

Summaries - ADULT

March 13, 2019

<u>Bill Number</u>	<u>Sponsor</u>	<u>Title</u>
1. HB 4	Longhurst Poore	<p>AN ACT TO AMEND TITLES 11 AND 16 OF THE DELAWARE CODE RELATING TO CRIMES AND CRIMINAL PROCEDURE.</p> <p>The James Johnson Sentencing Reform Act addresses the following:</p> <ul style="list-style-type: none"> - Removes all Title 16 drug offenses as violent felonies - Expands the ability to modify sentences for conditional release based on the rehabilitation of the offender, serious medical illness or infirmity, or prison overcrowding - Establishes the Sentencing Accountability and Guidelines Commission which will replace SENTAC as it is currently constituted.
2. HB 5	Longhurst Bolden Poore	<p>AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO IMPRISONMENT.</p> <p>The stacking of sentences can, and has in some cases, resulted in severe prison sentences without permitting the sentencing judge any discretion as to the offender's individual circumstances or the facts of the case. In order to provide such judicial discretion, this bill reforms concurrent and consecutive sentencing. This bill provides sentencing judges with the discretion to sentence prison time concurrently when appropriate. However, this bill mandates consecutive sentences when there are multiple victims for the most serious crimes. In addition, this bill requires consecutive sentences for assault in a detention facility. Under this bill, based upon the facts and circumstances of the case, prosecutors are able to recommend and judges have the discretion to decide consecutive sentences.</p>
3. HB 6	Osienski Minor-Brown Longhurst Walsh	<p>AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION EXAMINERS.</p> <p>This bill modifies the impact of criminal history on an applicant's eligibility for licensure by the Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners.</p>
4. HB 7	Minor-Brown Osienski Longhurst Walsh	<p>AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO MASSAGE AND BODYWORK.</p> <p>This bill modifies the impact of criminal history on an applicant's eligibility for licensure by the Board of Massage and Bodywork.</p>
5. SB 43	Walsh Minor-Brown Osienski Longhurst	<p>AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING THE BOARD OF ELECTRICAL EXAMINERS.</p> <p>This bill modifies the impact of criminal history on an applicant's eligibility for licensure by the Board of Electrical Examiners.</p>
6. HB 8	Matthews Yearick Lockman Delcollo	<p>AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO DELAWARE TAX CREDITS.</p> <p>Employment for formerly incarcerated individuals is a major barrier to transitioning and re-entering the community. The National Institute of Justice estimates that 60% of ex-offenders are jobless one year after their release. Improving access to employment opportunities for ex-offenders helps lower the State's recidivism rates and will improve public safety and reduce</p>

<u>Bill Number</u>	<u>Sponsor</u>	<u>Title</u>
		taxpayer spending on prisons. This Act seeks to improve access to employment for formerly incarcerated individuals by establishing the Ex-Offender Employment Opportunity Tax Credit that offers a tax credit to employers for hiring qualified ex-offenders in an amount equal to 10% of that individual's wages, with a maximum credit of \$1,500.
7. HB 9	Mitchell Ennis	<p>AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO POLICE OFFICER TRAINING.</p> <p>Being a police officer is one of the most dangerous and stressful jobs. In 2015, nationwide, there were 124 law enforcement fatalities and 51 suicides in the last six months of that year. In Delaware, in 2017 alone, the Delaware State Police Critical Incident Stress Management Team responded to approximately 100 incidents including several line of duty deaths, police involved shootings, fatal accidents and unexpected deaths of active police officers. Law enforcement officers face a 69 percent higher risk of suicide than the general population. They are also at an elevated risk for depression, substance abuse and post-traumatic stress disorder. This bill mandates 2 hours of wellness and resiliency training for police officers each year to mitigate the damaging effects of the trauma that our state's law enforcement officers face as a result of their jobs. The bill also adds an additional Sussex County member of the Police Officer Training Council.</p>
8. SB 37	Brown Townsend Delcollo Lynn Longhurst Dorsey Walker	<p>AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE.</p> <p>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 bill 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 and (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 SBI for (1) charges resolved in favor of the petitioner; (2) a record that includes violations only after the passage of 3 years; and (3) after 5 years for some misdemeanors. Excluded from this SBI-only expungement process are convictions for any misdemeanor crimes of domestic violence, or misdemeanor crimes where the victim is a child or a vulnerable adult. Allowing expungements for arrests without convictions and minor, isolated convictions through an application to the State Bureau of Identification 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 confinement, whichever is later; (3) 7 years have passed since conviction or release from confinement on misdemeanor domestic violence or misdemeanor conviction with child or vulnerable adult victim. No felony conviction for any of the following crimes is 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 that term is defined in the Beau Biden Child Protection Act. No conviction for unlawful sexual contact 3rd degree may 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. No person is 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</p>

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		ineligible for expungement under this statute. However, traffic offenses (other than DUIs) will also not operate as a bar to the expungement of other charges. The bill will also remove all limitations on the availability of court-ordered expungement after a pardon. The bill 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. Finally, implementation of the Act is delayed for 180 days to allow State agencies to prepare necessary procedures and forms.
9. SB 47	Lockman Sturgeon Lynn	<p>AN ACT TO AMEND TITLES 11 AND 116 RELATING TYO CONTROLLED SUBSTANCE OFFENSES.</p> <p>This Act simplifies Delaware’s drug code with a goal of providing more fairness in its application. The bill removes geographic-based enhancements that disproportionately impact those living in urban areas as opposed to suburban and rural areas. The bill reduces the number of weight tiers from 5 to 3 with adjustments to accompanying sentences while retaining higher felony levels for weights that indicate drug dealing. This bill reflects the reality that the road to recovery from a drug addiction is difficult by removing automatic sentence enhancements based on prior drug offenses, and instead allowing discretion during sentencing to determine when a repeat offender requires substantive additional penalty. Specifically, Sections 1-14 of this Act do the following:</p> <p>(1) Eliminate the 300 foot radius extending around schools within the definition of a protected school zone, while retaining an enhanced penalty for anyone who possesses or deals drugs on school property.</p> <p>(2) Eliminate aggravating factors, some of which may cause Delaware’s controlled substance laws to be applied unfairly, while maintaining enhanced sentencing for those who violate Delaware’s controlled substance laws within a protected school zone.</p> <p>(3) Eliminate enhancements based on the commission of prior drug offenses.</p> <p>(4) Simplify Delaware’s controlled substance laws by reducing the number of weight tiers that are used to categorize the severity of controlled substance offenses.</p> <p>(5) Provide statutory guidance for the weighing and sampling procedures used at criminal trials for a controlled substance.</p> <p>This Act takes effect 90 days after its enactment into law.</p>
10. SB 39	Brown Townsend Griffith	<p>AN ACT TO AMEND TITLE 10, TITLE 11, AND TITLE 21 OF THE DELAWARE CODE RELATING TO FINES, COSTS, PENALTIES, AND FORFEITURES.</p> <p>In 2017, 44,889 failure to pay warrants were issued for people who did not pay a fine, fee, cost, assessment, or restitution imposed for a non-felony offense. In the first 6 months of 2018, there were a total of 5,807 admissions to detention at all Level V facilities. Of these admissions, 129 were for failure to pay only and 595 were for failure to pay and another charge. When a warrant is issued for nonpayment of a fine, courts currently may and do impose fees to cancel the warrant. When defendants are late paying their fines, the courts’ clerks also must forward the defendant’s name to the Department of Transportation’s Division of Motor Vehicles for license suspension. This Act prohibits a court from suspending a driver’s license for nonpayment of a fine, fee, cost, assessment, or restitution and from charging a penalty, assessment, or fee to a defendant for the cancellation of a warrant issued due to the defendant’s nonpayment of a fine, fee, cost, assessment, or restitution. This Act also prohibits a court from imposing an additional fee on a defendant for payments that are made at designated periodic intervals or late, or when probation is ordered to supervise a defendant’s payment. Nothing in this Act precludes the court from filing contempt charges against defendants who willfully fail to pay their fines imposed after their ability to pay hearing. Further, this Act requires a court, before imposing a fine, fee, cost, or assessment, to determine if a defendant, whether an adult or a juvenile, is able to pay the fine, fee, cost, or assessment. If the court determines that a defendant is not able to pay, the court</p>

<u>Bill Number</u>	<u>Sponsor</u>	<u>Title</u>
		<p>must determine if the defendant is able to participate in the work referral program. If the court determines that a defendant is able to pay, the court may not impose a fine, fee, cost, or assessment that exceeds 1 day of the defendant's pay. Additionally, this Act requires state, county, and municipal law enforcement agencies and volunteer ambulance companies to calculate and report the total sum they receive from fines, forfeitures, and court costs and the percentage of their annual operating budget that the total sum represents. Also, this Act requires Delaware courts to collect and report the following data related to the fines, fees, costs, assessments, and restitution ordered to be collected:</p> <ol style="list-style-type: none"> (1) The total amount imposed and collected by the court. (2) The methods used by the court to collect the amount. (3) The disbursement of the amount collected. (4) The costs associated with collecting the amount. (5) The number of waivers based on defendants' ability to pay. (6) The number of revocations of probation for failure to pay. (7) The number of defendants referred to the work referral program. (8) The number of contempt charges issued for failure to complete work referral.
11. HB 77	Bolden Longhurst TBC	<p>Burglary Code Rewrite:</p> <p>This forthcoming bill would simplify the burglary code to eliminate duplication by combining the burglary and home invasion sections and to align minimum mandatory sentences. The bill would make it the crime of burglarizing an occupied home during the day as serious as if done at night. The bill removes provisions for minimum mandatory time for prior convictions to recognize that enhanced penalties based on a person's criminal history takes place at sentencing.</p>
12. HB 78	Bolden Longhurst TBC	<p>Robbery Code Rewrite:</p> <p>This forthcoming bill would simplify the robbery code to eliminate duplication. It combines the robbery and carjacking sections while preserving enhancements recognizing the seriousness of carjacking.</p>

*TBC – To Be Confirmed.



