherwise provided by law or ordered by a court of competent jurisdiction to respond differently, [~~a person~~] an individual who has received an expungement of an arrest or conviction under this chapter or Section 77-27-5.1[~~;~~] may respond to any inquiry as though the arrest or conviction did not occur.

(3) The bureau shall forward a copy of the expungement order to the Federal Bureau of Investigation.

(4) An agency receiving an expungement order shall expunge the [~~petitioner's~~] individual's identifying information contained in records in [~~its~~] the agency's possession relating to the incident for which expungement is ordered.

(5) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2), a government agency or official may not divulge information or records [~~which~~] that have been expunged [~~regarding the petitioner contained in a record of arrest, investigation, detention, or conviction after receiving an expungement order~~].

(6) (a) An order of expungement may not restrict an agency's use or dissemination of records in [~~its~~] the agency's ordinary course of business until the agency has received a copy of the order.

(b) Any action taken by an agency after issuance of the order but prior to the agency's receipt of a copy of the order may not be invalidated by the order.

(7) An order of expungement may not:

(a) terminate or invalidate any pending administrative proceedings or actions of which the [~~petitioner~~] individual had notice according to the records of the administrative body prior to issuance of the expungement order;

(b) affect the enforcement of any order or findings issued by an administrative body pursuant to [~~its~~] the administrative body's lawful authority prior to issuance of the expungement order;

(c) remove any evidence relating to the [~~petitioner~~] individual including records of arrest, which the administrative body has used or may use in these proceedings; or

(d) prevent an agency from maintaining, sharing, or distributing any record required by law.

Section 8. Section **77-40-108.5** is amended to read:

77-40-108.5. Distribution for order for vacatur.

(1) [~~A person~~] An individual who receives an order for vacatur under Subsection

78B-9-108(2) shall be responsible for delivering a copy of the order for vacatur to all affected criminal justice agencies and officials including the court, arresting agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.

(2) [~~In order to~~] To complete delivery of the order for vacatur to the bureau, the [~~petitioner~~] individual shall complete and attach to the order for vacatur an application for a certificate of eligibility for expungement, including identifying information and fingerprints, as provided in Subsection 77-40-103(1).

(3) The bureau shall treat the order for vacatur and attached certificate of eligibility for expungement the same as a valid order for expungement under Section 77-40-108, except as provided in this section.

(4) Unless otherwise provided by law or ordered by a court of competent jurisdiction to respond differently, [~~a person~~] an individual who has received a vacatur of conviction under Section 78B-9-108(2)[~~;~~] may respond to any inquiry as though the conviction did not occur.

(5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of Investigation.

(6) An agency receiving an order for vacatur shall expunge the [~~petitioner's~~] individual's identifying information contained in records in the agency's possession relating to the incident for which vacatur is ordered.

(7) A government agency or official may not divulge information contained in a record of arrest, investigation, detention, or conviction after receiving an order for vacatur to any person or agency, except for:

(a) the [~~petitioner~~] individual for whom vacatur was ordered; or

(b) Peace Officer Standards and Training, pursuant to Section 53-6-203 and Subsection 77-40-109(2)(b)(ii).

(8) The bureau may not count vacated convictions against any future expungement eligibility.

Section 9. Section **77-40-109** is amended to read:

77-40-109. Retention and release of expunged records -- Agencies.

(1) The bureau shall keep, index, and maintain all expunged records of arrests and convictions.

(2) (a) Employees of the bureau may not divulge any information contained in [~~its~~] the bureau's index to any person or agency without a court order unless specifically authorized by statute.

(b) The following organizations may receive information contained in expunged records upon specific request:

(i) the Board of Pardons and Parole;

(ii) Peace Officer Standards and Training;

(iii) federal authorities, only as required by federal law;

(iv) the Department of Commerce;

(v) the Department of Insurance;

(vi) the State Board of Education; and

(vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office.

(c) A person or agency authorized by this Subsection (2) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the [~~court order or~~] specific request, except as directed by a court order, including distribution on a public website.

(3) The bureau may also use the information in [~~its~~] the bureau's index as provided in Section 53-5-704.

(4) If, after obtaining an expungement, [~~the petitioner~~] an individual is charged with a felony or an offense eligible for enhancement based on a prior conviction, the state may petition the court to open the expunged records upon a showing of good cause.

(5) (a) For judicial sentencing, a court may order any records expunged under this chapter or Section 77-27-5.1 to be opened and admitted into evidence.

(b) The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect

them.

(c) At the end of the action or proceeding, the court shall order the records expunged again.

(d) Any person authorized by this Subsection (5) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court.

(6) Records released under this chapter are classified as protected under Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to Records.

Section 10. Section **77-40-110** is amended to read:

77-40-110. Use of expunged records -- Individuals -- Use in civil actions.

Records expunged under this chapter or Section 77-27-5.1 may be released to or viewed by the following individuals:

(1) the petitioner or an individual who receives an automatic expungement under Section 77-40-114;

(2) a law enforcement officer who was involved in the case, for use solely in the officer's defense of a civil action arising out of the officer's involvement with the petitioner in that particular case; and

(3) parties to a civil action arising out of the expunged incident, providing the information is kept confidential and utilized only in the action.

Section 11. Section **77-40-111** is amended to read:

77-40-111. Rulemaking.

[~~The~~] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to:

(1) implement procedures for processing an automatic expungement;

[~~(1)~~] (2) implement procedures for applying for certificates of eligibility;

[~~(2)~~] (3) specify procedures for receiving a certificate of eligibility; and

[~~(3)~~] (4) create forms and determine information necessary to be provided to the

bureau.

Section 12. Section **77-40-114** is enacted to read:

77-40-114. Automatic expungement procedure.

(1) (a) Except as provided in Subsection (1)(b) and subject to Section 77-40-116, this section governs the process for the automatic expungement of all records in:

(i) a case that resulted in an acquittal on all charges;

(ii) except as provided in Subsection (3)(d), a case that is dismissed with prejudice; or

(iii) a case that is a clean slate eligible case.

(b) This section does not govern automatic expungement of a traffic offense.

(2) (a) The process for automatic expungement of records for a case that resulted in an acquittal is as described in Subsections (2)(b) through (c).

(b) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:

(i) issue, without a petition, an expungement order; and

(ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.

(c) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.

(3) (a) The process for an automatic expungement of a case that is dismissed with prejudice is as described in Subsections (3)(b) through (c).

(b) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:

(i) issue, without a petition, an expungement order; and

(ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.

(c) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.

(d) For purposes of this Subsection (3), a case that is dismissed with prejudice does not

include a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b).

(4) (a) The process for the automatic expungement of a clean slate eligible case is as described in Subsections (4)(b) through (f) and in accordance with any rules made by the Judicial Council as described in Subsection (4)(g).

(b) A prosecuting agency shall receive notice on a monthly basis for any case prosecuted by that agency that appears to be a clean slate eligible case.

(c) Within 35 days of the day on which the notice described in Subsection (4)(b) is sent, the prosecuting agency shall provide written notice in accordance with any rules made by the Judicial Council if the prosecuting agency objects to an automatic expungement for any of the following reasons:

(i) after reviewing the agency record, the prosecuting agency believes that the case does not meet the definition of a clean slate eligible case;

(ii) the individual has not paid court-ordered restitution to the victim; or

(iii) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an individual with a clean slate eligible case is continuing to engage in criminal activity within or outside of the state.

(d) (i) If a prosecuting agency provides written notice of an objection for a reason described in Subsection (4)(c) within 35 days of the day on which the notice described in Subsection (4)(b) is sent, the court may not proceed with automatic expungement.

(ii) If 35 days pass from the day on which the notice described in Subsection (4)(b) is sent without the prosecuting agency providing written notice of an objection for a reason described in Subsection (4)(c), the court may proceed with automatic expungement.

(e) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:

(i) issue, without a petition, an expungement order; and

(ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.

(f) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.

(g) The Judicial Council shall make rules to govern the process for automatic expungement of records for a clean slate eligible case in accordance with this Subsection (4).

(5) Nothing in this section precludes an individual from filing a petition for expungement of records that are eligible for automatic expungement under this section if an automatic expungement has not occurred pursuant to this section.

(6) An automatic expungement performed under this section does not preclude a person from requesting access to expunged records in accordance with Section 77-40-109 or 77-40-110.

Section 13. Section **77-40-115** is enacted to read:

77-40-115. Automatic deletion for traffic offense.

(1) Subject to Section 77-40-116, records for the following traffic offenses shall be deleted without a court order or notice to the prosecuting agency:

(a) a traffic offense case that resulted in an acquittal on all charges;

(b) a traffic offense case that is dismissed with prejudice, other than a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b); or

(c) a traffic offense case that is a clean slate eligible case, as that term is defined in Section 77-40-102.

(2) The Judicial Council shall make rules to provide an ongoing process for identifying and deleting records on all traffic offenses described in Subsection (1).

Section 14. Section **77-40-116** is enacted to read:

77-40-116. Time periods for expungement or deletion -- Identification and processing of clean slate eligible cases.

(1) Reasonable efforts within available funding shall be made to expunge or delete a case as quickly as is practicable with the goal of:

(a) for cases adjudicated on or after May 1, 2020:

(i) expunging a case that resulted in an acquittal on all charges, 60 days after the acquittal;

(ii) expunging a case that resulted in a dismissal with prejudice, other than a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b), 180 days after:

(A) for a case in which no appeal was filed, the day on which the entire case against the individual is dismissed with prejudice; or

(B) for a case in which an appeal was filed, the day on which a court issues a final unappealable order;

(iii) expunging a clean slate eligible case that is not a traffic offense within 30 days of the court, in accordance with Section 77-40-114, determining that the requirements for expungement have been satisfied; or

(iv) deleting a clean slate eligible case that is a traffic offense upon identification; and

(b) for cases adjudicated before May 1, 2020, expunging or deleting a case within one year of the day on which the case is identified as eligible for automatic expungement or deletion.

(2) (a) The Judicial Council shall make rules governing the identification and processing of clean slate eligible cases in accordance with Sections 77-40-114 and 77-40-115.

(b) Reasonable efforts shall be made to identify and process all clean slate eligible cases in accordance with Sections 77-40-114 and 77-40-115.

(c) An individual does not have a cause of action for damages as a result of the failure to identify an individual's case as a clean slate eligible case or to automatically expunge or delete the records of a clean slate eligible case.

Section 15. **Effective date.**

This bill takes effect on May 1, 2020.

TAB 12

I have a misdemeanor conviction. Am I eligible to seal my record?

Automatic Sealing

If you were convicted of one of the following misdemeanors, your record may be automatically sealed when twhen Virginia begins automatic sealing of criminal records on October 1, 2025:

- Underage alcohol possession
- Petit larceny
- Concealment
- Trespass
- Marijuana possession
- Marijuana possession with intent to distribute (not the felony)
- Disorderly conduct

Additional requirements for misdemeanor automatic sealing:

- On the date of your conviction, you were not also convicted of—or received a deferral-dismissal for—another offense not listed above
- Seven years have passed since the conviction date
- You were not convicted of any crime (excluding traffic infractions) anywhere in the U.S. during those seven years

Asking a court to seal your record (non-automatic)

If you were convicted of any misdemeanor except DUI or assault and battery of a family or household member, you can petition a court to seal your record on July 1, 2025. If you cannot afford to hire an attorney to help you with the court process, the new law says you can ask the court to appoint one for you.

Additional requirements for a misdemeanor petition:

- You were never convicted of a Class 1 or 2 felony
- You were not convicted of a Class 3 or 4 felony in the last 20 years
- You were not convicted of any felony in the last 10 years
- Seven years have passed since the conviction date
- You were not convicted of any crime (excluding traffic infractions) anywhere in the U.S. during those seven years
- If court records indicate the offense involved the use or dependence of alcohol or drugs, you must demonstrate your rehabilitation

Lifetime limits

The new law imposes a lifetime limit on the number of times a person can seal convictions and deferral-dismissals. Each person can seal convictions and deferrals from only two sentencing events. You may have been convicted of multiple charges by a court on the same day—if so, these count as one sentencing event. The lifetime limit does not apply to non-convictions (dismissals, acquittals, nolle prosequi).

