

SS1 for SB37 (with SA1)
Mandatory vs Discretionary Misdemeanors in Title 11

Any crime that involves **domestic violence or a child or vulnerable adult victim** is **eligible only for discretionary expungement**, regardless of what category it would otherwise be in. For all other misdemeanors, a person is eligible under the following categories only if the misdemeanor conviction (or combined misdemeanor and violations relating to the same case) is the **ONLY** conviction on the person's record.

Subchapter II: Offenses against the Person

The following misdemeanors are eligible for discretionary expungement only after receiving a pardon:

- § 628A Vehicular assault in the second degree; class A misdemeanor.
- § 766 Incest; class A misdemeanor.
- § 767 Unlawful sexual contact in the third degree; class A misdemeanor.
- § 791 Acts constituting coercion; class A misdemeanor.

Otherwise, eligibility is as follows:

Mandatory

- § 601 Offensive touching; unclassified misdemeanor; class A misdemeanor.
- § 602 Menacing; unclassified misdemeanor.
- § 603 Reckless endangering in the second degree; class A misdemeanor.
- § 611 Assault in the third degree; class A misdemeanor.
- § 614 Abuse of a sports official; class A misdemeanor.
- § 621 Terroristic threatening. [usually misdemeanor]
- § 625 Unlawfully administering drugs; class A misdemeanor. (Except when charged in conjunction with a sexual offense, as defined in § 761(f) of this title - in which case it is excluded from mandatory.)
- § 627 Prohibited acts as to substances releasing vapors or fumes; unclassified misdemeanor.
- § 628 Vehicular assault in the third degree; class B misdemeanor.
- § 652 Self-abortion; class A misdemeanor.
- § 653 Issuing abortifacient articles; class B misdemeanor.
- § 781 Unlawful imprisonment in the second degree; class A misdemeanor.
- § 785 Interference with custody; class A misdemeanor.

Discretionary

§625 Unlawfully administering drugs, (when charged in conjunction with a sexual offense, as defined in § 761(f) of this title).

§ 763 Sexual harassment

§ 764 Indecent exposure in the second degree

§ 765 Indecent exposure in the first degree

Subchapter III: Offenses involving Property

Discretionary

§ 820 Trespassing with intent to peer or peep into a window or door of another

§ 841B Organized retail crime.

§ 916 Home improvement fraud

§ 917 New home construction fraud

Mandatory

§ 804 Reckless burning or exploding; class A misdemeanor.

§ 805 Cross or religious symbol burning; class A misdemeanor.

§ 811 Criminal mischief; classification of crime; defense.

§ 812 Graffiti and possession of graffiti implements; class A misdemeanor; class B misdemeanor.

§ 813 Theft of property from a cemetery.

§ 822 Criminal trespass in the second degree; unclassified misdemeanor.

§ 823 Criminal trespass in the first degree; class A misdemeanor.

840 Shoplifting; class G felony; class A misdemeanor.

§ 840A Use of illegitimate retail sales receipt or Universal Product Code Label.

§ 841 Theft; ~~class B felony; class D felony; class F felony; class G felony;~~ class A misdemeanor; restitution.

§ 848 Misapplication of property; ~~class G felony;~~ class A misdemeanor.

§ 849 Theft of rented property; class A misdemeanor or ~~class G felony.~~

§ 850 Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices. [misdemeanor under (b)(1)]

§ 851 Receiving stolen property; ~~class G felony;~~ class A misdemeanor.

§ 852A Selling stolen property; class A misdemeanor; ~~class G felony.~~

§ 853 Unauthorized use of a vehicle; class A misdemeanor.

§ 858 Unlawful operation of a recording device.

§ 861 Forgery; ~~class F felony; class G felony;~~ class A misdemeanor; restitution required.

§ 871 Falsifying business records; class A misdemeanor.

§ 873 Tampering with public records in the second degree; class A misdemeanor.

§ 877 Offering a false instrument for filing; class A misdemeanor.

§ 881 Bribery; class A misdemeanor.

§ 882 Bribe receiving; class A misdemeanor.

- § 1212 Profiteering
- § 1221 Perjury in the third degree
- § 1233 Making a false written statement
- § 1250 Offenses against law-enforcement animals
- § 1256 Promoting prison contraband
- § 1257 Resisting arrest
- § 1257A Use of an animal to avoid capture
- § 1271 Criminal contempt
- § 1271A Criminal contempt of a domestic violence protective order
- § 1273 Unlawful grand jury disclosure

Mandatory

- § 1241 Refusing to aid a police officer; class B misdemeanor.
- § 1243 Obstructing fire-fighting operations; class A misdemeanor.
- § 1244 Hindering prosecution; class A misdemeanor. [~~class G felony~~]
- § 1245 Falsely reporting an incident; class A misdemeanor. [~~class G felony~~]
- § 1245A Providing a false statement to law enforcement; ~~class G felony~~; class A misdemeanor.
- § 1246 Compounding a crime; class A misdemeanor.
- § 1248 Obstructing the control and suppression of rabies.
- § 1249 Abetting the violation of driver's license restrictions.
- § 1251 Escape in the third degree; class A misdemeanor.
- § 1260 Misuse of prisoner mail; class A misdemeanor; ~~class G felony~~.

