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HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 169

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

1 WHEREAS, Delaware law currently provides for the expungement of police and court records when a person has
2 been charged with the commission of one or more criminal acts and when the case is, thereafter, terminated in favor of the
3 accused; and

4 WHEREAS, a person whose record has been expunged is not be required to disclose the existence of the arrest, or
5 any subsequent court proceedings, to any persons; and

6 WHEREAS the Legislature, recognizing that otherwise-law abiding citizens who commit a single minor criminal
7 offense should be given the opportunity to avoid the stigma of a criminal conviction, has created two programs to provide
8 an avenue for first-time offenders to resolve their criminal cases without an adjudication of guilt, including the Probation
9 Before Judgment ("PBJ") Program and the First Offenders Controlled Substances Diversion Program ("CSDP"); and

10 WHEREAS, the PBJ and CSDP programs are avenues for a defendant to resolve his or her case without an
11 adjudication of guilt with minimal cost and involvement of judicial resources; and

12 WHEREAS, the Delaware Supreme Court has recognized that "discharge from [PBJ]" "is one of the categories of
13 cases expressly eligible for expungement." Ryan v. State, 791 A.2d 742 (Del. 2002); and

14 WHEREAS, the 144th General Assembly, through House Bill No. 496, amended the Delaware Code so that
15 individuals who have successfully resolved their cases by either PBJ or CSDP are no longer eligible to apply for prompt
16 expungement of their arrest records; instead, individuals must wait five years after successful discharge from PBJ and two
17 years from discharge from CSDP before they are eligible to apply for an expungement; and

18 WHEREAS, the declared purpose of Delaware's expungement statute is "to protect innocent persons from
19 unwarranted damage which may occur as the result of an arrest or other criminal proceedings which are unfounded or
20 unproven"; and

21 WHEREAS, currently a variety of information relating to an individual's criminal record, including the
22 individual's conviction records and the individual's arrest history, may readily be obtained through the Internet by private
23 investigators, potential employers, schools and members of the public; and

24 WHEREAS, the amended expungement law prohibits the State Bureau of Identification from disseminating
25 criminal history record information to persons or entities outside of the criminal justice system relating to charges resolved
26 by either the PBJ or the CSDP program, but this has not been sufficient to shelter first time offenders from public scrutiny;
27 and

28 WHEREAS, the amended expungement law is ambiguous as to whether a person who obtained a PBJ must report
29 the arrest record even though there technically is "no record" once the terms and conditions of the PBJ have been
30 completed; and

31 WHEREAS, many job, college and graduate school applications, which historically did not inquire into the
32 existence of a criminal record or inquired only into felony convictions, now ask applicants the question: "Have you ever
33 been arrested for a criminal offense, other than a minor traffic offense?"; and

34 WHEREAS, the combination of the amended expungement law, the ambiguity of certain statutes, and the
35 abundance of arrest information available on the Internet has had a profoundly negative impact on otherwise law-abiding
36 citizens in their pursuit of, among other things, employment and admission to college.

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

38 SECTION 1. Amend Chapter 43, Title 11 of the Delaware Code by striking § 4378 in its entirety.

39 SECTION 2. Amend Chapter 85 of Title 11 of the Delaware Code by striking § 8513(h) in its entirety.

40 SECTION 3. Amend § 4373, Title 11 of the Delaware Code by adding a new subsection (f) thereto, as follows:
41 "(f) An offense for which records have been expunged pursuant to this Section shall not have to be disclosed by the person
42 as an arrest for any reason."

43 SECTION 4. Amend § 4374, Title 11 of the Delaware Code by adding a new subsection (i) thereto, as follows:
44 "(i) An offense for which records have been expunged pursuant to this Section shall not have to be disclosed by the person
45 as an arrest for any reason."

46 SECTION 5. Amend Title 10 of the Delaware Code by striking § 1026 in its entirety.

47 SECTION 6. Amend § 1025(d), Title 10 of the Delaware Code, by inserting the language " , including any
48 electronic records," after the words "police records and court records" in the first sentence, and by inserting the following in
49 subparagraph (1) after the words "A court" in the second sentence: "or a police agency".

50 SECTION 7. Amend § 1025(e), Title 10 of the Delaware Code by inserting the following after the words
51 “subsection (d) of this section”: “, provided, however, that where a person was charged with a criminal offense where
52 discretionary expungement pursuant to this subsection applies, but also was charged, within the same case, with a criminal
53 offense where mandatory expungement pursuant to § 1025 applies, such person must file a petition in the Family Court
54 pursuant to this Section.”.

55 SECTION 8. Amend § 1025(e)(2), Title 10 of the Delaware Code by inserting the following at the end of the
56 second sentence: “or case.”.

57 Section 9. Amend § 1025(e)(5) of Title 10 of the Delaware Code by inserting the following after the end of the
58 first sentence and before the beginning of the second sentence. “A police agency which receives a notice of expungement
59 from the State Bureau of Identification shall provide the Bureau with written confirmation of the completion of the
60 expungement.”.

SYNOPSIS

This Act eliminates the five-year waiting period for a person who has successfully completed the Probation Before Judgment (“PBJ”) program, and the two-year waiting period for a person who has successfully completed the First Offenders Controlled Substances Diversion Program (“CSDP”), to obtain an expungement of the arrest and conviction records relating to that offense. This Act clarifies that offenses for which records have been expunged do not have to be disclosed as arrests. This Act also corrects for what appear to be inadvertent omissions in the amendments to the expungement statutes that were passed during the prior legislative session and corrects inconsistencies between the Family Court and Superior Court expungement statutes.