This notice was made by Legal Aid Justice Center
626 E. Broad St., Suite 200, Richmond, VA 23219
Rob Poggenklass is the attorney responsible for this information
Visit justice4all.org/expungement to learn more

LEGAL AID JUSTICE CENTER

I have a misdemeanor non-conviction. Am I eligible to seal my record?

Automatic Sealing

If you were charged but not convicted of a misdemeanor offense, your record may be automatically sealed when the new law takes effect on October 1, 2025. A non-conviction includes the following outcomes:

- Acquittal (not guilty)
- Nolle presqui (dropped)
- Dismissal (but not deferral-dismissal, which happens only after a court has found enough evidence to convict you

Additional Requirements

Additional requirements for misdemeanor non-conviction sealing:

- You have never been convicted of any crime in Virginia
- You were not charged or arrested in Virginia in the last three years (before Oct. 1, 2025)

Asking the court to seal your record

If you have misdemeanor—or felony—non-convictions on your record but do not meet the requirements above, you can petition for expungement under current law. If you cannot afford to hire an attorney, contact any LAJC office to see if you qualify for our help.

Lifetime Limits

The new law imposes a lifetime limit on the number of times a person can seal convictions and deferral-dismissals. Each person can seal convictions and deferrals from only two sentencing events. You may have been convicted of multiple charges by a court on the same day—if so, these count as one sentencing event. The lifetime limit does not apply to non-convictions (dismissals, acquittals, nolle prosequi).

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LEGAL AID JUSTICE CENTER

I have a misdemeanor deferral-dismissal. Am I eligible to seal my record?

What is deferral-dismissal?

When a person is charged with certain offenses for the first time and has never been convicted of a felony, Virginia courts will sometimes defer (avoid) convicting the person even though the court has enough evidence to convict. The person will typically have to complete some type of probation and pay all fines, fees, and restitution associated with the case. If the person is successful, the court will dismiss the case. This is a "deferral-dismissal."

Automatic Sealing

If you received a deferral-dismissal of the following misdemeanors, your record may be automatically sealed when the new law takes effect on October 1, 2025:

- Underage alcohol possession
- Marijuana possession

Additional requirements for misdemeanor automatic sealing:

- On the date of your conviction, you were not also convicted of—or received a deferral-dismissal for—another offense not listed above
- Seven years have passed since the conviction date
- You were not convicted of any crime (excluding traffic infractions) anywhere in the U.S. during those seven years

Asking a court to seal your record (non-automatic)

If you received a deferral-dismissal for any other misdemeanor except DUI or assault and battery of a family or household member, you can petition a court to seal your record on July 1, 2025. If you cannot afford to hire an attorney to help you with the court process, the new law says you can ask the court to appoint one for you.

Additional requirements for a misdemeanor petition:

- You were never convicted of a Class 1 or 2 felony
- You were not convicted of a Class 3 or 4 felony in the last 20 years
- You were not convicted of any felony in the last 10 years
- Seven years have passed since the conviction date
- You were not convicted of any crime (excluding traffic infractions) anywhere in the U.S. during those seven years
- If court records indicate the offense involved the use or dependence of alcohol or drugs, you must demonstrate your rehabilitation

Lifetime limits

The new law imposes a lifetime limit on the number of times a person can seal convictions and deferral-dismissals. Each person can seal convictions and deferrals from only two sentencing events. You may have been convicted of multiple charges by a court on the same day—if so, these count as one sentencing event. The lifetime limit does not apply to non-convictions (dismissals, acquittals, nolle prosequi).

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LEGAL AID JUSTICE CENTER

I have a felony conviction. Am I eligible to seal my record?

Felony Convictions

Under the new law, felony convictions in the following categories will become eligible for sealing on July 1, 2025:

- Class 5 felonies
- Class 6 felonies
- Felony larceny offenses

Ineligible Felonies

These felonies will remain ineligible for sealing:

- DUI manslaughter (by vehicle or watercraft)
- DUI maiming (by vehicle or watercraft)
- Assault and battery against a family or household member
- DUI (includes commercial motor vehicles)

Additional Requirements

Additional requirements for a felony petition:

- You were never convicted of a Class 1 or 2 felony
- You were not convicted of a Class 3 or 4 felony in the last 20 years
- You were not convicted of any felony in the last 10 years
- 10 years have passed since the conviction date
- You were not convicted of any crime (excluding traffic infractions) anywhere in the U.S. during those 10 years
  If court records indicate the offense involved the use or dependence of alcohol or drugs, you must demonstrate your rehabilitation

Petitioning the Court

If you meet the requirements above, you can petition a court to seal your record on July 1, 2025. If you cannot afford to hire an attorney to help you with the court process, the new law says you can ask the court to appoint one for you.

Lifetime limits

The new law imposes a lifetime limit on the number of times a person can seal convictions and deferral-dismissals. Each person can seal convictions and deferrals from only two sentencing events. You may have been convicted of multiple charges by a court on the same day—if so, these count as one sentencing event. The lifetime limit does not apply to non-convictions (dismissals, acquittals, nolle prosequi).

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LEGAL AID JUSTICE CENTER

What happens when my record is sealed?

What is sealing?

The commonwealth keeps two copies of every criminal record. One is kept by the Virginia State Police and the other is kept by the court where the person was charged. The new law defines sealing as prohibiting the dissemination sharing of these two records - which means that the court won't tell anyone you were charged except in certain circumstances where there is a court order (see below).

Can sealed records still be accessed in some situations?

Yes. The General Assembly created a list of situations in which certain individuals or government agencies can access sealed records but only if they obtain a court order to do so. Police and prosecutors cannot view sealed records unless they get a court order.

Here are a few situations when a court order can be obtained to access a sealed criminal record:

- Child custody proceedings
- Protective order proceedings
- To impeach the credibility of a witness testifying in a court proceeding
- To determine a person's eligibility to possess a firearm
- To determine a person's eligibility to serve as a juror
- The Department of Social Services and local departments of social services may request such records to carry out their duties.
- You can also request a copy of your own sealed record.

What do you mean by "most" potential employers?

Some employers require the disclosure of all records—even sealed records. If you are applying to work (or even volunteer) for the Virginia State Police or a local police department or sheriff's office and you do not disclose your sealed record, you can be convicted of perjury, a felony. Other employers may also require the disclosure of sealed records if other state or federal laws say disclosure is necessary, or if disclosure is in the interest of national security. Because perjury requires a willful act, the potential employer has an obligation to tell you that you must disclose the sealed record.

Most potential employers will not be able to require you to disclose a sealed record. An employer who asks about sealed records when the law does not require you to disclose it will be guilty of a Class 1 misdemeanor.

What can I do if my record is sealed but it still appears on background checks?

The new law addresses this situation by requiring companies that buy and sell criminal records to delete sealed records. The new law requires these companies to register with the Virginia State Police and keep their records updated. If a company refuses to delete your sealed record, under the new law you or the Attorney General of Virginia can file a lawsuit and recover money damages from the company.

CHAPTER 524

An Act to amend and reenact §§ 9.1-101, as it is currently effective and as it shall become effective, 9.1-128, 9.1-134, 17.1-293.1, 17.1-502, 19.2-72, 19.2-74, 19.2-310.7, 19.2-340, 19.2-389.3, and 19.2-390 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 2 of Title 17.1 a section numbered 17.1-205.1 and by adding in Title 19.2 a chapter numbered 23.2, consisting of sections numbered 19.2-392.5 through 19.2-392.17, relating to sealing of criminal records; penalties.

[S 1339]

Approved April 7, 2021

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-101, as it is currently effective and as it shall become effective, 9.1-128, 9.1-134, 17.1-293.1, 17.1-502, 19.2-72, 19.2-74, 19.2-310.7, 19.2-340, 19.2-389.3, and 19.2-390 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 2 of Title 17.1 a section numbered 17.1-205.1 and by adding in Title 19.2 a chapter numbered 23.2, consisting of sections numbered 19.2-392.5 through 19.2-392.17, as follows:

§ 9.1-101. (Effective until March 1, 2021) Definitions.

As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia Criminal Sentencing Commission.

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic

means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, or any full-time or part-time employee of a private police department, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Virginia Alcoholic Beverage Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife Resources; (v) investigator who is a sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the investigations unit designated by the State Inspector General pursuant to § 2.2-311 to investigate allegations of criminal behavior affecting the operations of a state or nonstate agency; (xi) employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 or by the Department of Juvenile Justice pursuant to subdivision A 7 of § 66-3; or (xii) private police officer employed by a private police department. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department, sheriff's office, or private police department.

"Private police department" means any police department, other than a department that employs police agents under the provisions of § 56-353, that employs private police officers operated by an entity authorized by statute or an act of assembly to establish a private police department or such entity's successor in interest, provided it complies with the requirements set forth herein. No entity is authorized to operate a private police department or represent that it is a private police department unless such entity has been authorized by statute or an act of assembly or such entity is the successor in interest of an entity that has been authorized pursuant to this section, provided it complies with the requirements set forth herein. The authority of a private police department shall be limited to real property owned, leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum of understanding with the private police department that addresses the duties and responsibilities of the private police department and the chief law-enforcement officer in the conduct of criminal investigations. Private police departments and private police officers shall be subject to and comply with the Constitution of the United States; the Constitution of Virginia; the laws governing municipal police departments, including the provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721, and 15.2-1722; and any regulations adopted by the Board that the Department designates as applicable to private police departments. Any person employed as a private police officer pursuant to this section shall meet all requirements, including the minimum compulsory training requirements, for law-enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a "qualified law enforcement officer" or "qualified retired law enforcement officer" within the meaning of the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an employee of the Commonwealth or any locality. An authorized private police department may use the word "police" to describe its sworn officers and may join a regional criminal justice academy created pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2. Any private police department in existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and whose status as a private police department was recognized by the Department at that time is hereby validated and may continue to operate as a private police department as may such entity's successor in interest, provided it complies with the requirements set forth herein.

"School resource officer" means a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.

"School security officer" means an individual who is employed by the local school board or a private or religious school for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of the policies of the school board or the private or religious school, and detaining students violating the law or the policies of the school board or the private or religious school on school property, school buses, or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

"Sealing" means (i) restricting dissemination of criminal history record information contained in the

Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction, in accordance with the purposes set forth in § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134 and (ii) prohibiting dissemination of court records related to an arrest, charge, or conviction, unless such dissemination is authorized by a court order for one or more of the purposes set forth in § 19.2-392.13.

"Unapplied criminal history record information" means information pertaining to criminal offenses submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history record of an arrested or convicted person (i) because such information is not supported by fingerprints or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within the content of the submitted information.

§ 9.1-101. (Effective March 1, 2021) Definitions.

As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia Criminal Sentencing Commission.

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, or any full-time or part-time employee of a private police department, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Virginia Alcoholic Beverage Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife Resources; (v) investigator who is a sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and

Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the investigations unit designated by the State Inspector General pursuant to § 2.2-311 to investigate allegations of criminal behavior affecting the operations of a state or nonstate agency; (xi) employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 or by the Department of Juvenile Justice pursuant to subdivision A 7 of § 66-3; or (xii) private police officer employed by a private police department. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department, sheriff's office, or private police department.

"Private police department" means any police department, other than a department that employs police agents under the provisions of § 56-353, that employs private police officers operated by an entity authorized by statute or an act of assembly to establish a private police department or such entity's successor in interest, provided it complies with the requirements set forth herein. No entity is authorized to operate a private police department or represent that it is a private police department unless such entity has been authorized by statute or an act of assembly or such entity is the successor in interest of an entity that has been authorized pursuant to this section, provided it complies with the requirements set forth herein. The authority of a private police department shall be limited to real property owned, leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum of understanding with the private police department that addresses the duties and responsibilities of the private police department and the chief law-enforcement officer in the conduct of criminal investigations. Private police departments and private police officers shall be subject to and comply with the Constitution of the United States; the Constitution of Virginia; the laws governing municipal police departments, including the provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721, 15.2-1721.1, and 15.2-1722; and any regulations adopted by the Board that the Department designates as applicable to private police departments. Any person employed as a private police officer pursuant to this section shall meet all requirements, including the minimum compulsory training requirements, for law-enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a "qualified law enforcement officer" or "qualified retired law enforcement officer" within the meaning of the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an employee of the Commonwealth or any locality. An authorized private police department may use the word "police" to describe its sworn officers and may join a regional criminal justice academy created pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2. Any private police department in existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and whose status as a private police department was recognized by the Department at that time is hereby validated and may continue to operate as a private police department as may such entity's successor in interest, provided it complies with the requirements set forth herein.

