SPONSOR: Rep. Barbieri & Rep. George & Sen. Blevins
Reps. Hudson, J. Johnson, Lavelle, Scott, Wilson; Sens. Ennis, Hall-Long, Venables

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 177

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO EXPUNGEMENT.

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

Section 1. Amend Chapter 9, Title 10 of the Delaware Code by striking §1001 in its entirety.

Section 2. Amend Chapter 9, Title 10 of the Delaware Code by inserting new sections 1014-1020 as follows:

"§ 1014. Juvenile expungement; statement of policy.

The General Assembly finds that juvenile arrest records are a hindrance to a person's present and future ability to obtain employment, obtain an education, or to obtain credit. This subchapter is intended to protect children and citizens from unwarranted damage which may occur as a result of a juvenile arrest record, even if the arrest resulted in an adjudication of delinquency.

§ 1015. Filing an expungement petition.

(a) A child, through his parent or guardian, or upon becoming an adult, may file a petition seeking to expunge the child's juvenile arrest record. For the purposes of §§1016 through 1020 of this title, the child or person seeking an expungement shall be deemed "the petitioner." All such petitions shall be filed 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 court records, including any electronic records, relating to the charge or charges.

(b) 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 subchapter. The State Bureau of Identification may charge a reasonable fee in providing a certified copy of the petitioner's criminal history. The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history.

(c) The Family Court must consider the entire juvenile arrest record in granting or denying the petition, consistent with sections §1017 and §1018 of this chapter. The Court shall either grant the petition, ordering the expungement of the petitioner's entire juvenile arrest record, or deny the petition. The Court may not order that only a portion of the petitioner's juvenile arrest record be expunged, unless the State, pursuant to §1018(e) in the interests of justice, petitions the

Court to expunge an arrest that would otherwise not qualify for immediate and mandatory expungement under this subchapter.

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

§ 1016. Definitions applicable to juvenile expungements.

For purposes of juvenile expungement, unless the context otherwise requires:

(1) "terminated in favor of the child" means:

a. The child is acquitted of all charges related to the case; or

b. A nolle prosequi is entered on all charges related to the case; or

c. The charges have been otherwise dismissed for any reason, including, but not limited to dismissals following successful completion of Arbitration, Probation Before Adjudication of Delinquency, or any Court approved diversion program.

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

(3) "adjudication of delinquency" means a finding of guilt or nolo contendere entered by the Court for a charge or charges following a plea or trial.

(4) "prior adjudication of delinquency" means an adjudication of delinquency entered by the Court, that occurs prior to the commission of a separate and distinct offense.

(5) "subsequent adjudication of delinquency or adult conviction" means an adjudication of delinquency or an adult conviction resulting from the commission of a separate and distinct offense that occurs after a prior adjudication of delinquency.

(6) "sex offense" means a delinquent act constituting any offense listed in §4121(a)(4) of Title 11.

(7) "misdemeanor sex offense" means a delinquent act constituting any misdemeanor offense listed in §4121(a)(4) of Title 11.

(8) "violent felony" means a delinquent act constituting any offense listed in §4201 of Title 11.

(9) "violent misdemeanor" means a delinquent act constituting one of the misdemeanors enumerated under §501, 603, 621, 628, 781, 1257, or 1325 of Title 11.

§ 1017. Mandatory expungement.

(a) The Family Court shall grant a petition for expungement if:

(1) A child is charged with the commission of one or more crimes designated as a misdemeanor or violation in Title 4,7, 11, 16 or 23 of this Code, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offense defined in Title 4,7, 11, 16 or 23 of this Code, and the case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges.

(2) A child is charged with the commission of one or more crimes designated as a felony in Title 11 or 16 of this Code, and the case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least one year has passed following the date the case was terminated, disposed of, or concluded in Family Court.

(3) A child has no more than one adjudication of delinquency in a case where the crime or crimes for which the child was adjudicated delinquent are designated as felonies or misdemeanors or violations in Title 4,7, 11,16 or 23 of this Code, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offenses enumerated in Title 4,7, 11, 16 or 23 of this code excepting violent felonies and sex offenses, and provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least three years have passed following the date the adjudication of delinquency was entered in Family Court.

(b) The petitioner is not required to provide a copy of the petition to the Attorney General, when filing an expungement petition pursuant to this section.

(c) If an order expunging the records is granted by the Court, all the police and court records, including any electronic 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 or police agency that 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 that entered the order with written confirmation of the execution of the order. In response to requests from non-law 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.

(d) An offense for which records have been expunged pursuant to this section does not have to be disclosed as an arrest by the petitioner for any reason.

§ 1018. Discretionary expungement.

(a) The Family Court may grant a petition for expungement if:

(1) A child is charged in a case with the commission of an offense designated as a felony in Title 11 or 16, and the case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that less than one year has passed following the date the case was terminated, disposed of, or concluded in Family Court.

(2) A child has no more than one adjudication of delinquency in a case where the offense or offenses for which the child was adjudicated delinquent are misdemeanor sex offenses, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least three years have passed following the date the adjudication of delinquency was entered in Family Court.

(3) A child has no more than two adjudications of delinquency involving separate and distinct cases where the offenses for which the child was adjudicated delinquent are designated as misdemeanors or violations in Title 4,7, 11,16 or 23 of this Code, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offenses enumerated in Title 4,7, 11, 16 or 23 of this Code, excepting violent misdemeanors, provided the petitioner has no prior adjudication of delinquency, and provided the petitioner has no other subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least five years have passed following the date the second adjudication of delinquency was entered in Family Court.

