



SPONSOR: Rep. Matthews & Rep. Longhurst & Sen. Townsend
Reps. Baumbach, Heffernan, J. Johnson, Keeley,
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HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 450

AN ACT TO AMEND TITLES 4, 10, 11, AND 16 OF THE DELAWARE CODE RELATING TO EXPUNGEMENT OF ADULT CRIMINAL RECORDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 4371, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4371. Statement of policy.

4 The General Assembly finds that arrest records and criminal histories ~~can be a hindrance to an innocent citizen's~~
5 are a significant barrier to Delaware citizens' ability to obtain employment, obtain an education, an education, housing,
6 skills training, or to obtain financial services and credit. These barriers contribute to recidivism and prevent individuals
7 from pursuing self-sufficiency and advancement. This subchapter is intended to ~~protect innocent persons from unwarranted~~
8 ~~damage which may occur as the result of arrest and other criminal proceedings which are unfounded or unproven~~ lower or
9 eliminate these barriers for individuals who have been arrested or charged but never convicted, and for some who have
10 certain criminal convictions. Providing an efficient avenue for the expungement of minor or stale convictions, as well as
11 arrests that did not lead to conviction, is in the best interest of the State.

12 Section 2. Amend § 4372, Title 11 of the Delaware Code by making deletions as shown by strike through and
13 insertions as shown by underline as follows:

14 § 4372. ~~Termination~~ Applicability; termination of criminal action in favor of ~~accused~~ accused; definitions; effect
15 of expungement.

16 (a) ~~If a person is charged with the commission of a crime or crimes and the case is terminated in favor of the~~
17 ~~accused, the person may request the expungement of the police records and the court records relating to the case pursuant to~~
18 ~~the provisions of this subchapter.~~ This subchapter applies to all criminal cases brought and convictions entered in a Justice
19 of the Peace Court, an Alderman's Court, the Court of Common Pleas, or the Superior Court and to criminal cases against
20 adults brought in the Family Court.

21 (b) For the purposes of this subchapter, a case ~~shall be deemed to be~~ is "terminated in favor of the accused" only if
22 one of the following occurs:

(1) The accused is acquitted of all charges related to the ~~ease~~; case.

(2) A nolle prosequi is entered on all charges related to the ~~ease~~; case or all charges related to the case are otherwise dismissed.

(3) The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the court enters an order discharging the person from ~~probation~~; or probation.

(4) ~~All charges related to the case are otherwise dismissed~~ The accused is acquitted of 1 or more charges related to the case, and the other charges are dismissed by the entry of a nolle prosequi or otherwise.

(5) The accused is arrested for the commission of 1 or more crimes and no charges related to the matter for which the person was arrested are filed in any court within 1 year of the arrest.

(c) For the purposes of this ~~subchapter~~, subchapter:

(1) "~~ease~~" "Case" means a charge or set of charges related to a complaint or incident that are or could be properly joined for prosecution.

(2) "Criminal justice agencies" means as defined in § 8502 of this title.

(3) "Expungement" means that all police records and court records, including any electronic records, are destroyed or placed in the custody of the State Bureau of Identification, and are not released in conjunction with any inquiry beyond those specifically authorized in this subchapter.

(d) A person is not required to disclose to any one for any purpose that the person was arrested for an offense for which records have been expunged under this subchapter or any other provision of this Code, except to criminal justice agencies for the purposes provided in § 4376(a) of this title.

(e)(1) If a court issues an order expunging records, all the criminal records specified in the order must, within 60 days of the order, be removed from the court's files and placed in the control of the Supervisor of the State Bureau of Identification. The Supervisor of the State Bureau of Identification shall retain control over all expunged records and shall ensure that the records or information contained in the records are not released for any reason, except as specified in this subchapter.

(2) If the State Bureau of Identification determines that expungement is mandated under the terms of this subchapter, or under an order and notification from a court, it shall promptly notify all courts and police agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of, or concluded. A court or police agency which receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement.

(3) If a court orders expungement, the State Bureau of Identification shall provide the court that entered the order with written confirmation of the execution of the order. The State Bureau of Identification shall promptly notify the court if it is unable to comply with any order issued under this subchapter and state the reasons why it is unable to comply.

(4) In response to requests from non-law-enforcement officers for information or records on the person who received an expungement, all law-enforcement officers, departments, and courts shall reply, with respect to the proceedings which are the subject of the order, that there is no record.

Section 3. Amend § 4373, Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4373. Mandatory expungement.

