

Senate Judicial Committee Meeting

Official Minutes 150th General Assembly

Committee Meeting Wednesday, March 27th, 2019 1:30 p.m. Senate Hearing Room

Meeting Attendance

Committee Members:

Present:

Senator Darius J. Brown	Darius.Brown@delaware.gov	302-744-4191
Senator Bryan Townsend	Bryan.Townsend@delaware.gov	302-744-4165
Senator Bruce C. Ennis	Bruce.Ennis@delaware.gov	302-744-4310
Senator Dave G. Lawson	Dave.Lawson@delaware.gov	302-744-4237
Senator Anthony Delcollo	Anthony.Delcollo@delaware.gov	302-744-4133

Attendees:

Tyron Clemmons
Tom Donovan
Tanner Polce
Dubard McGriff
Sandy Spence
Mariann Kenville-Moore
Jayce Dixon
Benjamin Parsons
Charles Sawchenko
Karen Lantz
Lauren Vella
Lisa Minutola
Paulette Rappa
Ed Capodanno
Earl McCloskey
Kate Parker
James DeChene

Organization:

Game Changers
Delaware CAN
Office of Lieutenant Governor
Smart Justice Delaware
League of Women Voters of Delaware
Delaware Coalition Against Domestic Violence
Smart Justice Delaware
Delaware State Police
Delaware State Police
ACLU of Delaware
Department of Justice
Office of Defense Services
The Way Home
Associated Builders and Contractors, Inc. (ABC)
Delaware Criminal Justice Information System (DELJIS)
Delaware Center for Justice
Delaware State Chamber of Commerce

Kimoko Harris	International Longshoremen's Association (ILA)
Zoe Patchell	Delaware CAN
Xavier Broomer	Game Changers
Jerome Pritchett	Game Changers
Tom Brackin	Delaware State Troopers Association
Debbie Hamilton	Hamilton Goodman Partners
Lisa Goodman	Hamilton Goodman Partners
Jason Smith	Office of the Controller General
Jeff Horvath	Delaware Police Chief's Council
Geoff Klopp	Correctional Officers Association of Delaware
Michelle Seabrooks	
Julius Yelverton	
Dana Gooner	
James Elliott	
Tim Collins	
LeShaye Cannon	
Steven Walls	
Jessica Partin	
Kim Willson	Ruggerio Willson & Associates
Myra Brown	
Tyrone Pierce	
Robert Overmiller	
Linda Carmichael	Delaware Superior Court
Corie Priest	
William Holden	
Rachelle Wilson	

Agenda:

SB 37

SB 26

SB 37 (Brown) AN ACT TO AMEND TITLE 4, TITLE 10, TITLE 11, AND TITLE 16 OF THE DELAWARE CODE RELATING EXPUNGEMENT OF RECORDS OF ADULT ARREST AND CONVICTION.

Synopsis

In our modern society, 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. The General Assembly has expanded the availability of expungement for juvenile adjudications of delinquency quite dramatically in recent years, in recognition that people can and do change and move beyond mistakes of their

past. The intent of this Act is to extend that same recognition to some categories of adult records of arrest and conviction. At present, Delaware allows adults to petition to have a record expunged in only 2 circumstances:

- (1) for an arrest that did not lead to conviction
- (2) after a pardon is granted – but for certain misdemeanor offenses only.

Under this Act, a person may have a record expunged through a petition to the State Bureau of Identification (SBI) for

- (1) charges resolved in favor of the petitioner
- (2) a record that includes violations only after the passage of 3 years
- (3) after 5 years for some misdemeanors.

Excluded from this SBI-only expungement process are convictions for any misdemeanor crimes of domestic violence, misdemeanor crimes where the victim is a child or a vulnerable adult, and unlawful sexual contact in the third degree. Allowing expungements for arrests without convictions and minor, isolated convictions through an application to the SBI will ease the burden on the courts and the Board of Pardons. This Act also provides that the court may grant a petition for expungement upon a showing of “manifest injustice” in the following situations:

- (1) 3 years have passed since the date of a single misdemeanor conviction
- (2) a person has a single conviction in a felony case, and 7 years have passed from the date of conviction or release from incarceration, whichever is later
- (3) 7 years have passed since conviction or release from incarceration on misdemeanor domestic violence or misdemeanor conviction with child or vulnerable adult victim.

