

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

v.

MICAEL S. GEORGE, SR.,
Defendant/Petitioner

:
:
:
:
:
:

No. 057 CR 2007

Joseph J. Matika, Esquire,
Assistant District Attorney

Counsel for Commonwealth

Glenn M. Goodge, Esquire

Counsel for Petitioner

Criminal Law - Criminal Records - Expungement - Wexler Balancing
Test - Criminal History Record Information Act
(CHRIA) - Identifying What Information is Subject
to Expungement

1. Expungement has as its purpose the protection of individuals against the hardships which may result from criminal records of an arrest and prosecution.
2. The right to seek expungement is an adjunct of due process and not dependent on express statutory authority. Whether a record will be expunged depends primarily on how the prosecution ended.
3. Absent express statutory authority, there is no right to expungement when the accused was convicted of the offense charged.
4. An accused who has been acquitted of the offense charged has an automatic right to expungement.
5. When criminal charges are disposed of without verdict, expungement depends on the exercise of judicial discretion - the individual's right to be free from the harm attendant to an arrest record must be balanced against the Commonwealth's interest in preserving such records.
6. Factors to be considered and balanced when there is neither a conviction nor acquittal are: (1) strength of the Commonwealth's case against the petitioner; (2) the reasons the Commonwealth gives for wishing to retain the records; (3) the petitioner's age, criminal record, and employment history; (4) the length of time that has elapsed between

the arrest and the petition to expunge; and (5) the specific adverse consequences the petitioner may endure should expungement be denied. This list is not exclusive.

7. Balancing of those factors relevant to the grant or denial of an expungement request requires that a hearing be held of which the District Attorney must be given a minimum of ten days notice. At this hearing, the burden of affirmatively justifying retention of the arrest record is upon the Commonwealth. This burden is not met by the Commonwealth's generalized concern for retention of records applicable to all defendants.
8. Where a defendant pleads guilty to some charges and other charges involving the same incident are nolle prossed, the trial court may in the proper exercise of its discretion expunge the record of those charges which were nolle prossed.
9. A nolle prosequi is qualitatively different from the dismissal of charges pursuant to a plea agreement. When the Commonwealth nolle prosses charges it implicitly admits that it cannot sustain its burden of proof.
10. The Criminal History Record Information Act provides for the "collection, compilation, maintenance, and dissemination of criminal history record information by [criminal justice agencies]." Pursuant to this Act, expungement involves the removal of some, but not necessarily all, criminal record information.
11. Criminal record information includes only: (1) identifiable descriptions; (2) dates and notations of arrests; (3) the criminal charges; and (4) dispositions. Excepted from expungement under the Act is investigative and intelligence information.

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MEMORANDUM OPINION

Nanovic, P.J. - April 6, 2010

PROCEDURAL AND FACTUAL BACKGROUND

On October 17, 2006, the Defendant, Micael S. George, Sr., was charged with criminal conspiracy to commit aggravated assault¹, simple assault², reckless endangerment³, and disorderly conduct⁴. All charges were bound over to court and are contained in the filed information. This information was later amended by agreement of the parties to include an additional charge, that of criminal conspiracy to commit simple assault⁵, a lesser included offense to the existing charge of conspiracy. On May 5, 2008, as part of a negotiated plea agreement, the Defendant entered a plea to the charge of criminal conspiracy to commit simple assault with the remaining charges to be *nolle prossed*. The Defendant was immediately sentenced to two years of probation.

On June 27, 2008, the District Attorney requested and was granted leave to *nolle pross* the remaining charges contained

¹ 18 Pa.C.S.A. § 903(a)(1) (related to Section 2702(a)(1)).

² 18 Pa.C.S.A. § 2701(a)(1).

³ 18 Pa.C.S.A. § 2705.

⁴ 18 Pa.C.S.A. § 5503(a)(1).