SPONSOR: Rep. Longhurst & Rep. Bolden & Rep. Kowalko & Sen. Poore
Reps. Heffernan, Lynn; Sen. Hansen

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL 5

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO IMPRISONMENT.

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

1 Section 1. Amend Chapter 39, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 **§ 3901 Fixing term of imprisonment; credits.**

4 (d) The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State
5 shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal
6 defendant. ~~Notwithstanding the foregoing, no sentence of confinement of any criminal defendant by any court of this State~~
7 ~~shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant for any~~
8 ~~conviction of the following crimes:~~

9	Title 11, Section	Crime
10	606	Abuse of a pregnant female in the first degree
11	613	Assault in the first degree
12	632	Manslaughter
13	635	Murder in the second degree
14	636	Murder in the first degree
15	772	Rape in the second degree
16	773	Rape in the first degree
17	777A	Sex offender unlawful sexual conduct against a child
18	778(1), (2) or (3)	Sexual abuse of a child by a person in a position of trust, authority or
19		supervision in the first degree
20	783	Kidnapping in the second degree
21	783A	Kidnapping in the first degree
22	803	Arson in the first degree

23 ~~825~~ _____ ~~Burglary in the second degree~~
 24 ~~826~~ _____ ~~Burglary in the first degree~~
 25 ~~826A~~ _____ ~~Home invasion~~
 26 ~~832~~ _____ ~~Robbery in the first degree~~
 27 ~~836~~ _____ ~~Carjacking in the first degree~~
 28 ~~1254~~ _____ ~~Assault in a detention facility~~
 29 ~~1447A~~ _____ ~~Possession of a firearm during the commission of a felony~~
 30 ~~or for any sentence for possession of a firearm by a person prohibited where the criminal defendant was previously~~
 31 ~~convicted of a Title 11 violent felony.~~

32 Notwithstanding the foregoing, where there are multiple victims, any sentence for each victim shall be consecutive to one
 33 another for the following crimes:

<u>Title 11, Section</u>	<u>Crime</u>
<u>632</u>	<u>Manslaughter</u>
<u>635</u>	<u>Murder Second Degree</u>
<u>636</u>	<u>Murder First Degree</u>
<u>772</u>	<u>Rape Second Degree</u>
<u>773</u>	<u>Rape First Degree</u>
<u>778(1),(2) or (3)</u>	<u>Sexual Abuse of a Child by a Person in a Position of Trust, Authority or</u> <u>Supervision in the First Degree</u>

42 Notwithstanding the foregoing, any sentence imposed upon a defendant for a conviction for assault in a detention
 43 facility, as set forth in §1254 of this title, shall be consecutive to any sentence being served by the defendant.

44 ~~(e) For purposes of this section, "Title 11 violent felony" means any Title 11 offense identified in § 4201(e) of this title, or~~
 45 ~~any offense set forth under the laws of the United States, any other state or any territory of the United States which is the~~
 46 ~~same as or equivalent to any of the offenses designated as a Title 11 offense identified in § 4201(e) of this title.~~

SYNOPSIS

The stacking of sentences can, and has, in some cases, result in severe prison sentences without permitting the sentencing judge any discretion as to the offender's individual circumstances or the facts of the case. In order to provide such judicial discretion, this bill reforms concurrent and consecutive sentencing. This bill provides sentencing judges with the discretion to sentence prison time concurrently when appropriate. However, this bill mandates consecutive sentences when there are multiple victims for the most serious crimes. In addition, this bill requires consecutive sentences for assault in a detention facility. Under this bill, based upon the facts and circumstances of a case, prosecutors are able to recommend and judges have the discretion to order consecutive sentences.



SPONSOR: Rep. Osienski & Rep. Minor-Brown & Rep. Longhurst & Sen. Walsh

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL **HB6**

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING AND REFRIGERATION EXAMINERS.

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

1 Section 1. Amend § 1808(a)(5), Title 24 of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 § 1808. Qualifications of applicant.

4 (a) An applicant for licensure as a master plumber shall submit evidence, satisfactory to the Board, and verified by
5 oath or affirmation, that the applicant:

6 (5) Does not have any disciplinary proceedings or unresolved complaints pending against the applicant in any
7 jurisdiction where the applicant has previously been or is currently authorized to provide plumbing services; or have a
8 criminal conviction record ~~or any pending criminal charges~~ relating to an incident, the circumstances of which
9 substantially relate to providing plumbing services. An applicant who has such a criminal conviction record ~~or any~~
10 ~~such pending criminal charges~~ must request appropriate authorities ~~to provide information about the record or charges~~
11 directly to the Board in sufficient specificity to enable the Board to make a determination of whether the record ~~or~~
12 ~~charge~~ is substantially related to providing plumbing services. In determining whether a crime is substantially related
13 to the professions regulated by this chapter, the Board may not consider a conviction where more than 10 years have
14 elapsed since the date of the conviction, if there have been no other criminal convictions in the intervening time.
15 ~~However, after~~ After a hearing or review of documentation that the applicant meets the specified criteria for a waiver,
16 the Board, by an affirmative vote of a majority of the quorum, or during the time between meetings, the Board
17 President or the President's designee, may waive this paragraph (a)(5) herein if it finds all of the following:

18 a. For waiver of a felony conviction, where the crime was committed against a person, more than 53 years
19 have elapsed since the date of the conviction and for all other felonies, more than 2 years have elapsed since the
20 date of conviction. At the time of the application the applicant may not be incarcerated, on work release, on
21 probation, ~~on~~ or on parole at Level III Supervision or higher, or serving any part of a suspended sentence and must
22 be in substantial compliance with all court orders pertaining to fines, restitution and community service.

23 b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may
24 not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must
25 be in substantial compliance with all court orders pertaining to fines, restitution and community service.

26 c. The applicant is capable of practicing plumbing services in a competent and professional manner.

27 d. The granting of the waiver will not endanger the public health, safety or welfare.

28 Section 2. Amend § 1821(a)(7), Title 24 of the Delaware Code by making deletions as shown by strike through
29 and insertions as shown by underline as follows:

30 § 1821. Qualifications of applicant — Heating, ventilation, air conditioning, and refrigeration.

31 (a) An applicant for licensure as a master HVACR licensee, or master HVACR restricted licensee, must submit
32 evidence, satisfactory to the Board and verified by oath or affirmation, that the applicant:

33 (7) Does not have a criminal conviction record ~~or any pending criminal charges~~ relating to an incident, the
34 circumstances of which substantially relate to providing HVACR or HVACR restricted services. An applicant who has
35 such a criminal conviction record ~~or any such pending criminal charges~~ must request appropriate authorities to provide
36 information about the record ~~or charges~~ directly to the Board in sufficient specificity to enable the Board to make a
37 determination of whether the record ~~or charge~~ is substantially related to providing HVACR or HVACR services. In
38 determining whether a crime is substantially related to the professions regulated by this chapter, the Board may not
39 consider a conviction where more than 10 years have elapsed since the date of the conviction, if there have been no
40 other criminal convictions in the intervening time. ~~However, after~~ After a hearing or review of documentation that the
41 applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, or
42 during the time between meetings, the Board President or the President's designee, may waive this paragraph (a)(7)
43 herein if it finds all of the following:

44 a. For waiver of a felony conviction, where the crime was committed against a person, more than ~~5~~ 3 years
45 have elapsed since the date of the conviction and for all other felonies, more than 2 years have elapsed since the
46 date of conviction. At the time of the application the applicant may not be incarcerated, on work release, on
47 probation, ~~or on parole~~ at Level III Supervision or higher, or serving any part of a suspended sentence and must
48 be in substantial compliance with all court orders pertaining to fines, restitution and community service.

49 b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may
50 not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must
51 be in substantial compliance with all court orders pertaining to fines, restitution and community service.

52 c. The applicant is capable of practicing plumbing services in a competent and professional manner.

d. The granting of the waiver will not endanger the public health, safety or welfare.

SYNOPSIS

This Bill modifies the impact of criminal history on an applicant's eligibility for licensure. It gives the Board discretion to grant waivers for felony convictions for crimes committed against a person where more than 3 years have elapsed, and more than 2 years have elapsed for other felonies. The Board is precluded from considering a conviction where more than 10 years have elapsed since the date of conviction.



SPONSOR: Rep. Minor-Brown & Rep. Osienki & Rep. Longhurst & Sen. Walsh

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL **HB7**

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO MASSAGE AND BODYWORK.

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

1 Section 1. Amend § 5308, Title 24 of the Delaware Code by making deletions as shown by strikethrough and
2 insertions as shown by underline as follows:

3 § 5308. Qualifications of applicant; report to Attorney General; judicial review.

