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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 112

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:

1 Section 1. Amend § 1015, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1015. Filing an expungement petition.

4 (a) *Persons eligible to petition for expungement.*— A child, through his or her parent, guardian, guardian ad ~~litem~~
5 litem, or attorney, or upon becoming an adult, may file a petition seeking to expunge part or all of the child's juvenile arrest
6 record. For the purposes of §§ 1016-1019 of this title, the child or person seeking an expungement ~~shall be~~ is deemed "the
7 petitioner." A petition for expungement may include all cases for which the petitioner is eligible for expungement under §
8 1017(a) or § 1018(a) of this title.

9 (b) *Prohibitions to expungement.* — Except for cases eligible for expungement under § 1017(a)(1) through §
10 1017(a)(2) of this title, all of the following apply:

11 (1) No person who has been adjudicated delinquent of first-degree murder (§ 636 of Title 11), second-degree
12 murder (§ 635 of Title 11), first-degree kidnapping (§ 783A of Title 11), manslaughter ~~under~~ (under either § 632(2) or
13 (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
14 first degree (§ 803 of Title 11), or an attempt to commit any of the ~~forementioned offenses, shall be~~ offenses listed in
15 this paragraph (b)(1) is eligible for a juvenile expungement pursuant to § 1017 or § 1018 under § 1017 or § 1018 of
16 this title.

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

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

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

21 conviction for driving a vehicle while under the influence ~~shall be~~ is considered a conviction for purposes of this
22 statute.

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

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

29 a. The State, pursuant to § 1018(e) under § 1018(f) of this title in the interests of justice, petitions the
30 Court to expunge an arrest that would otherwise not qualify for immediate and mandatory expungement under this
31 subchapter.

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

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

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

36 § 1016. Definitions applicable to juvenile expungements.

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

38 (6) "Terminated in favor of the child" ~~means:~~ means 1 of the following occurs:

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

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

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

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

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

48 § 1017. Mandatory expungement.

49 (a) The Family Court shall grant a petition for expungement if ~~the petitioner has no prohibitions pursuant to §~~
50 ~~1015(b) of this title and~~ 1 or more of the following apply to the person's juvenile criminal history indicates: history:

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

52 (2) ~~Only felony, misdemeanor~~ misdemeanor, and violation cases that were terminated in favor of the child and
53 ~~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
54 adjudication of delinquency only for 1 or more of the following:

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

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

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

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

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

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

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

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

77 § 1018. Discretionary expungement.

78 (a) The Family Court may grant a petition for expungement if the petitioner has no prohibitions pursuant to §
79 1015(b) of this title and the person's juvenile criminal history ~~indicates:~~ contains 1 of the following:

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

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

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

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

89 (5) Multiple adjudications for cases, that include Title 11 violent felonies and felony sex offenses, and at least
90 7 years have passed since the last adjudication.

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

93 § 1019. Effect of expungement; disclosure of expunged records.

94 (a) The Court shall notify the State Bureau of Identification of any expungement order. If an order expunging part
95 or all of a juvenile criminal history is granted by the court, all indicia of arrest, including police and court records and any
96 electronic records relating to the arrest, and any other items specified in the order shall, within 60 days of receipt of the
97 order, be removed from the files and placed in the control of the Supervisor of the State Bureau of Identification who shall
98 be designated to retain control over all expunged records, and who shall insure that the records or the information contained
99 therein is not released for any reason except as specified in this subchapter. A court or police agency that receives a notice
100 of expungement from the State Bureau of Identification shall provide the Bureau with written confirmation of the
101 completion of the expungement. The State Bureau of Identification shall provide the court that entered the order with
102 written confirmation of the execution of the order. In response to requests from nonlaw-enforcement officers for
103 information or records on the person who was arrested, law-enforcement officers and departments shall reply, with respect
104 to the arrest and proceedings which are the subject of the order, that there is no record. No order requiring an expungement
105 of any record shall be entered or enforced if such order is contrary to the provisions of this subchapter. The State Bureau of
106 Identification shall promptly notify the court if it is unable to comply with any order issued pursuant to this subchapter.

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

109 § 4372. Applicability; definitions; effect of expungement.

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

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

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

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

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

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

121 § 4373. Mandatory expungement; application through SBI.