"School resource officer" means a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.

"School security officer" means an individual who is employed by the local school board or a private or religious school for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of the policies of the school board or the private or religious school, and detaining students violating the law or the policies of the school board or the private or religious school on school property, school buses, or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

"Sealing" means (i) restricting dissemination of criminal history record information contained in the Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction, in accordance with the purposes set forth in § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134 and (ii) prohibiting dissemination of court records related to an arrest, charge, or conviction, unless such dissemination is authorized by a court order for one or more of the purposes set forth in § 19.2-392.13.

"Unapplied criminal history record information" means information pertaining to criminal offenses submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history record of an arrested or convicted person (i) because such information is not supported by fingerprints or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within the content of the submitted information.

§ 9.1-128. Dissemination of criminal history record information; Board to adopt regulations and

procedures.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only in accordance with § 19.2-389.

B. The Board shall adopt regulations and procedures for the interstate dissemination of criminal history record information by which criminal justice agencies of the Commonwealth shall ensure that the limitations on dissemination of criminal history record information set forth in § 19.2-389 are accepted by recipients and will remain operative in the event of further dissemination.

C. The Board shall adopt regulations and procedures for the validation of an interstate recipient's right to obtain criminal history record information from criminal justice agencies of the Commonwealth.

D. The Board shall adopt regulations and procedures for the dissemination of sealed criminal history record information, including any records relating to an arrest, charge, or conviction, by which the criminal justice agencies of the Commonwealth and other persons, agencies, and employers can access such sealed records and shall ensure that access to and dissemination of such sealed records are made in accordance with the limitations on dissemination and use set forth in §§ 19.2-389, 19.2-389.3, and 19.2-392.13.

§ 9.1-134. Sealing of criminal history record information.

The Board shall adopt procedures reasonably designed to (i) ensure *the* prompt sealing *of criminal history record information and the sealing* or purging of criminal history record information*, including any records relating to an arrest, charge, or conviction,* when required by state or federal law, regulation, or court order, and (ii) permit opening of sealed information under conditions authorized by law.

§ 17.1-205.1. Sealing Fee Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Sealing Fee Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds accruing to the Fund pursuant to §§ 19.2-392.12 and 19.2-392.16 and all funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be administered by the Executive Secretary of the Supreme Court, who shall use such funds solely to fund the costs for the compensation of court-appointed counsel under the provisions of subsection L of § 19.2-392.12. Expenditures from the Fund shall be limited by an appropriation in the general appropriation act. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon request of the Executive Secretary of the Supreme Court.

§ 17.1-293.1. Online case information system; exceptions.

A. The Executive Secretary shall make available a publicly viewable online case information system of certain nonconfidential information entered into the case management system for criminal cases in the circuit courts participating in the Executive Secretary's case management system and in the general district courts. Such system shall be searchable by defendant name across all participating courts, and search results shall be viewable free of charge.

B. Upon entry of a sealing order pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12, the Executive Secretary shall not make any offense that was ordered to be sealed available for online public viewing in an appellate court, circuit court, or district court case management system maintained by the Executive Secretary.

C. Upon entry of a sealing order pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12, any circuit court clerk who maintains a viewable online case management or case information system shall not make any offense that was ordered to be sealed available for online public viewing.

§ 17.1-502. Administrator of circuit court system.

A. The Executive Secretary of the Supreme Court shall be the administrator of the circuit court system, which includes the operation and maintenance of a case management system and financial management system and related technology improvements.

B. Any circuit court clerk may establish and maintain his own case management system, financial management system, or other independent technology using automation or technology improvements provided by a private vendor or the locality. Any data from the clerk's independent system may be provided directly from such clerk to designated state agencies. The data from the clerk's independent system may also be provided to designated state agencies through an interface with the technology systems operated by the Executive Secretary.

B1. If the data from a case management system established under subsection B is not provided to the Executive Secretary of the Supreme Court through an interface, such data shall be provided to the Department of State Police through an interface for purposes of complying with §§ 19.2-392.7, 19.2-392.10, 19.2-392.11, and 19.2-392.12. The parameters of such interface shall be determined by the Department of State Police. The costs of designing, implementing, and maintaining such interface shall

be the responsibility of the circuit court clerk.

C. The Executive Secretary shall provide an electronic interface with his case management system, financial management system, or other technology improvements upon written request of any circuit court clerk. The circuit court clerk and the clerk's designated application service provider shall comply with the security and data standards established by the Executive Secretary for any such electronic interface. The Executive Secretary shall establish security and data standards for such electronic interfaces on or before June 30, 2013, and such standards shall be consistent with the policies, standards, and guidelines established pursuant to § 2.2-2009.

D. The costs of designing, implementing, and maintaining any such interface with the systems of the Executive Secretary shall be the responsibility of the circuit court clerk. Prior to incurring any costs, the Office of the Executive Secretary shall provide the circuit court clerk a written explanation of the options for providing such interfaces and provide the clerk with a proposal for such costs and enter into a written contract with the clerk to provide such services.

E. The Executive Secretary shall assist the chief judges in the performance of their administrative duties. He may employ such staff and other assistants, from state funds appropriated to him for the purpose, as may be necessary to carry out his duties, and may secure such office space as may be requisite, to be located in an appropriate place to be selected by the Executive Secretary.

§ 19.2-72. When it may issue; what to recite and require.

On complaint of a criminal offense to any officer authorized to issue criminal warrants he shall examine on oath the complainant and any other witnesses, or when such officer shall suspect that an offense punishable otherwise than by a fine has been committed he may, without formal complaint, issue a summons for witnesses and shall examine such witnesses. A written complaint shall be required if the complainant is not a law-enforcement officer; however, if no arrest warrant is issued in response to a written complaint made by such complainant, the written complaint shall be returned to the complainant. If upon such examination such officer finds that there is probable cause to believe the accused has committed an offense, such officer shall issue a warrant for his arrest, except that no magistrate may issue an arrest warrant for a felony offense upon the basis of a complaint by a person other than a law-enforcement officer or an animal control officer without prior authorization by the attorney for the Commonwealth or by a law-enforcement agency having jurisdiction over the alleged offense. The warrant shall (i) be directed to an appropriate officer or officers, (ii) name the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty, (iii) describe the offense charged with reasonable certainty, (iv) command that the accused be arrested and brought before a court of appropriate jurisdiction in the county, city or town in which the offense was allegedly committed, and (v) be signed by the issuing officer. *If a warrant is issued for an offense in violation of any county, city, or town ordinance that is similar to any provision of this Code, the warrant shall reference the offense using both the citation corresponding to the county, city, or town ordinance and the specific provision of this Code.* The warrant shall require the officer to whom it is directed to summon such witnesses as shall be therein named to appear and give evidence on the examination. But in a city or town having a police force, the warrant shall be directed "To any policeman, sheriff or his deputy sheriff of such city (or town)," and shall be executed by the policeman, sheriff or his deputy sheriff into whose hands it shall come or be delivered. A sheriff or his deputy may execute an arrest warrant throughout the county in which he serves and in any city or town surrounded thereby and effect an arrest in any city or town surrounded thereby as a result of a criminal act committed during the execution of such warrant. A jail officer as defined in § 53.1-1 employed at a regional jail or jail farm is authorized to execute a warrant of arrest upon an accused in his jail. The venue for the prosecution of such criminal act shall be the jurisdiction in which the offense occurred.

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace.

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.

2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

3. Unless otherwise authorized by law, any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.). Reports to the Central Criminal Records Exchange concerning such persons shall be made pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Any person charged with committing any violation of § 18.2-407 may be arrested and immediately brought before a magistrate who shall proceed as provided in § 19.2-82.

B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses pursuant to this section, if such officers are in uniform or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

C. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. *If the summons is issued for an offense in violation of any county, city, or town ordinance that is similar to any provision of this Code, the summons shall reference the offense using both the citation corresponding to the county, city, or town ordinance and the specific provision of this Code.*

§ 19.2-310.7. Expungement when DNA taken for a conviction.

A. A person whose DNA profile has been included in the data bank pursuant to § 19.2-310.2 may request expungement on the grounds that the conviction on which the authority for including his DNA profile was based has been reversed and the case dismissed. Provided that the person's DNA profile is not otherwise required to be included in the data bank pursuant to § 9.1-903, 16.1-299.1, 19.2-310.2, or 19.2-310.2:1, the Department of Forensic Science shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of (i) a written request for expungement pursuant to this section and (ii) a certified copy of the court order reversing and dismissing the conviction.

B. Entry of a sealing order pursuant to § 19.2-392.7 or 19.2-392.12 shall not serve as grounds for expungement of a person's DNA profile or any records in the data bank relating to that DNA profile.

§ 19.2-340. Fines; how recovered; in what name.

When any statute or ordinance prescribes a fine, unless it is otherwise expressly provided or would be inconsistent with the manifest intention of the General Assembly, it shall be paid to the Commonwealth if prescribed by a statute and recoverable by presentment, indictment, information, or warrant and paid to the locality if prescribed by an ordinance and recoverable by warrant. *Whenever any warrant or summons is issued pursuant to § 19.2-72 or 19.2-74 for an offense in violation of any county, city, or town ordinance that is similar to any provision of this Code, and such warrant or summons references the offense using both the citation corresponding to the county, city, or town ordinance and the specific provision of this Code, any fine prescribed by the county, city, or town ordinance shall be paid to the locality.* Fines imposed and costs taxed in a criminal or traffic prosecution, including a prosecution for a violation of an ordinance adopted pursuant to § 46.2-1220, for committing an offense shall constitute a judgment and, if not paid at the time they are imposed, execution may issue thereon in the same manner as upon any other monetary judgment, subject to the period of limitations provided by § 19.2-341.

§ 19.2-389.3. Marijuana possession; limits on dissemination of criminal history record information; prohibited practices by employers, educational institutions, and state and local governments; penalty.