A felony conviction for any of the following crimes is not eligible for expungement through this court process: Title 11 violent felonies; 16 Del C. § 1136; 31 Del C § 3913; any “felony conviction involving physical or sexual assault crimes” as defined in the Beau Biden Child Protection Act. A conviction for unlawful sexual contact third degree may not be expunged through the court-only process. The Department of Justice will have an opportunity to state its position on the expungement petition to the court, and is empowered to seek input from any victim in the case. In all cases, the applicant for expungement must have no prior or subsequent convictions (other than traffic offenses, and underage alcohol or marijuana possession) in order to be eligible. Any person who applies for relief under this section, must essentially be a first offender in order to be eligible. A person is not allowed to apply for expungement under this process if an expungement has been granted within the last 10 years. Fines, fees, and restitution must be paid before an expungement may be granted; however, courts are empowered to waive outstanding fines or convert them to a civil judgement if they are unpaid for reasons other than willful noncompliance. Most Title 21 (traffic offenses), including DUI, are ineligible for expungement under this Act. However, traffic offenses (other than DUIs) will also not operate as a bar to the expungement of other charges. The Act also removes all limitations on the availability of court-ordered expungement after a pardon. The Act strikes provisions in Title 10 relating to expungement of adult records in Family Court and consolidates them with the Title 11 expungement provisions. Conforming changes are made to cross-references in Title 4 and 16. Implementation of the Act is delayed for 180 days to allow State agencies to prepare necessary procedures and forms. Finally, this Act is to be known as the Adult Expungement Reform Act.

Senator Brown called the meeting to order at 1:30 and went over ground rules for the public comment section. Introduced public hearing of Adult Expungement. Invited Members of the ACLU and Delaware Office of Defense Services to speak.

Lisa Minutola, Chief of Legal Services, Delaware Office of Defense Services explained that adult expungement is important because individuals with a criminal record are often barred from things like getting employment, housing, and education. American Bar Association found over 500 ways a criminal record has collateral consequences on Delaware residents. Not having steady housing, employment and education often is what causes people to commit crimes in the first place. University of Michigan study looked at the effects of expungement on individuals. It found that individuals that had their record expunged were more likely to be employed and employed with a higher salary. Individuals who had an expungement did not have a higher rate of recidivism than the average population. Delaware has talked about expungement a lot recently and said we think the time is now to make this happen.

Karen Lantz, Staff Attorney for ACLU of Delaware, gave an outline of the bill. Explained that right now the only adult expungements in Delaware is for arrests where the person was never convicted or in limited cases of misdemeanor with a pardon. Explained how this bill will allow for people to apply for an expungement through the SBI after five years of a single misdemeanor as long as it is not a domestic violence crime or a crime that involves a child or vulnerable adult victim. At the Superior Court or Family Court level individuals could apply after seven years and the expungement may or may not be granted. Talked about the amendments proposed.

Senator Brown asked if there were any questions from the members.

Senator Delcollo thanked them for coming. He talked about possible concerns from those in law enforcement, asked if they are willing to work with law enforcement to make adjustments if necessary through the process of getting it passed.

Karen Lantz, said they are certainly happy to work on this in the future and have conversations to improve. Said that the question is maybe better geared towards the sponsor.

Senator Delcollo talked about how they serve the people and he wants to make sure they are will to make changes based on what his constituents want.

Jeff Horvath, Delaware Police Chief's Council, said they do not support it because there needs to be more changes and it should be kept in committee.

Dubard McGriff, ACLU's campaign for Smart Justice, thanked senators for considering the bill. Said they should vote yes on the bill because it affects whole communities. Said whole

communities are missing fathers, mothers, and political power. People are not able to get good paying jobs or participate in democracy.

James DeChene, Delaware State Chamber of Commerce, said the goals of the bill are laudable, but there are concerns about unclassified misdemeanors. Talked about employers who wanted to be able to talk through with applicants about their record. Employers changing their rules about who can work because the labor market is tight. People who work with vulnerable populations like children and elderly in the home want the ability to hear from applicant about what happened in person. Said they believe it is the employers right to get a full history of employees. As drafted they cannot support the bill.