122 (a) Eligibility. —

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

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

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

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

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

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

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

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

144 c. The person was convicted of any of the following felonies and 10 years have passed since the date of
145 conviction:

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

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

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

149 4. Burglary in the third degree under § 824 of this title.

150 5. Possession of burglar’s tools or instruments facilitating theft under § 828 this title.

151 6. Theft classified as a class G or class F felony under § 841 of this title.

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

153 8. Unlawful use of payment card under § 903 of this title.

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

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

159 a. Was committed by any of the following:

160 1. A member of the victim’s family, as “family” is defined under § 901 of Title 10, regardless,
161 however, of the state of residence of the parties.

162 2. A former spouse of the victim.

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

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

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

167 b. Is a ~~misdemeanor~~ an offense under any of the following sections: § 601, § 602, § 603, § 611, § 614, §
168 621, § 625, § 628A, § 781, § 785, § 791, § 804, § 811, § 821, § 822, § 823, or § 1311 of this title.

- 169 (2) Offenses where the victim is a child.
- 170 (3) Offenses where the victim is a “vulnerable adult”, as defined under § 1105 of this title.
- 171 (4) Any misdemeanor set forth in subparts A, B, C, or F of subchapter VI of Chapter 5 of this title.
- 172 (5) Any of the following misdemeanors:

173 i. Official misconduct under § 1211 of this title.

174 Section 8. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and
175 insertions as shown by underline as follows:

176 § 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation.

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

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

186 § 4373. Mandatory expungement; application through SBI.

187 (a) Eligibility. —

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

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

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

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

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

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

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

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

210 c. The person was convicted of any of the following felonies and 10 years have passed since the date of
211 conviction:

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

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

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

215 4. Burglary in the third degree under § 824 of this title.

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

217 6. Theft classified as a class G or class F felony under § 841 of this title.

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

219 8. Unlawful use of payment card under § 903 of this title.

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

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

225 b. Is a ~~misdemeanor~~ an offense under any of the following sections: § 601, § 602, § 603, § 611, § 614, §
226 621, § 625, § 628A, § 781, § 785, § 791, § 804, § 811, § 821, § 822, § 823, or § 1311 of this title.

227 (5) Any of the following misdemeanors:

228 i. Official misconduct under § 1211 of this title.

229 Section 10. If Senate Substitute No. 1 for Senate Bill No. 38 is enacted into law before January 1, 2022, Section 7
230 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.

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

SYNOPSIS

This Act expands eligibility for mandatory expungement of adult and juvenile cases by doing all of the following:

1. Aligns eligibility for juvenile expungement so that all cases eligible for adult expungement are eligible for juvenile expungement.

2. Allows all cases terminated in favor of the accused and cases for underage possession or consumption of alcohol under § 904(e) or (f) of Title 4, possession of marijuana under § 4764 of Title 16, or possession of drug paraphernalia under § 4771 of Title 16 to be expunged, regardless of prior or subsequent adjudications or convictions.

3. Repeals § 4764(j) of Title 16 because this Act makes cases for marijuana possession eligible for mandatory expungement under § 1017 of Title 10 and § 4374 of Title 11.

4. If a person has no prior or subsequent convictions, makes a case for drug possession under § 4756 of Title 16 eligible for mandatory expungement 5 years after conviction. Juvenile adjudications of delinquency for drug possession under § 4756 of Title 16 are already eligible for mandatory expungement so no corresponding change is necessary to § 1017 of Title 10.

5. If a person has no prior or subsequent convictions, makes additional felony convictions eligible for mandatory expungement 10 years after conviction. Juvenile adjudications of delinquency for these felonies are already eligible for mandatory expungement so no corresponding change is necessary to § 1017 of Title 10.

6. Applies existing exceptions for eligibility for mandatory expungement because of the status of the victim to the offenses that become eligible under this Act.

7. Makes corresponding changes to other expungement sections in Title 10.

This Act adds a misdemeanor conviction for official misconduct to the offenses that are ineligible for mandatory expungement under § 4373(b) of Title 11. This Act does not make any offenses that are currently ineligible for mandatory expungement under § 4373(b) of Title 11 eligible for mandatory expungement.

This Act takes effect on January 1, 2022. Section 10 of this Act aligns this Act with the changes to § 4373 of Title 11 if Senate Substitute No. 1 for Senate Bill No. 38 is also enacted into law in 2021.

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

Author: Senator Brown