



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

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:

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

3 § 1014 Juvenile expungement; statement of policy.

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

8 § 1015 Filing an expungement petition.

9 (a) Persons Eligible to Petition for Expungement:

10 A child, through his or her parent, ~~or~~ guardian, guardian ad litem or attorney, or upon becoming an adult, may file
11 a petition seeking to expunge the child's juvenile arrest record. For the purposes of §1016-1019 of this title, the child or
12 person seeking an expungement shall be deemed "the petitioner." ~~All such petitions shall be filed in the Family Court in the~~
13 ~~county where the most recent case was terminated, disposed of, or concluded, setting forth the relevant facts and requesting~~
14 ~~expungement of the police records and court records, including any electronic records, relating to the charge or charges.~~

15 (b) Prohibitions to Expungement:

16 ~~The petitioner shall attach a copy of that petitioner's criminal history as maintained by the State Bureau of~~
17 ~~Identification to any petition requesting expungement filed pursuant to this subchapter. The State Bureau of Identification~~
18 ~~may charge a reasonable fee in providing a certified copy of the petitioner's criminal history. The Court shall summarily~~
19 ~~reject any petition for expungement that does not include the petitioner's criminal history.~~

20 (1) No person who has been adjudicated delinquent of first degree murder (§ 636 of Title 11), second degree
21 murder (§ 635 of Title 11), first degree kidnapping (§ 783A of Title 11), manslaughter under either Section 632(2) or

22 632(5) of Title 11), rape first degree (§ 773 of Title 11), rape second degree (§ 772 of Title 11), arson first degree (§ 803 of
23 Title 11), robbery first degree (§ 832 of Title 11), burglary first degree (§ 826 of Title 11), or home invasion (§ 826A of
24 Title 11), or an attempt to commit any of the aforementioned offenses, shall be eligible for a juvenile expungement pursuant
25 to §1017 or §1018 of this Title.

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

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

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

31 (c) Jurisdiction:

32 ~~The Family Court must consider the entire juvenile arrest record in granting or denying the petition, consistent~~
33 ~~with sections §§ 1017 and 1018 of this title. The Court shall either grant the petition, ordering the expungement of the~~
34 ~~petitioner's entire juvenile arrest record, or deny the petition. The Court may not order that only a portion of the petitioner's~~
35 ~~juvenile arrest record be expunged, unless the State, pursuant to § 1018(e) of this title in the interests of justice, petitions the~~
36 ~~Court to expunge an arrest that would otherwise not qualify for immediate and mandatory expungement under this~~
37 ~~subchapter. The Court may order expungement of charges originating in a different county.~~

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

40 (d) Contents of Petition:

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

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

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

49 (3) Except as permitted by the Court pursuant to 1017(d), the petitioner shall attach a copy of that petitioner's
50 criminal history as maintained by the State Bureau of Identification to any petition filed pursuant to this subchapter. The

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

53 (e) The Family Court shall consider the entire criminal history as maintained by the State Bureau of Identification
54 in granting or denying the petition, consistent with sections § 1017 and § 1018 of this title. The Court shall either grant the
55 petition, ordering the expungement of the petitioner's entire juvenile criminal history, including all indicia of arrest, except
56 for Title 21 offenses, or deny the petition. The Court may not order that only a portion of the petitioner's juvenile criminal
57 history be expunged, unless the State, pursuant to § 1018(e) of this title in the interests of justice, petitions the Court to
58 expunge an arrest that would otherwise not qualify for immediate and mandatory expungement under this subchapter. The
59 Court may order expungement of charges originating in a different county.

60 § 1016 Definitions applicable to juvenile expungements.

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

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

66 (4 2) "Adjudication of delinquency" means a finding of guilt or nolo contendere entered by the Court for a charge
67 or charges following a plea or trial.

68 (2 3) "Case" means a charge or set of charges related to a complaint or incident that are or could be properly
69 joined for prosecution.

70 (3 4) "Felony sex offense" means a delinquent act constituting any felony offense listed in § 4121(a)(4) of Title
71 11.

72 (4 5) "Misdemeanor sex offense" means a delinquent act constituting any misdemeanor offense listed in §
73 4121(a)(4) of Title 11.