Subchapter VII: Offenses against Public Health, Order and Decency

Discretionary

- § 1304. Hate crime
- § 1313 Malicious interference with emergency communication
- § 1332 Abusing a corpse
- § 1335 Violation of privacy
- § 1341 Lewdness
- § 1343 Patronizing a prostitute
- § 1355 Permitting prostitution
- § 1443 Carrying a concealed dangerous instrument
- § 1445 Unlawfully dealing with a dangerous weapon
- § 1456 Unlawfully permitting a minor access to a firearm
- § 1457. Possession of a weapon in a Safe School and Recreation Zone

Mandatory

- § 1301 Disorderly conduct; unclassified misdemeanor.
- § 1303 Disorderly conduct; funeral or memorial service. [class A misdemeanor; class F felony]

- § 891 Defrauding secured creditors; class A misdemeanor.
- § 892 Fraud in insolvency; class A misdemeanor.
- § 893 Interference with levied-upon property; class A misdemeanor.
- § 900 Issuing a bad check; class A misdemeanor; ~~class G felony~~.
- § 903 Unlawful use of payment card; ~~class G felony~~; class A misdemeanor.
- § 906 Deceptive business practices; class A misdemeanor.
- § 907 Criminal impersonation; class A misdemeanor.
- § 907C Impersonation as a member or veteran of the United States Armed Forces, class A misdemeanor.
- § 909 Securing execution of documents by deception; class A misdemeanor.
- § 910 Debt adjusting; class B misdemeanor.
- § 914 Use of consumer identification information.
- § 915 Use of payment card information.
- § 915A Credit and debit card transaction receipts; unclassified misdemeanor.
- § 918 Ticket scalping.
- § 921 Sale of transferred recorded sounds; class A misdemeanor.
- § 922 Improper labeling; class G felony. [in some cases is a misdemeanor]
- § 926 Trademark counterfeiting. [some misdemeanor scenarios]
- § 939 Penalties. [computer crime in 4th degree is misdemeanor]

Subchapter IV: Offenses Relating to Marriage

No misdemeanors

Subchapter V: Offenses Relating to Children and Vulnerable Adults

Discretionary

- § 1102 Endangering the welfare of a child; class A misdemeanor; ~~class E or G felony~~.
- § 1103 Child abuse in the third degree
- § 1105 Crime against a vulnerable adult
- § 1107 Endangering children; unclassified misdemeanor
- § 1113 Criminal nonsupport and aggravated criminal nonsupport
- § 1114 Body-piercing, tattooing or branding; consent for minors; civil and criminal penalties

Mandatory

- § 1114A Tongue-splitting; class A misdemeanor; class B misdemeanor (unless minor)

Eligible only after pardon

- § 1106 Unlawfully dealing with a child

Subchapter VI: Offenses against public administration

Discretionary

- § 1205 Giving unlawful gratuities
- § 1206 Receiving unlawful gratuities
- § 1207 Improper influence
- § 1211 Official misconduct

§ 1311 Harassment; class A misdemeanor.

§ 1315 Public intoxication; unclassified misdemeanor; violation.

§ 1322 Criminal nuisance; unclassified misdemeanor.

§ 1324 Obstructing ingress to or egress from public buildings; unclassified misdemeanor.

§ 1325 Cruelty to animals; class A misdemeanor; ~~class F felony~~.

§ 1325A The unlawful trade in dog or cat by-products; class B misdemeanor; class A misdemeanor, penalties.

§ 1327 Maintaining a dangerous animal; ~~class E felony~~; ~~class F felony~~; class A misdemeanor.

§ 1331 Desecration; class A misdemeanor.

§ 1333 Trading in human remains and Associated Funerary Objects.

§ 1334 Unlawful use of an unmanned aircraft system; unclassified misdemeanor; class B misdemeanor; class A misdemeanor.

§ 1340 Desecration of burial place.

§ 1342 Prostitution; class B misdemeanor.

§ 1365 Obscene literature harmful to minors; class A misdemeanor.

§ 1366 Outdoor motion picture theaters.

§ 1367 Unauthorized promotion of boxing, mixed martial arts or of a combative sports or combative sports entertainment or combative fighting match, contest, or event; class A misdemeanor.

§ 1368 Unauthorized participation in a boxing, mixed martial arts or in a combative sports or combative sports entertainment or combative fighting match, contest, or event; class A misdemeanor.