(a) ~~If a person is charged with the commission of a crime which is designated as a misdemeanor or violation in Title 4, 7, 11, 16 or 23, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any Title 4, 7, 11, 16 or 23 offense, excepting those crimes specifically exempted in subsection (c) of this section, and the case is terminated in favor of the accused, and the person has not previously been convicted of another criminal offense, upon an appropriate request to the State Bureau of Identification by such person the police records and court records, including any electronic records, relating to the charge or charges shall be expunged if the person has not been convicted of any crime since the date upon which the case was terminated in favor of the accused. Upon an appropriate request to the State Bureau of Identification under this section, the State Bureau of Identification shall expunge all charges relating to the case in any of the following scenarios:~~

(1) The person was arrested or charged with the commission of 1 or more crimes and the case is terminated in favor of the accused.

(2) The person was convicted of 1 or more violations relating to the same case, 3 years have passed since the date of conviction, and the person has no prior or subsequent convictions.

(3) The person was convicted of 1 or more misdemeanors, or a combination of 1 or more misdemeanors and 1 or more violations, relating to the same case, 5 years have passed since the date of conviction, and the person has no prior or subsequent convictions.

~~(b) If the State Bureau of Identification determines that expungement is mandated pursuant to the terms of this section it shall promptly so notify the courts and police agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of or concluded. All records appropriately specified in the expungement request shall, within 60 days of the determination that such request is mandated pursuant to the terms of~~

82 this section, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who
83 shall be designated to retain control over all expunged records, and who shall insure that the records or the information
84 contained therein is not released for any reason except as specified in this subchapter. A court and/or police agency which
85 receives a notice of expungement from the State Bureau Identification shall provide the Bureau with written confirmation
86 of the completion of the expungement. In response to requests from nonlaw enforcement officers for information or records
87 on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and
88 proceedings which are the subject of the order, that there is no record. A prior or subsequent conviction for a violation or
89 misdemeanor is not a bar to a person's eligibility for mandatory expungement under subsection (a) of this section if it is a
90 conviction under § 904(e) or (f) of Title 4, a conviction under § 4764(c) of Title 16, or a conviction for a Title 21 offense
91 other than a felony conviction under § 4177 of Title 21.

92 (c) Mandatory expungement pursuant to this section shall not be applicable to the records of any case in which the
93 defendant was charged with 1 or more of the following crimes, or any county or municipal code, ordinance, or regulation
94 which is the same as, or equivalent to, any crime specified herein:

- 95 (1) Any misdemeanor designated as a sex offense pursuant to § 761 of this title;
- 96 (2) Any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of this title;
- 97 (3) Unlawful imprisonment pursuant to § 781 of this title;
- 98 (4) Interference with custody pursuant to § 785 of this title;
- 99 (5) Coercion pursuant to § 791 of this title;
- 100 (6) Trespassing with intent to peer or peep, pursuant to § 820 of this title;
- 101 (7) Endangering the welfare of a child, pursuant to § 1102 of this title;
- 102 (8) Crime against a vulnerable adult, pursuant to § 1105 of this title;
- 103 (9) Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of this title;
- 104 (10) Any misdemeanor or violation set forth in Chapter 85 of this title;
- 105 (11) Patient abuse, pursuant to § 1136 of Title 16;
- 106 (12) Operation of a vessel or boat while under the influence, pursuant to § 2302 of Title 23. If more than 1
107 case, charge, or conviction is eligible for expungement under this section, they may be combined into a single
108 application for expungement.

109 (d) ~~At the time the application requesting expungement is filed with the State Bureau of Identification the~~
110 ~~applicant shall pay a reasonable fee to the State Bureau of Identification. The applicant shall attach a copy of that~~
111 ~~applicant's criminal history as maintained by the State Bureau of Identification to any application requesting expungement~~

112 ~~filed pursuant to this section. The State Bureau of Identification shall summarily reject any application for expungement~~
113 ~~that does not include the applicant's criminal history without further notice to the applicant. The State Bureau of~~
114 ~~Identification shall promulgate procedures and forms relating to the implementation of this section.~~

115 ~~(e) The State Bureau of Identification shall be authorized to promulgate reasonable regulations and a reasonable~~
116 ~~fee schedule to accomplish the purposes of this section. [Repealed.]~~

117 ~~(f) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the~~
118 ~~person as an arrest for any reason, except for disclosure to criminal justice agencies, as defined in § 8502(5) of this title, for~~
119 ~~the purposes provided in § 4376(a) of this title. [Repealed.]~~

120 Section 4. Amend § 4374, Title 11 of the Delaware Code by making deletions as shown by strike through and
121 insertions as shown by underline as follows:

122 § 4374. Discretionary expungement.

123 (a) For purposes of this section, "appropriate court" means the venue, under subsection (g) of this section, in which
124 a petition under this section must be filed.

