149th GENERAL ASSEMBLY
FISCAL NOTE

BILL:	**HOUSE BILL NO. 450**
SPONSOR:	**Representative Matthews**
DESCRIPTION:	**AN ACT TO AMEND TITLES 4, 10, 11, AND 16 OF THE DELAWARE CODE RELATING TO EXPUNGEMENT OF ADULT CRIMINAL RECORDS.**

Assumptions:

1. This Act will take effect 180 days after enactment.

2. This Act requires that an expungement must be granted to a petitioner if the following criteria has been met:

    - A person was arrested or charged but the case was resolved in favor of the petitioner.
    - After three years for a single violation
    - After five years for a single misdemeanor.
    - In all cases, a person is eligible for expungement if the person has no prior or subsequent convictions (with an exception for status offenses such as underage alcohol consumption).

3. This Act gives the Courts the power to decide if the petitioner deserves a discretionary expungement in the following cases:

    - One year has passed since conviction of a violation
    - Three years have passed since conviction of a misdemeanor
    - Seven years have passed since conviction of a felony or since release from confinement, whichever is later.
    - In all cases, a person is eligible for discretionary expungement if they have no prior or subsequent convictions (with an exception for status offenses such as underage alcohol consumption and for Title 21 driving offenses other than driving under the influence. The person must demonstrate that they are facing a grievous injustice without being granted an expungement.

4. This Act provides a new provision for an automatic expungement after a Governor's pardon has been granted, and also does not limit the Governor's authority to limit the right to an expungement as a condition of the pardon in any individual case.

5. The State Bureau of Identification (SBI) is required to make electronic records available to criminal justice agencies to determine whether a person who seeks to participate in the First Offenders Controlled Substance Diversion Program, may obtain probation before judgement disposition, or may participate in a court supervised drug diversion program that has done so before and had the record expunged.

6. In 2015 the SBI processed 823 expungements. Since 2015, the number of expungement requests has increased significantly. In 2016, due to major legislative changes there was a 49% increase, and in 2017 there was a 64% increase as a result of major activist contributions and funding from non-profits, amounting to 2013 expungements.

    - Currently, there are two full time Criminal History Technicians. One is in charge of doing histories for applicants and the other does the orders. Both histories and orders are consistently back logged and are time sensitive. The SBI anticipates another uptick in the number of expungements that would need to be processed as a result of HB 450. The SBI

would not be able to accommodate any further increases in processing expungements at its current staffing level. In order to implement this Act, the SBI would need two full-time Criminal History one for processing history and the other for orders.

- The annual cost for 2 full-time Criminal History Technicians is $99,000.

7. Superior Court projects that the number of expungement petitions will increase significantly under this Act as it expands the list of individuals who are eligible to petition for an expungement.

8. Each filed petition requires a series of additional complex filing processes. The Superior Court will be required to take on additional functions that require an electronic system. The Superior Court does not have an automated system to provide notice to the federal Department of Justice that an expungement was issued and the task will need to be performed manually.

9. The Superior Court projects a surge in the first several years of implementing HB 450. It is indeterminable how long the surge will last and that following the initial wave of petitions, Superior Court anticipates a steady and more sustainable volume of cases. Due to all these unknowns, and the fact that the number of cases may vary greatly over time, Superior Court recommends that the number of filings and the volume of cases be reviewed 12 months after the effective date, and then again at 2 years after the effective date to see if the number of cases is still growing or declining.

10. The Superior Court would require 3 additional Paralegals and 1 Judicial Case processor to handle the research necessary to process the anticipated volume of petitions and that a case processor will be needed to ensure timely docketing of the petitions.

    - The annual cost for 1.0 FTE for a Paralegals III is $66,429 and 1.0 FTE for a Judicial Case Processor III is $51,563. The total cost for all 4.0 positions is $250,000.

Cost:

Fiscal Year 2019	$	175,000	Assumes 6 months funding
Fiscal Year 2020	$	350,000	
Fiscal Year 2021	$	350,000	

Prepared by Huma Haroon
Office of the Controller General