



SPONSOR: Sen. Townsend & Sen. Blevins & Rep. J. Johnson & Rep.  
Longhurst  
Sens. Bonini, Cloutier, Hall-Long, Lawson, Marshall,  
McDowell, Peterson, Pettyjohn, Richardson; Reps. Baumbach,  
Bolden, Lynn, Matthews

DELAWARE STATE SENATE

148th GENERAL ASSEMBLY

SENATE BILL NO. 198  
AS AMENDED BY  
SENATE AMENDMENT NO. 1  
AND  
HOUSE AMENDMENT NOS. 3 & 4

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

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

Section 1. Amend, Subchapter III, Chapter 9, Title 10 of the Delaware Code by making the insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 1014 Juvenile expungement; statement of policy.

The General Assembly finds that ~~a juvenile arrest records are~~ criminal history is a hindrance to a person's present and future ability to obtain employment, housing, ~~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 criminal history. ~~arrest record, even if the arrest resulted in an adjudication of delinquency.~~

§ 1015 Filing an expungement petition.

(a) Persons Eligible to Petition for Expungement:

A child, through his or her parent, ~~or~~ guardian, guardian ad litem or attorney, or upon becoming an adult, may file a petition seeking to expunge the child's juvenile arrest record. For the purposes of §1016-1019 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 most recent 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) Prohibitions to Expungement:

~~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.~~

(1) No person who has been adjudicated delinquent of first degree murder (§ 636 of Title 11), second degree murder (§ 635 of Title 11), first degree kidnapping (§ 783A of Title 11), manslaughter under either Section 632(2) or 632(5) of Title 11, rape first degree (§ 773 of Title 11), rape second degree (§ 772 of Title 11), arson first degree (§ 803 of Title 11), robbery first degree (§ 832 of Title 11), burglary first degree (§ 826 of Title 11), or home invasion (§ 826A of Title 11), or an attempt to commit any of the aforementioned offenses, shall be eligible for a juvenile expungement pursuant to §1017 or §1018 of this Title.

(2) No person who has an adult conviction shall be eligible for a juvenile expungement.

(3) No person shall be eligible for an expungement while such person has pending criminal charges.

(4) No offenses in Title 21 of this Code shall be eligible for expungement nor shall such offenses be considered an adjudication or conviction for purposes of this statute. However, a felony conviction for driving a vehicle while under the influence shall be considered a conviction for purposes of this statute.

(c) Jurisdiction:

~~The Family Court must consider the entire juvenile arrest record in granting or denying the petition, consistent with sections §§ 1017 and 1018 of this title. 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) of this title 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. The Court may order expungement of charges originating in a different county.~~

All such petitions shall be filed in the Family Court in the county where the most recent case was terminated, disposed of, or concluded, even if the petition includes cases from more than one county.

(d) Contents of Petition:

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

(1) The petition shall set forth the relevant facts and request expungement of the police records and court records, and all indicia of arrest, including any electronic records, relating to the charge or charges.

(2) For discretionary petitions filed pursuant to Section 1018, the petition shall also specifically set forth relevant facts demonstrating that the continued existence and possible dissemination of information relating to the arrest and, where applicable, adjudication, of petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner.

(3) Except as permitted by the Court pursuant to 1017(c), the petitioner shall attach a copy of that petitioner's criminal history as maintained by the State Bureau of Identification to any petition 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.

(e) The Family Court shall consider the entire criminal history as maintained by the State Bureau of Identification in granting or denying the petition, consistent with sections § 1017 and § 1018 of this title. The Court shall either grant the petition, ordering the expungement of the petitioner's entire juvenile criminal history, including all indicia of arrest, except for Title 21 offenses, or deny the petition. The Court may not order that only a portion of the petitioner's juvenile criminal history be expunged, unless the State, pursuant to § 1018(e) of this title 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. The Court may order expungement of charges originating in a different county.

§ 1016 Definitions applicable to juvenile expungements.

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

(1) "Adult conviction" means a finding of guilt or nolo contendere entered by a Court for a charge or charges following a plea or trial. Only offenses, whether set forth in Delaware law or regulation or any municipal code, ordinance, or regulation, for which a period of incarceration may be imposed shall be considered an adult conviction for purposes of a juvenile expungement.

(2) "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.

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

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

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

~~(5) "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.~~

~~(6) "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.~~

~~(7 6) "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.~~

~~(8 7) "Violent felony" means a delinquent act constituting any offense listed in § 4201 of Title 11.~~

~~(9 8) "Violent misdemeanor" means a delinquent act constituting 1 of the misdemeanors enumerated under § 603, § 611, § 621, § 628, § 781, § 1257, or § 1325 of Title 11.~~

~~§ 1017 Mandatory expungement.~~

~~(a) The Family Court shall grant a petition for expungement if the petitioner has no prohibitions pursuant to § 1015(b) and the person's juvenile criminal history indicates:~~

~~(1) A child is charged with the commission of 1 or more crimes 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 offense defined in Title 4, 7, 11, 16 or 23, 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 1 or more crimes 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 at least 1 year has passed following the date the case was terminated, disposed of, or concluded in Family Court.~~