125 (b) A person may file with the appropriate court a petition requesting expungement of all charges related to a case
126 in any of the following scenarios:

127 (1) The person was convicted of 1 or more violations relating to the same case, 1 year has passed since the
128 date of conviction, and the person has no prior or subsequent criminal convictions.

129 (2) The person was convicted of 1 or more misdemeanors relating to the same case, at least 3 years have
130 passed since the date of conviction or the date of release from confinement, whichever is later, and the person has no
131 prior or subsequent criminal convictions.

132 (3) The person was convicted of a felony, at least 7 years have passed since the date of conviction or the date
133 of release from confinement, whichever is later, and the person has no other prior or subsequent criminal convictions.

134 (c) A person is not eligible for a discretionary expungement under this section if the person has a conviction for a
135 violent felony under § 4201(c) of this title other than a Title 16 violent felony.

136 (d) A person may not file a petition for expungement under this section if the person is currently serving a term of
137 incarceration, parole, or probation.

138 (e) A prior or subsequent criminal conviction is not a bar to a person's eligibility for discretionary expungement
139 under this section if it is a conviction under § 904(e) or (f) of Title 4, a conviction under § 4764(c) of Title 16, or a
140 conviction for a Title 21 offense other than a felony conviction under § 4177 of Title 21.

(f) A person who is eligible for a mandatory or discretionary expungement in more than 1 case may file a single petition for expungement.

(g) Venue - If all of the charges and convictions sought to be expunged were disposed of in Family Court, a petition for discretionary expungement under this section must be filed in the Family Court for the county where the most recent case was terminated. If any of the charges or convictions were not disposed of in Family Court, a petition under this section must be filed in the Superior Court for the county where the most recent case was terminated.

(h) Jurisdiction - When adjudicating a person's petition properly before the appropriate court under subsection (g) of this section, the Superior Court and the Family Court have the jurisdiction and authority to order expungement of the person's record in a different county or court if charges relating to the same case were brought or disposed of in more than 1 court.

(a) ~~(i)(1) Notwithstanding any provision of § 4373 of this title to the contrary, if a person is charged with the commission of a crime, or a violation of any county or municipal code, ordinance, or regulation, and the case is terminated in favor of the accused, the person may file a petition in the Superior Court in the county where the case was terminated, disposed of or concluded setting forth the relevant facts and requesting expungement of the police records and the court records, or includes any electronic records, relating to the charge or charges. Discretionary expungement pursuant to under this section shall not be is not applicable to the records of any case that may be expunged pursuant to as a mandatory expungement solely under the provisions of § 4373 of this title; title.~~

~~(2) provided, however, where Notwithstanding paragraph (i)(1) of this section, if a person was charged with a criminal offense where for which discretionary expungement pursuant to under this section applies, but also was charged, within the same case, with a criminal offense where for which mandatory expungement pursuant to under § 4373 of this title applies, such the person must file a petition in Superior Court pursuant to under this section.~~

~~(b) (j) After a person files the a petition requesting expungement is filed with the Superior Court the appropriate court, the petitioner person shall cause a copy of the petition to be served upon the Attorney General, General. The Attorney General who may file an objection or answer to the petition within 30 days after it is served on the Attorney General. The appropriate court shall make the State a defendant to the proceeding. Any party aggrieved by a decision of the appropriate court may appeal, as provided by law in civil cases.~~

~~(k) The petitioner A person who files a petition under this section shall attach to the petition a copy of that petitioner's the person's criminal history as maintained by the State Bureau of Identification to any petition requesting expungement filed pursuant to this section. The Court The appropriate court shall summarily reject any petition for expungement filed under this section that does not include the petitioner's person's criminal history.~~

171 (e) ~~(l)(1)~~ Unless the ~~Court~~ the appropriate court believes a hearing is necessary, ~~petitions shall be disposed of the~~
172 court shall dispose of s petition filed under this section without a hearing.

173 (2) If the ~~Court~~ the appropriate court finds that the continued existence and possible dissemination of
174 information relating to the person's arrest or conviction ~~of the petitioner~~ causes, or may cause, circumstances which
175 constitute a manifest injustice to the ~~petitioner~~ person, it shall enter an order requiring the expungement of the police
176 and court records relating to the ~~charge or case~~. Otherwise, it shall deny the petition.