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

76 ~~(6) "Subsequent adjudication of delinquency or adult conviction" means an adjudication of delinquency or an~~
77 ~~adult conviction resulting from the commission of a separate and distinct offense that occurs after a prior adjudication of~~
78 ~~delinquency.~~

79 (7 6) "Terminated in favor of the child" means:

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

81 b. A nolle prosequi is entered on all charges related to the case; or
82 c. The charges have been otherwise dismissed for any reason, including, but not limited to dismissals following
83 successful completion of arbitration, probation before adjudication of delinquency, or any court-approved diversion
84 program.

85 (~~8~~ 7) "Violent felony" means a delinquent act constituting any offense listed in § 4201 of Title 11.

86 (~~9~~ 8) "Violent misdemeanor" means a delinquent act constituting 1 of the misdemeanors enumerated under § 603,
87 § 611, § 621, § 628, § 781, § 1257, or § 1325 of Title 11.

88 § 1017 Mandatory expungement.

89 (a) The Family Court shall grant a petition for expungement if the petitioner has no prohibitions pursuant to §
90 1015(b) and the person's juvenile criminal history indicates:

91 ~~(1) A child is charged with the commission of 1 or more crimes designated as a misdemeanor or violation in Title~~
92 ~~4, 7, 11, 16 or 23, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any~~
93 ~~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~~
94 ~~prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult~~
95 ~~conviction, and provided that the petitioner has no pending criminal charges.~~

96 ~~(2) A child is charged with the commission of 1 or more crimes designated as a felony in Title 11 or 16, and the~~
97 ~~case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that~~
98 ~~the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no~~
99 ~~pending criminal charges, and provided that at least 1 year has passed following the date the case was terminated, disposed~~
100 ~~of, or concluded in Family Court.~~

101 ~~(3) A child has no more than 1 adjudication of delinquency in a case where the crime or crimes for which the~~
102 ~~child was adjudicated delinquent are designated as felonies or misdemeanors or violations in Title 4, 7, 11, 16 or 23, or a~~
103 ~~county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offenses enumerated in Title~~
104 ~~4, 7, 11, 16 or 23 excepting violent felonies and misdemeanor or felony sex offenses, and provided the petitioner has no~~
105 ~~prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult~~
106 ~~conviction, and provided that the petitioner has no pending criminal charges, and provided that at least 3 years have passed~~
107 ~~following the date the adjudication of delinquency was entered in Family Court.~~

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

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

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

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

116 ~~(c) If an order expunging the records is granted by the Court, all the police and court records, including any~~
117 ~~electronic records, specified in the order shall, within 60 days of the order, be removed from the files, and placed in the~~
118 ~~control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged~~
119 ~~records, and who shall insure that the records or the information contained therein is not released for any reason except as~~
120 ~~specified in this subchapter. A court or police agency that receives a notice of expungement from the State Bureau of~~
121 ~~Identification shall provide the Bureau with written confirmation of the completion of the expungement. The State Bureau~~
122 ~~of Identification shall provide the Court that entered the order with written confirmation of the execution of the order. In~~
123 ~~response to requests from nonlaw enforcement officers for information or records on the person who was arrested, the law-~~
124 ~~enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the~~
125 ~~order, that there is no record. No order requiring an expungement of any record shall be entered or enforced if such order is~~
126 ~~contrary to the provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is~~
127 ~~unable to comply with any order issued pursuant to this subchapter.~~

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

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

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

141 § 1018 Discretionary expungement.

142 (a) The Family Court may grant a petition for expungement if the petitioner has no prohibitions pursuant to
143 1015(b) and the person's juvenile criminal history indicates:

144 ~~(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~~
145 ~~case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that~~
146 ~~the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no~~
147 ~~pending criminal charges, and provided that less than 1 year has passed following the date the case was terminated,~~
148 ~~disposed of, or concluded in Family Court.~~

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

151 ~~(2) A child has no more than 1 adjudication of delinquency in a case where the offense or offenses for which the~~
152 ~~child was adjudicated delinquent are misdemeanor sex offenses, provided the petitioner has no prior adjudication of~~
153 ~~delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and~~
154 ~~provided that the petitioner has no pending criminal charges, and provided that at least 3 years have passed following the~~
155 ~~date the adjudication of delinquency was entered in Family Court.~~