4 (a) An applicant who is applying for licensure as a massage and bodywork therapist under this chapter shall submit
5 evidence, verified by oath and satisfactory to the Board, that such person:

6 (9) Has not been convicted of a crime that is substantially related to the practice of massage and bodywork. In
7 determining whether a crime is substantially related to the practice of massage and bodywork, the Board must not
8 consider a conviction where more than 10 years have elapsed since the date of conviction, if there have been no other
9 criminal convictions in the intervening time. However, after ~~After~~ a hearing or review of documentation demonstrating
10 that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the
11 quorum, or during the time period between Board meetings, the Board President or the President's designee, may
12 waive this paragraph (a)(9), if it finds all of the following:

13 a. For waiver of a felony conviction, where the crime was committed against a person, more than 35 years
14 have elapsed since the date of the conviction and for all other felonies, more than 2 years have elapsed since the
15 date of conviction. At the time of the application the applicant may not be incarcerated, on work release, on
16 probation, ~~on~~ or parole at Level III Supervision or higher, or serving any part of a suspended sentence and must be
17 in substantial compliance with all court orders pertaining to fines, restitution and community service.

18 b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may
19 not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must
20 be in substantial compliance with all court orders pertaining to fines, restitution and community service.

21 c. The applicant is capable of practicing massage and bodyworks in a competent and professional manner.

22 d. The granting of the waiver will not endanger the public health, safety or welfare;

Section 2. This Bill takes effect 90 days after enactment.

SYNOPSIS

This Bill modifies the impact of criminal history on an applicant's eligibility for licensure and thereby removes certain barriers to employment. It gives the Board the discretion to grant a waiver of a felony conviction for a crime committed against a person where more than 3 years have elapsed since the date of conviction, and for all other felonies, more than 2 years have elapsed since the date of conviction. The Board will be precluded from considering a conviction where more than 10 years have elapsed since the date of conviction, if there have been no other criminal convictions in the intervening time.



SPONSOR: Sen. Walsh & Rep. Minor-Brown & Rep. Osienski & Rep. Longhurst

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL 43

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING THE BOARD OF ELECTRICAL EXAMINERS.

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

1 Section 1. Amend § 1408, Title 24 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1408. Qualifications of applicant [For application of this section, see 81 Del. Laws, c. 290, § 5.] [Effective Jan.
4 1, 2019]

5 (a) An applicant, who is applying for licensure as an electrician under this chapter, shall submit evidence, verified
6 by oath and satisfactory to the Board, that such person:

7 (11) ~~Shall-Does not have a criminal conviction record, nor pending criminal charge record, relating to an~~
8 offense, the circumstances of which substantially relate to providing electrical services. Applicants who have criminal
9 conviction records ~~or pending criminal charges~~ shall request appropriate authorities to provide information about the
10 record ~~or charge~~ directly to the Board in sufficient specificity to enable the Board to make a determination whether the
11 ~~record or charge~~ is substantially related to providing electrical services. In determining whether a crime is substantially
12 related to the professions regulated by this chapter, the Board may not consider a conviction where more than 10 years
13 have elapsed since the date of the conviction, if there have been no other criminal convictions in the intervening time.

14 After a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver,
15 the Board, by an affirmative vote of a majority of the quorum, or, during the time between meetings, the Board
16 President or the President's designee, may waive this paragraph (a)(11), if it finds all of the following:

17 a. For waiver of a felony conviction, where the crime was committed against a person, more than 5 3
18 years have elapsed since the date of the conviction and, for all other felonies, more than 2 years have elapsed since
19 the date of conviction. At the time of the application the applicant may not be incarcerated, on work release, ~~on~~
20 ~~probation, on parole or serving any part of a suspended sentence~~ or on probation or parole at Level III supervision
21 or higher and must be in substantial compliance with all court orders pertaining to fines, ~~restitution~~ restitution, and
22 community service.

- 23 b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may
24 not be incarcerated, on work release, ~~on probation, on parole or serving any part of a suspended sentence~~ or on
25 probation or parole at Level III supervision or higher and must be in substantial compliance with all court orders
26 pertaining to fines, ~~restitution~~ restitution, and community service.
- 27 c. The applicant is capable of practicing electrical services in a competent and professional manner.
- 28 d. The granting of the waiver will not endanger the public health, ~~safety~~ safety, or welfare.

SYNOPSIS

This Act modifies the impact of criminal history for applicants for licensure to the Board of Electrical Examiners (Board). Specifically, this Act:

(1) Permits the Board to grant waivers for felony convictions for crimes committed against a person where more than 3 years have elapsed, and more than 2 years have elapsed for other felonies.

(2) Permits the Board to grant waivers for felony and misdemeanor convictions if the applicant is on Level I or II probation.

(3) Precludes the Board from considering a conviction where more than 10 years have elapsed since the date of conviction.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Walsh



SPONSOR: Rep. Matthews & Rep. Yearick & Sen. Lockman & Sen. Delcollo

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL HB8

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO DELAWARE TAX CREDITS.

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

1 Section 1. Amend Chapter 20E, Title 30 of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 Chapter 20E. Ex-Offender Employment Opportunity Tax Credit.

4 § 20E-100. Declaration of Purpose.

5 The purpose of this chapter is to provide Delaware’s employers an incentive to hire ex-offenders in order to
6 increase the available opportunities for ex-offenders to re-enter our communities and become productive citizens.

7 § 20AE-101. Definitions.

8 For purposes of this chapter:

9 (1) “Gross wages” means that part of the sum reported on Form W-2, or equivalent form of the United States
10 Department of Treasury, Internal Revenue Service as “Medicare wages and tips” that is attributable to Delaware sources.

11 (2) “Qualified employer” means an employer operating in Delaware which hires and employs one or more
12 qualified ex-offenders to work in Delaware.

13 (3) “Qualified ex-offender” means any individual Delaware resident who has been convicted of a felony under any
14 federal or state law and who has been released from confinement from a correctional facility located in Delaware within 1
15 year from the individual’s date of hire.

16 (4) “Secretary” means the Secretary of the Department of Finance described in § 8302 of Title 29.

17 (5) “Sustained employment” means a period of employment that is not less than 185 days during the taxable year.

18 § 20E-102. Credit for wages paid to qualified ex-offenders.

19 (a) Subject to the limitations contained in § 20E-103 of this title and to such return requirements as may be
20 imposed by the State Bank Commissioner, the Insurance Commissioner, or the Secretary, qualified employers shall be
21 eligible during the current or subsequent taxable year in which a qualified ex-offender is hired for credits against the taxes
22 imposed by the following statutory provisions:

23 (1) Chapter 11 of Title 5;
24 (2) Chapter 19 of this title;
25 (3) Chapter 11 of this title;
26 (4) Sections 702 and 703 of Title 18. 31 (b) The amount of the credit against the tax shall equal 10%, but in no
27 event to exceed \$1500, of the gross wages paid by the qualified employer to a qualified ex-offender in the course of
28 that person's sustained employment during the taxable year.
29 (c) To the extent a qualified employer's credits exceed any amounts otherwise due for the taxes and fees listed
30 under § 20E-102(a) of this title, such unused credits shall be forfeited.
31 § 20E-103. Limitations.
32 Notwithstanding § 20E-102 of this title, no qualified ex-offender counted for purposes of Ex-Offender
33 Employment Opportunity Tax Credits under this subchapter may be included in the calculation of employment for purposes
34 of claiming tax credits provided by subchapters II, III, IX and X of chapter 20 of this title or for tax credits under Chapter
35 20A of this title.
36 § 20E-104. Rules and Regulations.
37 The Director of the Division of Revenue is authorized to promulgate rules and regulations not inconsistent with
38 this chapter and require such facts and information to be reported as the Director deems necessary for administration and
39 enforcement of this chapter. No rule or regulation adopted pursuant to the authority granted by this section shall extend,
40 modify or conflict with any law of this State or the reasonable implications thereof.
41 Section 2. This Act is applicable to all qualified offenders hired on or after January 1 of the year after its
42 enactment into law.

SYNOPSIS

Employment for formerly incarcerated individuals is a major barrier to transitioning and re-entering the community. The National Institute of Justice estimates that 60% of ex-offenders are jobless one year after their release. Improving access to employment opportunities for ex-offenders helps lower the State's recidivism rates and will improve public safety and reduce taxpayer spending on prisons. This Act seeks to improve access to employment for formerly incarcerated individuals by establishing the Ex-Offender Employment Opportunity Tax Credit that offers a tax credit to employers hiring qualified ex-offenders in an amount equal to 10% of that individuals wages, with a maximum credit of \$1500.



SPONSOR: Rep. Mitchell & Sen. Ennis
Reps. Heffernan, Kowalko, Longhurst, Lynn, Matthews;
Sen. Hansen

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL 9

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO POLICE OFFICER TRAINING.

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

1 Section 1. Amend Chapter 84, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 8402 Members of Council.

4 (a) The Council shall be composed of ~~12~~ 13 members.

5 (b) The Council shall be composed of: a chairperson to be appointed by and to serve at the pleasure of the
6 Governor; the Attorney General; the Superintendent of the Delaware State Police; the Chief of the City of Wilmington
7 Police; the Chief of the New Castle County Police Department; the Chief of the City of Dover Police Department; the Chief
8 of the City of Newark Police Department; the Secretary of Education; the President of the Delaware League of Local
9 Governments; the mayor or police commissioner of an incorporated municipality in Kent County, to be appointed by the
10 Governor; the mayor or police commissioner of ~~an~~ two incorporated ~~municipality~~ municipalities in Sussex County, to be
11 appointed by the Governor; the Chairperson of the Delaware Police Chiefs' Council, Inc. The Chairperson shall have had
12 substantial practical experience in the field of law enforcement.

13 § 8404 Powers and duties.

