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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 37

AN ACT TO AMEND TITLE 4, TITLE 10, TITLE 11, AND TITLE 16 OF THE DELAWARE CODE RELATING
EXPUNGEMENT OF RECORDS OF ADULT ARREST AND CONVICTION.

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 can be~~ a criminal history is a hindrance to ~~an innocent citizen's a~~
5 person's present and future ability to obtain employment, ~~obtain an education or to obtain~~ housing, education, or credit.
6 This subchapter is intended to protect ~~innocent~~ persons from unwarranted damage which may occur ~~as the result of arrest~~
7 ~~and other criminal proceedings which are unfounded or unproven.~~ when the existence of a criminal history continues
8 indefinitely.

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

11 § 4372. ~~Termination of criminal action in favor of accused.~~ Applicability; definitions; effect of expungement.

12 (a) ~~If a person is charged with the commission of a crime or crimes and the case is terminated in favor of the~~
13 ~~accused, the person may request the expungement of the police records and the court records relating to the case pursuant to~~
14 ~~the provisions of this subchapter.~~ This subchapter applies to all criminal cases brought and convictions entered in a court in
15 this State.

16 (b) For the purposes of this subchapter, a case ~~shall be deemed to be~~ is "terminated in favor of the accused" only ~~if~~
17 if 1 or more of the following occurs:

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

- 19 (2) A nolle prosequi is entered on all charges related to the ~~ease;~~ case.
- 20 (3) The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the
21 court enters an order discharging the person from ~~probation;~~ or probation.
- 22 (4) All charges related to the case are otherwise dismissed.
- 23 (5) The accused is acquitted of 1 or more charges related to the case, and the other charges are dismissed by
24 the entry of a nolle prosequi or otherwise.
- 25 (6) The accused is arrested for the commission of 1 or more crimes and no charges related to the matter for
26 which the person was arrested are filed in any court within 1 year of the arrest.
- 27 (c) For the purposes of this ~~subchapter,~~ subchapter:
- 28 (1) "ease" "Case" means a charge or set of charges related to a complaint or incident that are or could be
29 properly joined for prosecution.
- 30 (2) "Criminal justice agencies" means as defined under § 8502 of this title.
- 31 (3) "Expungement" means that all law-enforcement agency records and court records relating to a case in
32 which an expungement is granted, including any electronic records, are destroyed, segregated, or placed in the custody
33 of the State Bureau of Identification, and are not released in conjunction with any inquiry beyond those specifically
34 authorized under this subchapter.
- 35 (d) Except as otherwise provided under § 4376(a) of this title, a person is not required to disclose, nor should the
36 person be asked to disclose, to anyone for any purpose that the person was arrested for, charged with, or convicted of an
37 offense for which records have been expunged under this subchapter or any other provision of this Code.
- 38 (e)(1) If a court issues an order expunging records, all the criminal records relating to a case specified in the order
39 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
40 Bureau of Identification or otherwise segregated and kept in a manner that ensures that they are not open to public
41 inspection or disclosure. The court may retain a non-public record of expungement orders. The court shall send a copy of its
42 order of expungement to the Bureau, and shall consult with the Bureau to develop a standard form of order for
43 expungements. Except as otherwise provided under § 4376 of this title, the Supervisor of the Bureau shall retain control
44 over all expunged records and shall ensure that the records or information contained in the records are not released for any
45 reason.
- 46 (2) If the State Bureau of Identification determines that expungement is mandated under this subchapter, or
47 receives an expungement order from a court, it shall promptly notify all courts and law-enforcement agencies where
48 records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of, or

49 concluded. A court or law-enforcement agency which receives a notice of expungement from the Bureau shall provide
50 the Bureau with written confirmation of the completion of the expungement. Where an expungement of a conviction is
51 granted, all arrest records associated with any charge in that case must also be expunged.

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

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

58 (f) Exclusions.

59 (1) A person is not eligible for an expungement while the person has pending criminal charges, except under
60 paragraph (b)(6) of this section.

61 (2) Except as otherwise provided under § 4374(i) of this title, offenses under Title 21, or their equivalent, are
62 not eligible for expungement under § 4373 or § 4374 of this title.

63 (3) A conviction for 1 of the following may not be expunged under § 4373 or § 4374 of this title:

64 a. Vehicular assault in the second degree under § 628A of this title.

65 b. Incest under § 766 of this title.

66 c. Unlawful sexual contact in the third degree under § 767 of this title.

67 d. Coercion under § 791 of this title.

68 e. Unlawfully dealing with a child under § 1106 of this title.

69 (4) A person is not eligible for an expungement if that person was granted an expungement under this
70 subchapter at any time in the 10 years immediately preceding application. This paragraph (f)(4) of this section does not
71 apply to a person seeking an expungement under § 4373(a)(1) of this title.

