

COMMITTEE BILL ANALYSIS

Bill: Senate Bill 391

Printer's No.: 327

Sponsor: Senator Solobay

Prepared by: Gregg Warner

Synopsis: This bill amends the provision of the Criminal History Record Information Act relating to expungement, section 9122 of the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes, to permit the expungement of conviction data for certain misdemeanors of the third and second degrees.

Summary: Under this legislation, a person may ask the court to expunge his record of conviction for a misdemeanor of the third degree or an offense which carries a maximum sentence of not less than 90 days and not more than one year, if the person has been free of arrest or prosecution for seven years.

In addition, a person may ask the court to expunge his record of conviction for a misdemeanor of the second degree committed when the individual was less than 25 years of age or an offense which carries a maximum penalty of two years but a minimum penalty of greater than one year, if the person has been free of arrest or prosecution for ten years following final release from confinement or supervision.

Even though the offense may be graded as a third or second degree misdemeanor, the legislation does not allow expungement for a person who has been convicted of the following:

- An offense punishable by imprisonment for more than two years.
- Four or more offenses punishable by imprisonment for one or more years.
- Possession of a firearm or other dangerous weapon in a court facility which is graded as a misdemeanor of the third degree (18 Pa.C.S. §913).
- Simple assault (18 Pa.C.S. §2701).
- Sexual intercourse with an animal (18 Pa.C.S. §3129).
- Impersonating a public servant (18 Pa.C.S. §4912).
- Intimidation of a witness or victim (18 Pa.C.S. §4952).
- Retaliation against a witness, victim or party (18 Pa.C.S. §4953).
- Cruelty to animals (18 Pa.C.S. §5511).
- A violation of the Uniform Firearms Act (18 Pa.C.S. Ch. 61).
- An offense which requires a sex offender to register (42 Pa.C.S. Ch. 97 Subch. H).

Effective date

This act takes effect in 60 days.

Background: According to the sponsor “A low-level misdemeanor in a person’s past can often serve as a continual barrier when seeking work, long after they have completed their sentence. My legislation proposes that the Commonwealth join a growing number of states that have expanded their expungement laws to reduce the period during which a minor criminal record can punish people. This legislation would benefit not just former offenders, but Pennsylvania as a whole, by countering high rates of recidivism, relieving an overburdened pardon system, and providing an opportunity for ex-offenders to join our workforce.”

Not automatic

Expungement is not automatic; it would still be granted solely at the discretion of the court.

Current law

Under 18 Pa.C.S. §9122, a person’s criminal history record information may be expunged, at the court’s discretion, when the person reaches age 70 and the person has been arrest and prosecution-free for ten years following his release from confinement or the end of his probation or parole; the person has been dead for three years; or when an individual petitions the court for the expungement of a summary offense and has been free of arrest or prosecution for five years following the conviction for that offense.

Legislative history

In 2007 the Senate Judiciary Committee held a public hearing to receive testimony relating to the expungement of criminal records (Senate Bill 232) and the use of criminal records for employment (Senate Bill 1060 of the 2005-2006 session). Senate Bill 232, which expanded the grounds for expungement to summary offenses and certain misdemeanors, was amended by the Senate to apply to summary offenses only. The House of Representatives passed House Bill 1543 expanding the grounds for expungement to summary offenses and certain misdemeanors. Given the amendment to Senate Bill 232, the Senate Judiciary Committee amended House Bill 1543 to apply to summary offenses only. House Bill 1543 became 2008 Act 134. In addition to allowing expungement for summary offenses, the legislation made clear that the criminal record information could be maintained for investigative purposes and determining the grading of subsequent offenses.

During the 2009-2010 session this legislation was introduced as House Bill 264. The House of Representatives passed House Bill 264 by a vote of 104 to 91. The Senate Judiciary Committee reported House Bill 264 from committee but the Senate re-referred the bill to the Senate Appropriations Committee where it remained for the rest of the session. House Bill 264 was limited to third degree misdemeanors and included provisions relating to the expungement of juvenile records.

During the 2011-2012 session this legislation was introduced as Senate Bill 1220 and applied to certain misdemeanors of the third and second degree. The Senate Judiciary Committee reported Senate Bill 1220 from committee but the Senate re-referred the bill to the Senate Appropriations Committee where it remained for the rest of the session. The expungement of juvenile records was addressed in separate legislation, Senate Bill 850, 2012 Act 204.

Senate Bill 391 is very similar to Senate Bill 1220.