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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 37
AS AMENDED BY
SENATE AMENDMENT NO. 1

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:

Section 1. Amend § 4371, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4371. Statement of policy.

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

Section 2. 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. ~~Termination of criminal action in favor of accused.~~ Applicability; definitions; effect of expungement.

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

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

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

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

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

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

(5) The accused is acquitted of 1 or more charges related to the case, and the other charges are dismissed by the entry of a nolle prosequi or otherwise.

(6) The accused is arrested for the commission of 1 or more crimes and no charges related to the matter for which the person was arrested are filed in any court within 1 year of the arrest.

(c) For the purposes of this ~~subchapter,~~ subchapter:

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

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

(3) "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.

(d) Except as otherwise provided under § 4376(a) of this title, a person is not required to disclose, nor should the person be asked to disclose, to anyone for any purpose that the person was arrested for, charged with, or convicted of an offense for which records have been expunged under this subchapter or any other provision of this Code.

(e)(1) If a court issues an order expunging records, all the criminal records relating to a case specified in the order 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 Bureau of Identification or otherwise segregated and kept in a manner that ensures that they are not open to public inspection or disclosure. The court may retain a non-public record of expungement orders. The court shall send a copy of its order of expungement to the Bureau, and shall consult with the Bureau to develop a standard form of order for expungements. Except as otherwise provided under § 4376 of this title, the Supervisor of the Bureau shall retain control over all expunged records and shall ensure that the records or information contained in the records are not released for any reason.

(2) If the State Bureau of Identification determines that expungement is mandated under this subchapter, or receives an expungement order from a court, it shall promptly notify all courts and law-enforcement agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of, or

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

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

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

(f) Exclusions.

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

(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.

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

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 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. For any other expungement of a conviction, a person is not eligible if the person has been granted an expungement of a prior conviction in the previous 10 years. This paragraph (f)(4) of this section does not apply to a person seeking an expungement under § 4373(a)(1) 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.

(g) A prior or subsequent conviction under § 904(e) or (f) of Title 4 (regarding underage possession or consumption of alcohol) or a conviction under § 4764(c) of Title 16 (regarding underage possession of personal use

quantity of marijuana) does not operate as a bar to eligibility for discretionary or mandatory expungement under this subchapter.

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

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

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

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

(*l*) To be eligible for an expungement under this subchapter, all fines, fees, and restitution associated with a 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 3. 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.~~ expungement; application through SBI.

(a) ~~If a person is charged with the commission of a crime which is designated as a misdemeanor or violation in Title 4, 7, 11, 16 or 23, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any Title 4, 7, 11, 16 or 23 offense, excepting those crimes specifically exempted in subsection (c) of this section, and the case is terminated in favor of the accused, and the person has not previously been convicted of another criminal offense, upon an appropriate request to the State Bureau of Identification by such person the police records and court records, including any electronic records, relating to the charge or charges shall be expunged if the person has not been convicted of any crime since the date upon which the case was terminated in favor of the accused.~~ 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.

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

(2) Offenses where the victim is a child.

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

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

(5) Any of the following misdemeanors:

a. Unlawfully administering drugs, under § 625 of this title, when the charged in conjunction with a sexual offense, as defined in § 761(f) of this title.

b. Sexual harassment, under § 763 of this title.

c. Indecent exposure in the second degree, under § 764 of this title.

d. Indecent exposure in the first degree, under § 765 of this title.

e. Trespassing with intent to peer or peep into a window or door of another, under § 820 of this title.

f. Organized retail crime, under § 841B of this title.

g. Home improvement fraud, under § 916 of this title.

h. New home construction fraud, under § 917 of this title.

i. Offenses against law-enforcement animals, under § 1250 of this title.

j. Promoting prison contraband, under § 1256 of this title.

k. Resisting arrest, under § 1257 of this title.

l. Use of an animal to avoid capture, under § 1257A of this title.

m. Hate crime, under § 1304 of this title.

n. Malicious interference with emergency communication, under § 1313 of this title.

o. Abusing a corpse, under § 1332 of this title.

p. Violation of privacy, under § 1335 of this title.

q. Lewdness, under § 1341 of this title.

r. Patronizing a prostitute, under § 1343 of this title.

s. Permitting prostitution, under § 1355 of this title.

t. Carrying a concealed dangerous instrument, under § 1443 of this title.

u. Unlawfully dealing with a dangerous weapon, under § 1445 of this title.

v. Unlawfully permitting a minor access to a firearm, under § 1456 of this title.

w. Possession of a weapon in a Safe School and Recreation Zone, under § 1457 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Section 1136 of Title 16.

(3) Section 3913 of Title 31.

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

(c) Venue. If all of the charges and convictions sought to be expunged were disposed of in Family Court, a petition under this section must be filed in the Family Court for the county where the most recent case was terminated. If any of the

charges or convictions were not disposed of in Family Court, a petition under this section must be filed in the Superior Court for the county where the most recent case was terminated.

(d) Jurisdiction and authority. 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.