14 (a) The Council may:

15 (1) Establish minimum qualifications for applicants as police officers;

16 (2) Establish minimum educational and training qualifications requisite to permanent appointment as a police
17 officer;

18 (3) Issue certification of completion of police officer training prescribed under this chapter;

19 (4) Suspend or revoke certification in the event that an individual:

20 a. Obtained a certificate by fraud or deceit;

21 b. Has failed to successfully complete any in-service or advanced training required by the Council;

22 c. Has been convicted of a felony, or of a misdemeanor involving moral turpitude, or of any local, state
23 or federal criminal offense involving, but not limited to, theft, fraud, or violation of the public trust, or of any drug
24 law;

25 d. Has been found, after examination by a licensed psychologist or psychiatrist, to be psychologically or
26 emotionally unfit to perform the duties or exercise the powers and authority of a police officer;

27 e. Has received a hearing pursuant to the Police Officer's Bill of Rights, or who has knowingly and
28 voluntarily waived that individual's right to such a hearing and:

29 1. Has been discharged from employment with a law-enforcement agency for a breach of internal
30 discipline; or

31 2. Has retired or resigned prior to the entry of findings of fact concerning an alleged breach of
32 internal discipline for which the individual could have been legitimately discharged had the individual not
33 retired from or resigned that individual's position prior to the imposition of discipline by the employing
34 agency.

35 (5) Prescribe standards for in-service or continued training of police officers, which shall include at least 2
36 hours every 4 years on the detection, prevention and prosecution of sexual assault for all police officers who perform
37 uniformed patrol duties or are assigned to investigative units responsible for sex crimes, and which training shall be
38 conducted on a staggered basis so that half of the eligible members of any law-enforcement or police organization
39 receive said training in each 2-year period;

40 (6) Establish minimum educational and training qualifications for seasonal employment as a police officer;

41 (7) Establish certification and recertification requirements for police officer applicants who have previously
42 been employed with permanent appointment as a police officer but have not been so employed within the 12 months
43 prior to application;

44 (8) Prescribe equipment and facility standards for schools at which police training courses shall be conducted,
45 including but not limited to existing county or municipal schools;

46 (9) Establish minimum training requirements, attendance requirements and standards of operations for police
47 training schools;

48 (10) Prescribe minimum qualifications for instructors at such schools and certify, as qualified, or decertify
49 such instructors to their particular courses of study;

50 (11) Approve and issue certificates of approval to such police training schools, to inspect such schools from
51 time to time and to revoke for cause any approval or certificate issued to such schools;

52 (12) Consult and cooperate with all agencies of government, state and local, concerning the development and
53 administration of the training and standard program and to contract with such agencies as it deems necessary to the
54 performance of its powers and duties;

55 (13) Accept or receive grants or donations from any source, public or private, for the purposes of this chapter;

56 (14) Make such rules and regulations as may be necessary to carry out the purposes and objectives of this
57 chapter;

58 (15) Provide a modification from the application of any provision of this chapter or the rules and regulations
59 promulgated thereunder, for any police officer of a municipality if:

60 a. The police officer is employed on a seasonal basis; and

61 b. The municipality makes application for such modification and establishes that it will suffer a hardship
62 if the modification is not granted;

63 (16) Establish an approved training program for seasonal police officers which shall be required prior to
64 active police duty, and in addition, if the officer is to be armed, that the police officer be certified in the use of firearms
65 at an approved police training school;

66 (17) Authorize articulation agreements between an approved school and an accredited institution of higher
67 education located in the State for the provision of police officer training prescribed under this chapter;

68 (18) Establish the criteria to afford reciprocity to police officers certified in other states by an agency like the
69 Council or by the federal government by waiving some or all of the minimum education and training qualifications for
70 police officers under this chapter if they have satisfied substantially equivalent education and training;

71 (19) Mandate training for all persons seeking permanent or seasonal appointment as a police officer in the
72 detection, prosecution and prevention of child sexual and physical abuse, exploitation and domestic violence, and the
73 obligations imposed by Delaware law, including § 903 of Title 16, and federal law in the prompt reporting thereof.
74 Such training shall be coordinated under §§ 911 and 931(b)(4) of Title 16 to ensure consistent trainings across
75 disciplines;

76 (20) Mandate in-service wellness and resiliency training of police officers, which shall include at least 2 hours
77 every other year to mitigate the destructive effects of emotional trauma, mental illness and suicidal behavior that arise
78 from the stressful and demanding nature of police work.

79 (b) The Director of the Delaware State Police Training Division shall be responsible for administering the
80 mandatory training and education for police officers program with responsibility and authority to obtain professional
81 assistance from other police and professional organizations to accomplish the purposes and objectives of the program.

SYNOPSIS

Being a police officer is one of the most dangerous and stressful jobs. In 2015, nationwide, there were 124 law enforcement fatalities and 51 suicides in the last six months of that year. In Delaware, in 2017 alone, the Delaware State Police Critical Incident Stress Management Team responded to approximately 100 incidents including several line of duty deaths, police involved shootings, fatal accidents and unexpected deaths of active police officers. Law enforcement officers face a 69 percent higher risk of suicide than the general population. They are also at an elevated risk for depression, substance abuse and post-traumatic stress disorder. This bill mandates 2 hours of wellness and resiliency training for police officers every other year to mitigate the damaging effects of the trauma that our state's law enforcement officers face as a result of their jobs. The bill also adds an additional Sussex County member of the Police Officer Training Council.



SPONSOR: Sen. Brown & Sen. Townsend & Sen. Delcollo &
Rep. Lynn & Rep. Longhurst & Rep. Dorsey Walker
Sens. Hansen, Poore; Rep. Heffernan

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL 37

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.

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

1 Section 1. Amend § 4371, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4371. Statement of policy.

4 The General Assembly finds that ~~arrest records~~ a criminal history can be ~~is~~ a hindrance to an ~~innocent citizen's a~~
5 person's present and future ability to obtain employment, ~~obtain an education or to obtain housing,~~ education, or credit.
6 This subchapter is intended to protect ~~innocent~~ persons from unwarranted damage which may occur as ~~the result of arrest~~
7 ~~and other criminal proceedings which are unfounded or unproven.~~ when the existence of a criminal history continues
8 indefinitely.

9 Section 2. Amend § 4372, Title 11 of the Delaware Code by making deletions as shown by strike through and
10 insertions as shown by underline as follows:

11 § 4372. ~~Termination of criminal action in favor of accused.~~ Applicability; definitions; effect of expungement.

12 (a) ~~If a person is charged with the commission of a crime or crimes and the case is terminated in favor of the~~
13 ~~accused, the person may request the expungement of the police records and the court records relating to the case pursuant to~~
14 ~~the provisions of this subchapter.~~ This subchapter applies to all criminal cases brought and convictions entered in a court in
15 this State.

16 (b) For the purposes of this subchapter, a case ~~shall be deemed to be~~ is "terminated in favor of the accused" only
17 ~~if~~ if one of the following occurs:

18 (1) The accused is acquitted of all charges related to the ~~ease;~~ case.

19 (2) A nolle prosequi is entered on all charges related to the ~~ease;~~ case.

20 (3) The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the
21 court enters an order discharging the person from ~~probation;~~ or probation.

22 (4) All charges related to the case are otherwise dismissed.

23 (5) The accused is acquitted of 1 or more charges related to the case, and the other charges are dismissed by
24 the entry of a nolle prosequi or otherwise.

25 (6) The accused is arrested for the commission of 1 or more crimes and no charges related to the matter for
26 which the person was arrested are filed in any court within 1 year of the arrest.

27 (c) For the purposes of this ~~subchapter~~, subchapter:

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

30 (2) "Criminal justice agencies" means as defined in § 8502 of this title.

31 (3) "Expungement" means that all law-enforcement agency records and court records relating to a case in
32 which an expungement is granted, including any electronic records, are destroyed, segregated, or placed in the custody
33 of the State Bureau of Identification, and are not released in conjunction with any inquiry beyond those specifically
34 authorized in this subchapter.

35 (d) Except as otherwise provided under § 4376(a) of this title, a person is not required to disclose, nor should the
36 person be asked to disclose, to anyone for any purpose that the person was arrested for, charged with, or convicted of an
37 offense for which records have been expunged under this subchapter or any other provision of this Code.

38 (e)(1) If a court issues an order expunging records, all the criminal records relating to a case specified in the order
39 must, within 60 days of the order, be removed from the court's files and placed in the control of the Supervisor of the State
40 Bureau of Identification or otherwise segregated and kept in a manner that ensures that they are not open to public
41 inspection or disclosure. The court may retain a non-public record of expungement orders. The court shall send a copy its
42 order of expungement to the Bureau, and shall consult with the Bureau to develop a standard form of order for
43 expungements. Except as otherwise provided under § 4376 of this title, the Supervisor of the Bureau shall retain control
44 over all expunged records and shall ensure that the records or information contained in the records are not released for any
45 reason.

46 (2) If the State Bureau of Identification determines that expungement is mandated under this subchapter, or
47 receives an expungement order from a court, it shall promptly notify all courts and law-enforcement agencies where
48 records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of, or
49 concluded. A court or law-enforcement agency which receives a notice of expungement from the Bureau shall provide
50 the Bureau with written confirmation of the completion of the expungement. Where an expungement of a conviction is
51 granted all arrest records associated with any charge in that case must also be expunged.

52 (3) If a court orders expungement, the State Bureau of Identification shall provide the court that entered the
53 order with written confirmation of the execution of the order. The Bureau shall promptly notify the court if it is unable
54 to comply with any order issued under this subchapter and state the reasons why it is unable to comply.