177 (3) ~~The burden shall be on the petitioner to~~ A person who files a petition under this section bears the burden to
178 allege specific facts in support of that petitioner's the person's allegation of manifest injustice, and ~~the burden shall be~~
179 ~~on the petitioner to~~ the person must prove such manifest injustice by a preponderance of the evidence. ~~The fact that the~~
180 ~~petitioner has previously been convicted of a criminal offense, other than that referred to in the petition, shall be~~
181 ~~considered by the Court as prima facie evidence that the continued existence and possible dissemination of information~~
182 ~~relating to the arrest in question does not constitute a manifest injustice to the petitioner. A petition filed by the~~
183 ~~Attorney General or the Attorney General's designee pursuant to subsection (e) of this section shall be granted by the~~
184 ~~Court.~~

185 (d) ~~The State shall be made party defendant to the proceeding. Any party aggrieved by the decision of the Court~~
186 ~~may appeal, as provided by law in civil cases.~~

187 (e) ~~(m)~~ Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the Attorney
188 ~~General~~ General, or the Attorney General's designee responsible for prosecuting a criminal action action, may petition the
189 ~~Court~~ appropriate court to expunge the instant arrest record of a ~~defendant if~~ person if, at the time of a state the State's
190 motion to dismiss or entry of a nolle prosequi in the case, the prosecutor has determined that the continued existence and
191 possible dissemination of information relating to the person's arrest ~~of the defendant~~ for the matter dismissed or for which a
192 nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the ~~defendant~~ person. The
193 court shall grant a petition properly made under this section.

194 (f) If an order expunging the records is granted by the Court, all the criminal records specified in the order shall,
195 within 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of
196 Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or
197 the information contained therein is not released for any reason except as specified in this subchapter. A court and/or police
198 agency which receives a notice of expungement from the State Bureau Identification shall provide the Bureau with written
199 confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court which
200 entered the order with written confirmation of the execution of the order. In response to requests from nonlaw enforcement

officers for information or records on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. No order requiring an expungement of any record shall be entered or enforced if such order is contrary to the provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to comply with any order issued pursuant to this subchapter.

(g)(1) (n)(1) Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the police records and the court records relating to ~~any a~~ charge set forth in Title 21, or in ~~any a~~ county or municipal code, ordinance, or ~~regulation~~ regulation, which is the same as, or equivalent to, ~~any a~~ Title 21 offense, shall ~~may~~ not be expunged ~~pursuant to~~ under this subchapter unless the charge ~~or charges~~ is one of those specifically enumerated in paragraph ~~(g)(2)~~ (n)(2) of this section.

(2) Discretionary expungement pursuant to this section shall be applicable when otherwise appropriate for the The police records and the court records related to any of the following Title 21 offenses, or ~~any a~~ county or municipal code, ordinance, or ~~regulation~~ regulation, which is the same as, or equivalent to, any of the following Title 21 offense specified herein offenses may be expunged:

- a. Driving after judgment prohibited, ~~pursuant to under~~ § 2810 of Title 21; Title 21.
- b. Reckless driving, ~~pursuant to under~~ § 4175 of Title 21; Title 21.
- c. Operation of a motor vehicle causing death, ~~pursuant to under~~ § 4176A of Title 21; Title 21.
- d. ~~Driving under the influence, pursuant to § 4177 of Title 21; or [Repealed.]~~
- e. Operating a commercial vehicle with a prohibited blood alcohol concentration or while impaired by drugs, ~~pursuant to under~~ § 4177M of Title 21.

~~(h)~~ (o) The Superior Court shall establish a reasonable fee schedule for the filing of a petition of expungement ~~pursuant to under~~ this section.

~~(i) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the person as an arrest for any reason, except for disclosure to criminal justice agencies, as defined in § 8502(5) of this title, for the purposes provided in § 4376(a) of this title.~~

Section 5. Amend § 4375, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4375. Discretionary expungement following a pardon.

(a) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted of a misdemeanor or violation ~~excepting those crimes specifically exempted in subsection (b) of this section~~ a crime and

231 who is thereafter unconditionally pardoned by the Governor must automatically have all criminal history related to the
232 pardoned conviction expunged under § 4372(e)(2) of this title ~~may request a discretionary expungement pursuant to the~~
233 ~~procedures set forth in § 4374 of this title. The burden shall be on the petitioner to allege specific facts in support of that~~
234 ~~petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a~~
235 ~~preponderance of the evidence. The fact that the petitioner was convicted of the criminal offense that is the subject of that~~
236 ~~petitioner's expungement application shall be considered by the Court as prima facie evidence that the continued existence~~
237 ~~and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the~~
238 ~~petitioner. A person who received an unconditional pardon before [the effective date of this Act] may petition for a~~
239 discretionary expungement under § 4374 of this title.