⁵ 18 Pa.C.S.A. § 903(a)(1) (related to Section 2701(a)(1)).

in the information filed against the Defendant. In this request, the District Attorney stated that "it would not be in the best interest of the Commonwealth to proceed with the prosecution of th[o]s[e] matter[s]." Subsequently, after we were advised by the Adult Probation Office that the Defendant had fully complied with the conditions of his probation, on May 12, 2009, we approved the Defendant's early termination from probation. Two months later, on July 16, 2009, the Defendant filed the instant Motion for Partial Expungement which is now before us. In this motion, the Defendant requests expungement of the criminal records of his arrest and prosecution related to those charges which were *nolle prossed*; he does not seek expungement of the records related to the charge to which he pled guilty.

A hearing on the Defendant's motion was held before the Court on November 12, 2009. At that time, the only witness presented was the Defendant himself. The Defendant has been employed in the financial services business for more than thirty years; however, in the beginning of 2007, he was denied a promotion because of the pending criminal charges in this case and subsequently lost his job. The Defendant is bilingual and well educated: he has a bachelor's degree in public administration and holds an MBA. The Defendant is fifty-eight years old and a man of color. Since November 2007, he has been

actively seeking employment without success. Though he has been interviewed several times, once a background check is performed and the record of his felony charge surfaces, his prospects for employment end.

The Commonwealth has taken no position with respect to the Defendant's expungement request.

DISCUSSION

The law of expungement is more complicated than it at first appears, in part, because there is no single standard for expunging criminal records and, in part, because what information is expunged, and what is meant by expungement, is commonly misunderstood. Fundamentally, expungement, to some degree, is necessitated by constitutional safeguards; however, the right and extent of what is expunged is often created and delineated by statute, as well as by the rules of criminal procedure.⁶

⁶ As an example, the Rules of Criminal Procedure pertaining to ARD permit expungement as soon as a participant completes the requirements of the program. Pa.R.Crim.P. 320. This is further refined in the context of ARDs related to driving under the influence charges in that, because of the ten-year lookback period for recidivism, PennDOT is statutorily authorized to maintain a record of the acceptance of ARD for a period of ten years from the date of notification. 75 Pa.C.S.A. § 1534(b) ("This record shall not be expunged by order of court or prior to the expiration of the ten-year period."). Consequently, a DUI-ARD participant is prohibited from seeking expungement prior to the expiration of this ten-year period, despite his right under the Rules of Criminal Procedure to be granted expungement in advance of that date. See Commonwealth v. M.M.M., 779 A.2d 1158, 1165 (Pa.Super. 2001), *appeal denied*, 793 A.2d 906 (Pa. 2002).

Likewise, the Uniform Controlled Substance, Drug, Device, and Cosmetic Act provides for the automatic expungement of any records of arrest or prosecution for criminal offenses arising under the Act, excluding, *inter*

"The purpose of expungement is to protect an individual from the difficulties and hardships that may result from an arrest on record including the harm to one's reputation and opportunities for advancement in life." ⁷ Doe v. Zappala,

alia, the expungement of records where a person was charged with PWID, when the charges are withdrawn or dismissed or when the person was acquitted of the charges. 35 P.S. § 780-119. This Act further states that such expungement as a matter of right is available to any person only once. See id.

The expungement of juvenile records is provided for at 18 Pa.C.S.A. § 9123. See also In re A.B., 987 A.2d 769, 780 (Pa.Super. 2009) (mandating the expungement of juvenile records upon satisfaction of the statutory criteria, "except upon cause shown" established by the Commonwealth).

Expungement of an indicated report of child abuse under the Child Protective Services Law upon good cause shown is provided for in 23 Pa.C.S.A. § 6341. See also F.V.C. v. Department of Public Welfare, 987 A.2d 223, 228 (Pa.Cmwlt. 2010) (stating that "[t]he county agency bears the burden of proof in an action for expunction of an indicated report of child abuse, and in order to discharge this burden, it must present substantial evidence that the report is accurate.").

