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HOUSE OF REPRESENTATIVES
144th GENERAL ASSEMBLY

HOUSE BILL NO. 496

AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO RECORDS OF ARREST
AND PROSECUTION.

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

1 Section 1. Amend § 4372 of Title 11 of the Delaware Code by striking said Section in its entirety, and by
2 substituting in lieu thereof the following:

3 “§ 4372. Termination of criminal action in favor of accused.

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

7 (b) For the purposes of this subchapter, a case shall be deemed to be ‘terminated in favor of the
8 accused’ only if:

9 (1) the accused is acquitted of all charges related to the case; or

10 (2) a *nolle prosequi* is entered on all charges related to the case, or all charges related to the
11 case are otherwise dismissed.

12 (c) For the purposes of this subchapter, ‘case’ means a charge or set of charges related to a
13 complaint or incident that are or could be properly joined for prosecution.”.

14 Section 2. Amend § 4373 of Title 11 of the Delaware Code by striking said subsection in its entirety, and by
15 substituting in lieu thereof the following:

16 “§ 4373. Mandatory Expungement.

17 (a) If a person is charged with the commission of a crime which is designated as a misdemeanor or
18 violation in Titles 4, 7, 11, 16 or 23 of this Code, excepting those crimes specifically exempted
19 in subsection (c) of this Section, and the case is terminated in favor of the accused, and the
20 person has not previously been convicted of another criminal offense, upon an appropriate
21 request to the State Bureau of Identification by such person the police records and court records,

22 including any electronic records, relating to the charge or charges shall be expunged if the
23 person has not been convicted of any crime since the date upon which the case was terminated in
24 favor of the accused.

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

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

- 41 (1) Any misdemeanor designated as a sex offense pursuant to 11 Del.C. § 761;
- 42 (2) any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of Title 11 of this
43 Code;
- 44 (3) Trespassing with Intent to Peer or Peep, pursuant to 11 Del.C. § 820;
- 45 (4) Endangering the Welfare of a Child, pursuant to 11 Del.C. § 1102;
- 46 (5) Endangering the Welfare of an Incompetent Person, pursuant to 11 Del.C. § 1105;
- 47 (6) any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of
48 Title 11 of this Code;
- 49 (7) any misdemeanor or violation set forth in Chapter 85 of Title 11 of this Code;
- 50 (8) Patient Abuse, pursuant to 16 Del.C. § 1136;

- 51 (9) Operation of a Vessel or Boat While Under the Influence, pursuant to 23 Del.C. § 2302.
- 52 (d) At the time the application requesting expungement is filed with the State Bureau of
- 53 Identification the applicant shall pay a reasonable fee to the State Bureau of Identification. The
- 54 applicant shall attach a copy of his or her criminal history as maintained by the State Bureau of
- 55 Identification to any application requesting expungement filed pursuant to this Section. The
- 56 State Bureau of Identification shall summarily reject any application for expungement that does
- 57 not include the applicant's criminal history without further notice to the applicant.
- 58 (e) The State Bureau of Identification shall be authorized to promulgate reasonable regulations and
- 59 a reasonable fee schedule to accomplish the purposes of this Section.”.

60 Section 3. Amend Chapter 43 of Title 11 of the Delaware Code by redesignating § 4374 and § 4375 thereof as §

61 4376 and § 4377, respectively, and by adding new sections § 4374 and § 4375 thereto, to read as follows:

62 “§ 4374. Discretionary Expungement.

- 63 (a) Notwithstanding any provision of § 4373 of this Title to the contrary, if a person is charged with
- 64 the commission of a crime and the case is terminated in favor of the accused, the person may file
- 65 a petition in the Superior Court in the county where the case was terminated, disposed of or
- 66 concluded setting forth the relevant facts and requesting expungement of the police records and
- 67 the court records, or includes any electronic records, relating to the charge or charges.
- 68 Discretionary expungement pursuant to this Section shall not be applicable to the records of any
- 69 case that may be expunged pursuant to the provisions of § 4373 of this Title; provided, however,
- 70 where a person was charged with a criminal offense where discretionary expungement pursuant
- 71 to this § 4374 applies, but also was charged, within the same case, with a criminal offense where
- 72 mandatory expungement pursuant to § 4373 applies, such person must file a petition in Superior
- 73 Court pursuant to this Section.
- 74 (b) After the petition requesting expungement is filed with the Superior Court the petitioner shall
- 75 cause a copy of the petition to be served upon the Attorney General, who may file an objection
- 76 or answer to the petition within 30 days after it is served on the Attorney General. The petitioner
- 77 shall attach a copy of his or her criminal history as maintained by the State Bureau of
- 78 Identification to any petition requesting expungement filed pursuant to this Section. The Court

79 shall summarily reject any petition for expungement that does not include the petitioner's
80 criminal history.