240 (b) ~~Discretionary expungement following a pardon pursuant to this section shall not be applicable to the records of~~
241 ~~any case in which the defendant was charged with 1 or more of the following crimes, or any county or municipal code,~~
242 ~~ordinance, or regulation which is the same as, or equivalent to, any crime specified herein:~~

- 243 (1) ~~Any misdemeanor or violation involving embezzlement of public money, bribery or perjury;~~
- 244 (2) ~~Any misdemeanor designated as a sex offense pursuant to § 761 of this title;~~
- 245 (3) ~~Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of this title;~~
- 246 (4) ~~Unlawful imprisonment pursuant to § 781 of this title;~~
- 247 (5) ~~Interference with custody pursuant to § 785 of this title; or~~
- 248 (6) ~~Coercion pursuant to § 791 of this title. [Repealed.]~~

249 Section 6. Amend § 4376, Title 11 of the Delaware Code by making deletions as shown by strike through and
250 insertions as shown by underline as follows:

251 § 4376 Disclosure of expunged records.

252 (a) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in
253 investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement
254 agency, it ~~shall be~~ is unlawful for ~~any a~~ a person having or acquiring access to an expunged court or police record to open or
255 review it or to disclose to another person any information from it without an order from the court which ordered the record
256 expunged. In addition to such other lawful purposes as may be prescribed by statute or otherwise, criminal justice agencies
257 ~~shall~~ must have access to records of expunged probations before ~~judgment and judgment~~, past participation in the First
258 Offenders Controlled Substance Diversion ~~Program or Program~~, a court-supervised drug diversion program for the purpose
259 of determining whether a person is eligible for a probation before judgment, ~~as set forth in~~ under § 4218 of this title, ~~or for~~

participation in the First Offenders Controlled Substance Diversion Program, ~~as set forth in~~ under § 4767 of Title 16 ~~or for~~
Title 16, or participation in a court-supervised drug diversion program.

(b) ~~Where~~ If disclosure to law-enforcement officers in the lawful performance of their duties in investigating criminal activity is permitted by subsection (a) of this section, ~~such the disclosure shall apply~~ applies for the purpose of investigating particular criminal activity in which ~~the a~~ a person, whose records have been expunged, is considered a suspect and the crime being investigated is a ~~felony or pursuant to~~ felony, or as part of an investigation of an employment application as an employee of a law-enforcement agency.

(c) Nothing contained in this subchapter ~~shall require~~ requires the destruction of photographs or fingerprints taken in connection with any felony arrest and which are utilized solely by law-enforcement officers in the lawful performance of their duties in investigating criminal activity.

(d) Nothing ~~herein shall require~~ in this subchapter requires the destruction of court records or records of the Department of Justice. However, all such records, including docket books, relating to a charge which has been the subject of a destruction order ~~shall be so~~ must be handled to ensure that ~~they~~ the records are not open to public inspection or disclosure.

(e) ~~An~~ A person is not required to disclose to any one for any reason that the person was arrested for an offense for which records have been expunged ~~pursuant to~~ under this subchapter ~~shall not have to be disclosed by the person as an~~
~~arrest for any reason.~~

(f) ~~Any~~ A person who violates subsection (a) of this section ~~shall be~~ is guilty of a class B misdemeanor, and ~~shall~~
must be punished accordingly.

(g) The State Bureau of Identification shall make available to criminal justice agencies ~~such~~ electronic records ~~as~~
that will enable criminal justice agencies to determine whether a person who seeks to participate in the First Offenders Controlled Substance Diversion ~~Program or to~~ Program, obtain a probation before judgment ~~disposition or to~~ disposition, or participate in a court-supervised drug diversion program has done so before and had the record expunged.

Section 7. Amend § 4377, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4377 Notification to federal government.

Upon ~~the granting by the court for~~ a court's granting of an order for the expungement of records ~~in accordance~~
~~with~~ under this subchapter, a copy of ~~such order shall~~ the order must be forwarded to the federal Department of Justice.

Section 8. Amend § 1025, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1025. Expungement of adult police and court records.

If an adult individual is charged in Family Court with a crime, expungement of adult police and court records may be sought under Subchapter VII, Chapter 43, of Title 11.

~~(a) If an adult person is charged with the commission of a crime or crimes and the case is terminated in favor of the accused, the person may request the expungement of the police records and the court records relating to the case pursuant to the provisions of this subchapter.~~

~~(b) For the purposes of this section, a case shall be deemed to be "terminated in favor of the accused" only if:~~

~~(1) The accused is acquitted of all charges related to the case;~~

~~(2) A nolle prosequi is entered on all charges related to the case;~~

~~(3) The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the court enters an order discharging the person from probation; or~~

~~(4) All charges related to the case are otherwise dismissed.~~

~~(c) For the purposes of this section "case" means a charge or set of charges related to a complaint or incident that are or could be properly joined for prosecution.~~