Corie Priest, New Castle County Re-entry Supervisor, said he supports the bill. Said this affects his own life. Talked about how he was arrested in 2008 and how he didn't realize at the time of the conviction how much it would affect the rest of his life. He didn't know there would be so many jobs he could no longer get. May 2, 2018 he was pardoned. He could never be expunged of his crime. Said they should think about all the people of Delaware who have been convicted of a crime.

Sandy Spence, League of Women Voters of Delaware, said they strongly support this bill. Talked about a study that found the rate of unemployment for formerly convicted people was 27%. The study said a recommendation was that a prison sentence should not be a perpetual punishment. Misdemeanors make up 80% of US criminal convictions. Punishment often seems lenient but the judicial consequences hardly make them just collateral. The severity of punishment authorizing discrimination from housing, employment and other basic elements of American life has been called modern civil death, social exclusion, and internal exile.

Mariann Kenville-Moore, Delaware Coalition Against Domestic Violence, said they commend SB 37 but said that our policies should not jeopardize the safety of victims. Said they appreciate the work that has been done to help victims and that many of their victims could benefit from expungements themselves. Said their community members have concerns about the bill. Said that more expunged individuals will have more access to firearms and that the bill will have an impact on future criminal proceedings and the ability to show course of conduct through criminal history. Said definitions will narrow the crimes classified as domestic violence that are given greater consideration for expungement. Said their member organizations welcome a chance to discuss further and they should postpone the vote to be able to do this. She asked for them to reach out to groups like the Domestic Violence Coordinating Council to get their input.

Benjamin Parsons, Delaware State Police, Director of SBI, thanked Karen Lance for holding a discussion on this topic last year with SBI and for amending the bill. Discussed the fiscal note from last year and the concerns about it. Said there were discrepancies and inaccuracies in it and

asked why a closer look wasn't taken last year. Said the best bills will fall short if we don't have the resources to honor their intent. Said SBI has seen a great increase in the number of expungements over the past few years but zero growth in staffing to process them. Said cases will continue to pile up if additional personnel are not provided. Said expungements are very complicated and have a process of going through the front desk, then criminal history, then to imprint, then to expungements and pardons sections, then to applications sections, then back to expungement sections. Asked that the human resources and infrastructure needed to carry out expungements be allocated.

Senator Lawson asked how many people it takes and the time it takes to process one expungement.

Benjamin Parsons said after looking at the number of hours his employees working in expungements worked and the number of cases it came out to about 2 hours per case. Said there aren't the resources necessary to support the number of expungements. Said their case load could double or triple

Senator Lawson asked today from start to finish how long it would take to process an expungement.

Benjamin Parsons said about 3-4 hours.

Senator Lawson asked if this included getting all the necessary information from the courts.

Benjamin Parsons said the 3-4 hours only includes the initial processing and that research has to be done after this time.

Senator Lawson said that takes weeks.

Benjamin Parsons said yes it takes weeks. Right now they are backlogged two weeks. Said his fear is that an increase in workload could be detrimental to the bill being carried out. Said constituents will be upset. Said all expungements go through SBI and they are not automatic like some people may assume.

Senator Lawson said the expungements will be delayed a lot.

Benjamin Parsons said that he worries that people might lose job opportunities while they are waiting for expungements to be carried out so they need more personnel.

Senator Brown said that we hear you and that there needs to be more manpower, but doesn't want to take up too much time.

Senator Ennis asked for clarification on the current system. Asked what involvement SBI has in the process currently.

Benjamin Parsons explained that they are just the beginning of the process, said it goes through almost the whole building before it goes back to the expungement section.