81 (c) Unless the Court believes a hearing is necessary, petitions shall be disposed of without a hearing.
82 If the Court finds that the continued existence and possible dissemination of information relating
83 to the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest
84 injustice to the petitioner, it shall enter an order requiring the expungement of the police and
85 court records relating to the charge or case. Otherwise, it shall deny the petition. The burden
86 shall be on the petitioner to allege specific facts in support of his or her allegation of manifest
87 injustice, and the burden shall be on the petitioner to prove such manifest injustice by a
88 preponderance of the evidence. The fact that the petitioner has previously been convicted of a
89 criminal offense, other than that referred to in the petition, shall be considered by the Court as
90 *prima facie* evidence that the continued existence and possible dissemination of information
91 relating to the arrest in question does not constitute a manifest injustice to the petitioner. A
92 petition filed by the Attorney General or his or her designee pursuant to subsection (e) of this
93 Section shall be granted by the Court.

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

96 (e) Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the
97 Attorney General or his/her designee responsible for prosecuting a criminal action may petition
98 the Court to expunge the instant arrest record of a defendant if at the time of a state motion to
99 dismiss or entry a *nolle prosequi* in the case, the prosecutor has determined that the continued
100 existence and possible dissemination of information relating to the arrest of the defendant for the
101 matter dismissed or for which a *nolle prosequi* was entered may cause circumstances which
102 constitute a manifest injustice to the defendant.

103 (f) If an order expunging the records is granted by the Court, all the criminal records specified in the
104 order shall, within 60 days of the order, be removed from the files, and placed in the control of
105 the Supervisor of the State Bureau of Identification who shall be designated to retain control
106 over all expunged records, and who shall insure that the records or the information contained
107 therein is not released for any reason except as specified in this subchapter. A court and/or

108 police agency which receives a notice of expungement from the State Bureau Identification shall
109 provide the Bureau with written confirmation of the completion of the expungement. The State
110 Bureau of Identification shall provide the Court which entered the order with written
111 confirmation of the execution of the order. In response to requests from nonlaw-enforcement
112 officers for information or records on the person who was arrested, the law-enforcement officers
113 and departments shall reply, with respect to the arrest and proceedings which are the subject of
114 the order, that there is no record. No order requiring an expungement of any record shall be
115 entered or enforced if such order is contrary to the provisions of this subchapter. The State
116 Bureau of Identification shall promptly notify the Court if it is unable to comply with any order
117 issued pursuant to this subchapter.

118 (g) (1) Notwithstanding any provision of this subchapter or any other statute or rule to the
119 contrary, the police records and the court records relating to any charge set forth in Title
120 21 of this Code shall not be expunged pursuant to this subchapter unless the charge or
121 charges is one of those specifically enumerated in paragraph (2) of this subsection.

122 (2) Discretionary expungement pursuant to this Section shall be applicable when otherwise
123 appropriate for the following Title 21 offenses:

- 124 a. Driving After Judgment Prohibited, pursuant to 21 Del.C. § 2810;
- 125 b. Reckless Driving, pursuant to 21 Del.C. § 4175;
- 126 c. Operation of a Motor Vehicle Causing Death, pursuant to 21 Del.C. § 4176A;
- 127 d. Driving Under the Influence, pursuant to 21 Del.C. § 4177; or
- 128 e. Operating a Commercial Vehicle With a Prohibited Blood Alcohol
129 Concentration or While Impaired By Drugs, pursuant to 21 Del.C. § 4177M.

130 (h) The Superior Court shall establish a reasonable fee schedule for the filing of a petition of
131 expungement pursuant to this Section.

132 § 4375. Discretionary expungement following a pardon.

133 (a) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who
134 was convicted of a misdemeanor or violation excepting those crimes specifically exempted in
135 subsection (b) of this Section who is thereafter unconditionally pardoned by the Governor may
136 request a discretionary expungement pursuant to the procedures set forth in § 4374 of this

137 subchapter. The burden shall be on the petitioner to allege specific facts in support of his or her
138 allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest
139 injustice by a preponderance of the evidence. The fact that the petitioner was convicted of the
140 criminal offense that is the subject of his or her expungement application shall be considered by
141 the Court as *prima facie* evidence that the continued existence and possible dissemination of
142 information relating to the arrest in question does not constitute a manifest injustice to the
143 petitioner.