(4) A child has no more than one adjudication of delinquency in a case where the offense or offenses for which the child was adjudicated delinquent are designated as violent felonies or sex offenses excepting Rape 1st Degree, Rape 2nd Degree, Arson 1st Degree, Robbery 1st Degree, and Burglary 1st Degree, provided the petitioner has no other prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges,

and provided that more than five years have passed following the date the adjudication of delinquency was entered in Family Court.

(b) The petitioner shall cause a copy of any petition filed under this section to be served upon the Attorney General, who may file an objection or answer to the petition within 30 days thereafter.

(c) Unless the Court believes a hearing is necessary, petitions filed pursuant to this section shall be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to 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, including any electronic records relating to the charge or case. Otherwise, it shall deny the petition. Although the Court will recognize a rebuttable presumption that juvenile records cause a manifest injustice for the petitioner, the burden shall nevertheless 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.

(d) 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.

(e) 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 delinquency action may petition the Court to expunge the instant arrest record of a child if at the time of a State motion to dismiss or entry of a nolle prosequi in the case, the State has determined that the continued existence and possible dissemination of information relating to the arrest of the child for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the juvenile.

(f) If an order expunging the records is granted by the Court, all the police and court records, including any electronic 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 or police agency that 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 that entered the order with written confirmation of the execution of the order. In response to requests from non-law enforcement officers for information or records on the person who was arrested, 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) Notwithstanding any provision of this subchapter or any other statute or any other statute or rule to the contrary, the police records and the court records, including any electronic records, relating to any charge set forth in Title 21 of this Code, or in any county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offense enumerated in Title 21, shall not be expunged pursuant to this subchapter.

(h) An offense for which records have been expunged pursuant to this section does not have to be disclosed as an arrest, by the petitioner for any reason.

§ 1019. Disclosure of expunged records.

(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. In addition to such other lawful purposes as may be prescribed by statute or otherwise, criminal justice agencies shall have access to records of expunged Probations Before Adjudication of Delinquency, arbitration and past participation in the First Offenders Controlled Substance Diversion Program or a court-supervised drug diversion program for the purpose of determining whether a person is eligible for a Probation Before Judgment, or Probation Before Adjudication of Delinquency as set forth in §1009A of this title and §4218 of Title 11, or for participation in the First Offenders Controlled Substance Diversion Program, as set forth in §4764 of Title 16, or for participation in a court-supervised drug diversion program.

(b) Where disclosure to law enforcement officers 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 an expungement order shall be handled and stored so as to ensure that they are not open to public inspection or disclosure.

(e) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor.

(f) For a period of 3 years following the date the Court grants a petition for expungement, 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 child or person who seeks to participate in Arbitration, a court supervised diversion program, or Probation Before Adjudication of Delinquency, or Probation Before Judgement, has done so before and had their record expunged.

§1020. Notification.to Federal Government.

Upon the granting by the Court for an order for the expungement of records in accordance with §§1013-1019 of this subchapter, a copy of such order shall be forwarded to the federal Department of Justice.".

Section 3. This Act shall become effective on January 1, 2012.

SYNOPSIS

This bill deals with the expungement of juvenile records of arrest and adjudications of delinquency and would become effective on January 1, 2012. Section 1015 sets out the procedure for filing an expungement petition and Section 1016 defines terms used in this subpart.

Section 1017 sets out situations where the Family Court must grant an expungement petition: (1) Where a juvenile was charged with a misdemeanor and the charges were dismissed or not prosecuted or the child was acquitted and the child has no prior or subsequent adjudications/convictions and no charges pending; (2) Where juvenile charged with felony offense that was resolved via dismissal, non-prosecution, or acquittal and the child has no prior or subsequent adjudications/convictions and more than one year has passed since the case was resolved; (3) Where the juvenile has one adjudication of delinquency for any offense other than a violent felony or a sex offense, and the child has no subsequent or prior adjudications/convictions, and three years have passed since the adjudication was entered. The Attorney General's office will not be notified of any petitions under this section.

Section 1018 gives the court discretion to grant expungement in some cases if the Court finds that the continued existence and dissemination of information about the juvenile charges and/or adjudication would work a manifest injustice. The Attorney General's Office is notified of these petitions and made a party to the case and has the opportunity to oppose the petition and/or appeal the Family Court's decision. The circumstances when a petition for discretionary expungement may be presented are as follows: (1) Child is charged with felony offense and the case is terminated in favor of the child, provided the child has no prior or subsequent adjudications/convictions and less than one year has passed since the case was resolved; (2) Child has a single adjudication of delinquency for a misdemeanor sex offense, no prior or subsequent adjudications/convictions, and at least three years have passed since the adjudication of delinquency was entered; (3) Child has 2 adjudications of delinquency for misdemeanor offense, no prior or subsequent record and at least five years have passed since the second adjudication was entered in Family Court; (4) petitioner has one adjudication of delinquency for a violent felony or sex offense (except rape 1st or 2nd degree, robbery 1st degree or burglary 1st degree), no other record and more than five years have passed since the adjudication of delinquency was entered.

Section 1019 provides that expunged records may be made available to law enforcement investigating criminal activity or where a person has applied for a job in law enforcement or to determine if a person is eligible to participate in a First Offenders, Probation Before Judgment, or other Court diversion program. It is otherwise unlawful to disclose the existence of an expunged record.

Section 1020 provides for notice to the federal government of any expungement granted under the foregoing procedures.