§ 1401 Advancing gambling in the second degree; class A misdemeanor.

§ 1402 Foreign lotteries; prima facie evidence; class A misdemeanor.

§ 1403 Advancing gambling in the first degree; class A misdemeanor.

§ 1404 Providing premises for gambling; class A misdemeanor; unclassified misdemeanor.

§ 1405 Possessing a gambling device; class A misdemeanor.

§ 1406 Being concerned in interest in keeping any gambling device; class A misdemeanor.

§ 1411 Unlawfully disseminating gambling information; class A misdemeanor.

§ 1428 Maintaining an obstruction; class A misdemeanor; a violation.

§ 1444 Possessing a destructive weapon; ~~class E felony~~ [Subsection (f) is effective until Jan. 1, 2020] [bump stock and trigger crank possession is misdemeanor for first offense]

§ 1446 Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

§ 1448A Criminal history record checks for sales of firearms. [improper criminal history check or intentional dissemination; wilful or intentional sale or delivery in violation of section is misdemeanor]

§ 1448B Criminal history record checks for sales of firearms — Unlicensed persons. [knowing sale or transfer in violation is Class A misdemeanor]

§ 1452 Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

§ 1453 Unlawfully dealing with martial arts throwing star; class B misdemeanor.

§ 1460 Possession of firearm while under the influence.

§ 1472 Penalties. [for cheating at video lottery and related offenses; some misdemeanors]



Southern Delaware Alliance for Racial Justice

... ending racism and its corrosive consequences

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STATEMENT ON THE ADULT EXPUNGEMENT REFORM ACT BEFORE THE HOUSE JUDICIARY COMMITTEE MAY 8, 2019

Good afternoon. My name is Bruce Bolander. I am the Treasurer and a member of the Steering Committee and Legislative/Advocacy Committee of the Southern Delaware Alliance for Racial Justice, a non-partisan organization based in Lewes whose mission is educating, informing, and advocating for racial justice, equality, and fair opportunity. We appreciate the opportunity to speak to you today about the Adult Expungement Reform Act -- Senate Substitute No. 1 for Senate Bill No. 37, as amended by Senate Amendment No. 1 (the "Bill").

One of the Alliance's activities is organizing and holding clinics, in conjunction with the Office of Defense Services ("ODS"), at which residents of Sussex County learn about the process of expunging juvenile criminal records and receive assistance in navigating through this process. Over the past two years the Alliance, with the assistance of ODS, has helped over 80 residents of Sussex County expunge their juvenile criminal records.

The Alliance has long been in favor of extending the availability of expungements to include adult criminal records. As most or all of you already know, under existing Delaware law, adult criminal records can be expunged only for arrests that did not result in a conviction or guilty plea or, in all other cases, only following a pardon.

An arrest or conviction can have long-lasting consequences, even for someone that has ever since then led a life free of encounters with the criminal justice system. As noted in the synopsis to the Bill, "a criminal record can limit a person's opportunities and the quality of life they can achieve for themselves and their families for years, and even decades, after that person has completed the terms of the criminal sentence imposed. Even the existence of an arrest record with no conviction can limit job opportunities, housing, access to higher education, credit, and access to jobs that require professional licensing." These barriers most often disproportionately affect people of color.

Enactment of the Bill would be a tremendous step forward in removing some of the long-lasting consequences of a criminal record. The Alliance is pleased that the Senate has passed the Bill by unanimous vote, and we urge the House Judiciary Committee to act favorably on the Bill so that it can be voted on promptly by the full House.

On behalf of the Alliance, I thank the Committee for its attention.



My name is Molly Keogh. I live in Smyrna and thank you for the opportunity

to speak in support of Senate Bill 37. I have read the bill and present here

today with the support of the Coalition for Smart Justice. I have been

in Corrections in Delaware and am well aware of the extremely high

rate of recidivism. Of course this bill will not address all the societal

issues resulting in recidivism but I would like to point out two areas

which are significant. In order for adults to truly be functioning,

contributing members of society they need to have both opportunities and

choices. This bill will not be an automatic erasure of convictions. It

has safeguards and it is a challenging process requiring the individual to

be highly motivated. Senators, have you recovered from the worse thing you

have ever done? You've probably made amends and moved on with your life.

Imagine that event being tattooed across your forehead so that we here

would

always be reminded. Would you be sitting where you are? Would you?

My final argument in favor of Senate Bill 37 comes from my experience

as a supervisor in a community program. I found a candidate who had all

the education and experience needed for serving client needs. She also had

a conviction for a violent crime. Because the conviction had not been

expunged she could not be hired for the work she was trained to do. 20

years had passed since her debt to society had been paid but her "biggest mistake" still affected her and her family. Please move SB 37 out of this committee to a vote on the floor.