72 (5) A person is not eligible for expungement under this subchapter if that person is currently serving a term of
73 incarceration, parole, or probation.

74 (g) A prior or subsequent conviction under § 904(e) or (f) of Title 4 (regarding underage possession or
75 consumption of alcohol) or a conviction under § 4764(c) of Title 16 (regarding underage possession of personal use
76 quantity of marijuana) does not operate as a bar to eligibility for discretionary or mandatory expungement under this
77 subchapter.

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

80 (i) Nothing in this subchapter is intended to operate to expand or limit the availability of expungement under any
81 other part of the Code.

82 (j) The grant of an expungement under this subchapter does not nullify any provision of an active protection from
83 abuse order.

84 (k) The grant of an expungement under this subchapter does not result in the automatic removal of an individual
85 from the Child Protection Registry, established under Subchapter II of Chapter 9 of Title 16, or the Adult Abuse Registry,
86 established under § 8564 of this title. The fact an expungement has been granted may be considered with other relevant
87 evidence as part of a petition for removal from the Child Protection Registry under § 929 of Title 16 or the Adult Abuse
88 Registry under regulations adopted under § 8564(f) of this title.

89 (l) To be eligible for an expungement under this subchapter, all fines, fees, and restitution associated with a
90 conviction must be paid. However, if an outstanding fine or fee is not yet satisfied due to reasons other than wilful
91 noncompliance, but the person is otherwise eligible for an expungement, the court may grant the expungement and waive
92 the fines or fees or convert outstanding financial obligations to a civil judgement.

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

95 § 4373. Mandatory ~~expungement~~; expungement; application through SBI.

96 (a) ~~If a person is charged with the commission of a crime which is designated as a misdemeanor or violation in~~
97 ~~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~~
98 ~~Title 4, 7, 11, 16 or 23 offense, excepting those crimes specifically exempted in subsection (e) of this section, and the case~~
99 ~~is terminated in favor of the accused, and the person has not previously been convicted of another criminal offense, upon an~~
100 ~~appropriate request to the State Bureau of Identification by such person the police records and court records, including any~~
101 ~~electronic records, relating to the charge or charges shall be expunged if the person has not been convicted of any crime~~
102 ~~since the date upon which the case was terminated in favor of the accused.~~ Eligibility. On an appropriate request to the State
103 Bureau of Identification under this section, the Bureau shall expunge all charges relating to a case if 1 of the following
104 applies:

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

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

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

112 (b) ~~If the State Bureau of Identification determines that expungement is mandated pursuant to the terms of this~~
113 ~~section it shall promptly so notify the courts and police agencies where records pertaining to the case are located or~~
114 ~~maintained, and any court where the case was terminated, disposed of or concluded. All records appropriately specified in~~
115 ~~the expungement request shall, within 60 days of the determination that such request is mandated pursuant to the terms of~~
116 ~~this section, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who~~
117 ~~shall be designated to retain control over all expunged records, and who shall insure that the records or the information~~
118 ~~contained therein is not released for any reason except as specified in this subchapter. A court and/or police agency which~~
119 ~~receives a notice of expungement from the State Bureau Identification shall provide the Bureau with written confirmation~~
120 ~~of the completion of the expungement. In response to requests from nonlaw enforcement officers for information or records~~
121 ~~on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and~~
122 ~~proceedings which are the subject of the order, that there is no record. Exclusions. In addition to the exclusions under §~~
123 4372(f) of this title, the following misdemeanor convictions are not eligible for mandatory expungement under this section:

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

126 a. Was committed by any of the following:

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

129 2. A former spouse of the victim.

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

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

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

134 b. Is a misdemeanor offense under any of the following sections: § 601, § 602, § 603, § 611, § 614, § 621,
135 § 625, § 628A, § 763, § 765, § 766, § 767, § 781, § 785, § 791, § 804, § 811, § 821, § 822, or § 823 of this title.

136 (2) Offenses where the victim is a child.

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

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

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

142 (1) Any misdemeanor designated as a sex offense pursuant to § 761 of this title;

143 (2) Any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of this title;

144 (3) Unlawful imprisonment pursuant to § 781 of this title;

145 (4) Interference with custody pursuant to § 785 of this title;

146 (5) Coercion pursuant to § 791 of this title;

147 (6) Trespassing with intent to peer or peep, pursuant to § 820 of this title;

148 (7) Endangering the welfare of a child, pursuant to § 1102 of this title;

149 (8) Crime against a vulnerable adult, pursuant to § 1105 of this title;

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

151 (10) Any misdemeanor or violation set forth in Chapter 85 of this title;

152 (11) Patient abuse, pursuant to § 1136 of Title 16;