A. ~~Records~~ *Criminal history record information contained in the Central Criminal Records Exchange, including any records* relating to ~~the~~ *an* arrest, criminal charge, or conviction ~~of a person~~, for a violation of § 18.2-250.1, including any violation charged under § 18.2-250.1 that was deferred and dismissed pursuant to § 18.2-251, ~~maintained in the Central Criminal Records Exchange~~ shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated *and*

used for the following purposes: (i) to make the determination as provided in § 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) ~~to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9, a pre-sentence or post-sentence investigation report pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation services agencies established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv)~~ for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System ~~computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time employee of the State Police, a police department, or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth, for purposes of the administration of criminal justice as defined in § 9.1-101; (vii)~~ *(iii)* to the Virginia Criminal Sentencing Commission for *its* research purposes; ~~(viii)~~ *(iv)* to any full-time or part-time employee of the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for full-time or part-time employment with, *or to be a volunteer with,* the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; ~~(ix)~~ *(v)* to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; ~~(x)~~ *(vi)* to any full-time or part-time employee of the Department of Forensic Science for the purpose of screening any person for full-time or part-time employment with the Department of Forensic Science; ~~(xi)~~ *(vii)* to the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a public safety official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; ~~and (xii)~~ *(viii)* to any full-time or part-time employee of the Department of Motor Vehicles, any employer as defined in § 46.2-341.4, or any medical examiner as defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration*; (ix) to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions; (x) to any employer or prospective employer or its designee where the position that a person is applying for, or where access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; (xi) to any person authorized to engage in the collection of court costs, fines, or restitution under subsection C of § 19.2-349 for purposes of collecting such court costs, fines, or restitution; (xii) to administer and utilize the DNA Analysis and Data Bank set forth in Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18; (xiii) to publish decisions of the Supreme Court, Court of Appeals, or any circuit court; (xiv) to any full-time or part-time employee of a court, the Office of the Executive Secretary, the Division of Legislative Services, or the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary for the purpose of screening any person for full-time or part-time employment as a clerk, magistrate, or judge with a court or the Office of the Executive Secretary; (xv) to any employer or prospective employer or its designee where this Code or a local ordinance requires the employer to inquire about prior criminal charges or convictions; (xvi) to any employer or prospective employer or its designee that is allowed access to such sealed records in accordance with the rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134; (xvii) to any business screening service for purposes of complying with § 19.2-392.16; (xviii) to any attorney for the Commonwealth and any person accused of a violation of law, or counsel for the accused, in order to comply with any constitutional and statutory duties to provide exculpatory, mitigating, and impeachment evidence to an accused; (xix) to any party in a criminal or civil proceeding for use as authorized by law in such proceeding; (xx) to any party for use in a protective order hearing as authorized by law; (xxi) to the Department of Social Services or any local department of social services for purposes of performing any statutory duties as required under Title 63.2; (xxii) to any party in a proceeding relating to the care and custody of a child for use as authorized by law in such proceeding; (xxiii) to the attorney for the Commonwealth and the court for purposes of determining eligibility for sealing pursuant to the provisions of § 19.2-392.12; (xxiv) to determine a person's eligibility to be empaneled as a juror; and (xxv) to the person arrested, charged, or convicted of the offense that was sealed.*

B. ~~An employer or~~ *Except as provided in subsection C, agencies, officials, and employees of state and local governments, private employers that are not subject to federal laws or regulations in the*

hiring process, and educational ~~institution~~ *institutions* shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A.

C. The provisions of subsection B shall not apply if:

1. The person is applying for full-time employment or part-time employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;

2. This Code requires the employer to make such an inquiry;

3. Federal law requires the employer to make such an inquiry;

4. The position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; or

5. The rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134 allow the employer to access such sealed records.

D. Agencies, officials, and employees of the state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.

E. No person, as defined in § 36-96.1:1, shall, in any application for the sale or rental of a dwelling, as defined in § 36-96.1:1, require an applicant to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.

~~D.~~ *F. No insurance company, as defined in § 38.2-100, shall, in any application for insurance, as defined in § 38.2-100, require an applicant to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.*

G. If any entity or person listed under subsection B, D, E, or F includes a question about a prior arrest, criminal charge, or conviction in an application for one or more of the purposes set forth in such subsections, such application shall include, or such entity or person shall provide, a notice to the applicant that an arrest, criminal charge, or conviction that is not open for public inspection pursuant to subsection A does not have to be disclosed in the application. Such notice need not be included on any application for one or more of the purposes set forth in subsection C.

H. The provisions of this section shall not prohibit the disclosure of any arrest, criminal charge, or conviction that is not open for public inspection pursuant to subsection A or any information from such records among law-enforcement officers and attorneys when such disclosures are made by such officers or attorneys while engaged in the performance of their duties for purposes solely relating to the disclosure or use of exculpatory, mitigating, and impeachment evidence or between attorneys for the Commonwealth when related to the prosecution of a separate crime.

I. A person who willfully violates subsection B ~~or C~~, *D, E, or F* is guilty of a Class 1 misdemeanor for each violation. :

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, for each charge when any person is arrested on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1;

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or

e. (Effective until July 1, 2021) Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, 63.2-1509, or 63.2-1727.

e. (Effective July 1, 2021) Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 22.1-289.041, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, or 63.2-1509.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested for each charge. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database. Fingerprints and photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be taken at the facility where the magistrate is located, including a regional jail, even if the accused is not committed to jail.

Law-enforcement agencies and clerks of court shall only submit reports to the Central Criminal Records Exchange only for those offenses enumerated in this subsection. Only reports received for those offenses enumerated in this subsection shall be included in the Central Criminal Records Exchange.

2. For persons arrested and released on summonses in accordance with subsection B of § 19.2-73 or § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed for each charge after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of Behavioral Health and Developmental Services.

3. For persons arrested on a capias for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

4. For any person served with a show cause for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such person is found to be in violation of the terms or conditions of a suspended sentence or probation for such felony offense. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

5. If the accused is in custody when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such at the time of first appearance for each indictment, presentment, or information for which a report is required upon arrest pursuant to subdivision 1, and the court shall order that the fingerprints and photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each offense.

B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or capias may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC.

B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his post-release supervision or probation, the law-enforcement agency that received the written statement shall enter, or cause to be entered, the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.

C. For offenses not charged on a summons in accordance with subsection B of § 19.2-73 or § 19.2-74, the clerk of each circuit court and district court shall make an electronic report to the Central Criminal Records Exchange of (i) any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, deferral, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action that may have resulted from an indictment, presentment or information, or any finding that the person is in violation of the terms or conditions of a suspended sentence or probation for a felony offense and (ii) any adjudication of delinquency based upon an act that, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. For offenses listed in subsection A and charged on a summons in accordance with subsection B of § 19.2-73 or § 19.2-74, such electronic report by the clerk of each circuit court and district court to the Central Criminal Records Exchange may be submitted but shall not be required until (a) a conviction is entered and no appeal is noted or, if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (b) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (c) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. The clerk of each circuit court shall make an electronic report to the Central Criminal Records Exchange of any finding that a person charged on a summons is in violation of the terms or conditions of a suspended sentence or probation for a felony offense. ~~In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722.~~ Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases that he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, and last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN.

D. In addition to those offenses enumerated in subsection A, the Central Criminal Records Exchange may receive, classify, and file any other fingerprints, photographs, and records of ~~arrest or~~ confinement submitted to it by any ~~law enforcement agency or any~~ correctional institution or the Department of Corrections. Unless otherwise prohibited by law, any such fingerprints, photographs, and records received by the Central Criminal Records Exchange from any correctional institution or the Department of Corrections may be classified and filed as criminal history record information.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or correctional change of status and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

I. As used in this section:

"Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

"Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal Records Exchange in an electronic format approved by the Exchange. The report shall contain the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the Virginia Code section and any subsection, the Virginia crime code for the offense, and the offense tracking number for the offense for which he was convicted.

CHAPTER 23.2.

SEALING OF CRIMINAL HISTORY RECORD INFORMATION AND COURT RECORDS.

§ 19.2-392.5. Sealing defined; effect of sealing.

A. As used in this chapter, unless the context requires a different meaning, "sealing" means to (i) restricting dissemination of criminal history record information contained in the Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction, in accordance with the purposes set forth in § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134 and (ii) prohibiting dissemination of court records related to an arrest, charge, or conviction, unless such dissemination is authorized by a court order for one or more of the purposes set forth in § 19.2-392.13. "Sealing" may be required either by the issuance of a court order following the filing of a petition or automatically by operation of law under the processes set forth in this chapter.

B. The provisions of this chapter shall only apply to adults who were arrested, charged, or convicted of a criminal offense and to juveniles who were tried in circuit court pursuant to § 16.1-269.1.

C. Records relating to an arrest, charge, or conviction that have been sealed may be disseminated only for purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. The court, except as provided in subsection B of § 19.2-392.14, and any law-enforcement agency shall reply to any inquiry that no record exists with respect to an arrest, charge, or conviction that has been sealed, unless such information is permitted to be disclosed pursuant to § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. A clerk of any court and the Executive Secretary of the Supreme Court shall be immune from any cause of action arising from the production of sealed court records, including electronic records, absent gross negligence or willful misconduct. This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law or to affect any cause of action accruing prior to the effective date of this section.

D. Except as otherwise provided in this section, upon entry of an order for sealing, the person who was arrested, charged, or convicted of the offense that was ordered to be sealed may deny or not disclose to any state or local government agency or to any private employer in the Commonwealth that such an arrest, charge, or conviction occurred. Except as otherwise provided in this section, no person as to whom an order for sealing has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of that person's denial or failure to disclose any information concerning an arrest, charge, or conviction that has been sealed.

E. A person who is the subject of the order of sealing entered pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12 may not deny or fail to disclose information to any employer or prospective employer about an offense that has been ordered to be sealed if:

1. The person is applying for full-time employment or part-time employment with, or to be a

volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;

2. This Code requires the employer to make such an inquiry;

3. Federal law requires the employer to make such an inquiry;

4. The position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; or

5. The rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134 allow the employer to access such sealed records.

Failure to disclose such sealed arrest, charge, or conviction, if such failure to disclose was knowing or willful, shall be a ground for prosecution of perjury as provided for in § 18.2-434.

F. An order to seal an arrest, charge, or conviction entered pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12 shall not relieve the person who was arrested, charged, or convicted of any obligation to pay all fines, costs, forfeitures, penalties, or restitution in relation to the offense that was ordered to be sealed.

G. Any arrest, charge, or conviction sealed pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12 may be admissible and considered in proceedings relating to the care and custody of a child. A person as to whom an order for sealing has been entered may be required to disclose a sealed arrest, charge, or conviction as part of such proceedings. Failure to disclose such sealed arrest, charge, or conviction, if such failure to disclose was knowing or willful, shall be a ground for prosecution of perjury as provided for in § 18.2-434.

H. Any arrest, charge, or conviction sealed pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12 shall not be (i) disclosed in any sentencing report; (ii) considered when ascertaining the punishment of a defendant; or (iii) considered in any hearing on the issue of bail, release, or detention of a defendant.

I. Any arrest, charge, or conviction sealed pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12 shall not constitute a barrier crime as defined in § 19.2-392.02, except as otherwise required under federal law.

J. A person shall be required to disclose any felony conviction sealed pursuant to § 19.2-392.12 for purposes of determining that person's eligibility to be empaneled as a member of a jury. Failure to disclose such conviction, if such failure to disclose was knowing or willful, shall be a ground for prosecution of perjury as provided for in § 18.2-434.

§ 19.2-392.6. Automatic sealing of offenses resulting in a deferred and dismissed disposition or conviction.

A. If a person was charged with an offense in violation of § 4.1-305 or 18.2-250.1, and such offense was deferred and dismissed as provided in § 4.1-305 or 18.2-251, such offense, including any records relating to such offense, shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7, subject to the provisions of subsections C and D.

B. If a person was convicted of a violation of any of the following sections, such conviction, including any records relating to such conviction, shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7, subject to the provisions of subsections C and D: § 4.1-305, 18.2-96, 18.2-103, 18.2-119, 18.2-120, or 18.2-134; a misdemeanor violation of § 18.2-248.1; or § 18.2-250.1 or 18.2-415.

C. Subject to the provisions of subsection D, any offense listed under subsection A and any conviction listed under subsection B shall be ordered to be automatically sealed if seven years have passed since the date of the dismissal or conviction and the person charged with or convicted of such offense has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, during that time period.

D. No offense listed under subsection A shall be automatically sealed if, on the date of the deferral or dismissal, the person was convicted of another offense that is not eligible for automatic sealing under subsection A or B. No conviction listed under subsection B shall be automatically sealed if, on the date of the conviction, the person was convicted of another offense that is not eligible for automatic sealing under subsection A or B.

E. This section shall not be construed as prohibiting a person from seeking sealing in the circuit court pursuant to the provisions of § 19.2-392.12.

§ 19.2-392.7. Process for automatic sealing of offenses resulting in a conviction or deferred disposition.

A. On at least a monthly basis, the Department of State Police shall determine which offenses in the Central Criminal Records Exchange meet the criteria for automatic sealing set forth in § 19.2-392.6.

B. After reviewing the offenses under subsection A, the Department of State Police shall provide an electronic list of all offenses that meet the criteria for automatic sealing set forth in § 19.2-392.6 to the

Executive Secretary of the Supreme Court and to any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502.

C. Upon receipt of the electronic list from the Department of State Police provided under subsection B, on at least a monthly basis the Executive Secretary of the Supreme Court shall provide an electronic list of all offenses that meet the criteria for automatic sealing set forth in § 19.2-392.6 to the clerk of each circuit court in the jurisdiction where the case was finalized, if such circuit court clerk participates in the case management system maintained by the Executive Secretary.

