
II. Dealing with a Criminal Record

Kinds of Offenses

Being familiar with your client's criminal record will help you make appropriate job referrals for your client. It is, therefore, important to understand the process for obtaining a rap sheet in Pennsylvania, as well as what it contains.

In particular, it is useful to know the type of offense(s) your client has been convicted of, as employment restrictions are sometimes defined by the class or severity of offense. For the sake of this discussion, let us assume that John, in addition to being convicted for drug possession (a felony) two years ago, was arrested, but not convicted, for petty theft (a misdemeanor) five years ago. An "offense" is any disposition for which a fine or imprisonment may be ordered. "Criminal" offenses are limited to misdemeanors and felonies. In Pennsylvania, the following types of offenses are recognized:

Summary Offense: A minor offense for which a person may be sentenced to a term of imprisonment for not more than ninety days. Common summary offenses include disorderly conduct, criminal mischief, underage drinking, and a **first** offense for retail theft of goods valued at

less than \$100 (shoplifting). Conviction of a summary offense is considered a conviction of a crime only if the individual is sentenced to any period of incarceration.¹⁵

Misdemeanor: A lesser criminal offense, for which a person may be sentenced to a term of imprisonment of not more than five years. Common misdemeanors include certain drug possession offenses, driving under the influence of alcohol, certain kinds of theft, and prostitution. Conviction of a misdemeanor is considered a conviction of a crime.¹⁶

Felony: A serious criminal offense, for which the length of imprisonment varies according to the crime. Some common felony charges are possession or sale of certain drugs, auto theft, burglary, and robbery. Conviction of a felony is considered a conviction of a crime.¹⁷

Special Dispositions of Charges

Often criminal charges are disposed of by procedures other than a conviction or acquittal at trial. In Pennsylvania, these procedures include:

¹⁵ 18 PA. CONS. STAT. ANN. § 106.

¹⁶ 18 PA. CONS. STAT. ANN. § 106.

¹⁷ 18 PA. CONS. STAT. ANN. § 106.

Dismissal: The equivalent of an acquittal. All charges are dropped and the accused retains the same status he had prior to the arrest.

Accelerated Rehabilitative Disposition

(ARD): The court defers the criminal proceedings against an accused person and places him on a form of probation for up to two years or requires him to fulfill other conditions such as making restitution. If the person successfully completes probation or fulfills the other conditions imposed by the court, the court will dismiss the charges. Failure to complete the program or fulfill the conditions will result in criminal prosecution. This disposition is usually only available for first offenses and specific crimes (not including drug offenses). The dismissal of these cases is not automatic; a person must apply to the court to get a dismissal. However, once an individual's ARD case is dismissed, expungement of these records should be automatic.¹⁸

Nolle Prosequi or Prosecution

Withdrawn: A dismissal based upon the prosecutor's decision (with the court's consent) to not prosecute. It clears the charges against the accused, wiping the slate clean. To reinstate charges against the accused following "nolle prosequi," the prosecutor must seek a new indictment.¹⁹

Suspended Sentence: A conviction for which the court imposes a sentence but then waives the person's obligation to

serve it. (These are not provided for by rule or by the statute providing sentencing alternatives.) One Pennsylvania court has even held them to be illegal, but apparently courts continue to utilize them.²⁰

In addition, certain special dispositions are available for persons who are found by the court to be drug dependent. These include:

Probation Without Verdict (PWV): An individual found by the court to be drug dependent following expert witness testimony, who is charged with a non-violent drug offense, may be given "probation without verdict" if s/he has not been convicted previously of any other offense. In these cases, the court defers the criminal proceeding against the accused person and places the individual on probation for a specified time (not to exceed the maximum sentence for the offense in question). If the person successfully completes probation, the court will dismiss the charges. Upon dismissal, a case resolved as probation without verdict is not considered a conviction for any purpose. Expungement should be automatic following dismissal of a PWV case. This disposition is available to an individual only once.²¹

Disposition in Lieu of Trial (DLT): This disposition is available only to drug dependent individuals and drug abusers who are charged with a nonviolent crime and seek this disposition **before** trial. The court may withdraw or hold the criminal

¹⁸ PA. R. CRIM. P. RULE 178 and 320.

¹⁹ 16 P.S. § 9952.

²⁰ *Commonwealth v. Tessel*, 347 Pa.Super. 37, 52, 500 A.2d 144, 150 (1985).

²¹ 35 PA. CONS. STAT. ANN. §§ 780-117.

charges in abeyance on the condition that the accused person participates in a drug treatment program for a specified time (not to exceed the maximum sentence for the offense in question or the statute of limitations). At the end of that period, the charges will be automatically dismissed.

The court may withdraw or hold the criminal charges in abeyance on the condition that the accused person participates in a drug treatment program . . .

Dismissal pursuant to this section is not considered a conviction. Expungement should be automatic following dismissal. This

disposition is also available to an individual only once.²²

Disposition in Lieu of Criminal Punishment (DLCP): This is available to drug dependent individuals who have been **convicted** of an offense. A court may give the individual a suspended sentence and probation instead of imprisonment on condition that s/he participates in a drug treatment program. Expungement should be automatic following the suspended sentence.²³

Getting and Cleaning Up Arrest and Conviction Records

As part of the pre-application process for clients with criminal histories, your client should obtain copies of arrest and

conviction records. This is extremely important for several reasons.

First, although there are restrictions on the release of criminal records by the Pennsylvania State Police Central Repository (PSPCR), the agency responsible for keeping the centralized file of such records in Pennsylvania (see below), employers often obtain this information from several sources, including local law enforcement agencies, the FBI, the Internet, and consumer reporting agencies. It is important to ascertain exactly what information the employer will obtain so that problem areas can be addressed directly. This is especially crucial if the criminal record reveals a history of alcohol or drug dependence. Some examples might be a criminal record that reveals a conviction for possession of drugs or driving while intoxicated, or shows that an individual was required to enter or remain in a treatment program as a condition of Probation Without Verdict or Disposition in Lieu of Trial.

Second, arrest and conviction records often contain errors or information that should not be reported. If your client discovers this in time, steps can be taken to correct the records before the employer sees them.

Third, often your client will not know the disposition of certain charges or will have forgotten some arrests. Finding out the details will enable the client to present his

²² 35 PA. CONS. STAT. ANN. §§ 780-118.

²³ 35 PA. CONS. STAT. ANN. §§ 780-118.