153 (12) ~~Operation of a vessel or boat while under the influence, pursuant to § 2302 of Title 23. If more than 1~~
154 ~~case or arrest is eligible for expungement under this section, it may be combined into a single application for~~
155 ~~expungement.~~

156 (d) ~~At the time the application requesting expungement is filed with the State Bureau of Identification the~~
157 ~~applicant shall pay a reasonable fee to the State Bureau of Identification. The applicant shall attach a copy of that~~
158 ~~applicant's criminal history as maintained by the State Bureau of Identification to any application requesting expungement~~
159 ~~filed pursuant to this section. The State Bureau of Identification shall summarily reject any application for expungement~~
160 ~~that does not include the applicant's criminal history without further notice to the applicant. The State Bureau of~~
161 ~~Identification shall promulgate procedures and forms relating to the implementation of this section.~~

162 (e) ~~The State Bureau of Identification shall be authorized to may promulgate reasonable regulations and a~~
163 ~~reasonable fee schedule to accomplish the purposes of this section.~~

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

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

169 § 4374. Discretionary ~~expungement~~. expungement; application to court.

170 (a) ~~Notwithstanding any provision of § 4373 of this title to the contrary, if a person is charged with the~~
171 ~~commission of a crime, or a violation of any county or municipal code, ordinance, or regulation, and the case is terminated~~
172 ~~in favor of the accused, the person may file a petition in the Superior Court in the county where the case was terminated,~~
173 ~~disposed of or concluded setting forth the relevant facts and requesting expungement of the police records and the court~~
174 ~~records, or includes any electronic records, relating to the charge or charges. Discretionary expungement pursuant to this~~
175 ~~section shall not be applicable to the records of any case that may be expunged pursuant to the provisions of § 4373 of this~~
176 ~~title; provided, however, where a person was charged with a criminal offense where discretionary expungement pursuant to~~
177 ~~this section applies, but also was charged, within the same case, with a criminal offense where mandatory expungement~~
178 ~~pursuant to § 4373 of this title applies, such person must file a petition in Superior Court pursuant to this section. Eligibility.~~
179 Upon petition to the appropriate court designated in subsection (c) of this section, an expungement may be granted if the
180 applicant meets one of the following:

181 (1) Was convicted of 1 or more misdemeanors other than those listed in § 4373(b) of this title relating to the
182 same case and at least 3 years have passed since the date of conviction or the date of release from incarceration,
183 whichever is later, and the person has no prior or subsequent convictions.

184 (2) Was convicted of 1 or more misdemeanors listed in § 4373(b) of this title relating to the same case and at
185 least 7 years have passed since the date of conviction or the date of release from incarceration, whichever is later, and
186 the person has no prior or subsequent convictions.

187 (3) Subject to subsection (b) of this section, was convicted of a felony and at least 7 years have passed since
188 the date of conviction or the date of release from incarceration, whichever is later, and the person has no prior or
189 subsequent convictions.

190 (b) Exclusions. In addition to the exclusions under § 4372(f) of this title, a person is not eligible for discretionary
191 expungement under this section if the person was convicted of any of the following crimes:

192 (1) A Title 11 felony listed in § 4201(c) of this title.

193 (2) Section 1136 of Title 16.

194 (3) Section 3913 of Title 31.

195 (4) A “felony conviction involving physical or sexual assault crimes” as defined in § 309 of Title 31
196 (regarding the Beau Biden Child Protection Act).

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

201 (d) Jurisdiction and authority. Where an expungement petition properly before the Family or Superior Court is
202 granted, the expungement order applies to any record, including arrest records, relating to any charge in that case held by
203 any court or law-enforcement agency in this State.

204 (b) (e) After the petition requesting expungement is filed with the Superior ~~Court~~ or Family Court, the petitioner
205 shall cause a copy of the petition to be served upon the Attorney General, who may file an objection or answer to the
206 petition within ~~30 days~~ 120 days after it is served on the Attorney General. The petitioner shall attach a copy of that
207 petitioner's criminal history as maintained by the State Bureau of Identification to any petition requesting expungement
208 filed ~~pursuant to~~ under this section. The Court shall summarily reject any petition for expungement that does not include
209 the petitioner's criminal history. The victim may provide a written statement on the petition for consideration by the Court.
210 If the Court holds a hearing on the petition, the victim may testify at the hearing or provide a written statement for
211 consideration by the Court.