D. Upon receipt of the electronic list provided under subsection B or C, on at least a monthly basis the clerk of each circuit court shall prepare an order and the chief judge of that circuit court shall enter such order directing that the offenses that meet the criteria for automatic sealing set forth in § 19.2-392.6 be automatically sealed under the process described in § 19.2-392.13. Such order shall contain the names of the persons charged with or convicted of such offenses.

E. The clerk of each circuit court shall provide an electronic copy of any order entered under subsection D to the Department of State Police on at least a monthly basis. Upon receipt of such order, the Department of State Police shall proceed as set forth in § 19.2-392.13.

F. Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

G. If an offense is automatically sealed contrary to law, the automatic sealing of that particular offense shall be voidable upon motion and notice made within two years of the entry of the order to automatically seal such offense.

§ 19.2-392.8. Automatic sealing of offenses resulting in acquittal, nolle prosequi, or dismissal.

A. If a person is charged with the commission of a misdemeanor offense, excluding traffic infractions under Title 46.2, and (i) the person is acquitted, (ii) a nolle prosequi is entered, or (iii) the charge is otherwise dismissed, excluding any charge that is deferred and dismissed after a finding of facts sufficient to justify a finding of guilt, the court disposing of the matter shall, at the time the acquittal, nolle prosequi, or dismissal is entered, order that the charge be automatically sealed under the process described in § 19.2-392.13, unless the attorney for the Commonwealth or any other person advises the court at the time the acquittal, nolle prosequi, or dismissal is entered that:

1. The charge is ancillary to another charge that resulted in a conviction or a finding of facts sufficient to justify a finding of guilt;

2. A nolle prosequi is entered or the charge is dismissed as part of a plea agreement;

3. Another charge arising out of the same facts and circumstances is pending against the person;

4. The Commonwealth intends to reinstitute the charge or any other charge arising out of the same facts and circumstances within three months;

5. Good cause exists, as established by the Commonwealth by a preponderance of the evidence, that such charge should not be automatically sealed; or

6. The person charged with the offense objects to such automatic sealing.

B. If a person is charged with the commission of a felony offense and is acquitted, or the charge against him is dismissed with prejudice, he may immediately upon the acquittal or dismissal orally request that the records relating to the charge be sealed. Upon such request and with the concurrence of the attorney for the Commonwealth, the court shall order the automatic sealing of records relating to the arrest or charge under the process described in § 19.2-392.13.

C. If the court enters an order of sealing pursuant to subsection A or B, the court shall advise the person that the offense has been ordered to be automatically sealed.

D. Any denial by the court to enter a sealing order under subsection A or B shall be without prejudice, and the person may seek expungement in the circuit court pursuant to the provisions of § 19.2-392.2. Entry of a sealing order under subsection A or B shall not prohibit the person from seeking expungement in the circuit court pursuant to the provisions of § 19.2-392.2.

E. Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

F. If an offense is automatically sealed contrary to law, the automatic sealing of that particular offense shall be voidable upon motion and notice made within two years of the entry of the order to automatically seal such offense.

§ 19.2-392.9. Automatic sealing for mistaken identity or unauthorized use of identifying information.

A. If (i) a person is charged or arrested as a result of mistaken identity or (ii) a person's name or other identification is used without his consent or authorization by another person who is charged or arrested using such name or identification, and a nolle prosequi is entered or the charge is otherwise dismissed, the attorney for the Commonwealth or any other person requesting the nolle prosequi or dismissal shall notify the court of the mistaken identity or unauthorized use of identifying information at the time such request is made. Upon such notification, the court disposing of the matter shall, at the

time the nolle prosequi or dismissal is entered, order that the charge be automatically sealed under the process described in § 19.2-392.13, unless the person charged or arrested as a result of the mistaken identity or unauthorized use of identifying information objects to such automatic sealing.

B. If the court enters an order of sealing pursuant to subsection A, the court shall advise the person charged that the offense has been ordered to be automatically sealed.

C. Any denial by the court to enter a sealing order under subsection A shall be without prejudice. Entry of a sealing order or the denial of entry of a sealing order under subsection A shall not prohibit the person from seeking expungement in the circuit court pursuant to the provisions of § 19.2-392.2.

D. Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

E. If an offense is automatically sealed contrary to law, the automatic sealing of that particular offense shall be voidable upon motion and notice made within two years of the entry of the order to automatically seal such offense.

§ 19.2-392.10. Process for automatic sealing of offenses resulting in acquittal, nolle prosequi, or dismissal.

A. On at least a monthly basis, the Executive Secretary of the Supreme Court and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502 shall provide an electronic list of all offenses in such case management system to the Department of State Police that were ordered to be automatically sealed pursuant to §§ 19.2-392.8 and 19.2-392.9.

B. Upon receipt of the electronic lists under subsection A, the Department of State Police shall proceed as set forth in § 19.2-392.13.

§ 19.2-392.11. Automatic sealing of misdemeanor offenses resulting in acquittal, nolle prosequi, or dismissal for persons with no convictions or deferred and dismissed offenses on their criminal history record.

A. On at least an annual basis, the Department of State Police shall review the Central Criminal Records Exchange and identify all persons with finalized misdemeanor case dispositions that resulted in (i) an acquittal, (ii) a nolle prosequi, or (iii) a dismissal, excluding any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt, where the criminal history record of such person contains no convictions for any criminal offense for a violation of any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 and where such criminal history record contains no arrests or charges for a violation of any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 in the past three years, excluding traffic infractions under Title 46.2. For purposes of this subsection, any offense on the person's criminal history record that has previously been ordered to be sealed shall not be deemed a conviction.

B. Upon identification of the finalized case dispositions under subsection A, the Department of State Police shall provide an electronic list of such offenses to the Executive Secretary of the Supreme Court and to any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502.

C. Upon receipt of the electronic list from the Department of State Police provided under subsection B, on at least an annual basis the Executive Secretary of the Supreme Court shall provide an electronic list of such offenses to the clerk of each circuit court in the jurisdiction where the case was finalized, if such circuit court clerk participates in the case management system maintained by the Executive Secretary.

D. Upon receipt of the electronic list provided under subsection B or C, on at least an annual basis the clerk of each circuit court shall prepare an order and the chief judge of that circuit court shall enter such order directing that the offenses be automatically sealed under the process described in § 19.2-392.13. Such order shall contain the names of the persons charged with such offenses.

E. The clerk of each circuit court shall provide an electronic copy of any order entered under subsection D to the Department of State Police on at least an annual basis. Upon receipt of such order, the Department of State Police shall proceed as set forth in § 19.2-392.13.

F. Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

G. This section shall not be construed as prohibiting a person from seeking expungement in the circuit court pursuant to the provisions of § 19.2-392.2. Entry of a sealing order pursuant to this section shall not prohibit a person from seeking expungement in the circuit court pursuant to the provisions of § 19.2-392.2.

H. If an offense is automatically sealed contrary to law, the automatic sealing of that particular offense shall be voidable upon motion and notice made within two years of the entry of the order to automatically seal such offense.

I. If an offense is automatically sealed pursuant to the procedure set forth in this section and such

offense was not ordered to be automatically sealed at the time of acquittal, nolle prosequi, or dismissal for one or more of the reasons set forth in § 19.2-392.8, the automatic sealing of such offense shall be voidable upon motion and notice made within two years of the entry of the order to automatically seal such offense.

§ 19.2-392.12. Sealing of offenses resulting in a deferred and dismissed disposition or conviction by petition.

A. Except for a conviction or deferral and dismissal of a violation of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5, 18.2-57.2, 18.2-266, or 46.2-341.24, a person who has been convicted of or had a charge deferred and dismissed for a (i) misdemeanor offense, (ii) Class 5 or 6 felony, or (iii) violation of § 18.2-95 or any other felony offense in which the defendant is deemed guilty of larceny and punished as provided in § 18.2-95 may file a petition setting forth the relevant facts and requesting sealing of the criminal history record information and court records relating to the charge or conviction, provided that such person has (a) never been convicted of a Class 1 or 2 felony or any other felony punishable by imprisonment for life, (b) not been convicted of a Class 3 or 4 felony within the past 20 years, or (c) not been convicted of any other felony within the past 10 years of his petition.

B. A person shall not be required to pay any fees or costs for filing a petition pursuant to this section if such person files a petition to proceed without the payment of fees and costs, and the court with which such person files his petition finds such person to be indigent pursuant to § 19.2-159.

C. The petition with a copy of the warrant, summons, or indictment, if reasonably available, shall be filed in the circuit court of the county or city in which the case was disposed of and shall contain, except when not reasonably available, the date of arrest, the name of the arresting agency, and the date of conviction. When this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the charge or conviction to be sealed; the date of final disposition of the charge or conviction as set forth in the petition; the petitioner's date of birth, sex, race, and social security number, if available; and the full name used by the petitioner at the time of arrest or summons. A petitioner may only have two petitions granted pursuant to this section within his lifetime.

D. The Commonwealth shall be made party to the proceeding. The petitioner shall provide a copy of the petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition or may give written notice to the court that he does not object to the petition within 21 days after it is delivered to him or received in the mail.

E. Upon receipt of the petition, the circuit court shall order that the attorney for the Commonwealth or a law-enforcement officer, as defined in § 9.1-101, provide the court with a sealed copy of the criminal history record of the petitioner. Upon completion of the hearing, the court shall cause the criminal history record to be destroyed unless, within 30 days of the date of the entry of the final order in the matter, the petitioner or the attorney for the Commonwealth notes an appeal to the Supreme Court of Virginia.

F. After receiving the criminal history record of the petitioner, the court may conduct a hearing on the petition. The court shall enter an order requiring the sealing of the criminal history record information and court records, including electronic records, relating to the charge or conviction, only if the court finds that all criteria in subdivisions 1 through 4 are met, as follows:

1. During a period after the date of (i) dismissal of a deferred charge, (ii) conviction, or (iii) release from incarceration of the charge or conviction set forth in the petition, whichever date occurred later, the person has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, for:

a. Seven years for any misdemeanor offense; or

b. Ten years for any felony offense;

2. If the records relating to the offense indicate that the occurrence leading to the deferral or conviction involved the use or dependence upon alcohol or any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, the petitioner has demonstrated his rehabilitation;

3. The petitioner has not previously obtained the sealing of two other deferrals or convictions arising out of different sentencing events; and

4. The continued existence and possible dissemination of information relating to the charge or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner.

G. If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not object to the petition and (ii) stipulates in such written notice that the petitioner is eligible to have such offense sealed, and the continued existence and possible dissemination of information relating to the charge or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner, the

court may enter an order of sealing without conducting a hearing.

H. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

I. Upon the entry of an order of sealing, the clerk of the court shall cause an electronic copy of such order to be forwarded to the Department of State Police. Such electronic order shall contain the petitioner's full name, date of birth, sex, race, and social security number, if available, as well as the petitioner's state identification number from the criminal history record, the court case number of the charge or conviction to be sealed, if available, and the document control number, if available. Upon receipt of such electronic order, the Department of State Police shall seal such records in accordance with § 19.2-392.13. When sealing such charge or conviction, the Department of State Police shall include a notation on the criminal history record that such offense was sealed pursuant to this section. The Department of State Police shall also electronically notify the Office of the Executive Secretary of the Supreme Court and any other agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be sealed and may only be disseminated in accordance with § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134.

J. Costs shall be as provided by § 17.1-275 but shall not be recoverable against the Commonwealth. Any costs collected pursuant to this section shall be deposited in the Sealing Fee Fund created pursuant to § 17.1-205.1.

K. Any order entered where (i) the court or parties failed to strictly comply with the procedures set forth in this section or (ii) the court enters an order for the sealing of records contrary to law shall be voidable upon motion and notice made within two years of the entry of such order.

L. If a petitioner qualifies to file a petition for sealing of records without the payment of fees and costs pursuant to subsection B and has requested court-appointed counsel, the court shall then appoint counsel to file the petition for sealing of records and represent the petitioner in the sealed records proceedings. Counsel appointed to represent such a petitioner shall be compensated for his services subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, in a total amount not to exceed $120, as determined by the court, and such compensation shall be paid from the Sealing Fee Fund as provided in § 17.1-205.1.