144 (b) Discretionary expungement following a pardon pursuant to this Section shall not be applicable to
145 the records of any case in which the defendant was charged with one or more of the following
146 crimes:

147 (1) any misdemeanor or violation involving embezzlement of public money, bribery or
148 perjury;

149 (2) any misdemeanor designated as a sex offense pursuant to 11 Del.C. § 761; or

150 (3) any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of
151 Title 11 of this Code.”.

152 Section 4. Amend Chapter 43 of Title 11 of the Delaware Code by adding a new § 4378 thereto, to read as
153 follows:

154 “§ 4378. Expungement of offenses resolved by probation before judgment and the first offenders controlled
155 substances diversion program.

156 (a) Notwithstanding any statute or rule to the contrary, the police records and court records relating
157 to any charge resolved by probation before judgment as set forth in § 4218 of this Title followed
158 by a discharge from probation upon fulfillment of the terms and condition of probation shall not
159 be expunged unless at least five years have elapsed from the date on which the defendant was
160 discharged from probation. After such five year period has elapsed, any charge resolved by
161 probation before judgment followed by a discharge from probation upon fulfillment of the terms
162 and condition of probation shall be expunged pursuant to the provisions of this subchapter.

163 (b) Notwithstanding any statute or rule to the contrary, the police records and court records relating
164 to any charge resolved by the First Offenders Controlled Substances Diversion Program as set
165 forth in § 4764 of Title 16 of this Code followed by a discharge from probation upon fulfillment

166 of the terms and condition of probation shall not be expunged unless at least two years have
167 elapsed from the date on which the defendant was discharged from probation. After such two
168 year period has elapsed, any charge resolved by the First Offenders Controlled Substances
169 Division Program followed by a discharge from probation upon fulfillment of the terms and
170 condition of probation shall be expunged pursuant to the provisions of this subchapter.”.

171 Section 5. Amend § 8513 of Title 11 of the Delaware Code by adding a new subsection “(h)” thereto, to read as
172 follows:

173 “(h) Notwithstanding any law or court rule to the contrary, criminal history record information
174 disseminated pursuant to subsection (c) of this Section shall not include information pertaining
175 to any charge resolved by Probation Before Judgment as set forth in § 4218 of this Title, or by
176 the First Offenders Controlled Substances Diversion Program as set forth in § 4764 of Title 16
177 of this Code, once all terms and conditions of any period of probation imposed pursuant to said
178 Sections have been completed to the satisfaction of the Court and the defendant is discharged
179 from probation. Nothing in this subsection shall prevent the dissemination of such information to
180 any criminal justice agency.”.

181 Section 6. Amend § 1025 of Title 10 of the Delaware Code by striking said Section in its entirety, and by
182 substituting in lieu thereof the following:

183 “§ 1025. Expungement of adult police and court records.

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

187 (b) For the purposes of this Section, a case shall be deemed to be ‘terminated in favor of the
188 accused’ only if:

189 (1) the accused is acquitted of all charges related to the case; or

190 (2) a *nolle prosequi* is entered on all charges related to the case, or all charges related to the
191 case are otherwise dismissed.

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

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

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

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

- 219 a. any misdemeanor designated as a sex offense pursuant to, 11 Del.C. § 761;
- 220 b. any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of Title
221 11 of this Code;
- 222 c. Trespassing with Intent to Peer or Peep, pursuant to 11 Del.C. § 820;

- 223 d. Endangering the Welfare of a Child, pursuant to 11 Del.C. § 1102;
224 e. Endangering the Welfare of an Incompetent Person, pursuant to 11 Del.C. §
225 1105;
226 f. any misdemeanor set forth in subparts A, B, C or F of subchapter VI of
227 Chapter 5 of Title 11 of this Code;
228 g. any misdemeanor or violation set forth in Chapter 85 of Title 11 of this Code;
229 h. Patient Abuse, pursuant to 16 Del.C. § 1136;
230 i. Operation of a Vessel or Boat While Under the Influence, pursuant to 23
231 Del.C. § 2302.

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

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

241 (e) Notwithstanding any provision of subsection (d) of this Title to the contrary, if a person is
242 charged with the commission of a crime and the case is terminated in favor of the accused, the
243 person may file a petition in the Family Court in the county where the case was terminated,
244 disposed of or concluded setting forth the relevant facts and requesting expungement of the police
245 records and the court records relating to the charge or charges. Discretionary expungement
246 pursuant to this Section shall not be applicable to the records of any case that may be expunged
247 pursuant to the provisions of subsection (d) of this Title.

