

# Legal Standards for Expungements in Pennsylvania

## Statutes and Rules

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Title 18 Pa.C.S.A. Crimes and Offenses ([Refs & Annos](#))

Part III. Miscellaneous Provisions

■ [Chapter 91](#). Criminal History Record Information ([Refs & Annos](#))

■ [Subchapter C](#). Dissemination of Criminal History Record Information ([Refs & Annos](#))

### ➔ § 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) 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.

**(b) Generally.**--Criminal history record information may be expunged when:

(1) An individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision.

(2) An individual who is the subject of the information has been dead for three years.

(3)(i) An individual who is the subject of the information 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.

(ii) Expungement under this paragraph shall only be permitted for a conviction of a summary offense.

**(b.1) Prohibition.**--A court shall not have the authority to order expungement of the defendant's arrest record where the defendant was placed on Accelerated Rehabilitative Disposition for a violation of any offense set forth in any of the following where the victim is under 18 years of age:

[Section 3121](#) (relating to rape).

[Section 3122.1](#) (relating to statutory sexual assault).

[Section 3123](#) (relating to involuntary deviate sexual intercourse).

[Section 3124.1](#) (relating to sexual assault).

[Section 3125](#) (relating to aggravated indecent assault).

[Section 3126](#) (relating to indecent assault).

[Section 3127](#) (relating to indecent exposure).

[Section 5902\(b\)](#) (relating to prostitution and related offenses).

[Section 5903](#) (relating to obscene and other sexual materials and performances).

[Subsections (c) through (f) omitted.]

Title 18 Pa.C.S.A. Crimes and Offenses (Refs & Annos)

Part III. Miscellaneous Provisions

■ Chapter 91. Criminal History Record Information (Refs & Annos)

■ Subchapter C. Dissemination of Criminal History Record Information (Refs & Annos)

➔ **§ 9123. Juvenile records**

(a) Expungement of juvenile records.--Notwithstanding the provisions of section 9105 (relating to other criminal justice information) and except upon cause shown, expungement of records of juvenile delinquency cases wherever kept or retained shall occur after 30 days' notice to the district attorney, whenever the court upon its motion or upon the motion of a child or the parents or guardian finds:

(1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court;

(2) six months have elapsed since the final discharge of the person from supervision under a consent decree and no proceeding seeking adjudication or conviction is pending;

(3) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not

been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(4) the individual is 18 years of age or older, the attorney for the Commonwealth consents to the expungement and a court orders the expungement after giving consideration to the following factors:

(i) the type of offense;

(ii) the individual's age, history of employment, criminal activity and drug or alcohol problems;

(iii) adverse consequences that the individual may suffer if the records are not expunged; and

(iv) whether retention of the record is required for purposes of protection of the public safety.

(b) Notice to prosecuting attorney.--The court shall give notice of the applications for the expungement of juvenile records to the prosecuting attorney.

(c) Dependent children.--All records of children alleged to be or adjudicated dependent may be expunged upon court order after the child is 21 years of age or older.

### **Pa.R.Crim.P. Rule 320**

Purdon's Pennsylvania Statutes and Consolidated Statutes Currentness

Rules of Criminal Procedure (Refs & Annos)

☐ Chapter 3. Accelerated Rehabilitative Disposition (Ard) (Refs & Annos)

☐ Part B. Court Cases

➡ Rule 320. Expungement Upon Successful Completion of ARD Program

(A) When the judge orders the dismissal of the charges against the defendant, the judge shall also order the expungement of the defendant's arrest record, subject to the provisions of paragraph (B).

(B) If the attorney for the Commonwealth objects to the automatic expungement, the objections shall be filed with the judge, together with the objections to dismissal, if any, within 30 days after service of a motion for dismissal under Rule 319, and copies of the objections shall be served on the defendant or the defendant's attorney.

(C) If the objections are filed, the judge shall hold a hearing on the objections, affording all parties an opportunity to be heard.

## Relevant Case Law

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***Commonwealth v. Wexler*, 494 Pa. 325 (1981)** – When determining whether to grant an expungement, the court needs to balance the harm to the individual caused by the record against the interests of the Commonwealth in preserving the record. A non-exhaustive list of the factors to balance are: 1) the strength of Commonwealth’s case against petitioner; 2) reasons the Commonwealth gives for wishing to retain the arrest record; 3) the petitioner’s age, employment history and criminal record; 4) the amount of time that has elapsed between the arrest and the filing of a petition; and 5) the specific adverse consequences the petitioner may endure should the petition be denied. The Commonwealth bears the burden of proving that the record should be maintained. “The mere assertion of a general interest in maintaining accurate records of those accused of crime is not convincing.”