M. A petition filed under this section and any responsive pleadings filed by the attorney for the Commonwealth shall be maintained under seal by the clerk unless otherwise ordered by the court. Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

N. A conviction or deferral and dismissal of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5, 18.2-57.2, 18.2-266, or 46.2-341.24 is ineligible for the sealing of records under this section.

O. Nothing in this chapter shall prohibit the circuit court from entering an order to seal a charge or conviction under this section when such charge or conviction is eligible for sealing under some other section of this chapter.

§ 19.2-392.13. Disposition of records when an offense is sealed; permitted uses of sealed records.

A. Upon electronic notification that a court order for sealing has been entered pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12, the Department of State Police shall not disseminate any criminal history record information contained in the Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction, that was ordered to be sealed, except for purposes set forth in this section and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. Upon receipt of such electronic notification, the Department of State Police shall electronically notify those agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be sealed and may only be disseminated for purposes set forth in this section and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134. Any records maintained electronically that are transformed or transferred by whatever means to an offline system or to a confidential and secure area inaccessible from normal use within the system in which the record is maintained shall be considered sealed, provided that such records are accessible only to the manager of the records or their designee.

B. Upon entry of a court order for sealing pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12, the Executive Secretary of the Supreme Court and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502 shall ensure that the court record of such arrest, charge, or conviction is not available for public online viewing as directed by subsections B and C of § 17.1-293.1. Additionally, upon entry of such an order for sealing, the clerk of court shall not disseminate any court record of such arrest, charge, or conviction, except as provided in subsections D and E.

C. Records relating to an arrest, charge, or conviction that was ordered to be sealed pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12 shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated and used for the following purposes: (i) to make the determination as provided in § 18.2-308.2:2 of eligibility to possess or

purchase a firearm; (ii) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System; (iii) to the Virginia Criminal Sentencing Commission for its research purposes; (iv) to any full-time or part-time employee of the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for full-time employment or part-time employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (v) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; (vi) to any full-time or part-time employee of the Department of Forensic Science for the purpose of screening any person for full-time or part-time employment with the Department of Forensic Science; (vii) to the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a public safety official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; (viii) to any full-time or part-time employee of the Department of Motor Vehicles, any employer as defined in § 46.2-341.4, or any medical examiner as defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration; (ix) to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions; (x) to any employer or prospective employer or its designee where the position that a person is applying for, or where access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; (xi) to any person authorized to engage in the collection of court costs, fines, or restitution under subsection C of § 19.2-349 for purposes of collecting such court costs, fines, or restitution; (xii) to administer and utilize the DNA Analysis and Data Bank set forth in Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18; (xiii) to publish decisions of the Supreme Court, Court of Appeals, or any circuit court; (xiv) to any full-time or part-time employee of a court, the Office of the Executive Secretary, the Division of Legislative Services, or the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary for the purpose of screening any person for full-time or part-time employment as a clerk, magistrate, or judge with a court or the Office of the Executive Secretary; (xv) to any employer or prospective employer or its designee where this Code or a local ordinance requires the employer to inquire about prior criminal charges or convictions; (xvi) to any employer or prospective employer or its designee that is allowed access to such sealed records in accordance with the rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134; (xvii) to any business screening service for purposes of complying with § 19.2-392.16; (xviii) to any attorney for the Commonwealth and any person accused of a violation of law, or counsel for the accused, in order to comply with any constitutional and statutory duties to provide exculpatory, mitigating, and impeachment evidence to an accused; (xix) to any party in a criminal or civil proceeding for use as authorized by law in such proceeding; (xx) to any party for use in a protective order hearing as authorized by law; (xxi) to the Department of Social Services or any local department of social services for purposes of performing any statutory duties as required under Title 63.2; (xxii) to any party in a proceeding relating to the care and custody of a child for use as authorized by law in such proceeding; (xxiii) to the attorney for the Commonwealth and the court for purposes of determining eligibility for sealing pursuant to the provisions of § 19.2-392.12; (xxiv) to determine a person's eligibility to be empaneled as a juror; and (xxv) to the person arrested, charged, or convicted of the offense that was sealed.

D. Upon request from any person to access a paper or a digital image of a court record, the clerk of court shall determine whether such record is open to public access and inspection. If the clerk of court determines that the court record has been sealed, such record shall not be provided to the requestor without an order from the court that entered the order to seal the court record. Any order from a court that allows access to a paper or a digital image of a court record that has been sealed shall only be issued for one or more of the purposes set forth in subsection C. Such order to access a paper or a digital image of a court record that has been sealed shall allow the requestor to photocopy such court record. No fee shall be charged to any person filing a motion to access a paper or a digital image of a court record that has been sealed if the person filing such motion is the same person who was arrested, charged, or convicted of the offense that was sealed.

E. No access shall be provided to electronic records in an appellate court, circuit court, or district court case management system maintained by the Executive Secretary of the Supreme Court or in a case management system maintained by a clerk of the circuit court for any arrest, charge, or conviction that was ordered to be sealed pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12, except to the Virginia Criminal Sentencing Commission for its research purposes. Such electronic records may be disseminated to the Virginia Criminal Sentencing Commission without a court order.

F. If a pleading or case document in a court record that was sealed is included among other court records that have not been ordered to be sealed, the clerk of court shall not be required to prohibit dissemination of that record. The Supreme Court, Court of Appeals, and any circuit court shall not be required to prohibit dissemination of any published or unpublished opinion relating to an arrest, charge, or conviction that was ordered to be sealed.

G. The Department of Motor Vehicles shall not seal any conviction or any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt (i) in violation of federal regulatory record retention requirements or (ii) in violation of federal program requirements if the Department of Motor Vehicles is required to suspend a person's driving privileges as a result of a conviction or deferral and dismissal ordered to be sealed. Upon receipt of an order directing that an offense be sealed, the Department of Motor Vehicles shall seal all records if the federal regulatory record retention period has run and all federal program requirements associated with a suspension have been satisfied. However, if the Department of Motor Vehicles cannot seal an offense pursuant to this subsection at the time it is ordered, the Department of Motor Vehicles shall (a) notify the Department of State Police of the reason the record cannot be sealed and cite the authority prohibiting sealing at the time it is ordered; (b) notify the Department of State Police of the date, if known at the time when the sealing is ordered, on which such record can be sealed; (c) seal such record on that date; and (d) notify the Department of State Police when such record has been sealed within the Department of Motor Vehicles' records.

H. No arrest, charge, or conviction that has been sealed may be used to impeach the credibility of a testifying witness at any hearing or trial unless (i) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect and (ii) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

I. The provisions of this section shall not prohibit the disclosure of sealed criminal history record information or any information from such records among law-enforcement officers and attorneys when such disclosures are made by such officers or attorneys while engaged in the performance of their duties for purposes solely relating to the disclosure or use of exculpatory, mitigating, and impeachment evidence or between attorneys for the Commonwealth when related to the prosecution of a separate crime.

§ 19.2-392.14. Disclosure of sealed records; penalty.

A. It is unlawful for any person having or acquiring access to sealed criminal history record information or a court record, including any records relating to an arrest, charge, or conviction, that was ordered to be sealed pursuant to § 19.2-392.7, 19.2-392.8, 19.2-392.9, 19.2-392.11, or 19.2-392.12, to disclose such record or any information from such record to another person, except in accordance with the purposes set forth in § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134.

B. A clerk of court shall not be in violation of this section if such clerk informs a person requesting access to a sealed court record that such court record has been sealed and can only be accessed pursuant to a court order.

C. Any person who willfully violates this section is guilty of a Class 1 misdemeanor. Any person who maliciously and intentionally violates this section is guilty of a Class 6 felony.

§ 19.2-392.15. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments; penalty.

A. Except as provided in subsection B, agencies, officials, and employees of state and local governments, private employers that are not subject to federal laws or regulations in the hiring process, and educational institutions shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, charge, or conviction against him that has been sealed. An applicant need not, in answer to any question concerning any arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions that has been sealed.

B. The provisions of subsection A shall not apply if:

1. The person is applying for full-time employment or part-time employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;

2. This Code requires the employer to make such an inquiry;

3. Federal law requires the employer to make such an inquiry;

4. The position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; or

5. The rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134 allow the employer to access such sealed records.

C. Agencies, officials, and employees of state and local governments shall not, in any application,

interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest, charge, or conviction against him that has been sealed. An applicant need not, in answer to any question concerning any arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions that has been sealed. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, charge, or conviction against him that has been sealed.

D. No person, as defined in § 36-96.1:1, shall, in any application for the sale or rental of a dwelling, as defined in § 36-96.1:1, require an applicant to disclose information concerning any arrest, charge, or conviction against him that has been sealed. An applicant need not, in answer to any question concerning any arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions that has been sealed. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, charge, or conviction against him that has been sealed.

E. No insurance company, as defined in § 38.2-100, shall, in any application for insurance, as defined in § 38.2-100, require an applicant to disclose information concerning any arrest, charge, or conviction against him that has been sealed. An applicant need not, in answer to any question concerning any arrest, charge, or conviction, include a reference to or information concerning arrests, charges, or convictions that has been sealed. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest, charge, or conviction against him that has been sealed.

F. If any entity or person listed under subsections A, C, D, or E includes a question about a prior arrest, charge, or conviction in an application for one or more of the purposes set forth in such subsections, such application shall include, or such entity or person shall provide, a notice to the applicant that information concerning an arrest, charge, or conviction that has been sealed does not have to be disclosed in the application. Such notice need not be included on any application for one or more of the purposes set forth in subsection B.

G. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation.

§ 19.2-392.16. Dissemination of criminal history records and traffic history records by business screening services.

A. For the purposes of this section:

"Business screening service" means a person engaged in the business of collecting, assembling, evaluating, or disseminating Virginia criminal history records or traffic history records on individuals.

"Business screening service" does not include any government entity or the news media.

"Criminal history record" means any information collected by a business screening service on individuals containing any personal identifying information, photograph, or other identifiable descriptions pertaining to an individual and any information regarding arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release.

"Delete" means that a criminal history record shall not be disseminated in any manner, except to any entity authorized to receive and use such information pursuant to § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134, but may be retained in order to resolve any disputes relating to this section, the accuracy of the record consistent with the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.

"Sealed record" means a Virginia criminal history record or a traffic history record that has been sealed pursuant to § 19.2-392.7, 19.2-392.10, 19.2-392.11, or 19.2-392.12.

"Traffic history record" means any information collected by a business screening service on individuals containing any personal identifying information, photograph, or other identifiable descriptions pertaining to an individual and any information regarding arrests, detentions, indictments, or other formal traffic infraction charges, and any disposition arising therefrom.

B. If a business screening service knows that a criminal history record or a traffic history record has been sealed, the business screening service shall promptly delete the record.

C. A business screening service shall register with the Department of State Police to electronically receive copies of orders of sealing provided to the Department of State Police pursuant to §§ 19.2-392.7, 19.2-392.10, 19.2-392.11, and 19.2-392.12. The Department of State Police may charge an annual licensing fee to the business screening service for accessing such information, with a portion of such fee to be used to cover the cost of providing such records and the remainder of such fee to be deposited into the Sealing Fee Fund pursuant to § 17.1-205.1. The contract between the Department of State Police and the business screening service shall prohibit dissemination of the orders of sealing and shall require compliance by the business screening service with the provisions of subsections D, E, and F. The orders of sealing received by the business screening service shall remain confidential and shall not be disseminated or resold. The orders of sealing shall be used for the sole purpose of deleting criminal history records that have been sealed. The business screening service shall destroy the copies of the orders of sealing after deleting the information contained in such orders from sealed records. The

Department of State Police shall require that the business screening service seeking access to the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. The Department of State Police shall further require that a business screening service acknowledge receipt of all electronic copies of orders of sealing provided by the Department of State Police. The Department of State Police shall maintain a public list within its website identifying the business screening services that are licensed to receive such records.