55 (4) In response to requests from non-law-enforcement officers for information or records on the person who
56 received an expungement, all law-enforcement officers, law-enforcement agencies, and courts shall reply, with respect
57 to the proceedings which are the subject of the order, that there is no record.

58 (f) Exclusions.

59 (1) A person is not eligible for an expungement while the person has pending criminal charges, except under
60 paragraph (b)(6) of this section.

61 (2) Except as otherwise provided under § 4374(g) of this title, offenses in Title 21, or their equivalent, are not
62 eligible for expungement under §§ 4373 or 4374 of this title.

63 (3) A conviction for unlawful sexual contact in the third degree may not be expunged under § 4373 or § 4374
64 of this title.

65 (4) A person is not eligible for an expungement if that person was granted an expungement under this
66 subchapter at any time in the 10 years immediately preceding application.

67 (5) A person is not eligible for expungement under this subchapter if that person is currently serving a term of
68 incarceration, parole, or probation.

69 (g) A prior or subsequent conviction under § 904(e) or (f) of Title 4 (regarding underage possession or
70 consumption of alcohol) or a conviction under § 4764(c) of Title 16 (regarding underage possession of personal use
71 quantity of marijuana) does not operate as a bar to eligibility for discretionary or mandatory expungement under this
72 subchapter.

73 (h) A prior or subsequent conviction of a Title 21 offense does not operate as a bar to eligibility for discretionary
74 or mandatory expungement under this subchapter, unless it is a conviction under § 4177 or § 4177M of Title 21.

75 (i) Nothing in this subchapter is intended to operate to expand or limit the availability of expungement set forth in
76 any other part of the Code.

77 (j) The grant of an expungement under this subchapter does not nullify any provision of an active protection from
78 abuse order.

79 (k) To be eligible for an expungement under this subchapter, all fines, fees, and restitution associated with a
80 conviction must be paid. However, if an outstanding fine or fee is not yet satisfied due to reasons other than willful

81 noncompliance, but the person is otherwise eligible for an expungement, the court may grant the expungement and waive
82 the fines or fees or convert outstanding financial obligations to a civil judgement.

83 Section 3. Amend § 4373, Title 11 of the Delaware Code by making deletions as shown by strike through and
84 insertions as shown by underline as follows:

85 § 4373. ~~Mandatory expungement.~~ expungement; application through SBI.

86 (a) ~~If a person is charged with the commission of a crime which is designated as a misdemeanor or violation in~~
87 ~~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~~
88 ~~Title 4, 7, 11, 16 or 23 offense, excepting those crimes specifically exempted in subsection (c) of this section, and the case~~
89 ~~is terminated in favor of the accused, and the person has not previously been convicted of another criminal offense, upon an~~
90 ~~appropriate request to the State Bureau of Identification by such person the police records and court records, including any~~
91 ~~electronic records, relating to the charge or charges shall be expunged if the person has not been convicted of any crime~~
92 ~~since the date upon which the case was terminated in favor of the accused.~~ Eligibility. On an appropriate request to the State
93 Bureau of Identification under this section, the Bureau shall expunge all charges relating to a case if one of the following
94 applies:

95 (1) The person was arrested or charged with the commission of 1 or more crimes and the case is terminated in
96 favor of the accused.

97 (2) The person was convicted of 1 or more violations relating to the same case. 3 years have passed since the
98 date of conviction, and the person has no prior or subsequent convictions.

99 (3) The person was convicted of 1 or more misdemeanors, or a combination of 1 or more misdemeanors and 1
100 or more violations, relating to the same case. 5 years have passed since the date of conviction, and the person has no
101 prior or subsequent convictions.

102 (b) ~~If the State Bureau of Identification determines that expungement is mandated pursuant to the terms of this~~
103 ~~section it shall promptly so notify the courts and police agencies where records pertaining to the case are located or~~
104 ~~maintained, and any court where the case was terminated, disposed of or concluded. All records appropriately specified in~~
105 ~~the expungement request shall, within 60 days of the determination that such request is mandated pursuant to the terms of~~
106 ~~this section, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who~~
107 ~~shall be designated to retain control over all expunged records, and who shall insure that the records or the information~~
108 ~~contained therein is not released for any reason except as specified in this subchapter. A court and/or police agency which~~
109 ~~receives a notice of expungement from the State Bureau Identification shall provide the Bureau with written confirmation~~
110 ~~of the completion of the expungement. In response to requests from nonlaw enforcement officers for information or records~~

111 ~~on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and~~
112 ~~proceedings which are the subject of the order, that there is no record.~~ Exclusions. In addition to the exclusions under §
113 4372(f) of this title, the following misdemeanor convictions are not eligible for mandatory expungement under this section:

114 (1) "Misdemeanor crimes of domestic violence", as defined in § 1448 of this title.

115 (2) Offenses where the victim is a child.

116 (3) Offenses where the victim is a "vulnerable adult", as defined in § 1105 of this title.

117 (3) Any misdemeanor set forth in subparts A, B, C, or F of Subchapter VI of Chapter 5 of this title.

118 (c) ~~Mandatory expungement pursuant to this section shall not be applicable to the records of any case in which the~~
119 ~~defendant was charged with 1 or more of the following crimes, or any county or municipal code, ordinance, or regulation~~
120 ~~which is the same as, or equivalent to, any crime specified herein:~~

121 (1) ~~Any misdemeanor designated as a sex offense pursuant to § 761 of this title;~~

122 (2) ~~Any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of this title;~~

123 (3) ~~Unlawful imprisonment pursuant to § 781 of this title;~~

124 (4) ~~Interference with custody pursuant to § 785 of this title;~~

125 (5) ~~Coercion pursuant to § 791 of this title;~~

126 (6) ~~Trespassing with intent to peer or peep, pursuant to § 820 of this title;~~

127 (7) ~~Endangering the welfare of a child, pursuant to § 1102 of this title;~~

128 (8) ~~Crime against a vulnerable adult, pursuant to § 1105 of this title;~~

129 (9) ~~Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of this title;~~

130 (10) ~~Any misdemeanor or violation set forth in Chapter 85 of this title;~~

131 (11) ~~Patient abuse, pursuant to § 1136 of Title 16;~~

132 (12) ~~Operation of a vessel or boat while under the influence, pursuant to § 2302 of Title 23.~~ If more than 1
133 case or arrest is eligible for expungement under this section, it may be combined into a single application for
134 expungement.

135 (d) ~~At the time the application requesting expungement is filed with the State Bureau of Identification the~~
136 ~~applicant shall pay a reasonable fee to the State Bureau of Identification. The applicant shall attach a copy of that~~
137 ~~applicant's criminal history as maintained by the State Bureau of Identification to any application requesting expungement~~
138 ~~filed pursuant to this section. The State Bureau of Identification shall summarily reject any application for expungement~~
139 ~~that does not include the applicant's criminal history without further notice to the applicant.~~ The State Bureau of
140 Identification shall promulgate procedures and forms relating to the implementation of this section.

141 (e) ~~The State Bureau of Identification shall be authorized to promulgate reasonable regulations and a reasonable~~
142 ~~fee schedule to accomplish the purposes of this section. [Repealed.]~~

143 (f) ~~An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the~~
144 ~~person as an arrest for any reason, except for disclosure to criminal justice agencies, as defined in § 8502(5) of this title, for~~
145 ~~the purposes provided in § 4376(a) of this title. [Repealed.]~~

146 Section 4. Amend § 4374, Title 11 of the Delaware Code by making deletions as shown by strike through and
147 insertions as shown by underline and redesignating as follows:

148 § 4374. Discretionary ~~expungement.~~ expungement; application to court.

149 (a) ~~Notwithstanding any provision of § 4373 of this title to the contrary, if a person is charged with the~~
150 ~~commission of a crime, or a violation of any county or municipal code, ordinance, or regulation, and the case is terminated~~
151 ~~in favor of the accused, the person may file a petition in the Superior Court in the county where the case was terminated,~~
152 ~~disposed of or concluded setting forth the relevant facts and requesting expungement of the police records and the court~~
153 ~~records, or includes any electronic records, relating to the charge or charges. Discretionary expungement pursuant to this~~
154 ~~section shall not be applicable to the records of any case that may be expunged pursuant to the provisions of § 4373 of this~~
155 ~~title; provided, however, where a person was charged with a criminal offense where discretionary expungement pursuant to~~
156 ~~this section applies, but also was charged, within the same case, with a criminal offense where mandatory expungement~~
157 ~~pursuant to § 4373 of this title applies, such person must file a petition in Superior Court pursuant to this section. Eligibility.~~
158 Upon petition to the appropriate court designated in subsection (c) of this section, an expungement may be granted if the
159 applicant meets one of the following:

160 (1) Was convicted of 1 or more misdemeanors other than those listed in § 4373(b) of this title relating to the
161 same case and at least 3 years have passed since the date of conviction or the date of release from incarceration,
162 whichever is later, and the person has no prior or subsequent convictions.

163 (2) Was convicted of 1 or more misdemeanors listed in § 4373(b) of this title relating to the same case and at
164 least 7 years have passed since the date of conviction or the date of release from incarceration, whichever is later, and
165 the person has no prior or subsequent convictions.

166 (3) Subject to subsection (b) of this section, was convicted of a felony and at least 7 years have passed since
167 the date of conviction or the date of release from incarceration, whichever is later, and the person has no prior or
168 subsequent convictions.

