

LAWS OF DELAWARE
VOLUME 83
CHAPTER 266
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 112
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10, TITLE 11, AND TITLE 16 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 deletions as shown by strike through and insertions as shown by underline as follows:

§ 1015. Filing an expungement petition.

(a) *Persons eligible to petition for expungement.*— A child, through his or her parent, guardian, guardian ad ~~hitem~~ litem, or attorney, or upon becoming an adult, may file a petition seeking to expunge part or all of the child's juvenile arrest record. For the purposes of §§ 1016-1019 of this title, the child or person seeking an expungement ~~shall be~~ is deemed "the petitioner." A petition for expungement may include all cases for which the petitioner is eligible for expungement under § 1017(a) or § 1018(a) of this title.

(b) *Prohibitions to expungement.* — Except for cases eligible for expungement under § 1017(a)(1) through § 1017(a)(2) of this title, all of the following apply:

(1) No person who has been adjudicated delinquent of first-degree murder (§ 636 of Title 11), second-degree murder (§ 635 of Title 11), first-degree kidnapping (§ 783A of Title 11), manslaughter ~~under~~ (under either § 632(2) or (5) of Title 11), rape in the first degree (§ 773 of Title 11), rape in the second degree (§ 772 of Title 11), arson in the first degree (§ 803 of Title 11), or an attempt to commit any of the ~~aforementioned offenses, shall be~~ offenses listed in this paragraph (b)(1) is eligible for a juvenile expungement ~~pursuant to § 1017 or § 1018~~ under § 1017 or § 1018 of this title.

(2) No person who has an adult conviction ~~shall be~~ is eligible for a juvenile expungement.

(3) No person ~~shall be~~ is eligible for an expungement while such person has pending criminal charges.

(4) ~~No offenses in Title 21 shall be~~ Offenses under Title 21 are not eligible for expungement ~~nor shall such offenses be~~ and are not considered an adjudication or conviction for purposes of this statute. However, a felony conviction for driving a vehicle while under the influence ~~shall be~~ is considered a conviction for purposes of this statute.

(e)(1) The Family Court shall consider the entire criminal history as maintained by the State Bureau of Identification in granting or denying the petition, consistent with §§ 1017 and 1018 of this title.

(2) The Court shall either grant the petition, ordering the expungement of part or all of the petitioner's ~~entire~~ juvenile criminal history, including all indicia of arrest, except for Title 21 offenses, or deny the petition. The Court may not order that only a portion of the petitioner's juvenile criminal history be expunged, unless ~~the~~ any of the following apply:

a. The State, pursuant to § 1018(e) under § 1018(f) 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.

b. A case is eligible for expungement under § 1017(a)(1) through § 1017(a)(2) of this title.

(3) The Court may order expungement of charges originating in a different county.

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

§ 1016. Definitions applicable to juvenile expungements.

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

(6) “Terminated in favor of the child” ~~means:~~ means 1 of the following occurs:

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

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

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

d. The child is arrested for the commission of 1 or more crimes and no charges related to the matter for which the child was arrested are filed in a court within 1 year of the arrest.

Section 3. Amend § 1017, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1017. Mandatory expungement.

(a) The Family Court shall grant a petition for expungement if ~~the petitioner has no prohibitions pursuant to § 1015(b) of this title and~~ 1 or more of the following apply to the person’s juvenile criminal history indicates: history:

(1) ~~Only misdemeanor and violation cases that were~~ A case was terminated in favor of the child; ~~or child.~~

(2) ~~Only felony, misdemeanor~~ misdemeanor, ~~and violation cases that were terminated in favor of the child and at least 1 year has passed since the last felony case was terminated in favor of the child;~~ or A case that resulted in an adjudication of delinquency only for 1 or more of the following:

a. Underage possession or consumption of alcohol under § 904(e) or (f) of Title 4.

b. Possession of marijuana under § 4764 of Title 16.

c. Possession of drug paraphernalia under § 4771 of Title 16.

(3) ~~No~~ The person’s juvenile criminal history includes no more than 1 felony, misdemeanor ~~misdemeanor,~~ or violation case which ~~that~~ that ~~resulted in an adjudication of delinquency and at least 3 years have passed since the date of adjudication, provided the~~ that all of the following apply:

a. The adjudication was not for a violent felony, felony sex offense, or misdemeanor sex offense as those terms are defined in § 1016 of this title.

b. The petitioner has no prohibitions under § 1015(b) of this title.