212 (e) (f) Unless the Court believes a hearing is necessary, petitions ~~shall~~ are to be disposed of without a hearing. If
213 the Court finds that the continued existence and possible dissemination of information relating to the arrest or conviction of
214 the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an
215 order requiring the expungement of the ~~police~~ law-enforcement and court records relating to the charge or case. Otherwise,
216 it shall deny the petition. The burden ~~shall be~~ is on the petitioner to allege specific facts in support of that petitioner's
217 allegation of manifest injustice, and the burden ~~shall be~~ is on the petitioner to prove such manifest injustice by a
218 preponderance of the evidence. ~~The fact that the petitioner has previously been convicted of a criminal offense, other than~~
219 ~~that referred to in the petition, shall be considered by the Court as prima facie evidence that the continued existence and~~
220 ~~possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the~~
221 ~~petitioner.~~ A petition filed by the Attorney General or the Attorney General's designee pursuant to ~~under~~ subsection (e) (h)
222 of this section ~~shall~~ must be granted by the Court.

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

225 (e) (h) Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the Attorney
226 General or the Attorney General's designee responsible for prosecuting a criminal action may petition the Court to expunge

227 the instant arrest record of a defendant if at the time of a state motion to dismiss or entry a nolle prosequi in the case, the
228 prosecutor has determined that the continued existence and possible dissemination of information relating to the arrest of
229 the defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute
230 a manifest injustice to the defendant.

231 ~~(f) If an order expunging the records is granted by the Court, all the criminal records specified in the order shall,~~
232 ~~within 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of~~
233 ~~Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or~~
234 ~~the information contained therein is not released for any reason except as specified in this subchapter. A court and/or police~~
235 ~~agency which receives a notice of expungement from the State Bureau Identification shall provide the Bureau with written~~
236 ~~confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court which~~
237 ~~entered the order with written confirmation of the execution of the order. In response to requests from nonlaw enforcement~~
238 ~~officers for information or records on the person who was arrested, the law enforcement officers and departments shall~~
239 ~~reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. No order~~
240 ~~requiring an expungement of any record shall be entered or enforced if such order is contrary to the provisions of this~~
241 ~~subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to comply with any order~~
242 ~~issued pursuant to this subchapter.~~

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

248 (2) Discretionary expungement ~~pursuant to~~ under this section ~~shall be~~ is applicable when otherwise
249 appropriate for the following Title 21 offenses, or any county or municipal code, ordinance, or regulation which is the
250 same as, or equivalent to, any of the following Title 21 ~~offense specified herein:~~ offenses:

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

257 (h) (j) The Superior Court and Family Court shall establish a reasonable fee schedule for the filing of a petition of
258 expungement pursuant to under this section.

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

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

264 § 4375. Discretionary expungement following a pardon.

265 (a) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted
266 of a ~~misdemeanor or violation~~ excepting those crimes specifically exempted in subsection (b) of this section ~~crime, other~~
267 than those specifically excluded under subsection (b) of this section, who is thereafter unconditionally pardoned by the
268 Governor may request a discretionary expungement pursuant to under the procedures set forth in § 4374 of this title. The
269 burden shall be on the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and
270 ~~the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence. The fact that the~~
271 ~~petitioner was convicted of the criminal offense that is the subject of that petitioner's expungement application shall be~~
272 ~~considered by the Court as prima facie evidence that the continued existence and possible dissemination of information~~
273 ~~relating to the arrest in question does not constitute a manifest injustice to the petitioner.~~

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

277 (1) ~~Any misdemeanor or violation involving embezzlement of public money, bribery or perjury;~~

278 (2) ~~Any misdemeanor designated as a sex offense pursuant to § 761 of this title;~~

279 (3) ~~Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of this title;~~

280 (4) ~~Unlawful imprisonment pursuant to § 781 of this title;~~

281 (5) ~~Interference with custody pursuant to § 785 of this title; or~~

282 (6) ~~Coercion pursuant to § 791 of this title.~~ Exclusions. Convictions of the following crimes are not eligible
283 for expungement after a pardon under this section:

284 (1) Manslaughter, under § 632 of this title.

285 (2) Murder in the second degree, under § 635 of this title.

286 (3) Murder in the first degree, under § 636 of this title.

287 (4) Rape in the second degree, under § 772 of this title.

288 (5) Rape in the first degree, under § 773 of this title.

289 (6) Sexual abuse of a child by a person in a position of trust, authority, or supervision in the first degree, under
290 § 778(1), (2), or (3).

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

293 § 4376. Disclosure of expunged records.

294 (a)~~(1)~~ Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in
295 investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement
296 agency, it ~~shall be~~ is unlawful for any person having or acquiring access to an expunged court or ~~police~~ law-enforcement
297 agency record to open or review it or to disclose to another person any information from it without an order from the court
298 which ordered the record expunged.