156 (2) no more than one case which resulted in an adjudication of delinquency for a misdemeanor sex offense and at
157 least 3 years have passed since adjudication; or

158 ~~(3) A child has no more than 2 adjudications of delinquency involving separate and distinct cases where the~~
159 ~~offenses for which the child was adjudicated delinquent are designated as misdemeanors or violations in Title 4, 7, 11, 16~~
160 ~~or 23, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offenses~~
161 ~~enumerated in Title 4, 7, 11, 16 or 23, excepting violent misdemeanors, provided the petitioner has no prior adjudication of~~
162 ~~delinquency, and provided the petitioner has no other subsequent adjudication of delinquency or adult conviction, and~~
163 ~~provided that the petitioner has no pending criminal charges, and provided that at least 5 years have passed following the~~
164 ~~date the second adjudication of delinquency was entered in Family Court.~~

165 (3) no more than two cases which resulted in adjudications of delinquency where no more than one of the cases
166 involves a felony adjudication, excepting violent felonies unless the Attorney General consents to the petition, and at least 5
167 years have passed since the second adjudication; or

168 ~~(4) A child has no more than 1 adjudication of delinquency in a case where the offense or offenses for which the~~
169 ~~child was adjudicated delinquent are designated as violent felonies or felony sex offenses excepting rape first degree (§ 773~~
170 ~~of Title 11), rape second degree (§ 772 of Title 11), arson first degree (§ 803 of Title 11), robbery first degree (§ 832 of~~

171 Title 11), burglary first degree (§ 826 of Title 11), and home invasion (§ 826A of Title 11), provided the petitioner has no
172 other prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or
173 adult conviction, and provided that the petitioner has no pending criminal charges, and provided that more than 5 years
174 have passed following the date the adjudication of delinquency was entered in Family Court.

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

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

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

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

184 (c) Unless the Court believes a hearing is necessary, petitions filed pursuant to this section shall be disposed of
185 without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to the
186 arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall
187 enter an order requiring the expungement of the police and court records and all other indicia of arrest, including any
188 electronic records, relating to the charge or case. Otherwise, it shall deny the petition. Although the Court will recognize a
189 rebuttable presumption that juvenile records cause a manifest injustice for the petitioner, the burden shall nevertheless be on
190 the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden shall be
191 on the petitioner to prove such manifest injustice by a preponderance of the evidence.

192 (d) The State Attorney General's office shall be made party defendant to ~~the~~ a proceeding for discretionary
193 expungement. Any party aggrieved by the decision of the Court may appeal, as ~~provided by law in civil cases~~ prescribed by
194 Delaware law.

195 (e) Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the Attorney
196 General or the Attorney General's designee responsible for prosecuting a delinquency action may petition the Court to
197 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
198 case, the State has determined that the continued existence and possible dissemination of information relating to the arrest
199 of the child for the matter dismissed, or for which a nolle prosequi was entered, may cause circumstances which constitute a
200 manifest injustice to the juvenile.

201 (f) ~~If an order expunging the records is granted by the Court, all the police and court records, including any~~
202 ~~electronic records, specified in the order shall, within 60 days of the order, be removed from the files, and placed in the~~
203 ~~control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged~~
204 ~~records, and who shall insure that the records or the information contained therein is not released for any reason except as~~
205 ~~specified in this subchapter. A court or police agency that receives a notice of expungement from the State Bureau of~~
206 ~~Identification shall provide the Bureau with written confirmation of the completion of the expungement. The State Bureau~~
207 ~~of Identification shall provide the Court that entered the order with written confirmation of the execution of the order. In~~
208 ~~response to requests from nonlaw enforcement officers for information or records on the person who was arrested, law-~~
209 ~~enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the~~
210 ~~order, that there is no record. No order requiring an expungement of any record shall be entered or enforced if such order is~~
211 ~~contrary to the provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is~~
212 ~~unable to comply with any order issued pursuant to this subchapter.~~

213 (g) ~~Notwithstanding any provision of this subchapter or any other statute or any other statute or rule to the~~
214 ~~contrary, the police records and the court records, including any electronic records, relating to any charge set forth in Title~~
215 ~~21, or in any county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offense~~
216 ~~enumerated in Title 21, shall not be expunged pursuant to this subchapter.~~

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

219 § 1019 Effect of Expungement; Disclosure of expunged records.