(c) During the Court proceeding where any felony, misdemeanor or violation case is terminated in favor of the child, the Court sua sponte, or upon request of any party, may immediately order expungement of the entire juvenile criminal history, ~~history or a case,~~ including all indicia of arrest. Prior to ordering expungement ~~pursuant to~~ under this subsection, the Court shall review a name-based Delaware criminal background check conducted through the Delaware Justice Information System (DELJIS), in order to ensure eligibility. ~~In cases reviewed by the Court pursuant to this subsection, the children must otherwise qualify for expungement under paragraph (a)(1) or (a)(2) of this section. The Court may waive the 1-year waiting period under paragraph (a)(2) of this section.~~ The Court has discretion to deny immediate expungement and require compliance with § 1015(d) of this title. An order to expunge a felony, misdemeanor, or violation case from the juvenile’s record, ~~pursuant to~~ under this subsection, shall be stayed for 30 days and may, upon motion by the Attorney General, be vacated within that 30 days, as prescribed by Delaware law. This stay ~~shall~~ does not toll the applicable appeal period.

Section 4. Amend § 1018, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1018. Discretionary expungement.

(a) The Family Court may grant a petition for expungement if the petitioner has no prohibitions pursuant to § 1015(b) of this title and the person's juvenile criminal history ~~indicates:~~ contains 1 of the following:

(1) ~~Only felony, misdemeanor, or violation cases, all of which were terminated in favor of the petitioner, and less than 1 year has passed since termination of the last felony case; or [Reserved.]~~

(2) A single case that resulted in an adjudication of delinquency for a "misdemeanor sex offense" or "violent felony," as those terms are defined in § 1016 of this title, and at least 3 years have passed since ~~adjudication;~~ adjudication.

(3) No more than 1 case which resulted in adjudication of delinquency for a felony sex offense and at least 5 years have passed since ~~adjudication;~~ adjudication.

(4) Multiple adjudications for cases, excepting Title 11 violent felonies and felony sex offenses, and at least 5 years have passed since the last ~~adjudication;~~ adjudication.

(5) Multiple adjudications for cases, that include Title 11 violent felonies and felony sex offenses, and at least 7 years have passed since the last adjudication.

Section 5. Amend § 1019, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1019. Effect of expungement; disclosure of expunged records.

(a) The Court shall notify the State Bureau of Identification of any expungement order. If an order expunging part or all of a juvenile criminal history is granted by the court, all indicia of arrest, including police and court records and any electronic records relating to the arrest, and any other items specified in the order shall, within 60 days of receipt 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 nonlaw-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.

Section 6. Amend § 4372, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4372. Applicability; definitions; effect of expungement.

(g) A prior or subsequent conviction ~~under § 904(e) or (f) of Title 4 (regarding underage possession or consumption of alcohol) or a conviction under § 4764(c) of Title 16 (regarding underage possession of personal use quantity of marijuana)~~ does not operate as a bar to eligibility for discretionary or mandatory expungement under this ~~subchapter.~~ subchapter if the conviction is under any of the following:

(1) Underage possession or consumption of alcohol under § 904(e) or (f) of Title 4.

(2) Possession of a personal use quantity of marijuana under § 4764 of Title 16.

(3) Possession of drug paraphernalia under § 4771 of Title 16.

(h) A prior or subsequent conviction of a Title 21 offense does not operate as a bar to eligibility for discretionary or mandatory expungement under this subchapter.

Section 7. Amend § 4373, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 4373. Mandatory expungement; application through SBI.

(a) Eligibility. —

(1) On an appropriate request to the State Bureau of Identification under this section, the Bureau shall expunge all charges relating to a case if 1 of the following applies: case, even if a person has prior or subsequent convictions that are ineligible for expungement, if all other charges in the case are eligible for expungement under this subchapter, and 1 or more of the following apply:

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

c. The person was convicted of possession of marijuana under § 4764 of Title 16 or possession of drug paraphernalia under § 4771 of Title 16, or both in the same case.

d. The person was convicted of underage possession or consumption of alcohol under § 904(e) or (f) of Title 4.

(2) On an appropriate request to the State Bureau of Identification under this section, the Bureau shall expunge all charges relating to a case if the person has no prior or subsequent convictions that bar eligibility for expungement under this subchapter, all charges in the case are eligible for expungement under this subchapter, and 1 of the following applies:

~~(3) a.~~ a. 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.~~ conviction.

b. The person was convicted of drug possession under § 4756 of Title 16 and 5 years have passed since the date of conviction.

c. The person was convicted of any of the following felonies and 10 years have passed since the date of conviction or the date of release from incarceration, whichever is later:

1. Miscellaneous drug crimes under § 4757 of Title 16.

2. Unlawful dealing in a counterfeit or purported controlled substance under § 4758 of Title 16.

3. Maintaining a drug property under § 4760 of Title 16.

4. Possession of burglar's tools or instruments facilitating theft under § 828 this title.

5. Forgery in the second degree under § 861(b)(2) of this title.

6. Unlawful use of payment card under § 903 of this title.

(b) *Exclusions.* — In addition to the exclusions under § 4372(f) of this title, the following misdemeanor convictions and felony convictions under paragraph (a)(2)c. of this section are not eligible for mandatory expungement under this section:

(1) A ~~misdemeanor~~ crime of domestic violence. For purposes of this section, a ~~“misdemeanor crime~~ “crime of domestic violence”, means a ~~misdemeanor~~ an offense that meets both of the following:

a. Was committed by any of the following:

1. A member of the victim's family, as "family" is defined under § 901 of Title 10, regardless, however, of the state of residence of the parties.