299 (2) In addition to such other lawful purposes as may be prescribed by ~~statute~~ law or otherwise, criminal justice
300 agencies shall have access ~~to records of expunged~~ to the following:

301 a. Records of expunged probations before judgment and past participation in the First Offenders
302 Controlled Substance Diversion Program ~~Program~~, First Offenders Domestic Violence Diversion Program, or a
303 court-supervised drug diversion program for the purpose of determining whether a person is eligible for a
304 probation before judgment, ~~as set forth in under~~ § 4218 of this title, or for title; participation in the First Offenders
305 Controlled Substance Diversion Program, as set forth in under § 4767 of ~~Title 16 or for Title 16~~; participation in
306 the First Offenders Domestic Violence Diversion Program, under § 1024 of Title 10; or participation in a court-
307 supervised drug diversion program.

308 b. For criminal justice agencies involved in the licensing of individuals to carry a concealed deadly
309 weapon under § 1441 of this title, records of expunged cases for the purpose of determining whether an individual
310 meets the requirements to be granted a license to carry a concealed deadly weapon.

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

316 (c) Nothing contained in this subchapter ~~shall require~~ requires the destruction of photographs or fingerprints taken
317 in connection with any felony ~~arrest~~ arrest, or DNA taken under § 4713 of Title 29, and which are utilized solely by law-
318 enforcement officers in the lawful performance of their duties in investigating criminal activity.

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

323 (e) An offense for which records have been expunged ~~pursuant to~~ under this subchapter ~~shall~~ does not have to be
324 disclosed by the person ~~as an arrest~~ for any reason.

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

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

332 (h) Notwithstanding subsection (a) of this section, if a defendant is convicted of an offense after an expungement
333 is granted under this subchapter, the Supervisor of the State Bureau of Identification shall, upon request, provide all of the
334 following with expunged records for the following purposes:

335 (1) A court, the Attorney General, and the defendant, for use or consideration during the defendant's
336 sentencing.

337 (2) The Governor or the Board of Pardons, for use or consideration if the defendant applies for a pardon for
338 the subsequent offense.

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

341 § 4377. Notification to federal government.

342 Upon the granting by the court ~~for~~ of an order for the expungement of records ~~in accordance with~~ under this
343 subchapter, ~~a copy of such order shall be forwarded to the federal Department of Justice.~~ the State Bureau of Identification
344 shall provide notice of the order of expungement to federal law-enforcement.

345 Section 8. Amend § 787, Title 11 of the Delaware Code by making deletions as shown by strike through and
346 insertions as shown by underline as follows:

347 § 787. Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony;
348 class A felony.

349 (j) *Application for pardon and petition to expunge; motion to vacate conviction and expunge record.* —

350 (3) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, any person filing
351 a motion under paragraph (j)(2) of this section in Superior Court or Family Court may also seek in that motion
352 expungement of the criminal record related to such conviction. If the court grants the motion to vacate the conviction
353 under paragraph (j)(2) of this section and the movant also requested expungement, the court's order shall require
354 expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement
355 that the expungement is ordered pursuant to this paragraph and, notwithstanding any limitations to the contrary, that
356 the provisions of §§ ~~4374(f)~~, 4372(e), 4376 and 4377 of this title apply to such order.

357 (4) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, any person filing
358 in Court of Common Pleas a motion under paragraph (j)(2) of this section may, upon the Court of Common Pleas' entry
359 of an order granting the motion to vacate, file a petition in the Superior Court seeking expungement of the criminal
360 record related to such conviction and attaching to the petition a certified copy of the Court of Common Pleas' order
361 granting the motion to vacate. Upon finding that the Court of Common Pleas entered an order under paragraph (j)(2) of
362 this section, the Superior Court shall enter an order requiring expungement of the police and court records relating to
363 the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this
364 paragraph and, notwithstanding any limitations to the contrary, that the provisions of §§ ~~4374(f)~~, 4372(e), 4376 and
365 4377 of this title apply to such order.

366 Section 9. Amend Chapter 94, Title 11 of the Delaware Code by making deletions as shown by strike through and
367 insertions as shown by underline as follows:

368 § 9412A. Information concerning expungement and victim's ability to testify or give written statement.

369 (a) If a defendant seeks an expungement under § 4374 or § 4375 of this title for a crime, the Attorney General shall
370 promptly inform a victim of the crime that the defendant is seeking an expungement and of the victim's ability to testify or
371 give a written statement.

372 (b) If a court holds a hearing on an expungement petition under § 4374 or § 4375 of this title, the Attorney General
373 shall promptly inform a victim of a crime of the date, time, and place of a hearing on the expungement petition.

374 (c) The Attorney General shall promptly inform a victim of a crime of the court's decision on an expungement
375 petition under § 4374 or § 4375 of this title.

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

378 § 1025. Expungement of adult police and court records.