220 (a) If an order expunging a juvenile criminal history is granted by the Court, all indicia of arrest, including police
221 and court records and any electronic records relating to the arrest, and any other items specified in the order shall, within 60
222 days of the order, be removed from the files and placed in the control of the Supervisor of the State Bureau of Identification
223 who shall be designated to retain control over all expunged records, and who shall insure that the records or the information
224 contained therein is not released for any reason except as specified in this subchapter. A court or police agency that
225 receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with written
226 confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court that entered
227 the order with written confirmation of the execution of the order. In response to requests from non law-enforcement officers
228 for information or records on the person who was arrested, law-enforcement officers and departments shall reply, with
229 respect to the arrest and proceedings which are the subject of the order, that there is no record. No order requiring an
230 expungement of any record shall be entered or enforced if such order is contrary to the provisions of this subchapter. The

231 State Bureau of Identification shall promptly notify the Court if it is unable to comply with any order issued pursuant to this
232 subchapter.

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

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

237 (a d) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in
238 investigating criminal activity for the purpose of an employment application as an employee of a law-enforcement agency,
239 it shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or
240 to disclose to another person any information from it without an order from the Court which ordered the record expunged.
241 In addition to such other lawful purposes as may be prescribed by statute or otherwise, criminal justice agencies shall have
242 access to records of expunged probations before adjudication of delinquency, arbitration and past participation in the First
243 Offenders Controlled Substance Diversion Program or a court-supervised drug diversion program for the purpose of
244 determining whether a person is eligible for a probation before judgment, or probation before adjudication of delinquency
245 as set forth in § 1009A of this title and § 4218 of Title 11, or for participation in the First Offenders Controlled Substance
246 Diversion Program, as set forth in § 4767 of Title 16, or for participation in a court-supervised drug diversion program.

247 (b e) Where disclosure to law-enforcement officers is permitted by subsection (a d) of this section, such disclosure
248 shall apply for the purpose of investigating particular criminal activity in which the person, whose records have been
249 expunged, is considered a suspect and the crime being investigated is a felony, or pursuant to an investigation of an
250 employment application as an employee of a law-enforcement agency.

251 (e f) Nothing contained in this section shall require the destruction of photographs or fingerprints taken in
252 connection with any felony arrest and which are utilized solely by law-enforcement officers in the lawful performance of
253 their duties in investigating criminal activity.

254 (d g) Nothing herein shall require the destruction of court records or records of the Department of Justice.
255 However, all such records, including docket books, relating to a charge which has been the subject of an expungement
256 order shall be handled and stored so as to ensure that they are not open to public inspection or disclosure.

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

258 (f i) For a period of 3 years following the date the Court grants a petition for expungement, the State Bureau of
259 Identification shall make available to criminal justice agencies such electronic records as will enable criminal justice
260 agencies to determine whether a child or person who seeks to participate in arbitration, a court-supervised diversion

261 program, or probation before adjudication of delinquency, or probation before judgment, has done so before and had their
262 record expunged.

SYNOPSIS

The continued existence and dissemination of juvenile criminal histories hampers an individual's ability to be successful and a productive member of society. These criminal histories are a hindrance to employment, education, housing and credit. It is often difficult for indigent children, especially children in foster care, to overcome the hurdles required to obtain an expungement. Children are often unable to pay the fee required to obtain a criminal history from SBI. Children also do not have the knowledge or support to obtain documentation and file the petition as required by the current statute.

This act streamlines the process of mandatory expungements by easing some of the cumbersome requirements currently in place. This change will save the Court time and resources and is in the interest of judicial economy. This change is also in the best interests of the child who may lack the resources, knowledge, and family support to file an expungement petition and obtain a criminal history on their own.

Second, the act modifies the discretionary expungement provisions to allow more children the ability to petition the Court for an expungement. These changes allow the Court to consider an expungement where the child has demonstrated rehabilitation despite multiple youthful indiscretions. These provisions will enable a greater number of deserving youth the ability to move beyond their past and recognizes that most youth mature out of offending behavior.

Author: Senator Townsend