⁷ Judge Hoffman of the Superior Court described these disabilities as follows:

The harm ancillary to an arrest record is obvious: Information denominated a record of arrest, if it becomes known, may subject an individual to serious difficulties. Even if no direct economic loss is involved, the injury to an individual's reputation may be substantial. Economic losses themselves may be both direct and serious. Opportunities for schooling, employment, or professional licenses may be restricted or nonexistent as a consequence of the mere fact of an arrest, even if followed by acquittal or complete exoneration of the charges involved. An arrest record may be used by the police in determining whether subsequently to arrest the individual concerned, or whether to exercise their discretion to bring formal charges against an individual already arrested. Arrest records have been used in deciding whether to allow a defendant to present his story without impeachment by prior convictions, and as a basis for denying release prior to trial or an appeal; or they may be considered by a judge in determining the sentence to be given a convicted offender.

Commonwealth v. Mallone, 366 A.2d 584, 587-88 (Pa.Super. 1976) (citation and quotation marks omitted).

In consequence of these effects, the right to seek expungement of an arrest record "is an adjunct of due process and is not dependent upon express statutory authority." Commonwealth v. V.A.M., 980 A.2d 131, 134 (Pa.Super. 2009), appeal granted, 2010 WL 1233808 (Pa. 2010).

[I]t is not hyperbole to suggest that one who is falsely accused is subject to punishment despite his innocence. Punishment of the innocent is the clearest denial of life, liberty and property without due process of law. To remedy such a situation, an individual must be afforded a hearing to present his claim that he is entitled to an expungement-that is, because an innocent individual has a right to be

987 A.2d 190, 194 (Pa.Cmwlth. 2009). Whether an individual charged with a crime is entitled to the protection afforded by expungement depends primarily on how the prosecution ended.

1) If the accused was convicted of the offense charged, there is no right to expunge either the conviction, or the related record, absent express statutory authorization. See Commonwealth v. Hanna, 964 A.2d 923, 925 (Pa.Super. 2009); see also 18 Pa.C.S.A. § 9122(b) (directing that expungement may occur only where the "subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years" or where that individual "has been dead for three years");

2) If the accused was acquitted, he is entitled to automatic expungement. See Commonwealth D.M., 695 A.2d 770, 772 (Pa. 1997) (holding that the Wexler balancing test, discussed below, "is unnecessary, indeed inappropriate, when a petitioner has been tried and acquitted"); see also Commonwealth v. B.C., 936

free from unwarranted punishment, a court has the authority to remedy the denial of that right by ordering expungement of the arrest record. Commonwealth v. G.C., 581 A.2d 221, 223 (Pa.Super. 1990). Nevertheless, though "expungement affords an individual some protection from the difficulties and hardships that may result from an arrest on record, it cannot entirely protect him from the consequences of his prior actions." Doe v. Zappala, 987 A.2d 190, 194 (Pa.Cmwlth. 2009); see also Commonwealth v. Butler, 672 A.2d 806, 809 (Pa.Super. 1996) (noting that "expungement is limited to the erasure of the record and does not erase the memory of those personally involved").

A.2d 1070, 1073 (Pa.Super. 2007) (“[T]he law offers no greater absolution to an accused than acquittal of the charges [Therefore], expungement of an arrest record, after being found not guilty, is not a matter of judicial clemency.”); cf. Commonwealth v. C.S., 534 A.2d 1053, 1054 (Pa. 1987) (holding that expungement is required when a pardon has been granted since “[a] pardon without expungement is not a pardon”);

3) If the charges were disposed of without verdict (i.e., there is neither a conviction nor acquittal), the court must exercise its discretion. “In determining whether justice requires expungement, the Court, in each particular case, must balance the individual’s right to be free from the harm attendant to maintenance of the arrest record against the Commonwealth’s interest in preserving such records.”

Commonwealth v. Wexler, 431 A.2d 877, 879 (Pa. 1981).

See generally Hanna, 964 A.2d at 925-27; Commonwealth V.A.M., 980 A.2d 131, 134-35 (Pa.Super. 2009), *appeal granted*, 2010 WL 1233808 (Pa. 2010). Additionally, before an order can be entered expunging non-conviction data, the Court must provide a minimum of ten days’ prior notice to the District Attorney of the application for expungement. 18 Pa.C.S.A. § 9122(f); Hunt v. Pennsylvania State Police, 983 A.2d 627, 635 (Pa. 2009)

(finding that standing to challenge the merits of an expungement order has been conferred by statute upon the District Attorney who the legislature has appointed to protect the interests of the Commonwealth).