~~(d) If an adult is charged with the commission of a crime which is designated as a misdemeanor or violation in Title 4, 7, 11, 16, or 23, excepting those crimes specifically exempted in paragraph (d)(2) of this section, and the case is terminated in favor of the accused, and the person has not previously been convicted of another criminal offense, upon an appropriate request to the State Bureau of Identification by such person the police records and court records, including any electronic records, relating to the charge or charges shall be expunged if the person has not been convicted of any crime since the date upon which the case was terminated in favor of the accused.~~

~~(1) If the State Bureau of Identification determines that expungement is mandated pursuant to the terms of this paragraph, it shall promptly so notify the courts and police agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of or concluded. All records appropriately specified in the expungement request shall, within 60 days of the determination that such request is mandated pursuant to the terms of this section, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall ensure that the records or the information contained therein is not released for any reason except as specified in this subchapter. Criminal justice agencies as defined in § 8502(5) of Title 11 shall, however, have access to records of expunged probations before judgment for the specific purpose of determining whether a person is eligible for a probation before judgment, as set forth in § 4218 of Title 11. A court or a police agency which receives a notice of expungement from the State~~

Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement. In response to requests from nonlaw enforcement officers for information or records on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

(2) Mandatory expungement pursuant to this subsection shall not be applicable to the records of any case in which the defendant was charged with one or more of the following crimes:

- a. Any misdemeanor designated as a sex offense pursuant to § 761 of Title 11;
- b. Any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of Title 11;
- c. Unlawful imprisonment pursuant to § 781 of Title 11;
- d. Interference with custody pursuant to § 785 of Title 11;
- e. Coercion pursuant to § 791 of Title 11;
- f. Trespassing with intent to peer or peep, pursuant to § 820 of Title 11;
- g. Endangering the welfare of a child, pursuant to § 1102 of Title 11;
- h. Crime against a vulnerable adult, pursuant to § 1105 of Title 11;
- i. Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of Title 11;
- j. Any misdemeanor or violation set forth in Chapter 85 of Title 11;
- k. Patient abuse, pursuant to § 1136 of Title 16;
- l. Operation of a vessel or boat while under the influence, pursuant to § 2302 of Title 23.

(3) At the time the application requesting expungement is filed with the State Bureau of Identification, the applicant shall pay a reasonable fee to the State Bureau of Identification. The applicant shall attach a copy of that applicant's criminal history as maintained by the State Bureau of Identification to any application requesting expungement filed pursuant to this section. The State Bureau of Identification shall summarily reject any application for expungement that does not include the applicant's criminal history without further notice to the applicant.

(4) The State Bureau of Identification shall be authorized to promulgate reasonable regulations and a reasonable fee schedule to accomplish the purposes of this subsection.

(e) Notwithstanding any provision of subsection (d) of this section to the contrary, if a person is charged with the commission of a crime and the case is terminated in favor of the accused, the person may file a petition in the Family Court in the county where the case was terminated, disposed of or concluded setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge or charges. Discretionary expungement pursuant to this section shall not be applicable to the records of any case that may be expunged pursuant to the provisions of

subsection (d) of this section, provided, however, that where a person was charged with a criminal offense where discretionary expungement pursuant to this subsection applies, but also was charged, within the same case, with a criminal offense where mandatory expungement pursuant to this section applies, such person must file a petition in the Family Court pursuant to this section.

(1) After the petition requesting expungement is filed with the Family Court, the petitioner shall cause a copy of the petition to be served upon the Attorney General, who may file an objection or answer to the petition within 30 days after it is served on the Attorney General. The petitioner shall attach a copy of that petitioner's criminal history as maintained by the State Bureau of Identification to any petition requesting expungement filed pursuant to this section. The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history.

(2) Unless the Court believes a hearing is necessary, petitions shall be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge or case. Otherwise, it shall deny the petition. The burden shall be on the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence. The fact that the petitioner has previously been convicted of a criminal offense, other than that referred to in the petition, shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner. A petition filed by the Attorney General or the Attorney General's designee pursuant to paragraph (e)(4) of this section shall be granted by the Court.

(3) The State shall be made party defendant to the proceeding. Any party aggrieved by the decision of the Court may appeal, as provided by law in civil cases.

(4) Notwithstanding any provision of this section or any other statute or rule to the contrary, the Attorney General or designee responsible for prosecuting a criminal action may petition the Court to expunge the instant arrest record of a defendant if at the time of a state motion to dismiss or entry of nolle prosequi in the case, the prosecutor has determined that the continued existence and possible dissemination of information relating to the arrest of the defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the defendant.

(5) If an order expunging the records is granted by the Court, all the records specified in the order shall, within 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of

Identification who shall be designated to retain control over all expunged records, and who shall ensure that the records or the information contained therein is not released for any reason except as specified in this subchapter. A police agency which receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court which entered the order with written confirmation of the execution of the order. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. No order requiring an expungement of any record shall be entered or enforced if such order is contrary to the provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to comply with any order issued pursuant to this subchapter.