D. A business screening service that disseminates a criminal history record or a traffic history record on or after the effective date of this section shall include the date when the record was collected by the business screening service and a notice that the information may include records that have been sealed since that date.

E. A business screening service shall implement and follow reasonable procedures to assure that it does not maintain or sell criminal history records or traffic history records that are inaccurate or incomplete. If the completeness or accuracy of a criminal history record or traffic history record maintained by a business screening service is disputed by the individual who is the subject of the record, the business screening service shall, without charge, investigate the disputed record. If, upon investigation, the business screening service determines that the record does not accurately reflect the content of the official record, the business screening service shall correct the disputed record so as to accurately reflect the content of the official record. If the disputed record is found to have been sealed pursuant to § 19.2-392.7, 19.2-392.10, 19.2-392.11, or 19.2-392.12, the business screening service shall promptly delete the record. A business screening service may terminate an investigation of a disputed record if the business screening service reasonably determines that the dispute is frivolous, which may be based on the failure of the subject of the record to provide sufficient information to investigate the disputed record. Upon making a determination that the dispute is frivolous, the business screening service shall inform the subject of the record of the specific reasons why it has determined that the dispute is frivolous and shall provide a description of any information required to investigate the disputed record. The business screening service shall notify the subject of the disputed record of the correction or deletion of the record or of the termination or completion of the investigation related to the record within 30 days of the date when the business screening service receives notice of the dispute from the subject of the record.

F. A business screening service shall implement procedures for individuals to submit a request to obtain their own criminal history record and traffic history record information maintained by the business screening service and any other information that may be sold to another entity by the business screening service regarding the individual.

G. A business screening service that violates this section is liable to the person who is the subject of the criminal history record or traffic history record for a penalty of $1,000 or actual damages caused by the violation, whichever is greater, plus costs and reasonable attorney fees. Within 10 days of service of any suit by an individual, the business screening service may make a cure offer in writing to the individual claiming to have suffered a loss as a result of a violation of this section. Such offer shall be in writing and include one or more things of value, including the payment of money. A cure offer shall be reasonably calculated to remedy a loss claimed by the individual, as well as any attorney fees or other fees, expenses, or other costs of any kind that such individual may incur in relation to such loss. No cure offer shall be admissible in any proceeding initiated under this section, unless the cure offer is delivered by the business screening service to the individual claiming loss or to any attorney representing such individual prior to the filing of the business screening service's initial responsive pleading in such proceeding. The business screening service shall not be liable for such individual's attorney fees and court costs incurred following delivery of the cure offer unless the actual damages found to have been sustained and awarded, without consideration of attorney fees and court costs, exceed the value of the cure offer.

H. The Attorney General may file a civil action to enforce this section. If the court finds that a business screening service has willfully engaged in an act or practice in violation of this section, the Attorney General may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than $2,500 per violation. For the purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General notifies the alleged violator by certified mail that an act or practice is a violation of this section and the alleged violator, after receipt of said notice, continues to engage in the act or practice. In any civil action pursuant to this subsection, in addition to any civil penalty awarded, the Attorney General may also recover any costs and reasonable expenses incurred by the state in investigating and preparing the case, not to exceed $1,000 per violation, and attorney fees. Such additional costs and expenses shall be paid into the general fund of the Commonwealth.

I. A business screening service that disseminates criminal history records or traffic history records in the Commonwealth is deemed to have consented to service of process in the Commonwealth and to the jurisdiction of courts of the Commonwealth for actions involving a violation of this section or for the recovery of remedies under this section.

J. A business screening service that is a consumer reporting agency and that is in compliance with

the applicable provisions of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., is considered to be in compliance with the comparable provisions of this section. A business screening service is subject to the state remedies under this section if its actions would violate this section and federal law.

K. Any business screening service or person who engages in the conduct of a business screening service, as set forth this this section, that fails to register with the Department of State Police as required by subsection C and that disseminates criminal history records or traffic history records in the Commonwealth may be subject to (i) suit by any person injured by such dissemination and (ii) enforcement actions by the Attorney General as set forth in subsection H.

§ 19.2-392.17. Traffic infractions deemed sealed.

A. Any record of a traffic infraction under Title 46.2 that is not punishable as a criminal offense shall be deemed to be sealed after 11 years from the date of final disposition of the offense, unless such sealing is prohibited under federal or state law. No record of any such traffic infraction shall be disseminated, unless such dissemination is authorized pursuant to § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134.

B. The Department of Motor Vehicles shall not seal any traffic infraction under Title 46.2 (i) in violation of federal regulatory record retention requirements or (ii) in violation of federal program requirements if the Department of Motor Vehicles is required to suspend a person's driving privileges as a result of the traffic infraction that was ordered to be sealed. Upon receipt of an order directing that a traffic infraction be sealed, the Department of Motor Vehicles shall seal all records if the federal regulatory record retention period has run and all federal program requirements associated with a suspension have been satisfied. However, if the Department of Motor Vehicles cannot seal a traffic infraction pursuant to this subsection at the time it is ordered, the Department of Motor Vehicles shall (a) notify the Department of State Police of the reason the record cannot be sealed and cite the authority prohibiting sealing at the time it is ordered; (b) notify the Department of State Police of the date, if known at the time when the sealing is ordered, on which such record can be sealed; (c) seal such record on that date; and (d) notify the Department of State Police when such record has been sealed within the Department of Motor Vehicles' records.

C. The Department of Motor Vehicles shall not seal a record of a traffic infraction if a customer is subject to an administrative suspension order issued pursuant to Driver Improvement Program requirements under § 46.2-498, 46.2-499, or 46.2-506, issued in part or in whole, as a result of an accumulation of traffic infractions, and less than two years has passed since the date that the suspension order was complied with.

2. That the Department of State Police shall delete all records from the Central Criminal Records Exchange that were not required to be reported to the Central Criminal Records Exchange under subdivision A 1 of § 19.2-390 of the Code of Virginia, as amended by this act, by July 1, 2021.

3. That the Attorney General, after consultation with the Committee on District Courts, the Superintendent of State Police, and the Commissioner of the Department of Motor Vehicles, shall amend the uniform summons described in § 46.2-388 of the Code of Virginia to reflect the amendments to the provisions of subsection C of § 19.2-74 of the Code of Virginia, as amended by this act, by July 1, 2021.

4. That the provisions of §§ 9.1-101, 9.1-128, 9.1-134, 17.1-293.1, 17.1-502, 19.2-310.7, and 19.2-389.3 of the Code of Virginia, as amended by this act, and Chapter 23.2 (§ 19.2-392.5 et seq.) of Title 19.2 of the Code of Virginia, as created by this act, shall become effective on the earlier of (i) the first day of the fourth month following notification of the Chair of the Virginia Code Commission and the Chairs of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by the Superintendent of State Police that the Executive Secretary of the Supreme Court of Virginia, the Department of State Police, and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502 of the Code of Virginia, as amended by this act, have automated systems to exchange information as required by §§ 19.2-392.7, 19.2-392.10, 19.2-392.11, and 19.2-392.12 of the Code of Virginia, as created by this act, or (ii) July 1, 2025.

5. That the Department of State Police shall first transmit the list required under subsection B of § 19.2-392.7 of the Code of Virginia, as created by this act, not later than the earlier of (i) the first day of the third month following the effective date of this act as provided in clause (i) of the fourth enactment of this act or (ii) October 1, 2025.

6. That the Executive Secretary of the Supreme Court of Virginia, the Department of State Police, and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502 of the Code of Virginia, as amended by this act, shall automate systems to exchange information as required by §§ 19.2-392.7, 19.2-392.10, 19.2-392.11, and 19.2-392.12 of the Code of Virginia, as created by this act, not later than July 1, 2025.

7. That the Executive Secretary of the Supreme Court of Virginia shall develop a form for requesting and authorizing access to a sealed court record as set forth in section D of § 19.2-392.13

of the Code of Virginia, as created by this act, not later than July 1, 2025.

8. That the Department of State Police shall purchase Criminal History, Expungement, Master Name Index, Rap Back, Civil Commitment, Applicant Tracking, and such other solutions or services as may be necessary to implement this act. The purchase of these solutions or services shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia).

9. That the Virginia State Crime Commission shall consult with stakeholders to determine and recommend methods to educate the public on the sealing process and the effects of an order to seal an arrest, charge, or conviction and shall report on such recommended methods by December 15, 2021.

10. That the Executive Secretary of the Supreme Court of Virginia, the Department of State Police, and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § 17.1-502 of the Code of Virginia, as amended by this act, shall each provide a report to the Virginia State Crime Commission on the progress of implementing automated systems to exchange information as required by §§ 19.2-392.7, 19.2-392.10, 19.2-392.11, and 19.2-392.12 of the Code of Virginia, as created by this act, by November 1, 2021, and by November 1 of each year thereafter until the automated systems have been fully implemented.

11. That the Department of State Police shall determine the feasibility and cost of implementing an automated system to review out-of-state criminal history records and report to the Virginia State Crime Commission by November 1, 2021, and by November 1 of each year thereafter until such determination has been made.

12. That the Virginia Court Clerks' Association shall determine the necessary staffing and technology costs of implementing the provisions of this act and report to the Virginia State Crime Commission by November 1, 2021, and by November 1 of each year thereafter until such determination has been made.

13. That the Department of State Police shall consult with the Department of Motor Vehicles in determining the form and content of the electronic notice to be provided to the Department of Motor Vehicles as required in subsection A of § 19.2-392.13 of the Code of Virginia, as created by this act.

14. That the Department of Criminal Justice Services shall develop regulations governing the dissemination of sealed criminal history record information as directed by subsection D of § 9.1-128 of the Code of Virginia, as amended by this act, and the sealing of criminal history record information as directed by § 9.1-134 of the Code of Virginia, as amended by this act, in accordance with § 19.2-392.13 of the Code of Virginia, as created by this act.

15. That the Virginia State Crime Commission (the Commission) shall continue its current study on expungement; that such study shall include (i) the interplay between the current expungement statute and the sealing of criminal history record information and court records; (ii) the feasibility of destroying or purging expunged or sealed criminal history record information and court records; (iii) permissible uses of criminal history record information and court records; (iv) plea agreements in relation to the expungement or sealing of criminal history record information and court records; and (v) any other relevant matters that arise during the course of the study; and that the Commission shall report its findings by December 15, 2021. Such report shall also include a recommendation on how to create a review process for any proposed changes to the expungement or sealing of criminal history record information and court records.

16. That the Department of State Police shall develop a form contract for purposes of providing information regarding sealed criminal history record information to business screening services pursuant to § 19.2-392.16 of the Code of Virginia, as created by this act.

17. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

TAB 13

Criminal Record Clearing: The Terminology

POLICY SNAPSHOT

BY MICHAEL HARTMAN

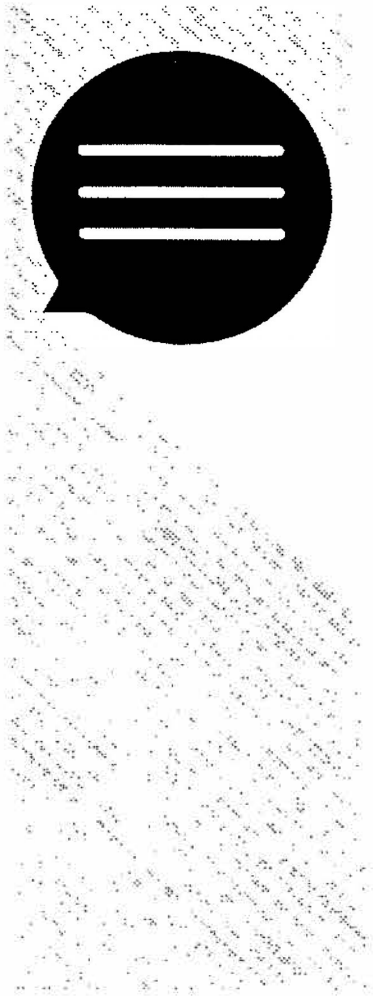
Introduction

Roughly 70 million adults in the U.S. have a criminal record. Additionally, more than 1 million youth are charged with crimes and acquire juvenile court records each year. This amounts to roughly 1 in 3 Americans. Of those, millions are eligible to have their records cleared; however, a University of Michigan Law School study shows that less than 10% of Americans get their records expunged, even if they are entitled to it. This problem—called the Second Chance Gap by some researchers who study the issue—is causing growing concern among policymakers across the country.