169 (b) Exclusions. In addition to the exclusions under § 4372(f) of this title, a person is not eligible for discretionary
170 expungement under this section if the person was convicted of any of the following crimes:

171 (1) A Title 11 felony listed in § 4201(c) of this title.
172 (2) Section 1136 of Title 16.
173 (3) Section 3913 of Title 31.
174 (4) A “felony conviction involving physical or sexual assault crimes” as defined in § 309 of Title 31
175 (regarding the Beau Biden Child Protection Act).
176 (c) Venue. If all of the charges and convictions sought to be expunged were disposed of in Family Court, a petition
177 under this section must be filed in the Family Court for the county where the most recent case was terminated. If any of the
178 charges or convictions were not disposed of in Family Court, a petition under this section must be filed in the Superior
179 Court for the county where the most recent case was terminated.
180 (d) Jurisdiction and authority. Where an expungement petition properly before the Family or Superior Court is
181 granted, the expungement order applies to any record, including arrest records, relating to any charge in that case held by
182 any court or law-enforcement agency in this State.
183 ~~(b)~~ (e) After the petition requesting expungement is filed with the Superior Court ~~or Family Court~~, the petitioner
184 shall cause a copy of the petition to be served upon the Attorney General, who may file an objection or answer to the
185 petition within 30 days after it is served on the Attorney General. The petitioner shall attach a copy of that petitioner's
186 criminal history as maintained by the State Bureau of Identification to any petition requesting expungement filed pursuant
187 ~~to~~ under this section. The Court shall summarily reject any petition for expungement that does not include the petitioner's
188 criminal history.
189 ~~(e)~~ (f) Unless the Court believes a hearing is necessary, petitions ~~shall be~~ are to be disposed of without a hearing. If
190 the Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner
191 causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring
192 the expungement of the ~~police~~ law-enforcement and court records relating to the charge or case. Otherwise, it shall deny
193 the petition. The burden ~~shall be~~ is on the petitioner to allege specific facts in support of that petitioner's allegation of
194 manifest injustice, and the burden ~~shall be~~ is on the petitioner to prove such manifest injustice by a preponderance of the
195 evidence. ~~The fact that the petitioner has previously been convicted of a criminal offense, other than that referred to in the~~
196 ~~petition, shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of~~
197 ~~information relating to the arrest in question does not constitute a manifest injustice to the petitioner.~~ A petition filed by the
198 Attorney General or the Attorney General's designee pursuant to under subsection ~~(e)~~ (h) of this section ~~shall~~ must be
199 granted by the Court.

200 (d) ~~(g)~~ The State shall ~~be~~ is made party defendant to the proceeding. Any party aggrieved by the decision of the
201 Court may appeal, as provided by law in civil cases.

202 (e) ~~(h)~~ Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the Attorney
203 General or the Attorney General's designee responsible for prosecuting a criminal action may petition the Court to expunge
204 the instant arrest record of a defendant if at the time of a state motion to dismiss or entry a nolle prosequi in the case, the
205 prosecutor has determined that the continued existence and possible dissemination of information relating to the arrest of
206 the defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute
207 a manifest injustice to the defendant.

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

220 ~~(g)(1)(i)(1)~~ Notwithstanding any provision of this subchapter or any other statute or rule law to the contrary, the
221 police law enforcement agency records and the court records relating to any charge set forth in Title 21, or in any county or
222 municipal code, ordinance, or regulation which is the same as, or equivalent to, any Title 21 offense, shall may not be
223 expunged pursuant to under this subchapter unless the charge ~~or charges~~ is one of those specifically enumerated in
224 paragraph ~~(g)(2)(i)(2)~~ of this section.

225 (2) Discretionary expungement ~~pursuant to~~ under this section shall ~~be~~ is applicable when otherwise
226 appropriate for the following Title 21 offenses, or any county or municipal code, ordinance, or regulation which is the
227 same as, or equivalent to, any of the following Title 21 ~~offense specified herein:~~ offenses:

- 228 a. Driving after judgment prohibited, ~~pursuant to~~ under § 2810 of Title 21; Title 21.
229 b. Reckless driving, ~~pursuant to~~ under § 4175 of Title 21; Title 21.

230 c. Operation of a motor vehicle causing death, pursuant to ~~under~~ § 4176A of Title 21; Title 21.
231 d. ~~Driving under the influence, pursuant to § 4177 of Title 21; or [Repealed.]~~
232 e. ~~Operating a commercial vehicle with a prohibited blood alcohol concentration or while impaired by~~
233 ~~drugs, pursuant to § 4177M of Title 21. [Repealed.]~~
234 ~~(h)(i)~~ The Superior Court and Family Court shall establish a reasonable fee schedule for the filing of a petition of
235 expungement pursuant to ~~under~~ this section.

236 ~~(i) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the~~
237 ~~person as an arrest for any reason, except for disclosure to criminal justice agencies, as defined in § 8502(5) of this title, for~~
238 ~~the purposes provided in § 4376(a) of this title.~~

239 Section 5. Amend § 4375, Title 11 of the Delaware Code by making deletions as shown by strike through and
240 insertions as shown by underline as follows:

241 § 4375. Discretionary expungement following a pardon.

242 (a) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted
243 of a ~~misdemeanor or violation excepting those crimes specifically exempted in subsection (b) of this section~~ crime who is
244 thereafter unconditionally pardoned by the Governor may request a discretionary expungement pursuant to the ~~procedures~~
245 ~~set forth in~~ under § 4374 of this title. ~~The burden shall be on the petitioner to allege specific facts in support of that~~
246 ~~petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a~~
247 ~~preponderance of the evidence. The fact that the petitioner was convicted of the criminal offense that is the subject of that~~
248 ~~petitioner's expungement application shall be considered by the Court as prima facie evidence that the continued existence~~
249 ~~and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the~~
250 ~~petitioner.~~

251 (b) ~~Discretionary expungement following a pardon pursuant to this section shall not be applicable to the records of~~
252 ~~any case in which the defendant was charged with 1 or more of the following crimes, or any county or municipal code,~~
253 ~~ordinance, or regulation which is the same as, or equivalent to, any crime specified herein:~~

- 254 (1) ~~Any misdemeanor or violation involving embezzlement of public money, bribery or perjury;~~
255 (2) ~~Any misdemeanor designated as a sex offense pursuant to § 761 of this title;~~
256 (3) ~~Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of this title;~~
257 (4) ~~Unlawful imprisonment pursuant to § 781 of this title;~~
258 (5) ~~Interference with custody pursuant to § 785 of this title; or~~
259 (6) ~~Coercion pursuant to § 791 of this title. [Repealed.]~~

260 Section 6. Amend § 4376, Title 11 of the Delaware Code by making deletions as shown by strike through and
261 insertions as shown by underline as follows:

262 § 4376. Disclosure of expunged records.

263 (a) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in
264 investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement
265 agency, it ~~shall be~~ is unlawful for any person having or acquiring access to an expunged court or ~~police~~ law-enforcement
266 agency record to open or review it or to disclose to another person any information from it without an order from the court
267 which ordered the record expunged. In addition to such other lawful purposes as may be prescribed by ~~statute~~ law or
268 otherwise, criminal justice agencies shall have access to records of expunged probations before judgment and past
269 participation in the First Offenders Controlled Substance Diversion Program or a court-supervised drug diversion program
270 for the purpose of determining whether a person is eligible for a probation before judgment, ~~as set forth in~~ under § 4218 of
271 ~~this title, or for~~ title: participation in the First Offenders Controlled Substance Diversion Program, ~~as set forth in~~ under §
272 4767 of ~~Title 16 or for~~ Title 16: or participation in a court-supervised drug diversion program.

273 (b) Where disclosure to law-enforcement officers in the lawful performance of their duties in investigating
274 criminal activity is permitted by subsection (a) of this section, such disclosure ~~shall apply~~ applies for the purpose of
275 investigating particular criminal activity in which the person, whose records have been expunged, is considered a suspect
276 and the crime being investigated is a felony or pursuant to an investigation of an employment application as an employee of
277 a law-enforcement agency.

278 (c) Nothing contained in this subchapter ~~shall require~~ requires the destruction of photographs or fingerprints taken
279 in connection with any felony arrest and which are utilized solely by law-enforcement officers in the lawful performance of
280 their duties in investigating criminal activity.

281 (d) Nothing ~~herein shall require~~ contained in this subchapter requires the destruction of court records or records of
282 the Department of Justice. However, all such records, including docket books, relating to a charge which has been the
283 subject of a destruction order ~~shall~~ must be so handled to ensure that they are not open to public inspection or disclosure.

284 (e) An offense for which records have been expunged ~~pursuant to~~ under this subchapter ~~shall~~ does not have to be
285 disclosed by the person as an arrest for any reason.

286 (f) Any person who violates subsection (a) of this section ~~shall be~~ is guilty of a class B misdemeanor, and ~~shall~~
287 must be punished accordingly.

288 (g) The State Bureau of Identification shall make available to criminal justice agencies such electronic records as
289 will enable criminal justice agencies to determine whether a person who seeks to participate in the First Offenders

290 Controlled Substance Diversion Program or to Program, obtain a probation before judgment ~~disposition or to disposition~~,
291 or participate in a court-supervised drug diversion program has done so before and had the record expunged.

292 Section 7. Amend § 4377, Title 11 of the Delaware Code by making deletions as shown by strike through and
293 insertions as shown by underline as follows:

294 § 4377. Notification to federal government.

295 Upon the granting by the court for an order for the expungement of records in accordance with this subchapter, a
296 copy of such order ~~shall~~ must be forwarded to the federal Department of Justice.