~~(3) A child has no more than 1 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, 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 excepting violent felonies and misdemeanor or felony 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 3 years have passed following the date the adjudication of delinquency was entered in Family Court.~~

~~(1) only misdemeanor and violation cases that were terminated in favor of the child; or~~

~~(2) only felony, misdemeanor and violation cases that were terminated in favor of the child and at least one year has passed since the last felony case was terminated in favor of the child; or~~

~~(3) no more than one felony, misdemeanor or violation case(s) which resulted in an adjudication of delinquency and at least three years have passed since the date of adjudication, provided the adjudication was not for a violent felony, violent misdemeanor, or felony or misdemeanor sex offense as those terms are defined in § 1016.~~

~~(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 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.~~

~~(b) The petitioner is not required to serve a copy of the petition on the Attorney General's office when filing for mandatory expungement pursuant to this section. If the Court finds that a mandatory expungement petition does not meet the requirements for granting and sua sponte considers it as a petition for discretionary expungement, the Court shall serve a copy of the petition on the Attorney General's Office.~~

~~(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.~~

(c) During the Court proceeding where any misdemeanor or violation case is terminated in favor of the child, the Court sua sponte, or upon request of any party, may immediately order expungement of the juvenile criminal history, including all indicia of arrest. Prior to ordering expungement pursuant to this paragraph, the Court shall review a name-based Delaware criminal background check conducted through the Delaware Justice Information System (DELJIS), in order to ensure eligibility. In cases reviewed by the Court pursuant to this paragraph, the children must otherwise qualify for expungement under this section. The Court has discretion to deny immediate expungement and require compliance with § 1015(d).

§ 1018 Discretionary expungement.

(a) The Family Court may grant a petition for expungement if the petitioner has no prohibitions pursuant to 1015(b) and the person's juvenile criminal history indicates:

~~(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 1 year has passed following the date the case was terminated, disposed of, or concluded in Family Court.~~

(1) only felony, misdemeanor, or violation cases, all of which were terminated in favor of the petitioner, and less than 1 year has passed since termination of the last felony case; or

~~(2) A child has no more than 1 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 3 years have passed following the date the adjudication of delinquency was entered in Family Court.~~

(2) a single case that resulted in an adjudication of delinquency for a misdemeanor sex offense and at least 3 years have passed since adjudication; or

~~(3) A child has no more than 2 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, 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, 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 5 years have passed following the date the second adjudication of delinquency was entered in Family Court.

(3) no more than two cases which resulted in adjudication of delinquency where no more than one of the cases involves a felony adjudication, and at least 5 years have passed since the second adjudication, provided that the felony adjudication may not be a violent felony; or

~~(4) A child has no more than 1 adjudication of delinquency in a case where the offense or offenses for which the child was adjudicated delinquent are designated as violent felonies or felony sex offenses excepting rape first degree (§ 773 of Title 11), rape second degree (§ 772 of Title 11), arson first degree (§ 803 of Title 11), robbery first degree (§ 832 of Title 11), burglary first degree (§ 826 of Title 11), and home invasion (§ 826A of Title 11), 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 5 years have passed following the date the adjudication of delinquency was entered in Family Court.~~

(4) multiple adjudications for misdemeanor or violation cases and at least 5 years have passed since the last adjudication; or

(5) no more than one case which resulted in adjudication of delinquency for a violent felony or felony sex offense and at least 5 years have passed since adjudication; or

(6) no more than two cases which resulted in adjudications of delinquency, where one of the cases involves a misdemeanor or violation adjudication and the other involves a violent felony adjudication, and at least 7 years have passed since the second adjudication.

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

(c) Upon receipt of any petition for discretionary expungement that involves a violent felony not terminated in favor of the child, the Attorney General's office shall contact the victim(s) of the violent felony at their last known address or telephone number to ascertain the victim's position on the petition for expungement. The victim's position, if known, shall be stated in the Attorney General's answer to the petition.

(e) (d) Unless the Court believes a hearing is necessary and upon consideration and review of any comments or objections received from victim(s) pursuant to subsection (c), 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 and all other indicia of arrest, 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) (e) The State Attorney General's office shall be made party defendant to ~~the~~ a proceeding for discretionary expungement. Any party aggrieved by the decision of the Court may appeal, as ~~provided by law in civil cases~~ prescribed by Delaware law.

(e) (f) 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 nonlaw 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, 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 Effect of Expungement; Disclosure of expunged records.

(a) If an order expunging a juvenile criminal history is granted by the Court, all indicia of arrest, including police and court records and any electronic records relating to the arrest, and any other items 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.

(b) A felony adjudication expunged pursuant to this section shall cease to be the basis for a person prohibited pursuant to § 1448(a)(4) of Title 11.

(c) An offense for which the juvenile criminal history and indicia of arrest has been expunged pursuant to this subchapter does not have to be disclosed as an arrest by the petitioner for any reason.

(a d) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in investigating criminal activity 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 § 4767 of Title 16, or for participation in a court-supervised drug diversion program.

(~~b~~ e) Where disclosure to law-enforcement officers is permitted by subsection (~~a~~ d) 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.

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

(~~f~~ i) 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 judgment, has done so before and had their record expunged.