248 (1) After the petition requesting expungement is filed with the Family Court, the petitioner
249 shall cause a copy of the petition to be served upon the Attorney General, who may file
250 an objection or answer to the petition within 30 days after it is served on the Attorney
251 General. The petitioner shall attach a copy of his or her criminal history as maintained

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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. Otherwise, it shall deny the petition. The burden shall be on the petitioner to allege specific facts in support of his or her 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 his or her designee pursuant to paragraph (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

281 control of the Supervisor of the State Bureau of Identification who shall be designated
282 to retain control over all expunged records, and who shall ensure that the records or the
283 information contained therein is not released for any reason except as specified in this
284 subchapter. The State Bureau of Identification shall provide the Court which entered
285 the order with written confirmation of the execution of the order. In response to
286 requests from nonlaw-enforcement officers for information or records on the person
287 who was arrested, the law-enforcement officers and departments shall reply, with
288 respect to the arrest and proceedings which are the subject of the order, that there is no
289 record. No order requiring an expungement of any record shall be entered or enforced
290 if such order is contrary to the provisions of this subchapter. The State Bureau of
291 Identification shall promptly notify the Court if it is unable to comply with any order
292 issued pursuant to this subchapter.

293 (6) Notwithstanding any provision of this Section or any other statute or rule to the
294 contrary, the police records and the court records relating to any charge set forth in Title
295 21 of this Code shall not be expunged pursuant to this Section unless the charge or
296 charges is one of these specifically enumerated offenses:

- 297 a. Driving After Judgment Prohibited, pursuant to 21 Del.C. § 2810;
- 298 b. Reckless Driving, pursuant to 21 Del.C. § 4175;
- 299 c. Operation of a Motor Vehicle Causing Death, pursuant to 21 Del.C. § 4176A;
- 300 d. Driving Under the Influence, pursuant to 21 Del.C. § 4177;
- 301 e. Operating a Commercial Vehicle With a Prohibited Blood Alcohol
302 Concentration or While Impaired by Drugs, pursuant to 21 Del.C. § 4177M.

303 (7) The Family Court shall establish a reasonable fee schedule for the filing of a petition of
304 expungement pursuant to this Section.”.

305 Section 7. Amend § 1026 of Title 10 of the Delaware Code by redesignating said Section as § 1027, and by
306 adding a new § 1026 thereto, to read as follows:

307 “§ 1026. Expungement of offenses resolved by probation before judgment.

308 Notwithstanding any statute or rule to the contrary, the police records and court records relating to any
309 charge resolved by probation before judgment followed by a discharge from probation upon fulfillment of the

310 terms and condition of probation shall not be expunged unless at least five (5) years have elapsed from the date on
311 which the defendant was discharged from probation. After such five-year period has elapsed, any charge resolved
312 by probation before judgment followed by a discharge from probation upon fulfillment of the terms and condition
313 of probation shall be expunged pursuant to the provisions of this subchapter.”.

314 Section 8. No actions for expungement in Superior Court pending upon date of enactment shall be affected by this
315 legislation and shall continue to be processed under the previous statutory provisions.

316 Section 9. This Act will become effective 90 days after signed by the Governor.

SYNOPSIS

This Act will modernize and streamline the process by which the police records and court records relating to arrests in cases with adult defendants are expunged. Under current law, all requests for expungement are discretionary matters decided upon by a judge. This Act will require the automatic expungement of records in most misdemeanor cases upon request of the defendant to the State Bureau of Identification. This new process will be much simpler than the existing one, and therefore less expensive to both the defendant and the criminal justice system. The Act also makes several changes to the discretionary expungement process utilized by the courts that will make that process more efficient. It also creates a mechanism that will allow most misdemeanor convictions that are the subject of a Governor’s pardon to be expunged at the discretion of the Superior Court. Under current law, pardoned convictions can never be expunged.

This Act also will facilitate the rehabilitative efforts of defendants who resolved their cases by successful completion of Probation Before Judgment or the First Offenders Controlled Substances Diversion Program by prohibiting the State Bureau of Identification from including information about the arrest on the version of the defendant’s criminal history record that is released to persons or entities outside of the criminal justice system. The information will remain available to judges, prosecutors and the police. Expungement will be available after enough time has passed to permit enforcement of the time limits promulgated in the various first offender programs.