2. A former spouse of the victim.

3. A person who cohabited with the victim at the time of or within 3 years before the offense.

4. A person with a child in common with the victim.

5. A person with whom the victim had a substantive dating relationship, as defined under § 1041 of Title 10, at the time of or within 3 years before the offense.

b. Is a ~~misdemeanor~~ an offense under any of the following sections: § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 781, § 785, § 791, § 804, § 811, § 821, § 822, § 823, or § 1311 of this title.

(2) Offenses where the victim is a child.

(3) Offenses where the victim is a "vulnerable adult", as defined under § 1105 of this title.

(4) Any misdemeanor set forth in subparts A, B, C, or F of subchapter VI of Chapter 5 of this title.

(5) Any of the following misdemeanors:

i. Official misconduct under § 1211 of this title.

Section 8. 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.

(j) ~~Notwithstanding any provision of law to the contrary, any person who prior to December 18, 2015, was convicted of a single offense arising from an original charge under this section or any predecessor statute, law or ordinance prohibiting the possession, use or consumption of marijuana or any controlled substance or counterfeit controlled substance classified in § 4714(d)(19) of this title shall be eligible for mandatory expungement of the records of the conviction and all indicia of arrest pursuant to the provisions of § 4373 of Title 11, provided the applicant is otherwise eligible for mandatory expungement as specified therein. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in §§ 4373, 4376, and 4377 of Title 11. [Reserved.]~~

Section 9. Amend § 4373, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 4373. Mandatory expungement; application through SBI.

(a) Eligibility. —

(1) On an appropriate request to the State Bureau of Identification under this section, the Bureau shall expunge all charges relating to a case if 1 of the following applies: case, even if a person has prior or subsequent convictions that are ineligible for expungement, if all other charges in the case are eligible for expungement under this subchapter, and 1 or more of the following apply:

~~(1) a. The person was arrested or charged with the commission of 1 or more crimes and the case is terminated in favor of the accused. The Bureau shall expunge a case terminated in favor of the accused even if a person has prior or subsequent convictions that are ineligible for expungement under this subchapter.~~

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

c. The person was convicted of possession of marijuana under § 4764 of Title 16 or possession of drug paraphernalia under § 4771 of Title 16, or both in the same case.

d. The person was convicted of underage possession or consumption of alcohol under § 904(e) or (f) of Title 4.

(2) On an appropriate request to the State Bureau of Identification under this section, the Bureau shall expunge all charges relating to a case if the person has no prior or subsequent convictions that bar eligibility for expungement under this subchapter, all charges in the case are eligible for expungement under this subchapter, and 1 of the following applies:

(3) a. 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. conviction.

b. The person was convicted of drug possession under § 4756 of Title 16 and 5 years have passed since the date of conviction.

c. The person was convicted of any of the following felonies and 10 years have passed since the date of conviction or the date of release from incarceration, whichever is later:

1. Miscellaneous drug crimes under § 4757 of Title 16.

2. Unlawful dealing in a counterfeit or purported controlled substance under § 4758 of Title 16.

3. Maintaining a drug property under § 4760 of Title 16.

4. Possession of burglar's tools or instruments facilitating theft under § 828 this title.

5. Forgery in the second degree under § 861(b)(2) of this title.

6. Unlawful use of payment card under § 903 of this title.

(b) *Exclusions.* — In addition to the exclusions under § 4372(f) of this title, the following misdemeanor convictions and felony convictions under paragraph (a)(2)c. of this section are not eligible for mandatory expungement under this section:

(1) A ~~misdemeanor~~ crime of domestic violence. For purposes of this section, a ~~“misdemeanor crime~~ “crime of domestic violence”, means ~~a misdemeanor~~ an offense that meets both of the following:

b. Is ~~a misdemeanor~~ an offense under any of the following sections: § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 781, § 785, § 791, § 804, § 811, § 821, § 822, § 823, or § 1311 of this title.

(5) Any of the following misdemeanors:

i. Official misconduct under § 1211 of this title.

Section 10. If Senate Substitute No. 1 for Senate Bill No. 38 is enacted into law before January 1, 2022, Section 7 of this Act does not take effect and Sections 1 through 6 and Section 8 through 9 of this Act take effect on January 1, 2022.

Section 11. If Senate Substitute No. 1 for Senate Bill No. 38 is not enacted into law, Section 9 of this Act does not take effect and Sections 1 through 8 of this Act take effect on January 1, 2022.

Approved November 8, 2021