In recent years, policymakers and criminal justice stakeholders have paid increasing attention to the substantial barriers to employment, housing and social integration that criminal records can pose. These indirect sentencing consequences are often referred to as collateral consequences. Some examples include restrictions on public benefits eligibility and occupational licensing.

Some collateral consequences have a direct link to public safety matters, making them important to many policymakers. For example, people convicted of assault or physical abuse are prohibited from working with children or the elderly for the safety of the community. Similarly, barring someone who was convicted of fraud from a position of public trust is in the best interest of the community. Through criminal record-clearing policies, legislators are attempting to balance community safety with effectively reintegrating people with prior criminal records into the community.

States often use a variety of language to describe record clearance, including annulment, destruction, dismissal, erasure, expungement, sealing, set-aside and vacatur. In fact, some states may use the same language, but the terms have drastically different meanings. As such, it is important to identify and know your individual state's definitions of these terms. This policy snapshot will define and explain the variety of terminology used by states when enacting criminal record-clearing laws.



Terminology

Despite language differences, the commonality between states' criminal record-clearance laws is they enable an individual's criminal history information to be removed from easy public access, most often with the goal of improving employment and other outcomes for the affected person.

TERMINOLOGY

Annulment	The act of nullifying or making void.
Destruction	To damage (something) so thoroughly as to make unusable, unreliable or nonexistent; to ruin.
Dismissal	Termination of an action, claim or charge without further hearing, especially before a trial; a judge's decision to stop a court case with an order or judgment that imposes no civil or criminal liability on the defendant with respect to the case.
Erasure	The removal of a conviction (especially for a first offense) from a person's criminal record.
Expungement	To remove from a record, list or book; to erase or destroy.
Sealing	To prevent access to (a document, record, etc.), especially by court order; to seal the record of the proceedings.
Set-Aside	To annul or vacate (a judgment, order, etc.).
Vacatur	The act of annulling or setting aside.

**Definitions taken from Black's Law Dictionary (11th ed. 2019)*

Examples of Terminology

As you will see below, states have vastly different and nuanced approaches to record clearing. What might be called expungement in one state may be entirely different to expungement in another. A few examples of states' definitions for record clearing are described below.

ANNULMENT

Under **New Hampshire** law, a person whose record is annulled shall be treated in all respects as if he or she had never been arrested, convicted or sentenced. However, upon conviction of any crime committed after the order of annulment, the prior annulled conviction may be considered by the court in determining habitual offender status and sentencing. The law provides that court records relating to an annulled arrest, conviction or sentence shall be sealed and available only to the person whose record was annulled, his or her attorney, a court for sentencing, or for law enforcement personnel for legitimate law enforcement purposes.

Additionally, the law states in any application for employment, license or other civil right or privilege, a person does not have to report his or her criminal conviction. A person may be questioned about a previous criminal record only in terms such as, "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?"

DISMISSAL

Under **Louisiana** law, completion of a deferred sentence allows a court to dismiss the case. Deferred sentencing is a process in which courts postpone sentencing as long as the defendant abides by certain restrictions, such as supervised or unsupervised probation. Because sentencing has not been carried out, the case remains active throughout the deferral period and may be dismissed upon completion. Dismissing the case has the same effect as an acquittal, except the criminal record may be considered a prior offense in any subsequent prosecution. However, the criminal record may be considered as a prior offense and provide the basis for subsequent prosecution of the party as a multiple offender. Additionally, Louisiana law expressly states that nothing shall be construed as being a basis for destruction of records of the arrest and prosecution of any person convicted of a misdemeanor.

ERASURE

Under **Connecticut** law, any person who receives an erasure shall be deemed to have never been arrested within the meaning of the general statutes and may so swear under oath.

EXPUNGEMENT

Under **Delaware** law, expungement means all law enforcement agency and court records— including any electronic records—relating to a case in which an expungement is granted are destroyed, segregated or placed in the custody of the State Bureau of Identification. They are not typically released.

In contrast, under **Indiana** law, I.C. 35-38-9-6, expungement only prohibits the release of the person's records to anyone without a court order. If a person is required to register as a felony sex offender, expungement does not release him or her from that responsibility. Also, expungement of a crime of domestic violence does not restore a person's right to possess a firearm.

SEALING

Under **Arkansas** law, sealing means to expunge, remove, sequester and treat as confidential the record or records in question. It does not include the physical destruction of a record of a conviction unless noted specifically in the law.

The law allows the person whose record has been sealed to have most privileges and rights restored. However, sealing in Arkansas does not reconfer the right to carry a firearm if that right was removed as the result of a felony conviction. When a person's record is sealed, it shall be deemed as a matter of law that it never occurred, and a person does not have to admit to having committed a crime. A sealed record can still be used in certain court proceedings, such as to determine habitual offender status, and may still be examined when applying for licensure from a health care agency or for a position in law enforcement.

By contrast, the definition of sealing in **Colorado** is very different. Under Colorado law, a sealed arrest or other criminal records are still available to law enforcement agencies, criminal justice agencies, prosecuting attorneys, or agencies required to conduct a criminal history record check on an individual. Employers, state and local government agencies, officials, landlords and employees cannot require an applicant to disclose any information contained in sealed conviction records in any application or interview, with some exceptions. Finally, sealing does not mean there is any physical destruction of conviction records.

SET-ASIDE

Under **Michigan** law, a person receiving a set-aside is considered not to have been previously convicted, with some exceptions. Like Indiana's expungement, Michigan's set-aside has no effect on sex offender registration.

By contrast, under **Nebraska** law, an order to set aside a conviction nullifies the conviction and removes all civil disabilities and disqualifications imposed. This means (among other things) a person with nullified felony convictions has the right to be a part of jury and hold public office. To determine whether to set aside the conviction, Nebraska courts consider the behavior of the offender after sentencing and the likelihood that the offender will not engage in further criminal activity. Once again, like Michigan's set-aside and Indiana's expungement, Nebraska's set-aside does not affect sex offender registration.

VACATUR

Under **Washington** law, vacatur means the offender's conviction cannot be included in his or her criminal history for sentencing purposes. Again, the offender is released from "all penalties and disabilities resulting from the offense," meaning he or she has the right to vote, be a part of a jury and run for public office. The offender also does not have to disclose the vacated conviction on employment applications. Additionally, a conviction that has been vacated may not be disseminated or disclosed by any law enforcement agency to anyone other than criminal justice enforcement agencies in the state.

Resources

- Clean Slate Clearinghouse
- Criminal Record Clearing Process
- Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities
- Expungement of Criminal Convictions: An Empirical Study
- Restoration of Rights Project: Expungement, Sealing and Other Record Relief
- The Second Chance Gap

NCSL's Criminal Justice Program is in Denver, Colo., at 303-364-7700, or cj-info@ncsl.org.

Statutes and bills may be edited or summarized; full text can be retrieved through: http://www.ncsl.org/aboutus/ncslservice/state-legislative-websites-directory.aspx

Information is provided for representative purposes; this may not be a complete list or analysis.

NCSL

About Us

NCSL: Our Mission

NCSL, founded in 1975, represents the legislatures in the states, territories and commonwealths of the U.S. Its mission is to advance the effectiveness, independence and integrity of legislatures and to foster interstate cooperation and facilitate the exchange of information among legislatures.

NCSL also represents legislatures in dealing with the federal government, especially in support of state sovereignty and state flexibility and protection from unfunded federal mandates and unwarranted federal preemption. The conference promotes cooperation between state legislatures in the U.S. and those in other countries.

In addition, NCSL is committed to improving the operations and management of state legislatures, and the effectiveness of legislators and legislative staff. NCSL also encourages the practice of high standards of conduct by legislators and legislative staff.

NCSL Bylaws

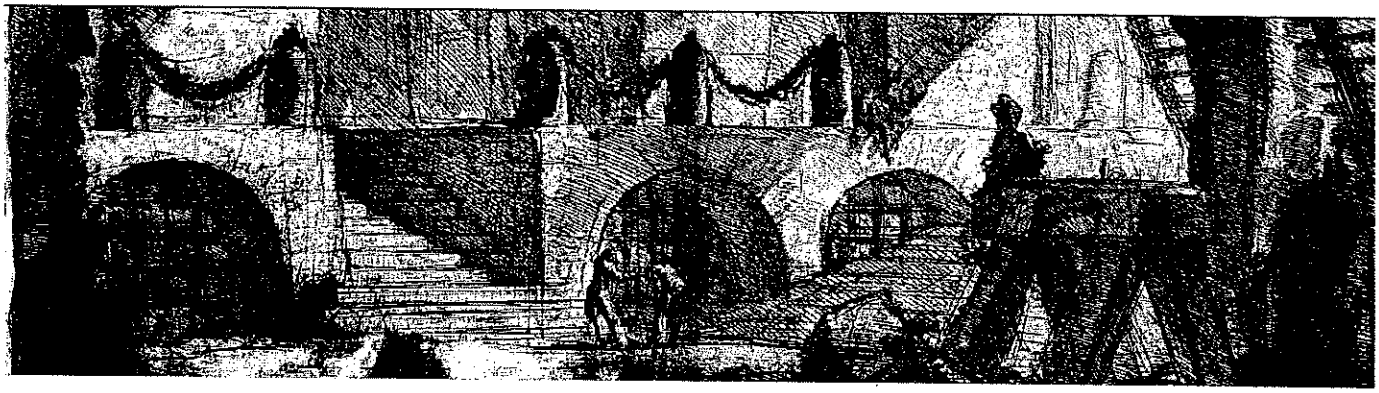
The NCSL bylaws and rules govern the operation of the conference. The NCSL Executive Committee's Budget, Finance and Rules Committee is the place where revisions are proposed and authorized, and then submitted to the full Executive Committee for consideration.

Our Story

In 1974, three organizations represented the interests of legislators and staff, but their influence was diluted. So seven inventive legislative leaders and two staffers got together and envisioned a single national organization to support, defend and strengthen state legislatures. The three organizations dissolved, and on Jan. 1, 1975, the National Conference of State Legislatures was born.

COLLATERAL CONSEQUENCES RESOURCE CENTER

Collateral Consequences of Criminal Conviction and Restoration of Rights: News, Commentary, and Tools



About CCRC

The Collateral Consequences Resource Center is a non-profit organization established in 2014 to promote public engagement on the myriad issues raised by the legal restrictions and societal stigma that burden people with a criminal record long after their criminal case is closed. Situated at the intersection of the academic and advocacy communities, the Center provides a variety of research and practice materials aimed at legal and policy advocates, courts, scholars, lawmakers, and those most directly affected by criminal justice involvement. It also provides news and commentary about this dynamic area of the law.

Through our Restoration of Rights Project (RRP) we describe and analyze the various laws and practices relating to criminal record relief in each U.S. jurisdiction. In addition to these state-by-state profiles, a series of 50-state comparison charts and periodic reports on new enactments make it possible to see national patterns and emerging trends in official efforts to mitigate the adverse impact of a criminal record. We have recently begun consulting in support of state law reform efforts, and in 2019 led a successful effort to develop a model law on access to and use of non-conviction records. In addition, we participate in court cases challenging specific collateral consequences, and engage with social media and journalists on these issues.

We welcome tips about relevant current developments—including judicial decisions and new legislation—as well as proposals for projects on topics related to collateral consequences and criminal records, and encourage submission of analytical pieces for posting on the CCRC website. Contact us here.

Board of Directors:

Gabriel "Jack" Chin – *Professor of Law at the UC Davis School of Law, Jack is one of the leading academic authorities on collateral consequences. He served as reporter for the Uniform Collateral Consequences of Conviction Act, and the ABA Standards on Collateral Sanctions and Discretionary Disqualification.*

Nora V. Demleitner – *Nora is the Roy L. Steinheimer Jr. Professor of Law at Washington and Lee University School of Law, and served as*