In D.M., the Pennsylvania Supreme Court reiterated the authority of Wexler and "the balancing test approved therein as the means of deciding petitions to expunge the records of *all* arrests which are terminated without convictions except in cases of acquittals." 695 A.2d at 772 (emphasis ours). The factors set forth in Wexler are neither exclusive nor exhaustive. They are: (1) the strength of the Commonwealth's case against the petitioner; (2) the reasons the Commonwealth gives for wishing to retain the records; (3) the petitioner's age, criminal record, and employment history; (4) the length of time that has elapsed between the arrest and the petition to expunge; and (5) the specific adverse consequences the petitioner may endure should expungement be denied. See 431 A.2d at 879.

Balancing of the Wexler factors, and any relevant additional considerations presented to the Court, requires a hearing. At this hearing, "the Commonwealth bears the burden of affirmatively justifying retention of the arrest record, because it did not, could not, or chose not to bear its burden of proof beyond a reasonable doubt at trial." Commonwealth v. Lutz, 788 A.2d 993, 999 (Pa.Super. 2001). See also Commonwealth v.

A.M.R., 887 A.2d 1266, 1268 (Pa.Super. 2005) ("[W]here the Commonwealth has dropped the charges against a petitioner or otherwise has failed to carry its burden of proof beyond a reasonable doubt, the Commonwealth must bear the burden of showing why an arrest record should not be expunged."). "Where *nolle prosequere* is the reason for a termination without conviction, the trial court is to analyze the case according to the factors set forth in a controlling statute or in [Wexler]." Commonwealth v. Rodland, 871 A.2d 216, 219 (Pa.Super. 2005), *appeal denied*, 923 A.2d 410 (Pa. 2007).

"[T]he Commonwealth's generalized concern for retention of records, applicable to all defendants, is not a sufficient basis for denying an expunction petition . . . nor is the retention of records to inhibit further crimes of the same sort a compelling reason." Commonwealth v. McKee, 516 A.2d 6, 9 (Pa.Super. 1986), *appeal denied*, 527 A.2d 537 (Pa. 1987). "A judge's conclusion at the preliminary hearing that the Commonwealth had presented a *prima facie* case at that time is not dispositive of the issue to expunge." Id. at 8. Further, a guilty plea to a lesser charge does not necessarily imply a defendant's guilt to other charges that have been dropped and does not, by itself, shift the burden of proof to the defendant.

See Lutz, 788 A.2d at 999.⁸ Moreover, beyond the particular reasons proffered by a defendant for why his criminal records should be expunged, the court may take judicial notice of the potential harm an individual may suffer as a result of the Commonwealth's retention of an arrest record. See McKee, 516 A.2d at 10.

Because the Defendant requests expungement of the record information of charges which never went to trial, the law requires that we balance the competing interests of the Commonwealth and those of the Defendant. In doing so, we note first that this case, like Commonwealth v. Maxwell, 737 A.2d 1243 (Pa.Super. 1999), concerns a plea agreement in which the Defendant pled guilty to some charges and the remaining charges were *nolle prossed*. In Maxwell, the Superior Court concluded that notwithstanding a guilty plea to related charges involving the same incident, the trial court had the authority to expunge the record of those charges which were *nolle prossed*. See id. at 1245. Because the trial court had not done so, the Superior Court remanded the case to the trial court for a hearing as outlined in Wexler. See id.

⁸ However, where a defendant pleads guilty to a greater offense and seeks to expunge the record of lesser included offenses, the result will likely be different since the plea to the greater offense necessarily implies full culpability to the lesser-included offenses. See Commonwealth v. Lutz, 788 A.2d 993, 1000-01 (Pa.Super. 2001).

