SPONSOR: Sen. Brown & Rep. Lynn & Rep. Longhurst & Rep. Cooke

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 38

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

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

Section 1. 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.

(c) For the purposes of this subchapter:

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

(2)a. "Conviction" means as defined under § 222 of this title.

b. "Conviction" does not include a case in which a person is adjudicated delinquent under § 1002 of Title 10.

~~(2)~~(3) "Criminal justice agencies" means as defined under § 8502 of this title.

~~(3)~~(4) "Expungement" means that all law-enforcement agency records and court records relating to a case in which an expungement is granted, including any electronic records, are destroyed, segregated, or placed in the custody of the State Bureau of Identification, and are not released in conjunction with any inquiry beyond those specifically authorized under this subchapter.

(f) Exclusions. — Except as otherwise provided under § 4375 of this title, the following exclusions apply:

(1) ~~A~~ Except as otherwise provided under paragraph (b)(6) of this section, a person is not eligible for an expungement while the person has pending criminal ~~charges, except under paragraph (b)(6) of this section.~~ charges. For purposes of this paragraph (f)(1), "pending criminal charges" does not include an alleged violation of any of the following:

a. Section 904 (e) or (f) of Title 4.

b. Section 4764(c) of Title 16.

c. A Title 21 offense.

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

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

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

b. Incest under § 766 of this title.

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

d. Coercion under § 791 of this title.

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

(4)a. A person is not eligible for an expungement of a felony conviction ~~under this subchapter~~ if the person is convicted of the felony after the date an expungement of a prior felony conviction was ~~granted under this subchapter.~~ granted.

b. For ~~any other~~ an expungement of a ~~conviction,~~ conviction other than in the circumstances under paragraph (4)a. of this section, a person is not eligible if the person has been granted an expungement of a prior conviction in the previous 10 years. This paragraph (4)b. applies to a person who is granted an expungement after December 27, 2019.

c. This paragraph (f)(4) does not apply to a person seeking an expungement under § 4373(a)(1) or (a)(2) of this title.

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

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

Section 2. Amend § 4373, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4373. Mandatory expungement; application through SBI.

(a) *Eligibility.* — 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:

(1) The person was arrested or charged with the commission of 1 or more crimes and the case is terminated in favor of the accused. 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) The person was convicted of 1 or more violations relating to the same case, 3 years have passed since the date of conviction, and the person has no prior or subsequent convictions.

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

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

(1) A misdemeanor crime of domestic violence. For purposes of this section, a "misdemeanor crime of domestic violence", means a misdemeanor 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 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~~ § 1271(3), § 1271A, § 1311, or § 2113 of this title.

Section 3. Amend § 4374, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4374. Discretionary expungement; application to court.

(d) *Jurisdiction and authority.* —

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

(2) A person may file a petition for discretionary expungement under this section and include in the petition a case that is eligible for mandatory expungement under § 4373 of this title. The Family Court or Superior Court may address both the mandatory and discretionary expungement requests when a mandatory expungement is filed with a discretionary expungement petition.

Section 4. Amend § 4375, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4375. Discretionary expungement following a pardon.

(a) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted of a crime, other than those specifically excluded under subsection (b) of this section, who is thereafter unconditionally pardoned by the Governor may request a discretionary expungement under the procedures ~~set forth in § 4374 of this title.~~ under § 4374(c) through (h) and (j) of this title.

(b) *Exclusions.* — Convictions of the following crimes are not eligible for expungement after a pardon under this section:

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

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

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

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

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

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

SYNOPSIS

In 2019, the 150th General Assembly enacted Senate Substitute No. 1 for Senate Bill No. 37, which reformed the adult expungement process in this State. After a year of implementing this new expungement process, Senate Bill No. 38 was introduced to make changes to clarify language or increase the efficiency of the process.

Like Senate Bill No. 38, this Substitute does the following:

(1) Clarifies that the adult expungement law under Subchapter VII of Chapter 43 of Title 11 of the Delaware Code does not apply to a juvenile adjudication of delinquency.

(2) Clarifies that "pending criminal charges" does not include an alleged violation of Section 904 (e) or (f) of Title 4, Section 4764(c) of Title 16, or a Title 21 offense.

(3) Clarifies that certain crimes that are not eligible for a mandatory or discretionary expungement under § 4372(f) of Title 11 are eligible for a discretionary expungement after an unconditional pardon is granted by the Governor.

(4) Clarifies that the requirement that a person may not receive an expungement for 10 years after a prior expungement is to be applied prospectively to expungements granted after December 27, 2019.

(5) Clarifies that the requirement that all fines, fees, and restitution be paid before an expungement is granted applies to the conviction for which the person is seeking the expungement, not all fines, fees, or restitution the person might owe.

(6) Clarifies that a case terminated in favor of an accused is to be expunged even if a person has other prior or subsequent convictions that are not eligible for expungement.

(7) Includes certain criminal contempt of court orders, criminal contempt of a protection from abuse order, and breach of release as misdemeanor crimes of domestic violence that are not subject to mandatory expungement.

(8) Clarifies that a discretionary expungement that is sought after an unconditional pardon by the Governor is to follow the procedures for a discretionary expungement in § 4374(c) through (h) and (j) of Title 11 and is not to be restricted by any of the eligibility requirements or exclusions contained in § 4374 of Title 11.

This Substitute differs from Senate Bill No. 38 as follows:

(1) This Substitute removes the process for expunging certain cases that do not have a disposition.

(2) While this Substitute also permits a person to include in a petition for discretionary expungement a crime that is eligible for mandatory expungement and to authorize Family Court and Superior Court to grant a mandatory expungement, this Substitute modifies that language.

Author: Senator Brown