

CHAPTER 343
FORMERLY
HOUSE BILL NO. 285

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO EXPUNGEMENT.

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

Section 1. Amend §1015, Title 10 of the Delaware Code by making additions as shown by underlining as follows:

§ 1015. Filing an expungement petition.

(a) A child, through his or her parent or guardian, or upon becoming an adult, may file a petition seeking to expunge the child's juvenile arrest record. For the purposes of §§ 1016 through 1020 of this title, the child or person seeking an expungement shall be deemed "the petitioner." All such petitions shall be filed in the Family Court in the county where the most recent case was terminated, disposed of, or concluded, setting forth the relevant facts and requesting expungement of the police records and court records, including any electronic records, relating to the charge or charges.

(b) 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 subchapter. The State Bureau of Identification may charge a reasonable fee in providing a certified copy of the petitioner's criminal history. The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history.

(c) The Family Court must consider the entire juvenile arrest record in granting or denying the petition, consistent with sections §§ 1017 and 1018 of this title. The Court shall either grant the petition, ordering the expungement of the petitioner's entire juvenile arrest record, or deny the petition. The Court may not order that only a portion of the petitioner's juvenile arrest record be expunged, unless the State, pursuant to § 1018(e) of this title in the interests of justice, petitions the Court to expunge an arrest that would otherwise not qualify for immediate and mandatory expungement under this subchapter. The Court may order expungement of charges originating in a different county.

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

Section 2. Amend § 1016 of Title 10 of the Delaware Code by making additions as shown by underlining and deletions as shown by strike through as follows:

§ 1016. Definitions applicable to juvenile expungements.

For purposes of juvenile expungement, unless the context otherwise requires:

(1) "Adjudication of delinquency" means a finding of guilt or nolo contendere entered by the Court for a charge or charges following a plea or trial.

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

(3) "Felony sex offense" means a delinquent act constituting any felony offense listed in § 4121(a)(4) of Title 11.

~~(3)(4)~~ "Misdemeanor sex offense" means a delinquent act constituting any misdemeanor offense listed in § 4121(a)(4) of Title 11.

~~(4)(5)~~ "Prior adjudication of delinquency" means an adjudication of delinquency entered by the Court, that occurs prior to the commission of a separate and distinct offense.

~~(5) "Sex offense" means a delinquent act constituting any offense listed in § 4121(a)(4) of Title 11.~~

(6) "Subsequent adjudication of delinquency or adult conviction" means an adjudication of delinquency or an adult conviction resulting from the commission of a separate and distinct offense that occurs after a prior adjudication of delinquency.

(7) "Terminated in favor of the child" means:

a. The child is acquitted of all charges related to the case; or

b. A nolle prosequi is entered on all charges related to the case; or

c. The charges have been otherwise dismissed for any reason, including, but not limited to dismissals following successful completion of arbitration, probation before adjudication of delinquency, or any court-approved diversion program.

(8) "Violent felony" means a delinquent act constituting any offense listed in § 4201 of Title 11.

(9) "Violent misdemeanor" means a delinquent act constituting 1 of the misdemeanors enumerated under § 603, § 611, § 621, § 628, § 781, § 1257, or § 1325 of Title 11.

Section 3. Amend §1017, Title 10 of the Delaware Code by making insertions as shown by underlining as follows:

§ 1017. Mandatory expungement.

(a) The Family Court shall grant a petition for expungement if:

(1) A child is charged with the commission of 1 or more crimes 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 offense defined in Title 4, 7, 11, 16 or 23, and the case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges.

(2) A child is charged with the commission of 1 or more crimes designated as a felony in Title 11 or 16, and the case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least 1 year has passed following the date the case was terminated, disposed of, or concluded in Family Court.

(3) A child has no more than 1 adjudication of delinquency in a case where the crime or crimes for which the child was adjudicated delinquent are designated as felonies or misdemeanors or violations 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 offenses enumerated in Title 4, 7, 11, 16 or 23 excepting violent felonies and misdemeanor or felony sex offenses, and provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least 3 years have passed following the date the adjudication of delinquency was entered in Family Court.

(b) The petitioner is not required to provide a copy of the petition to the Attorney General, when filing an expungement petition pursuant to this section.

(c) If an order expunging the records is granted by the Court, all the police and court records, including any electronic 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 insure that the records or the information contained therein is not released for any reason except as specified in this subchapter. A court or police agency that 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 that entered the order with written confirmation of the execution of the order. In response to requests from non-law-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.

(d) An offense for which records have been expunged pursuant to this section does not have to be disclosed as an arrest by the petitioner for any reason.

Section 4. Amend §1018, Title 10 of the Delaware Code by making insertions as shown by underlining as follows:

§ 1018. Discretionary expungement.

(a) The Family Court may grant a petition for expungement if:

(1) A child is charged in a case with the commission of an offense designated as a felony in Title 11 or 16, and the case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that less than one year has passed following the date the case was terminated, disposed of, or concluded in Family Court.

(2) A child has no more than 1 adjudication of delinquency in a case where the offense or offenses for which the child was adjudicated delinquent are misdemeanor sex offenses, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least 3 years have passed following the date the adjudication of delinquency was entered in Family Court.

(3) A child has no more than 2 adjudications of delinquency involving separate and distinct cases where the offenses for which the child was adjudicated delinquent are designated as misdemeanors or violations 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 offenses enumerated in Title 4, 7, 11, 16 or 23, excepting violent misdemeanors, provided the petitioner has no prior adjudication of delinquency, and provided the petitioner has no other subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least 5 years have passed following the date the second adjudication of delinquency was entered in Family Court.

(4) A child has no more than 1 adjudication of delinquency in a case where the offense or offenses for which the child was adjudicated delinquent are designated as violent felonies or felony sex offenses excepting rape first degree [§ 773 of Title 11], rape second degree [§ 772 of Title 11], arson first degree [§ 803 of Title 11], robbery first degree [§ 832 of Title 11], and burglary first degree [§ 826 of Title 11], provided the petitioner has no other prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that more than 5 years have passed following the date the adjudication of delinquency was entered in Family Court.

(b) The petitioner shall cause a copy of any petition filed under this section to be served upon the Attorney General, who may file an objection or answer to the petition within 30 days thereafter.

(c) Unless the Court believes a hearing is necessary, petitions filed pursuant to this section shall be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to 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, including any electronic records relating to the charge or case. Otherwise, it shall deny the petition. Although the Court will recognize a rebuttable presumption that juvenile records cause a manifest injustice for the petitioner, the burden shall nevertheless 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.

(d) 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.

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

(f) If an order expunging the records is granted by the Court, all the police and court records, including any electronic 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 insure that the records or the information contained therein is not released for any reason except as specified in this subchapter. A court or police agency that 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 that entered the order with written confirmation of the execution of the order. In response to requests from non-law-enforcement officers for information or records on the person who was arrested, 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) Notwithstanding any provision of this subchapter or any other statute or any other statute or rule to the contrary, the police records and the court records, including any electronic records, relating to any charge set forth in Title 21, or in any county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offense enumerated in Title 21, shall not be expunged pursuant to this subchapter.

(h) An offense for which records have been expunged pursuant to this section does not have to be disclosed as an arrest, by the petitioner for any reason.

Section 5. Amend § 1020, Title 10 of the Delaware Code by deleting that section as shown by strike through as follows:

~~§ 1020. Notification to federal government.~~

~~Upon the granting by the Court for an order for the expungement of records in accordance with §§ 1013-1019 of this title, a copy of such order shall be forwarded to the federal Department of Justice.~~

Approved July 18, 2012