Here, the Defendant is fifty-eight years old, he has no prior criminal record and his employment history has been exemplary. The Defendant's conduct on the date of the offense was uncharacteristic: the circumstances which resulted in the charges against the Defendant arose when the Defendant decided to confront several individuals who he believed had attacked his son. Unfortunately, the situation turned violent, leading to charges against both the Defendant and his son.

Although the short period of time between his arrest and the filing of his request for expungement mitigates against expungement, Commonwealth v. Persia, 673 A.2d 969, 972 (Pa.Super. 1996), it is also relevant that the Defendant was successfully terminated early from probation. The Commonwealth has offered no specific reasons for retaining the criminal record nor argued against expungement. See Wexler, 431 A.2d at 880-81 (holding that the Commonwealth did not meet its burden of showing why retention of the arrest record was necessary where it failed to provide any analysis of Wexler's particular case or cite any special facts justifying retention of the record). Moreover, the Commonwealth's withdrawal of the charges by *nolle prosequi* represents an admission that there was insufficient evidence to proceed with prosecution. See Lutz, 788 A.2d at

999-1001.⁹ The Defendant's evidence further demonstrated that he has been a law-abiding citizen for more than fifty years and that his arrest record on the *nolle prossed* charges, in particular for the felony charge of criminal conspiracy, has prevented him from obtaining employment. These circumstances, together with our recognition that the Commonwealth's retention of an arrest record in and of itself may cause serious harm to an individual, convince us that the Defendant is entitled to have his arrest record related to the charges which were *nolle prossed* expunged.

The Defendant's motion for partial expungement requests that criminal information related to the charges *nolle prossed* be expunged pursuant to the provisions of the Criminal History Record Information Act (CHRIA or Act), 18 Pa.C.S.A. §§ 9101-9183. In granting this request, we believe it important to comment briefly on what this information consists of. The CHRIA provides for the "collection, compilation, maintenance and dissemination of criminal history record information by [criminal justice agencies]." 18 Pa.C.S.A. § 9102 (Definitions). The Act also sets forth the process by which a

⁹ "A *nolle prosequi* is a voluntary withdrawal by the prosecuting attorney of proceedings on a particular bill or information, which can at anytime be retracted to permit revival of proceedings on the original bill or information." Lutz, 788 A.2d at 999. The implicit admission in a *nolle prosequi* that the Commonwealth cannot sustain its burden of proof makes a *nolle prosequi* qualitatively different from a dismissal pursuant to a plea agreement which is "most often entered into for prosecutorial or judicial economy, or due to the request of the victims." Id. at 1001.

person may expunge criminal record history information. 18
Pa.C.S.A. § 9122 (Expungement).

Contrary to popular belief, expungement does not require the wholesale expungement of documents, regardless of what information they contain, or the destruction of documents or information. Instead, expungement involves the removal of some, not necessarily all, criminal record information. "Criminal History Record Information" is defined in the CHRIA as:

Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom. *The term does not include intelligence information, investigative information . . . or information and records specified in Section 9104 (relating to scope).*

18 Pa.C.S.A. § 9102 (emphasis ours). "Expunge" is defined as:

- (1) To remove information so that there is no trace or indication that such information existed;
- (2) To eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes

Id.

As is evident from its definition, "criminal history record information" expressly excepts certain types of information from expungement, including investigative and

intelligence information.¹⁰ As recently stated by the Commonwealth Court in Zappala:

[A]ll "criminal history record information" is assembled as a result of the performance of inquiries into criminal conduct. What distinguishes "criminal history record information" from "investigative information" is that the former arises from the initiation of a criminal proceeding, i.e., an arrest, whereas the latter is composed of information assembled as a result of the performance of an inquiry into a crime that is still under investigation.^{FN8}

FN8. Thus, once there has been an arrest and the criminal proceedings have begun, information about a case becomes "criminal history record information" to the extent that it falls within the statutory definition. In other words, the initiation of criminal proceedings does not necessarily transform all "investigative information" into "criminal history record information." As indicated above, "criminal history record information" includes only: (1) identifiable descriptions; (2) dates and notations of arrests; (3) the criminal charges; and (4) dispositions.

