



Governor Wolf and PA lawmakers committed to giving a “clean slate” to persons convicted of “non-violent” offenses
Fuller understanding of sealing convictions related to Endangering the Welfare of Children (EWOC) required before well-intentioned legislation hits Wolf's desk

April 28th - Bipartisan Pennsylvania lawmakers and a diverse coalition of stakeholders have come together to support (and likely fast track to the Governor’s desk) legislation aimed at providing a “clean slate” for individuals convicted of certain misdemeanor and summary criminal offenses.

Specifically the introduced legislation would “automatically seal” the records of a person convicted of “non-violent misdemeanors” 10 years after the conviction.¹ A person’s criminal record, related to such misdemeanors (or summary offenses after 5 years), would still be subject to review by courts and law enforcement. However, this information would not be made available upon a person applying for employment, housing or educational pursuits.

Community Legal Services (CLS) of Philadelphia underscores clean slate “is a policy of automatically sealing certain criminal records so that they are not available to the public” and that such offenses then “need not be reported to employers, landlords, or others.” Also such a criminal record could not “be used to deny state occupational licenses.”²

Prime sponsors of the bipartisan legislation include Senators [Scott Wagner \(R-York\)](#) and [Anthony Williams \(D-Philadelphia\)](#)³ along with Representatives [Sheryl M. Delozier \(R-Cumberland\)](#) and [Jordan Harris \(D-Philadelphia\)](#).⁴

[Senate Bill 1197](#) has over 20 co-sponsors in the Pennsylvania Senate and [House Bill 1984](#) has 38 co-

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Foundation for “clean slate” enacted earlier this year

Earlier this year, Governor Tom Wolf signed Senate Bill 166 into law.⁵ The legislation was sponsored by [Senate Judiciary Chairman Stewart Greenleaf \(R-Montgomery, Bucks\)](#).

¹<http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20150&cosponId=19851>

² <https://clsphila.org/news/clean-slate-bills-introduced-pennsylvania>

³ *Ibid.*

⁴ <http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20150&cosponId=19849>

⁵ <https://www.governor.pa.gov/governor-wolf-signs-criminal-history-sealing-expansion-bill-into-law/>

Act 5 of 2016, as advanced by Greenleaf and signed by Wolf, already provides that a court of common pleas can limit access to the person's misdemeanor criminal conviction history if the person "has been free of arrest or prosecution following conviction or final release from confinement or supervision, whichever is later." The caveat (and hurdle) is that the person, who was previously convicted, must petition the court to make the person's criminal records off limits to entities other than the courts or law enforcement.

The "clean slate" bills builds upon Act 5 making the sealing of the person's conviction automatic when 10 years "have passed since the final conviction without subsequent felony or misdemeanor convictions."

Senate Bill 1197 and House Bill 1984 declare that as a matter of policy, the Commonwealth "should provide a clean slate remedy to create a strong incentive for avoidance of recidivism by offenders, to provide hope for the alleviation of the hardships of having a criminal record by offenders who are trying

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Endangering the Welfare of Children convictions could become sealed

The bipartisan legislation would not permit automatic sealing of a conviction linked to an Article B (of Title 18 – the Crimes Code) offense "relating to offenses involving danger to the person" or offenses requiring registration stemming from a sexually-based offense. Article B offenses include criminal homicide, crimes against unborn children, assault, kidnapping, human trafficking, and sexual offenses.⁶

The clean slate bills, however, would permit sealing – at 10 years – of certain convictions that involve violence against children, but are presently not found within Title 18's Article B. Most notably Endangering the Welfare of Children (EWOC) is not within Article B.

EWOC is defined as when "A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person" then "knowingly endangers the welfare of the child by violating a duty of care, protection or support." EWOC also includes when a "person, in an official capacity, prevents or interferes with the making of a report of suspected child abuse." EWOC is graded as a misdemeanor unless "there is a course of conduct of endangering the welfare of a child" then it is graded as a felony of the third degree.

Several other misdemeanor-level convictions involving children (e.g., concealing the death of a child and dealing in infant children) would also be applicable for automatic seal from public view.

In 2015 according to the Pennsylvania Commission on Sentencing, there were

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Pennsylvania employment bans are already confusing, statutes in conflict

The championing of the clean slate legislation arrives as Pennsylvania remains conflicted about how best to screen and then apply the consequences of convictions, including those graded as misdemeanors, when an individual seeks to be employed caring for children and other vulnerable populations.