297 Section 8. Amend § 787, Title 11 of the Delaware Code by making deletions as shown by strike through and
298 insertions as shown by underline as follows:

299 (j) *Application for pardon and petition to expunge; motion to vacate conviction and expunge record.* —

300 (3) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, any person
301 filing a motion under paragraph (j)(2) of this section in Superior Court or Family Court may also seek in that motion
302 expungement of the criminal record related to such conviction. If the court grants the motion to vacate the conviction
303 under paragraph (j)(2) of this section and the movant also requested expungement, the court's order shall require
304 expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement
305 that the expungement is ordered pursuant to this paragraph and, notwithstanding any limitations to the contrary, that
306 the provisions of §§ ~~4374(f), 4372(e)~~, 4376 and 4377 of this title apply to such order.

307 (4) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, any person filing
308 in Court of Common Pleas a motion under paragraph (j)(2) of this section may, upon the Court of Common Pleas' entry
309 of an order granting the motion to vacate, file a petition in the Superior Court seeking expungement of the criminal
310 record related to such conviction and attaching to the petition a certified copy of the Court of Common Pleas' order
311 granting the motion to vacate. Upon finding that the Court of Common Pleas entered an order under paragraph (j)(2) of
312 this section, the Superior Court shall enter an order requiring expungement of the police and court records relating to
313 the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this
314 paragraph and, notwithstanding any limitations to the contrary, that the provisions of §§ ~~4374(f), 4372(e)~~, 4376 and
315 4377 of this title apply to such order.

316 Section 9. Amend § 1025, Title 10 of the Delaware Code by making deletions as shown by strike through and
317 insertions as shown by underline as follows:

318 § 1025. Expungement of adult police and court records.

319 (a) ~~If an adult person is charged with the commission of a crime or crimes and the case is terminated in favor of~~
320 ~~the accused, the person may request the expungement of the police records and the court records relating to the case~~
321 ~~pursuant to the provisions of this subchapter.~~

322 (b) ~~For the purposes of this section, a case shall be deemed to be "terminated in favor of the accused" only if:~~

323 (1) ~~The accused is acquitted of all charges related to the case;~~

324 (2) ~~A nolle prosequi is entered on all charges related to the case;~~

325 (3) ~~The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the~~
326 ~~court enters an order discharging the person from probation; or~~

327 (4) ~~All charges related to the case are otherwise dismissed.~~

328 (c) ~~For the purposes of this section "case" means a charge or set of charges related to a complaint or incident that~~
329 ~~are or could be properly joined for prosecution.~~

330 (d) ~~If an adult is charged with the commission of a crime which is designated as a misdemeanor or violation in~~
331 ~~Title 4, 7, 11, 16, or 23, excepting those crimes specifically exempted in paragraph (d)(2) of this section, and the case is~~
332 ~~terminated in favor of the accused, and the person has not previously been convicted of another criminal offense, upon an~~
333 ~~appropriate request to the State Bureau of Identification by such person the police records and court records, including any~~
334 ~~electronic records, relating to the charge or charges shall be expunged if the person has not been convicted of any crime~~
335 ~~since the date upon which the case was terminated in favor of the accused.~~

336 (1) ~~If the State Bureau of Identification determines that expungement is mandated pursuant to the terms of this~~
337 ~~paragraph, it shall promptly so notify the courts and police agencies where records pertaining to the case are located or~~
338 ~~maintained, and any court where the case was terminated, disposed of or concluded. All records appropriately specified~~
339 ~~in the expungement request shall, within 60 days of the determination that such request is mandated pursuant to the~~
340 ~~terms of this section, be removed from the files, and placed in the control of the Supervisor of the State Bureau of~~
341 ~~Identification who shall be designated to retain control over all expunged records, and who shall ensure that the records~~
342 ~~or the information contained therein is not released for any reason except as specified in this subchapter. Criminal~~
343 ~~justice agencies as defined in § 8502(5) of Title 11 shall, however, have access to records of expunged probations~~
344 ~~before judgment for the specific purpose of determining whether a person is eligible for a probation before judgment,~~
345 ~~as set forth in § 4218 of Title 11. A court or a police agency which receives a notice of expungement from the State~~
346 ~~Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement. In~~
347 ~~response to requests from nonlaw enforcement officers for information or records on the person who was arrested, the~~

348 law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject
349 of the order, that there is no record.

350 (2) Mandatory expungement pursuant to this subsection shall not be applicable to the records of any case in
351 which the defendant was charged with one or more of the following crimes:

- 352 a. Any misdemeanor designated as a sex offense pursuant to § 761 of Title 11;
- 353 b. Any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of Title 11;
- 354 c. Unlawful imprisonment pursuant to § 781 of Title 11;
- 355 d. Interference with custody pursuant to § 785 of Title 11;
- 356 e. Coercion pursuant to § 791 of Title 11;
- 357 f. Trespassing with intent to peer or peep, pursuant to § 820 of Title 11;
- 358 g. Endangering the welfare of a child, pursuant to § 1102 of Title 11;
- 359 h. Crime against a vulnerable adult, pursuant to § 1105 of Title 11;
- 360 i. Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of Title 11;
- 361 j. Any misdemeanor or violation set forth in Chapter 85 of Title 11;
- 362 k. Patient abuse, pursuant to § 1136 of Title 16;
- 363 l. Operation of a vessel or boat while under the influence, pursuant to § 2302 of Title 23.

364 (3) At the time the application requesting expungement is filed with the State Bureau of Identification, the
365 applicant shall pay a reasonable fee to the State Bureau of Identification. The applicant shall attach a copy of that
366 applicant's criminal history as maintained by the State Bureau of Identification to any application requesting
367 expungement filed pursuant to this section. The State Bureau of Identification shall summarily reject any application
368 for expungement that does not include the applicant's criminal history without further notice to the applicant.

369 (4) The State Bureau of Identification shall be authorized to promulgate reasonable regulations and a
370 reasonable fee schedule to accomplish the purposes of this subsection.

371 (e) Notwithstanding any provision of subsection (d) of this section to the contrary, if a person is charged with the
372 commission of a crime and the case is terminated in favor of the accused, the person may file a petition in the Family Court
373 in the county where the case was terminated, disposed of or concluded setting forth the relevant facts and requesting
374 expungement of the police records and the court records relating to the charge or charges. Discretionary expungement
375 pursuant to this section shall not be applicable to the records of any case that may be expunged pursuant to the provisions of
376 subsection (d) of this section, provided, however, that where a person was charged with a criminal offense where
377 discretionary expungement pursuant to this subsection applies, but also was charged, within the same case, with a criminal

378 offense where mandatory expungement pursuant to this section applies, such person must file a petition in the Family Court
379 pursuant to this section.

380 (1) After the petition requesting expungement is filed with the Family Court, the petitioner shall cause a copy
381 of the petition to be served upon the Attorney General, who may file an objection or answer to the petition within 30
382 days after it is served on the Attorney General. The petitioner shall attach a copy of that petitioner's criminal history as
383 maintained by the State Bureau of Identification to any petition requesting expungement filed pursuant to this section.
384 The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history.

385 (2) Unless the Court believes a hearing is necessary, petitions shall be disposed of without a hearing. If the
386 Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner
387 causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order
388 requiring the expungement of the police and court records relating to the charge or case. Otherwise, it shall deny the
389 petition. The burden shall be on the petitioner to allege specific facts in support of that petitioner's allegation of
390 manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the
391 evidence. The fact that the petitioner has previously been convicted of a criminal offense, other than that referred to in
392 the petition, shall be considered by the Court as prima facie evidence that the continued existence and possible
393 dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.
394 A petition filed by the Attorney General or the Attorney General's designee pursuant to paragraph (e)(4) of this section
395 shall be granted by the Court.

396 (3) The State shall be made party defendant to the proceeding. Any party aggrieved by the decision of the
397 Court may appeal, as provided by law in civil cases.

398 (4) Notwithstanding any provision of this section or any other statute or rule to the contrary, the Attorney
399 General or designee responsible for prosecuting a criminal action may petition the Court to expunge the instant arrest
400 record of a defendant if at the time of a state motion to dismiss or entry of nolle prosequi in the case, the prosecutor has
401 determined that the continued existence and possible dissemination of information relating to the arrest of the
402 defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute
403 a manifest injustice to the defendant.

404 (5) If an order expunging the records is granted by the Court, all the records specified in the order shall, within
405 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of
406 Identification who shall be designated to retain control over all expunged records, and who shall ensure that the records
407 or the information contained therein is not released for any reason except as specified in this subchapter. A police

408 agency which receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with
409 written confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court
410 which entered the order with written confirmation of the execution of the order. In response to requests from nonlaw-
411 enforcement officers for information or records on the person who was arrested, the law enforcement officers and
412 departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no
413 record. No order requiring an expungement of any record shall be entered or enforced if such order is contrary to the
414 provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to
415 comply with any order issued pursuant to this subchapter.

416 (6) Notwithstanding any provision of this section or any other statute or rule to the contrary, the police records
417 and the court records relating to any charge set forth in Title 21 of shall not be expunged pursuant to this section unless
418 the charge or charges is 1 of these specifically enumerated offenses:

- 419 a. Driving after judgment prohibited, pursuant to § 2810 of Title 21;
- 420 b. Reckless driving, pursuant to § 4175 of Title 21;
- 421 c. Operation of a motor vehicle causing death, pursuant to § 4176A of Title 21;
- 422 d. Driving under the influence, pursuant to § 4177 of Title 21;
- 423 e. Operating a commercial vehicle with a prohibited blood alcohol concentration or while impaired by
424 drugs, pursuant to § 4177M of Title 21.

425 (7) The Family Court shall establish a reasonable fee schedule for the filing of a petition of expungement
426 pursuant to this section.