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

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

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

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

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

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

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

390 ~~(d) If an adult is charged with the commission of a crime which is designated as a misdemeanor or violation in Title~~
391 ~~4, 7, 11, 16, or 23, excepting those crimes specifically exempted in paragraph (d)(2) of this section, and the case is~~
392 ~~terminated in favor of the accused, and the person has not previously been convicted of another criminal offense, upon an~~
393 ~~appropriate request to the State Bureau of Identification by such person the police records and court records, including any~~
394 ~~electronic records, relating to the charge or charges shall be expunged if the person has not been convicted of any crime~~
395 ~~since the date upon which the case was terminated in favor of the accused.~~

396 ~~(1) If the State Bureau of Identification determines that expungement is mandated pursuant to the terms of this~~
397 ~~paragraph, it shall promptly so notify the courts and police agencies where records pertaining to the case are located or~~
398 ~~maintained, and any court where the case was terminated, disposed of or concluded. All records appropriately specified~~
399 ~~in the expungement request shall, within 60 days of the determination that such request is mandated pursuant to the~~
400 ~~terms of this section, be removed from the files, and placed in the control of the Supervisor of the State Bureau of~~
401 ~~Identification who shall be designated to retain control over all expunged records, and who shall ensure that the records~~
402 ~~or the information contained therein is not released for any reason except as specified in this subchapter. Criminal~~
403 ~~justice agencies as defined in § 8502(5) of Title 11 shall, however, have access to records of expunged probations~~

404 before judgment for the specific purpose of determining whether a person is eligible for a probation before judgment,
405 as set forth in § 4218 of Title 11. A court or a police agency which receives a notice of expungement from the State
406 Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement. In
407 response to requests from nonlaw enforcement officers for information or records on the person who was arrested, the
408 law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject
409 of the order, that there is no record.

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

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

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

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

431 (e) Notwithstanding any provision of subsection (d) of this section to the contrary, if a person is charged with the
432 commission of a crime and the case is terminated in favor of the accused, the person may file a petition in the Family Court
433 in the county where the case was terminated, disposed of or concluded setting forth the relevant facts and requesting

434 expungement of the police records and the court records relating to the charge or charges. Discretionary expungement
435 pursuant to this section shall not be applicable to the records of any case that may be expunged pursuant to the provisions of
436 subsection (d) of this section, provided, however, that where a person was charged with a criminal offense where
437 discretionary expungement pursuant to this subsection applies, but also was charged, within the same case, with a criminal
438 offense where mandatory expungement pursuant to this section applies, such person must file a petition in the Family Court
439 pursuant to this section.

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

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

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

458 (4) Notwithstanding any provision of this section or any other statute or rule to the contrary, the Attorney
459 General or designee responsible for prosecuting a criminal action may petition the Court to expunge the instant arrest
460 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
461 determined that the continued existence and possible dissemination of information relating to the arrest of the
462 defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute
463 a manifest injustice to the defendant.

464 (5) If an order expunging the records is granted by the Court, all the records specified in the order shall, within
465 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of
466 Identification who shall be designated to retain control over all expunged records, and who shall ensure that the records
467 or the information contained therein is not released for any reason except as specified in this subchapter. A police
468 agency which receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with
469 written confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court
470 which entered the order with written confirmation of the execution of the order. In response to requests from nonlaw-
471 enforcement officers for information or records on the person who was arrested, the law enforcement officers and
472 departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no
473 record. No order requiring an expungement of any record shall be entered or enforced if such order is contrary to the
474 provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to
475 comply with any order issued pursuant to this subchapter.

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

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

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

487 (f) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted
488 of a misdemeanor or violation excepting those crimes specifically exempted in subsection (g) of this section who is
489 thereafter unconditionally pardoned by the Governor may request a discretionary expungement pursuant to the procedures
490 set forth in subsection (e) of this section. The burden shall be on the petitioner to allege specific facts in support of the
491 petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a
492 preponderance of the evidence. The fact that the petitioner was convicted of the criminal offense that is the subject of the
493 petitioner's expungement application shall be considered by the Court as prima facie evidence that the continued existence

494 and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the
495 petitioner.

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

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

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

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

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

502 If a person is charged with or convicted of a crime in Family Court, expungement may be sought under Subchapter
503 VII of Chapter 43 of Title 11.

504 Section 11. Amend § 1027, Title 10 of the Delaware Code by making deletions as shown by strike through and
505 insertions as shown by underline as follows:

506 § 1027. Expungement; records; access by law-enforcement officers.

507 (a) ~~Except for disclosure to law enforcement officers acting in the lawful performance of their duties in~~
508 ~~investigating criminal activity or for the purpose of an employment application as an employee of a law enforcement~~
509 ~~agency, it shall be unlawful for any person having or acquiring access to an expunged court or police record to open or~~
510 ~~review it or to disclose to another person any information from it without an order from the Court which ordered the record~~
511 ~~expunged.~~

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

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

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

523 (e) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the
524 person as an arrest for any reason.