Lieutenant Charles Sawchenko, Delaware State Police, said the DSP is not opposed to criminal justice reform, but they do have some concerns about the bill. Said mandatory expungement individuals may pose a risk to the public and license employment sector. Said they are worried about expungement individuals being able to get jobs in medical, counseling, education, security, and daycare fields where they were previously not allowed to work. Since 1987 there has been a 27% re-offending rate by expunged individuals. Said they are concerned that it is mandatory and still harmful people will be in the public if there is no review. Expressed concern for the victims. Individuals who receive expungements must be taken off sex offenders list. Said further research needs to be done on how discretionary expungement effects those on the child sex offenders' registry. Said the safety of law enforcement workers is at risk because there isn't information about these expunged individuals. Talked about a case of a woman who killed a child and had her mummified in her basement for a year, but because the cause of death was not determined she was charged with abuse of a corpse and failure to comply with law enforcement. This crime could be expunged under the new bill.

Senator Delcollo asked how we make improvements to this bill to address the concerns Sawchenko has and if there were any suggested writings. Said he firmly believes that some people need a clean slate to prevent recidivism, but still sees the concerns and wants to find the compromise.

Lieutenant Charles Sawchenko, said suggested language has to come through the state police, victims' advocacy groups, and ACLU. Said that there should be a group to work on the language to prevent law enforcement from being at risk. Said kinks between court and SBI have to be worked out. Said there should be a process where a person can explain their change of heart. Time should not be the only factor when expunging someone's record.

Senator Delcollo asked if his primary concern is the lack of a hearing and ability to capture other details involved in individuals' cases.

Lieutenant Charles Sawchenko, said absolutely that is what he is worried about.

Lauren Vella, Department of Justice, thanked the sponsors for their work on this bill. Said Attorney General Jennings firmly believes this is a jobs and anti-crime bill and supports the bill because of how she has personally seen how expungements have changed people's lives. Said the mission of the Attorney General and the DOJ is to protect public safety, which includes reducing recidivism. Said it is important to stop recidivism. Expanding access to expungements will lead to safer communities and second-chances and were committed to leading a lawful life. Referred to Michigan Law School study of individuals with their criminal records set aside. Within five years of receiving a set aside, less than one percent were convicted of a violent crime, one percent were convicted of a felony, and 4.2 percent were convicted of any crime. Said that is a far lower rate of recidivism than the overall pool of criminals. Said the chances of them being employed was far higher as well. Referred to the announcement last month from AG about the overhaul of criminal justice laws. DOJ is prepared to implement the bill by screening petitions to the court to ensure that applicants are eligible for discretionary pardons and will make a recommendation to support or oppose a pardon based on the facts of the individual case. Said the department has requested additional paralegal and administrative staff to support this work. AG supports the bill for its positive impacts it will have on employment and public safety.

Senator Lawson asked if the AG was going to look at the entire case of people and not just what they're sentence is for.

Lauren Vella answered for discretionary expungement cases the AG will look at the entirety of cases and provide an opinion based on the case.

Senator Lawson said it wouldn't be a short review but a complete review. Said this is an issue that law enforcement has brought up that cases are not looked at in their entirety.

Lauren Vella said they would first look at if the individual is eligible and then make a second review of the case.

Paulette Rappa, Executive of The Way Home, said they see people being brought back into the community. Said they see firsthand convicted individuals going back into their communities and receiving "a thousand little paper cuts" that remind that they are living modern day Scarlett Letter. Said they believe that democracy works best when people all work together for a common goal, like justice, fairness, and equality. Said the criminal justice system is set up to be correctional, so if when people are released they are still judged harshly we are saying we do not believe in our system of correction. The Way Home supports the bill.

Ed Capodanno, President of ABC, said they are a trade association and want to offer their assistance with the bill. Said they are willing to hire formerly incarcerated criminals. As of now construction sites are not able to hire them because they can't have a criminal record. Laws

require all workers to get background checks and if individuals have been convicted of a felon they cannot be hired. This bill is a way to increase the number of incarcerated individuals able to work in construction careers. It could also help with their initiative called “Prison to Work”. Major construction companies are requiring background checks preventing them from hiring convicted individuals. Said they are here to support the bill to help bring employees to their industry.

Geoff Klopp, President of Correctional Officers Association of Delaware, said they have concerns about the bill. Said they have to screen potential employees to make sure they are able to work in a correctional environment where they are constantly interacting with inmates. Said the background check is critical to maintaining safety and security for those in a facility. Said they would not be able to screen potential workers into the correctional setting if this bill is passed. We request the bill be tabled today.