In December 2015, the Pennsylvania Department of Human Services (DHS) joined with the Pennsylvania Department of Education (PDE) and the Pennsylvania Commission on Crime and Delinquency (PCCD) in releasing a report to the General Assembly entitled ***Act 153 of 2014 Report: Study and Recommendations on Employment Bans for Those Having Contact with Children.***

⁶ <http://www.legis.state.pa.us/WU01/LI/LI/CT/PDF/18/18.PDF>

The General Assembly required this study and development of recommendations when it amended the Child Protective Services Law (CPSL) in 2014 to require specific and more frequent comprehensive background checks of a diversity of individuals seeking to be employed or volunteer with children.

As DHS/PDE/PCCD were issuing their report last December, Pennsylvania’s Commonwealth Court issued a unanimous opinion which continued to expose Pennsylvania’s employment screening and prohibitive hire provisions within the Older Adult Protective Services Act (OAPSA) to scrutiny. It is anticipated the

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Included below is a **preliminary** chart that attempts to track the December 2015 DHS/PDE/PCCD recommendations. The **yellow** column is the recommendations alongside the current employment ban requirements in the CPSL and PSC. Unless otherwise stipulated existing bans in the CPSL and PSC are lifetime bans. There are many nuances to the crimes (e.g., only certain sections or subsections being applied in current law or being recommended going forward) so this chart should be seen as a guidepost to the recommendations.

Offense (as defined in Title 18)	<u>Description, grading of offense</u>	Current CPSL	Current PSC	RECOMMENDED Length of Ban <i>(12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)</i>
Founded reports of child abuse or neglect	A report of child abuse or neglect that has been substantiated with the person named as a perpetrator of a founded report.	YES 5 years	YES 5 years	10 YEARS
Indicated reports of child abuse or neglect	A report of child abuse or neglect that has been substantiated with the person named as a perpetrator in an indicated report.	NO	NO	5 YEARS
Criminal homicide (Chapter 25)	<u>To keep reading, become a CJAR Subscriber!</u>			
Criminal homicide (Chapter 25)	<u>To keep reading, become a CJAR Subscriber!</u>			
Aggravated assault (Chapter 27)	<u>To keep reading, become a CJAR Subscriber!</u>			
Simple assault (Chapter 27)				
Recklessly endangering another person (Chapter 27)				
Stalking (Chapter 27)				
Kidnapping (Chapter 29)				
Unlawful restraint (Chapter 29)				
False imprisonment (Chapter 29)				
False imprisonment (Chapter 29)				

Offense (as defined in Title 18)	<u>Description, grading of offense</u>	Current CPSL	Current PSC	RECOMMENDED Length of Ban (12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)
Interference with custody of children (Chapter 29) - felony				
Interference with custody of children (Chapter 29) - misdemeanor				
Concealment of whereabouts of a child (Section 2909)				
Luring a child into a motor vehicle or structure (Section 2910)				
Trafficking in individuals - Chapter 3011(b)				
Rape (Section 3121)				
Statutory sexual assault (Section 3122.1)				
Involuntary deviate sexual intercourse (section 3123)				
Sexual assault (Section 3124.1)				
Institutional sexual assault (Section 3124.2)				
Sexual assault by sports official/volunteer or employee of nonprofit organization (Section 3124.3)				
Aggravated indecent assault (Section 3125)				
Indecent assault (Section 3126)				
Indecent Exposure (Section 3127)				
Sexual intercourse with animal (Section 3129)				
Unlawful dissemination of intimate image (Section 3131)				
Arson (Section 3301)				
Burglary (Section 3502)				
Robbery (Section 3701)				
Incest (Section 4302)				
Concealing death of a child (Section 4303)				
Endangering the welfare of children (section 4304)				

Offense (as defined in Title 18)	<u>Description, grading of offense</u>	Current CPSL	Current PSC	RECOMMENDED Length of Ban <i>(12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)</i>
Dealing in infant children (Section 4305)				
Prostitution (Section 5902 b.1)				
Prostitution (Section 5902(a), (b), (d) and (e))				
Obscene and other sexual materials and performances (Section 5903)				
Corruption of minors [Section 6301(a)(1)(ii)]				
Sexual abuse of children (Section 6312)				
Unlawful contact with a minor (Section 6318)				
Solicitation of minors to traffic drugs (Section 6319)				
Sexual exploitation of children (Section 6320)				
Felony offense under the Act of April 14, 1972 (P.L. 233, NO 64), known as the Controlled Substance, Drug, Device and Cosmetic Act.				
Controlled Substance, Drug, Device and Cosmetic Act				
Catch all felonies of 1 st , 2 nd , 3 rd degree				
Catch all misdemeanors of the 1 st degree				