525 (f) Upon the granting by the Court for an order for the expungement of records in accordance with this subchapter,
526 a copy of such order shall be forwarded to the United States Department of Justice.

527 (g) Any person who violates § 1025 of this title shall be guilty of a Class B misdemeanor, and shall be punished
528 accordingly. [Repealed.]

529 Section 12. Amend § 904, Title 4 of the Delaware Code by making deletions as shown by strike through and
530 insertions as shown by underline as follows:

531 § 904. Offenses concerning certain persons.

532 (o) Any person who was convicted of a first offense under subsections (e) and (f) of this section or the same
533 offense under any county or municipal code, ordinance, or regulation and who was under the age of 21 at the time of the
534 offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of
535 arrest to the court in which the person was convicted. For violations of subsection (e) or (f) of this section, an order granting
536 such expungement shall issue upon proof that the person has reached the age of 21, unless the person has failed to comply
537 with the sentencing order or the person has another charge under this section, or under the same offense under any county
538 or municipal code, ordinance, or regulation, which remains outstanding. Upon issuance of the order of expungement, the
539 records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in §§
540 ~~4373(e), 4374 and 4375~~ Subchapter VII of Chapter 43 of Title 11. Nothing in this section shall ~~prohibit~~ prohibits the Family
541 Court from expunging a record of conviction as otherwise provided by law. The application for or granting of a pardon
542 ~~pursuant to under~~ §§ 4361 through ~~4363~~ 4364 of Title 11 shall does not prohibit an expungement under this section. All
543 sentencing orders for violations of this section by persons under the age of 21 at the time of the offense shall state that the
544 record of the conviction may be expunged upon reaching the age of 21 and thereafter. The civil filing fee shall apply to
545 applications for expungement plus a \$100 fee payable to the State Bureau of Identification for administrative costs.

546 Section 13. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and
547 insertions as shown by underline as follows:

548 § 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation [For
549 application of this section, see 80 Del. Laws, c. 38, § 6]

550 (i) Any person who was convicted of a single criminal offense under subsection (c) of this section and who was
551 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
552 the conviction and any indicia of arrest to the court in which the person was convicted. For violations of subsection (c) of

553 this section, an order granting such expungement shall issue upon proof that the person has reached the age of 21, unless
554 the person has failed to comply with the sentencing order or the person has another charge under this section which remains
555 outstanding. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be
556 dealt with in accordance with the procedures specified in §§ ~~4373(c), 4374 and 4375~~ Subchapter VII of Chapter 43 of Title
557 11. Nothing in this section ~~shall prohibit the Family Court~~ prohibits a court from expunging a record of conviction as
558 otherwise provided by law. The application for or granting of a pardon ~~pursuant to~~ under §§ 4361 through ~~4363~~ 4364 of
559 Title 11 ~~shall~~ does not prohibit an expungement under this section. All sentencing orders for violations of this section by
560 persons under the age of 21 at the time of the offense ~~shall~~ must state that the record of the conviction may be expunged
561 upon reaching the age of 21 and thereafter. The civil filing fee ~~shall apply~~ applies to applications for expungement plus a
562 \$100 fee payable to the State Bureau of Identification for administrative costs.

563 Section 14. This Act takes effect 180 days after its enactment into law.

564 Section 15. This Act is known as “The Adult Expungement Reform Act”.

SYNOPSIS

In our modern society, a criminal record can limit a person’s opportunities and the quality of life they can achieve for themselves and their families for years, and even decades, after that person has completed the terms of the criminal sentence imposed. Even the existence of an arrest record with no conviction can limit job opportunities, housing, access to higher education, credit, and access to jobs that require professional licensing.

The General Assembly has expanded the availability of expungement for juvenile adjudications of delinquency quite dramatically in recent years, in recognition that people can and do change and move beyond mistakes of their past. The intent of this Act is to extend that same recognition to some categories of adult records of arrest and conviction.

At present, Delaware allows adults to petition to have a record expunged in only 2 circumstances: (1) for an arrest that did not lead to conviction and (2) after a pardon is granted – but for certain misdemeanor offenses only.

Under this Act, a person may have a record expunged through a petition to the State Bureau of Identification (SBI) for (1) charges resolved in favor of the petitioner; (2) a record that includes violations only after the passage of 3 years; and (3) some misdemeanors after 5 years. Excluded from this SBI-only expungement process are convictions for any misdemeanor crimes of domestic violence, misdemeanor crimes where the victim is a child or a vulnerable adult, and unlawful sexual contact in the third degree. Allowing expungements for arrests without convictions and minor, isolated convictions through an application to the SBI will ease the burden on the courts and the Board of Pardons.