Kate Parker, Delaware Center for Justice, said they support the bill and are grateful for the bipartisan support. Talked about the difficulties they see in the collateral consequences of imprisonment, especially in children. Talked about their work with preventing crime by taking bigenerational approach. One of the leading indicators of criminality especially in young people is adverse childhood experiences, like physical and mental abuse. Talked about how parental employment, stable housing, and parental education helps children stay out of crime. Any obstacles removed that prevent parents from getting employment, solid housing, and access to education will prevent future crime. Asked for members to see a bigenerational perspective of the legacy of the collateral consequences convictions have.

Tyrone Pierce, Real Estate Investor, talked about his brother who got a felony in 2003. For seven years he couldn’t get a job above minimum wage, couldn’t get housing, and couldn’t get a college education because he couldn’t get a loan because he had a felony. Said the bill needs to pass to humanize and empathize with prisoners. Talked about the stark difference between his life and his brother’s, even though he also got arrested at the same time but was 17. Said we need to allow people to have second chances. Talked about how there was talk about not enough manpower and said this is an opportunity to give more people jobs.

Kimoko Harris, ILA, said the best crime prevention service is a good paying job. Said he sees people in his local who now have jobs and are no longer selling drugs and have their own homes. Said it will give relief to hundreds of able-bodied workers from the stigma of being denied a TWIC card. Said this bill will fill positions to be able to expand the port in Wilmington. Said this bill will do more for public safety and crime prevention than anything else in Wilmington.

Senator Brown said that they were over time so if any senators had to go they could.

Julius Yelverton, said he committed a sexual offense at the age of 17, then was transitioned into an adult facility. Said he got credits while he was in jail, but then was not able to get a degree because he wasn't allowed on campus. Said he believes everyone should get a second chance, and sex offenders have it the worst. Said this bill needs to be passed for all people.

Dana Gooner, said she pleaded guilty of two felonies, said she has not been given employment since she committed the crime ten years ago. Said it bothers her that there are complaints of fees for expungements but money for parole can be taxes. Said she can't be employed by any company because of her felonies.

James Elliott, said that criminals get life sentences, talked about disenfranchisement. Said they are not able to participate in public life. Talked about civil death. Said we are isolating criminals from society. Let Delawareans know we want them to succeed.

Tim Collins, said everybody makes mistake and everyone should have a right to a second life. Said there had been six months for the mistakes in the bill to be fixed. Said he is hopeful the bill will be passed.

Senator Brown talked about the amendments to the bill based on conversations and recommendations he's had with police chiefs and DSP. Said the bill will be passed around the table for signatures. Said they will move onto SB 26.

Senator Lawson asked to talk about SB 37. Talked about his experience in state police and how long it takes to get through expungements. Said the bill will add a tremendous burden to SBI. Asked for the bill to be tabled to see the issues with SBI figured out and said he supports the bill.

Senator Brown asked for the bill to be passed around. Was removed from committee with a U=0 M=1 F=2 vote

SB 26 AN ACT TO AMEND TITLE 11 AND TITLE 16 OF THE DELAWARE CODE RELATING TO FALSELY REPORTING AN INCIDENT.

Synopsis

Sections 1 and 2 of this Act make clear that an individual who is the subject of a false report is a victim and is entitled to restitution and the benefits of the Victims' Bill of Rights. Section 3 of this Act corrects an internal reference to § 1245 of Title 11 based on changes made in Section 1 of this Act. Finally, this Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Senator Delcollo talked about SB 26. Bill to address an unintended gap in the way our law is surrounding false reports. Solely deals with events after conviction. Said it deals with people who have regrettably been the subject of a false report and then have to deal with the financial and emotional burdens of this conviction. Talked about how victims of false reports should get access to victims' bill of rights. Also would give them property loss and any physical harm benefits.

Senator Ennis talked about supporting more expungements, but that the stakeholders should be more involved in the creation of SB 37 to get it right.

Senator Delcollo said as a cosponsor of the SB 37 he supports it, but is also aware of the crushing weight it would have on police departments. Said he is wrestling with the decision of if he should sign the backer.

Senator Brown adjourned at 3:04 PM

The minutes were prepared by Maria Faiola, Legislative Fellow 4/11/19.