987 A.2d at 195 (emphasis removed). Therefore, after the initiation of criminal proceedings, only that investigative information which falls within one of these four categories becomes criminal history record information expungeable under the CHRIA. See id.

The order of expungement which accompanies this opinion is intended to comply with the CHRIA. Accordingly, it

¹⁰ "Intelligence information" concerns the "habits, practices, characteristics, possessions, associations or financial status of any individual compiled in an effort to anticipate, prevent, monitor, investigate or prosecute criminal activity." 18 Pa.C.S.A. § 9102 (Definitions).

"Investigative information" is "assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include *modus operandi* information." Id.

does not direct the expungement or destruction of all documents pertaining to the arrest or prosecution of the Defendant for the charges *nolle prossed*, or of public records, including hearing transcripts, filed with the court,¹¹ but directs only the expungement of criminal history record information relating to the charges which were *nolle prossed*. Cf. Zappala, 987 A.2d 190 (where the court signed two standardized, pre-printed expungement orders, which, on their face, were overbroad, but were upheld on appeal because the appellant did not show that the court intended to disregard the governing statutes nor did he show that the Commonwealth did not expunge in accordance with the governing statutes); see also Pa.R.Crim.P. 722 (Contents of Order for Expungement).

CONCLUSION

The presumption of innocence, as a matter of law, is perhaps the greatest protection an accused has in defending against criminal charges, yet, by itself, it is insufficient to

¹¹ See 18 Pa.C.S.A. §§ 9104, 9122(e) (relating to the scope of public records that shall not be expunged). Section 9122(e) prohibits the expungement of public records listed in Section 9104(a). Section 9104(a) identifies the following public records which are exempt from expungement:

- (1) Original records of entry compiled chronologically, including, but not limited to, police blotters and press releases that contain criminal history record information and are disseminated contemporaneous with the incident.
- (2) Any documents, records or indices prepared or maintained by or filed in any court of this Commonwealth, including but not limited to the minor judiciary.
- (3) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.
- (4) Announcements of executive clemency.

¹⁸ Pa.C.S.A. § 9104(a).

overcome the very real disadvantages which often follow one who has been arrested and prosecuted on charges which, for a variety of reasons, do not result in a guilty verdict. Whether the person has been unjustly charged or whether an innocent person's character has been unfairly impugned is often unclear; however, in an attempt to at least set the record straight, the law, through expungement, provides a means for a person so accused to remove specific criminal information from his records. Moreover, in these proceedings, which are civil in nature, the accused enters with a decided advantage: the burden is upon the Commonwealth to establish a legitimate, compelling interest for retention of the record, failing which the record must be expunged.

In the instant case, the Commonwealth has offered no evidence. It has made no argument against expungement and has failed to carry its burden to justify retention of the record information of the *nolle prossed* charges. Defendant, who has no obligation to prove that he has suffered any specific harm, but has done so, is, therefore, entitled to have his record expunged as requested.

BY THE COURT:

P.J.

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Joseph J. Matika, Esquire,	Counsel for Commonwealth
Assistant District Attorney	
Glenn M. Goodge, Esquire	Counsel for Petitioner

ORDER

AND NOW, this 6th day of April, 2010, upon consideration of the within Petition and motion of Glenn Matthew Goodge, Esquire, Attorney for Defendant, it is hereby ORDERED and DECREED that the criminal history record information relating to the arrest(s) detailed herein, be expunged in accordance with the provisions of the Criminal History Information (C.H.R.I.) Act, 18 Pa.C.S. §§ 9101, *et seq.*, as directed on the reverse hereof:

Defendant's Name: Micael S. George, Sr.	Date of Birth: 12/08/51
SSN: 074-76-6358	OTN: K5310063-1
DJ Docket No.: CR-0000291-06	Magisterial Dist. No.: 56-3-01
Common Pleas Docket No.: CP-13-CR-0000057-2007	Incident No.: T08-8017414

Charges: Simple Assault, Criminal Conspiracy to Commit Aggravated Assault, Reckless Endangerment of another Person and Disorderly Conduct.