This Act also provides that the court may grant a petition for expungement upon a showing of “manifest injustice” in the following situations: (1) 3 years have passed since the date of a single misdemeanor conviction; (2) a person has a single conviction in a felony case and 7 years have passed from the date of conviction or release from incarceration, whichever is later; (3) 7 years have passed since conviction or release from incarceration on misdemeanor domestic violence or misdemeanor conviction with child or vulnerable adult victim. A felony conviction for any of the following crimes is not eligible for expungement through this discretionary only expungement process, but may be expunged by a court following a pardon: Title 11 violent felonies; § 1136 of Title 16 (crimes against a resident of a long-term care facility; § 3913 of Title 31 (crimes against an adult who is impaired due to a physical or mental disability); and any “felony conviction involving physical or sexual assault crimes” as defined in the Beau Biden Child Protection Act. The Department of Justice will have an opportunity to state its position on the expungement petition to the court, and is empowered to seek input from any victim in the case.

In all cases, the applicant for expungement must have no prior or subsequent convictions (other than traffic offenses, and underage alcohol or marijuana possession) in order to be eligible. A person is not allowed to apply for

expungement under this process if an expungement has been granted within the last 10 years. Fines, fees, and restitution must be paid before an expungement may be granted; however, courts are empowered to waive outstanding fines or convert them to a civil judgement if they are unpaid for reasons other than willful noncompliance. Most Title 21 (traffic offenses), including DUI, are ineligible for expungement under this Act. However, traffic offenses (other than DUIs) will also not operate as a bar to the expungement of other charges.

The Act strikes provisions in Title 10 relating to expungement of adult records in Family Court and consolidates them with the Title 11 expungement provisions. Conforming changes are made to cross-references in Title 4 and 16.

This Substitute Bill differs from Senate Bill No. 37 as follows:

(1) Adds Vehicular Assault in the Second Degree, Incest, Coercion, and Unlawfully Dealing with a Child to the list of crimes that can be expunged only if the individual first receives a pardon. That list previously included only Unlawful Sexual Contact in the Third Degree.

(2) Makes clear that an expungement does not result in an individual's automatic removal from the Child Protection Registry or the Adult Abuse Registry.

(3) Adds certain misdemeanor property crimes to the list of misdemeanor crimes of domestic violence that may be expunged only through the discretionary expungement process.

(4) Permits the State Bureau of Identification to continue to promulgate regulations and impose fees for mandatory expungements under § 4373 of Title 11. This change also makes a technical correction to conform the existing law to the standards of the Delaware Legislative Drafting Manual.

(5) Gives the Department of Justice additional time to answer a petition for discretionary expungement so that the Department has sufficient time to contact the victim of the crime.

(6) Permits the victim of the crime to provide a written statement to the court when a defendant seeks a discretionary expungement and to testify at a hearing if one is held.

(7) Requires, as part of the Victims' Bill of Rights, that the Department of Justice to provide notice to the victim that the defendant is seeking a discretionary expungement; that the victim may provide a statement or testify, if a hearing is held; of the date, time, and place of any hearing; and of the court's decision on the expungement petition.

(8) Makes the following crimes not eligible for discretionary expungement following a pardon: Manslaughter, Murder in the Second Degree, Murder in the First Degree, Rape in the Second Degree, Rape in the First Degree, and Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the First Degree.

(9) Includes references to the First Offender Domestic Violence Diversion Program, under § 1024 of Title 10, so that expunged records related to this program may be accessed by criminal justice agencies to determine if an individual is eligible for the program.

(10) Permits law-enforcement to access expunged records in any criminal investigation, not just a felony investigation.

(11) Permits criminal justice agencies involved in the licensing of individuals to carry a concealed deadly weapon under § 1441 of Title 11 to access expunged records.

(12) Makes clear that an expungement does not require the destruction of DNA taken under § 4713 of Title 29.

(13) Allows the use of an expunged record in sentencing for a subsequent offense or on application for a pardon of a subsequent offense.

(14) Makes clear that it is the State Bureau of Identification's responsibility to inform federal law-enforcement of an order of expungement.

(15) Makes clear that the 10 year waiting period for a subsequent expungement does not apply to an individual who is seeking a mandatory expungement because the case was terminated in the individual's favor.

(16) Removes language that would preclude an individual from obtaining an expungement if the individual has a prior or subsequent driving under the influence offense.

(17) Makes an additional conforming change to remove § 1027 of Title 10, which is obsolete based on the change to § 1025 of Title 10.

(18) Makes technical corrections, including to correct an internal reference and add an existing section heading to the Act for clarity.

Finally, this Act is to be known as the Adult Expungement Reform Act and implementation of the Act is delayed for 180 days to allow State agencies to prepare necessary procedures and forms.

Author: Senator Brown