

Philadelphia DAO Policy Relating to The Clean Slate Act



Effective Date: 6/27/2019

I. Background

For several years, Pennsylvania has allowed sealing of minor, old conviction records. Sealed records are available to law enforcement and criminal justice stakeholders but not to the general public.

Beginning on June 28, 2019, sealing will be expanded to include all misdemeanors where the defendant has been conviction free for ten years, except for select M1s. Sealing will also be expanded to all non-conviction charges. These changes will be retroactive, so older non-convictions will be sealed in addition to newer ones. Because of the sheer number of cases that will be sealed (more than 31M statewide), it will take the courts about a year to catch up and seal all eligible cases.

In recognition of the new law and spirit behind it, the DAO has developed a policy regarding the use non-conviction charge information and older misdemeanor convictions where the defendant has remained conviction free for a period of 10 years.

The following policies are presumptions. ADAs should consult with their supervisors if they wish to depart from these policies.

II. Rules on Use of Non-Conviction Data

The following rules govern when and how ADAs may use non-conviction charge information in subsequent, unrelated, prosecutions of a defendant.

An ADA may only use the existence of a prior charge that did not result in a conviction where the prior charge is reasonably related to the instant matter and is not excluded by any rule of evidence.

III. Rules on Use of Old Misdemeanor Convictions

The following rules govern when and how ADAs may use old misdemeanor conviction information in subsequent prosecutions of a defendant.

It is presumed that ADAs shall not consider misdemeanor convictions where the defendant has been free of misdemeanor and felony convictions for at least 10 years except:

- a. Misdemeanors of the first degree under Article B, involving danger to a person (18 Pa.C.S. §§ 2301-3299)
- b. Misdemeanors of the first degree under Article D, involving offenses against the family (18 Pa.C.S. §§ 4301-4399)

Such misdemeanor convictions not excluded in III(a) and (b) may only be used if reasonably related to the instant matter.

1. Prior Record Score: when calculating a prior record score, ADAs should consider all of the defendant's prior convictions. Since most 10-year-old misdemeanor convictions are viewed as so insignificant they are worthy of sealing, ADAs should use their discretion to make appropriate offers that discount the convictions described above, and explain their reasoning to the Court.
2. Diversion: such misdemeanor convictions should not be considered when determining a defendant's eligibility for diversion, except where the MOU governing the program requires it.
3. A Defendant's Criminal History Should Be Passed In Discovery: Defense attorneys who do not work for the Defender Association will not have access to those parts of their clients' records which have been sealed. Though the law does not require it, a copy of each defendant's secure court summary should be passed or uploaded to e-discovery prior to the disposition of a case.

Examples

A. Use of Non-Conviction Information (Part II)

1. The existence of a prior charge that did not result in a conviction could be used at a bail hearing, if the defendant failed to appear on the previous case.
2. The existence of a prior charge of domestic violence that did not lead to a conviction could be used in a later domestic violence case against the same defendant at the stage where bail is set or at sentencing.
3. The existence of a prior charge of domestic violence that did not lead to a conviction is not reasonably related to and should not be used in a current prosecution of a possession with the intent to distribute.

B. Use of Older Convictions (Part III)

1. A 12-year old conviction for M2 simple assault where the person has had no convictions in the past 10 years stemming from a domestic violence incident could reasonably be related to a later domestic violence case against the same defendant.
2. A 12-year old sealed conviction for simple assault stemming from a domestic violence incident is not reasonably related to and should not be used in a later prosecution for possession with the intent to distribute against the same defendant.