(6) Notwithstanding any provision of this section or any other statute or rule to the contrary, the police records and the court records relating to any charge set forth in Title 21 of shall not be expunged pursuant to this section unless the charge or charges is 1 of these specifically enumerated offenses:

- a. Driving after judgment prohibited, pursuant to § 2810 of Title 21;
- b. Reckless driving, pursuant to § 4175 of Title 21;
- c. Operation of a motor vehicle causing death, pursuant to § 4176A of Title 21;
- d. Driving under the influence, pursuant to § 4177 of Title 21;
- e. Operating a commercial vehicle with a prohibited blood alcohol concentration or while impaired by drugs, pursuant to § 4177M of Title 21.

(7) The Family Court shall establish a reasonable fee schedule for the filing of a petition of expungement pursuant to this section.

(f) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted of a misdemeanor or violation excepting those crimes specifically exempted in subsection (g) of this section who is thereafter unconditionally pardoned by the Governor may request a discretionary expungement pursuant to the procedures set forth in subsection (e) of this section. The burden shall be on the petitioner to allege specific facts in support of the petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence. The fact that the petitioner was convicted of the criminal offense that is the subject of the petitioner's expungement application shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.

(g) Discretionary expungement following a pardon pursuant to this section shall not be applicable to the records of any case in which the defendant was charged with 1 or more of the following crimes:

(1) Any misdemeanor designated as a sex offense pursuant to § 761 of Title 11;

(2) Unlawful imprisonment pursuant to § 781 of Title 11;

(3) Interference with custody pursuant to § 785 of Title 11; or

(4) Coercion pursuant to § 791 of Title 11.

Section 9. Amend § 904, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 904. Offenses concerning certain persons.

(o)(1) Any person who was convicted of a first offense under subsections (e) and (f) of this section or the same offense under any county or municipal code, ordinance, or regulation and who was under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of arrest to the court in which the person was convicted.

(2) For violations of subsection (e) or (f) of this section, an order granting such expungement ~~shall~~ must issue upon proof that the person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another charge under this ~~section~~, section or under the same offense under any county or municipal code, ordinance, or ~~regulation~~, which regulation that remains outstanding.

(3) Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest ~~shall~~ must be dealt with ~~in accordance with the procedures specified in §§ 4373(e), 4374 and 4375 under Subchapter VII, Chapter 43 of Title 11.~~

(4) Nothing in this section ~~shall prohibit the Family Court~~ prohibits a court from expunging a record of arrest ~~or conviction~~ as otherwise ~~provided~~ permitted by law.

(5) The application for or granting of a pardon ~~pursuant to under~~ §§ 4361 through ~~4363~~ 4364 of Title 11 ~~shall~~ does not prohibit an application for expungement under this section.

(6) All sentencing orders for violations of this section by persons under the age of 21 at the time of the offense ~~shall~~ must state that the record of the conviction may be expunged upon reaching the age of 21 and thereafter.

(7) The civil filing fee ~~shall apply~~ applies to applications for expungement plus a \$100 fee payable to the State Bureau of Identification for administrative costs.

Section 10. Amend § 4364, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4364. Effect of pardon; restoration of civil rights.

(a)(1) Except as otherwise provided by the Delaware Constitution, or expressly by any provision of the Delaware Code or any court rule, the granting of an unconditional pardon by the Governor ~~shall have~~ has the effect of fully restoring all civil rights to the person ~~pardoned. Such civil rights include, but are not limited to,~~ pardoned, including the right to vote, the right to serve on a jury if selected, the right to purchase or possess deadly ~~weapons~~ weapons, and the right to seek and hold public ~~office~~ office.

(2) ~~provided however, that~~ Notwithstanding paragraph (a)(1) of this section, this section ~~shall~~ does not limit or affect the Governor's authority to place lawful conditions upon the granting of a pardon.

(3) Notwithstanding the granting of a pardon or any provision of this section, ~~no~~ a person who ~~shall be~~ was convicted of embezzlement of the public money, bribery, ~~perjury~~ perjury, or other infamous crime, ~~shall be~~ is not eligible to a seat in either House of the General Assembly, or capable of holding any office of trust, ~~honor~~ honor, or profit under this State.

(b) Upon the granting of a pardon, the Governor shall provide notification of the pardon to all courts in which the person pardoned was convicted of a criminal offense and to the State Bureau of Identification. The notification must inform the courts and State Bureau of Identification if the pardon contains a condition prohibiting expungement of 1 or more charges.

(c) If there is no condition of the pardon prohibiting expungement, the courts and the State Bureau of Identification shall immediately take all steps specified in § 4372 of this title to complete expungement of all pardoned crimes.