***Commonwealth v. Chacker*, 467 A.2d 386 (Pa. Super. 1983)** – Following *Wexler*, reaffirms that the burden of proof is on the Commonwealth to show why the record should be maintained. Making out a *prima facie* case of guilt at the preliminary hearing, with nothing more, is not enough to meet the Commonwealth’s burden. Also seems to stand for the proposition that if the Commonwealth fails to present any evidence at the expungement hearing, it cannot meet its burden.

***Commonwealth v. McKee*, 516 A.2d 6 (Pa. Super. 1986)** – The Commonwealth presented enough evidence to meet its burden by showing (through an expert witness and other “persuasive evidence”) that the past acts of the petitioner amounted to an identifiable pattern of behavior. The petitioner had twice been acquitted of rape based on his assertion that the intercourse was consensual. The Commonwealth also asserted, and the court accepted, a need to maintain the arrest record because it contained information about confidential informants used in the case who may later need to be qualified in a warrant. The court focused on the fact that there were multiple arrests for similar offenses and that the expungement was sought soon after acquittal.

***Commonwealth v. C.S.*, 517 Pa. 90 (1987)** – If a past offense is pardoned, an expungement must also be granted by the Court of Common Pleas for the offense.

***Commonwealth v. D.M.*, 548 Pa. 131 (1996)** – In cases of acquittal, the petitioner is automatically entitled to have his arrest record expunged. In cases that are terminated without conviction, such as through ARD and nolle prossed cases, *Wexler* applies.

***Commonwealth v. Maxwell*, 737 A.2d 1243 (Pa. Super. 1999)** - At a *Wexler* hearing, the Commonwealth bears the burden of affirmatively justifying retention of the arrest record, because it did not, could not, or choose not to bear its burden of proof beyond a reasonable doubt at trial.

***Commonwealth v. Lutz*, 788 A.2d 993 (Pa. Super. 2001)** – If the petitioner has charges dismissed in a plea agreement, he is not entitled to expungement of those charges. This is particularly true where Appellant has already been bound over for trial on all charges, the Commonwealth is fully prepared to proceed against Appellant on all charges at trial, and Appellant admits to facts that could essentially constitute culpability for the dismissed charges.

***Commonwealth v. Rodland*, 871 A.2d 216 (Pa. Super. 2005)** – In a case where there is partial acquittal (some guilty charges and some not-guilty), *D.M.* controls unless the court can show impracticality or impossibility of partial expungement (redaction). In a plea deal situation involving nolle prossed charges, the court needs to examine the agreement itself to see whether it is appropriate to expunge the nolle prossed charges.

***Commonwealth v. Hanna*, 964 A.2d 923 (Pa. Super. 2009)** – In a situation where the petitioner has plead guilty to some charges and the others are dismissed/withdrawn/nolle prossed, the Commonwealth bears the heavy burden to show that *Lutz* applies; if it is unable to bear that burden, *Wexler* applies. In footnote 5, further articulate the public policy considerations of the value of expungement. Questions whether *Lutz* should remain good law.

***Commonwealth v. V.A.M.*, 2009 Pa Super 156 (Pa. Super. 2009)** – V.A.M. was convicted of rape in 1986 on the basis of the victim making an id, a sketch, and the testimony of the victim; 10 years later, on the basis of DNA testing that failed to directly indicate VAM as the perpetrator, VAM received a new trial. Before the new trial, the DA nolle prossed the charges because it could not locate the victim to retestify; VAM applied for an expungement. At the expungement trial, the Commonwealth argued that the strength of its original case should act to deny the expungement. The lower court granted the expungement, considering only the first two *Wexler* factors. The Superior Court overturned the lower court and reaffirmed that *Wexler* test was to be applied, rejected the Commonwealth's argument that maintenance of the record was important to show propensity to commit future crimes under *Wexler*, and found that the Commonwealth failed to meet its burden under *Wexler* by not addressing any factors but the strength of the underlying case.

***In the Interest of A.B.*, 2009 Pa Super 252 (Pa. Super 2009)** – Expungement of a juvenile record is controlled by 18 Pa.C.S.A. § 9123(a)(3), not by *Wexler*. If the criteria of 9123(a)(3) are met, the expungement *shall* be granted. This applies to adjudications of delinquency, not convictions.

***Commonwealth v. Wubbe*, 59 Cumb. 34 (2009)** – Construed Section 9122(b)(3)(i) as meaning that a summary offense conviction could be expunged if the petitioner has been crime-free for the last five years before the filing of the petition, not the five-year period immediately following a summary conviction.

***Sammons v. Pennsylvania State Police*, 931 A.2d 784 (Pa. Commw. Ct. 2007)** – The Pennsylvania State Police has no discretion in whether or not it should expunge the record of an individual who receives a court order of expungement under 18 Pa.C.S. § 9122(b), relating to expungements of persons over 70 years old. The PSP was ordered to expunge the record.