~~(b)~~ (e) After the petition requesting expungement is filed with the Superior ~~Court~~ or Family Court, the petitioner shall cause a copy of the petition to be served upon the Attorney General, who may file an objection or answer to the petition within ~~30 days~~ 120 days after it is served on the Attorney General. The petitioner shall attach a copy of that petitioner's criminal history as maintained by the State Bureau of Identification to any petition requesting expungement filed ~~pursuant to~~ under this section. The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history. Upon receipt of any petition, the Attorney General shall contact a victim of the crime at the victim's last known address or telephone number to ascertain the victim's position on the petition. The Attorney General shall provide the victim's position, if known, in the Attorney General's answer to the petition. The Attorney General shall promptly orally inform the victim of the court's decision. The Attorney General may not provide the victim with a copy of the expungement order. For purposes of this subsection, "victim" means as defined in § 9401 of this title.

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

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

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

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 prosecutor has determined that the continued existence and possible dissemination of information relating to the arrest of the defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the defendant.

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

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

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

a. Driving after judgment prohibited, ~~pursuant to~~ under § 2810 of ~~Title 21;~~ Title 21.

b. Reckless driving, ~~pursuant to~~ under § 4175 of ~~Title 21;~~ Title 21.

c. Operation of a motor vehicle causing death, ~~pursuant to~~ under § 4176A of ~~Title 21;~~ Title 21.

d. ~~Driving under the influence, pursuant to § 4177 of Title 21; or~~ [Repealed.]

e. ~~Operating a commercial vehicle with a prohibited blood alcohol concentration or while impaired by drugs, pursuant to § 4177M of Title 21~~. [Repealed.]

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

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

Section 5. 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 ~~misdemeanor or violation excepting those crimes specifically exempted in subsection (b) of this section~~ 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 ~~pursuant to~~ under the procedures set forth in § 4374 of this title. ~~The burden shall be on the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence. The fact that the petitioner was convicted of the criminal offense that is the subject of that petitioner's expungement application shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.~~

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

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

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

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

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

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

~~(6) Coercion pursuant to § 791 of this title.~~ 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).

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

§ 4376. Disclosure of expunged records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 4377. Notification to federal government.

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

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

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

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

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

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

Section 9. Amend § 1025, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1025. Expungement of adult police and court records.

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

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

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

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

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

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

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

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

(1) If the State Bureau of Identification determines that expungement is mandated pursuant to the terms of this paragraph, it shall promptly so notify the courts and police agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of or concluded. All records appropriately specified in the expungement request shall, within 60 days of the determination that such request is mandated pursuant to the terms of this section, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall ensure that the records or the information contained therein is not released for any reason except as specified in this subchapter. Criminal justice agencies as defined in § 8502(5) of Title 11 shall, however, have access to records of expunged probations before judgment for the specific purpose of determining whether a person is eligible for a probation before judgment, as set forth in § 4218 of Title 11. A court or a police agency which receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, the law-enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

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

a. Any misdemeanor designated as a sex offense pursuant to § 761 of Title 11;

b. Any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of Title 11;

c. Unlawful imprisonment pursuant to § 781 of Title 11;

d. Interference with custody pursuant to § 785 of Title 11;

e. Coercion pursuant to § 791 of Title 11;

f. Trespassing with intent to peer or peep, pursuant to § 820 of Title 11;

g. Endangering the welfare of a child, pursuant to § 1102 of Title 11;

h. Crime against a vulnerable adult, pursuant to § 1105 of Title 11;

i. Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of Title 11;

j. Any misdemeanor or violation set forth in Chapter 85 of Title 11;

k. Patient abuse, pursuant to § 1136 of Title 16;

l. Operation of a vessel or boat while under the influence, pursuant to § 2302 of Title 23.

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

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

(e) Notwithstanding any provision of subsection (d) of this section to the contrary, if a person is charged with the commission of a crime and the case is terminated in favor of the accused, the person may file a petition in the Family Court in the county where the case was terminated, disposed of or concluded setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge or charges. Discretionary expungement pursuant to this section shall not be applicable to the records of any case that may be expunged pursuant to the provisions of subsection (d) of this section, provided, however, that where a person was charged with a criminal offense where discretionary expungement pursuant to this subsection applies, but also was charged, within the same case, with a criminal offense where mandatory expungement pursuant to this section applies, such person must file a petition in the Family Court pursuant to this section.

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

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

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

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

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

~~provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to comply with any order issued pursuant to this subchapter.~~

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

~~a. Driving after judgment prohibited, pursuant to § 2810 of Title 21;~~

~~b. Reckless driving, pursuant to § 4175 of Title 21;~~

~~c. Operation of a motor vehicle causing death, pursuant to § 4176A of Title 21;~~

~~d. Driving under the influence, pursuant to § 4177 of Title 21;~~

~~e. Operating a commercial vehicle with a prohibited blood alcohol concentration or while impaired by drugs, pursuant to § 4177M of Title 21.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 11. Amend § 904, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 904. Offenses concerning certain persons.

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

Section 12. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

Section 13. This Act takes effect 180 days after its enactment into law.

Section 14. This Act is known as “The Adult Expungement Reform Act”.