(d) If the pardoned offenses are not eligible for automatic expungement, the courts shall, upon receipt of the notification, modify all court records, including paper, electronic, and all other types of records, which specify the final disposition of the criminal conviction, so that the final disposition is thereafter recorded as "pardoned".

(e)(1) If the pardoned offenses are not eligible for automatic expungement, the State Bureau of Identification shall, upon receipt of the notification, modify the final disposition of all criminal convictions of the person pardoned, as recorded in the Criminal Justice Information System, so that the final disposition is thereafter recorded as "pardoned."

(2) In furnishing information regarding the criminal history of the person pardoned for any purpose under Chapter 85 of Title 11, the State Bureau of Identification shall print a heading on the first page of the information in boldface 12 point font or larger that states that the person pardoned "has been granted a pardon from the Governor of the State of Delaware".

Section 11. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation [For application of this section, see 80 Del. Laws, c. 38, § 6]

(i)(1) Any person who was convicted of ~~a single criminal~~ an offense under subsection (c) of this section and who was under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of arrest to the court in which the person was convicted.

(2) For violations of subsection (c) of this section, an order granting such expungement ~~shall~~ must issue upon proof that the person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another charge under this section ~~which~~ that remains outstanding.

(3) Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest ~~shall~~ must be dealt with ~~in accordance with the procedures specified in §§ 4373(c), 4374 and 4375 under Subchapter VII, Chapter 43 of Title 11.~~

(4) Nothing in this section ~~shall prohibit the Family Court~~ prohibits a court from expunging a record of arrest or conviction as otherwise ~~provided~~ permitted by law.

(5) The application for or granting of a pardon ~~pursuant to under~~ §§ 4361 through ~~4363~~ 4364 of Title 11 ~~shall~~ does not prohibit an application for expungement under this section.

(6) All sentencing orders for violations of this section by persons under the age of 21 at the time of the offense ~~shall~~ must state that the record of the conviction may be expunged upon reaching the age of 21 and thereafter.

(7) The civil filing fee ~~shall apply~~ applies to applications for expungement plus a \$100 fee payable to the State Bureau of Identification for administrative costs.

Section 12. This Act takes effect 180 days after its enactment into law.

SYNOPSIS

There is a growing body of research regarding the detrimental effects to an individual and to society relating to the collateral consequences of arrests and criminal convictions. To name just a few, a criminal history is a significant barrier to obtaining and advancing in a job, finding housing, and gaining additional skills or education. Inability to participate in society in these basic ways contributes to Delaware's high rate of recidivism and lowers the overall productivity and efficiency of the State. One way to relieve these consequences is to allow for the expungement of records if (1) an arrest did not lead to a guilty disposition or (2) an isolated conviction has been followed by a significant amount of time spent staying out of trouble with the law.

At present, Delaware allows adults to petition to have a record expunged in only 2 circumstances: (1) if the arrest or charges never led to a conviction and (2) after a pardon is granted for certain misdemeanor offenses only. This Act allows for mandatory expungement (meaning the expungement must be granted if the petitioner meets the criteria) through the State Bureau of Identification if: (1) a person was arrested or charged but the case was resolved in favor of the petitioner; (2) after 3 years for a single violation; (3) after 5 years for a single misdemeanor. In all cases, a person is eligible for expungement if the person has no prior or subsequent convictions (with an exception for status offenses such as underage alcohol consumption). Allowing expungements for arrests without convictions and minor, isolated convictions through an application to the State Bureau of Identification will ease the burden on the Courts and the Board of Pardons.

This Act also gives the Courts the power to decide if a petitioner deserves an expungement, a process called discretionary expungement, if the person seeking the expungement has maintained an otherwise clean record and (1) 1 year has passed since conviction of a violation; (2) 3 years have passed since conviction of a misdemeanor; or (3) 7 years have passed since conviction of a felony or since release from confinement, whichever is later. In all cases, a person is eligible for discretionary expungement if they have no prior or subsequent convictions (with an exception for status offenses such as underage alcohol consumption and for Title 21 driving offenses other than driving under the influence). The person must demonstrate that the failure to grant the expungement would constitute manifest injustice.

The Act also creates an avenue for automatic expungement of a person's criminal record after a pardon has been granted. This new provision for automatic expungement does not limit the Governor's authority to limit the right to an expungement as a condition of the pardon in any individual case.

This Act strikes the Title 10 provisions related to expungement of charges for adults in Family Court and consolidates all provisions relating to expungement of adult records in Title 11. It also makes some conforming changes to cross-references in Title 4 and Title 16.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Finally, implementation of this Act is delayed for 180 days to allow State agencies to prepare necessary procedures and forms.