Date of Filing: 10/17/06

Disposition: Negotiated guilty plea to lesser included charge of conspiracy to simple assault, for which no expungement is being sought.

Reason for Expungement: The presence of the aforesaid records in the files of those agencies hereafter stated will be harmful to Defendant's earnings and status in the community.

Clerk to Serve Order On:

☒ Arresting Police Agency
☒ Issuing Authority
☒ District Attorney

☒ PSP Central Repository
☐ Defendant or counsel

BY THE COURT:

P.J.

IT IS SPECIFICALLY ORDERED THAT:

1. The Clerk of Courts--Criminal for Carbon County shall:
 - a. Serve one copy of the within Order on the defendant or defendant's counsel;
 - b. Serve certified copies of the within Petition and Order upon the arresting police agency, the Pennsylvania State Police Central Repository, and, if this Order involves expungement of a case or cases finalized in the District Justice Courts (where there was a dismissal, discharge or other final disposition at the District justice level, and no bind-over or appeal to, or other disposition in a court of record), one copy of the Petition and order for service upon the proper issuing authority or authorities;
 - c. Serve one copy of the said Petition and Order on the Attorney for the Commonwealth; and
 - d. Note the impingement on the records of the within case(s), if the case(s) were finally disposed of in the Court of Common Pleas.
2. The arresting police agency, upon receipt of a certified copy of the within Petition and Order from the Clerk of Courts shall:
 - a. Note the impingement on the records of the within case(s) maintained by their Department, and expunge from any local RAP sheets or their equivalent maintained by said police agency any reference to the within case(s); and
 - b. Within thirty (30) days of receipt of this Petition and order, file with the Clerk of Courts--Criminal for Carbon County, verification that paragraph 2 of this Order has been complied with.
3. The Pennsylvania State Police Central Repository, upon receipt of a certified copy of the within Petition and Order from the Clerk of Courts shall:
 - a. Expunge their records in accordance with this Order;
 - b. As required by the Criminal History Record Information Act, 18 Pa.C.S. § 9122(d), notify all criminal justice agencies which have received the criminal history record information to be expunged" of this expungement order; and
 - c. Within thirty (30) days of receipt of this Petition and Order, file with the Clerk of Courts--Criminal for Carbon County, a verification that paragraph 3 of this Order has been complied with.
4. The Attorney for the Commonwealth and any issuing authority, upon receipt of this Petition and Order shall note the expungement on the records of their offices, if any, relating to the case(s).

IN ACCORDANCE WITH THE C.H.R.I. ACT,

NOTHING IN THIS ORDER SHALL BE CONSTRUED TO REQUIRE:

- A. The expungement of public records which are exempt from expungement by 18 Pa.C.S. § 9104(e), namely, "[o]riginal records of entry compiled chronologically, including but not limited to, police blotters and press releases that contain criminal history record information and are disseminated contemporaneous with the incident", "[a]ny documents, records or indices prepared or maintained by or filed in any court of the Commonwealth, including but not limited to the minor judiciary", "[p]osters, announcements, or lists for identifying or apprehending fugitives or wanted persons", or "[a]nnouncements of executive clemency." 18 Pa.C.S. § 9104(a).
- B. The expungement of non-criminal history record information which is exempt from expungement by 18 Pa.C.S. § 9102, namely, intelligence information (defined in 18 Pa.C.S. § 9102 as "[i]nformation concerning the habits, practices, characteristics, possessions, associations or financial status of any individual"), investigative information (defined in 18 Pa.C.S. § 9102 as "[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information), including medical and psychological information, or information specified in 18 Pa.C.S. § 9104". (Other than as specified in 1, above, this includes: "[c]ourt dockets, police blotters [including any reasonable substitute therefor] and information contained therein").
- C. The expungement of information required or authorized to be kept by the prosecuting attorney, the central repository and the court by 18 Pa.C.S. § 9122(c), relating to diversion or pre-conviction probation programs such as Accelerated Rehabilitative Disposition.