427 (f) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted
428 of a misdemeanor or violation excepting those crimes specifically exempted in subsection (g) of this section who is
429 thereafter unconditionally pardoned by the Governor may request a discretionary expungement pursuant to the procedures
430 set forth in subsection (e) of this section. The burden shall be on the petitioner to allege specific facts in support of the
431 petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a
432 preponderance of the evidence. The fact that the petitioner was convicted of the criminal offense that is the subject of the
433 petitioner's expungement application shall be considered by the Court as prima facie evidence that the continued existence
434 and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the
435 petitioner.

436 (g) Discretionary expungement following a pardon pursuant to this section shall not be applicable to the records of
437 any case in which the defendant was charged with 1 or more of the following crimes:

438 (1) Any misdemeanor designated as a sex offense pursuant to § 761 of Title 11;

439 (2) Unlawful imprisonment pursuant to § 781 of Title 11;

440 (3) Interference with custody pursuant to § 785 of Title 11; or

441 (4) Coercion pursuant to § 791 of Title 11.

442 If a person is charged with or convicted of a crime in Family Court, expungement may be sought under Subchapter
443 VII of Chapter 43 of Title 11.

444 Section 10. Amend § 904, Title 4 of the Delaware Code by making deletions as shown by strike through and
445 insertions as shown by underline as follows:

446 § 904. Offenses concerning certain persons.

447 (o) Any person who was convicted of a first offense under subsections (e) and (f) of this section or the same
448 offense under any county or municipal code, ordinance, or regulation and who was under the age of 21 at the time of the
449 offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of
450 arrest to the court in which the person was convicted. For violations of subsection (e) or (f) of this section, an order granting
451 such expungement shall issue upon proof that the person has reached the age of 21, unless the person has failed to comply
452 with the sentencing order or the person has another charge under this section, or under the same offense under any county
453 or municipal code, ordinance, or regulation, which remains outstanding. Upon issuance of the order of expungement, the
454 records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in §§
455 ~~4373(e), 4374 and 4375~~ Subchapter VII of Chapter 43 of Title 11. Nothing in this section ~~shall prohibit~~ prohibits the Family
456 Court from expunging a record of conviction as otherwise provided by law. The application for or granting of a pardon
457 ~~pursuant to~~ under §§ 4361 through ~~4363~~ 4364 of Title 11 ~~shall~~ does not prohibit an expungement under this section. All
458 sentencing orders for violations of this section by persons under the age of 21 at the time of the offense shall state that the
459 record of the conviction may be expunged upon reaching the age of 21 and thereafter. The civil filing fee shall apply to
460 applications for expungement plus a \$100 fee payable to the State Bureau of Identification for administrative costs.

461 Section 11. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and
462 insertions as shown by underline as follows:

463 § 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation [For
464 application of this section, see 80 Del. Laws, c. 38, § 6]

465 (i) Any person who was convicted of a single criminal offense under subsection (c) of this section and who was
466 under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of
467 the conviction and any indicia of arrest to the court in which the person was convicted. For violations of subsection (c) of

468 this section, an order granting such expungement shall issue upon proof that the person has reached the age of 21, unless
469 the person has failed to comply with the sentencing order or the person has another charge under this section which remains
470 outstanding. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be
471 dealt with in accordance with the procedures specified in §§ ~~4373(e), 4374 and 4375~~ Subchapter VII of Chapter 43 of Title
472 11. Nothing in this section ~~shall prohibit the Family Court~~ prohibits a court from expunging a record of conviction as
473 otherwise provided by law. The application for or granting of a pardon ~~pursuant to under~~ §§ 4361 through ~~4363~~ 4364 of
474 Title 11 ~~shall~~ does not prohibit an expungement under this section. All sentencing orders for violations of this section by
475 persons under the age of 21 at the time of the offense ~~shall~~ must state that the record of the conviction may be expunged
476 upon reaching the age of 21 and thereafter. The civil filing fee ~~shall apply~~ applies to applications for expungement plus a
477 \$100 fee payable to the State Bureau of Identification for administrative costs.

478 Section 12. This Act takes effect 180 days after its enactment into law.

479 Section 13. This Act is to be known as the Adult Expungement Reform Act.

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 and (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; and (3) after 5 years for some misdemeanors. Excluded from this SBI-only expungement process are convictions for any misdemeanor crimes of domestic violence, or misdemeanor crimes where the victim is a child or a vulnerable adult. 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.

Author: Senator Brown



SPONSOR: Sen. Brown & Sen. Townsend & Rep. Griffith &
Rep. Longhurst & Rep. Dorsey Walker & Rep. Lynn
Sen. Hansen; Rep. Heffernan

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL *SB 39*

AN ACT TO AMEND TITLE 10, TITLE 11, AND TITLE 21 OF THE DELAWARE CODE RELATING TO FINES, COSTS, PENALTIES, AND FORFEITURES.

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

1 Section 1. Amend § 1009, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1009. Adjudication; disposition following adjudication; commitment to custody of Department of Services for
4 Children, Youth and Their Families; effect.

5 (c) Following an adjudication in which the Court declares that a child is delinquent, it may:

6 (19) Notwithstanding any provision of law or court rule to the contrary, and except for any assessment
7 imposed pursuant to Chapter 90 of Title 11, waive or suspend payment of any fine, ~~cost~~ cost, or penalty assessment,
8 including those otherwise deemed mandatory or not subject to waiver or suspension, as part of the sentence imposed on
9 a delinquent child. When imposing, waiving, or suspending payment of any fine, cost, or penalty assessment as part of
10 the sentence imposed on a delinquent child, the Court shall consider the child's ability to pay under § 4104(a) of Title
11 11.

12 Section 2. Amend § 4101, Title 11 of the Delaware Code by making deletions as shown by strike through and
13 insertions as shown by underline as follows:

14 § 4101. Payment of fines, ~~costs~~ costs, assessments, and restitution upon conviction.

15 (a) On conviction upon indictment or information for any crime or offense, ~~all the costs shall be paid by the party~~
16 ~~convicted.~~ a defendant must pay all costs imposed by a court.

17 (b)(1) ~~Immediately upon imposition by a court, including a justice of the peace, of any sentence to pay a fine,~~
18 ~~costs, restitution or all 3, the same shall be a judgment against the convicted person for the full amount of the fine, costs,~~
19 ~~restitution or all 3, assessed by the sentence.~~ When a court's sentence includes a fine, fee, cost, assessment, or restitution,
20 the full amount imposed becomes a judgement against the defendant immediately upon sentencing. For purposes of this
21 chapter, "court" includes the Superior Court, Court of Common Pleas, Family Court, Justice of the Peace Court, and a
22 municipality's alderman's or mayor's court.

23 (2) ~~Such A judgment shall be under this subsection is~~ immediately executable, ~~enforceable and/or enforceable,~~
24 or transferable by the State or by the victim to whom such restitution is ordered in the same manner as other judgments
25 of the court.

26 (3) If not paid promptly upon its imposition or in accordance with the terms of the order of the court, or
27 immediately if so requested by the State, the clerk or Prothonotary shall cause the judgment to be entered upon the civil
28 judgment docket of the court; provided, however, that where a stay of execution is otherwise permitted by law such a
29 stay shall may not be granted as a matter of right but only within the discretion of the court.

30 (4) If the court imposing ~~any a~~ sentence to pay a ~~fine, costs, restitution or all 3~~ fine, fee, cost, assessment, or
31 restitution has no does not have a civil docket for the entry of a judgment, then ~~such the~~ the court may immediately transfer
32 ~~such the~~ the judgment to the civil judgment docket of an appropriate court, as ~~shall be~~ determined by the court imposing
33 ~~such the~~ the sentence.

34 (5) Judgments docketed ~~pursuant to~~ under this subsection shall be are exempt from the provisions of § 4711 of
35 Title 10 which mandate the expiration of judgments, and which require the renewal of such judgments.

36 (k)(1) A state, county, or municipal law enforcement agency or a volunteer ambulance company, as defined under
37 paragraph (j)(4) of this section, shall calculate and report the total sum the law enforcement agency or volunteer ambulance
38 company received under this chapter from fines, forfeitures, and court costs, and the percentage of its annual operating
39 budget that the total sum represents.

40 (2) A state, county, or municipal law enforcement agency or a volunteer ambulance company shall
41 disaggregate the total sum calculated under paragraph (k)(1) of this section into the sum it received based on violations
42 of traffic, State, county, or municipal ordinance, violation, misdemeanor, and felony offenses. The county or municipal
43 law enforcement agency or volunteer ambulance company shall include its findings in the report required under
44 paragraph (k)(1) of this section.

45 (3) A state, county, or municipal law enforcement agency or a volunteer ambulance company shall make the
46 report required under paragraph (k)(1) of this section available on its website.

47 (l)(1) A state, county, or municipal government shall calculate and report the total sum it received under this
48 chapter from fines, forfeitures, and court costs, and the percentage of its annual operating budget that the total sum
49 represents.

50 (2) A state, county, or municipal government shall make the report required under paragraph (l)(1) of this
51 section available on its website.

52 Section 3. Amend § 4104, Title 11 of the Delaware Code by making deletions as shown by strike through and
53 insertions as shown by underline as follows:

54 § 4104. Fines, ~~costs~~ fees, costs, assessments, or restitution; how collected; ~~holding operator's license as security for~~
55 ~~payment~~ suspending driver's license for nonpayment prohibited.

56 (a) Before imposing fines, fees, costs, or assessments upon a defendant, a court shall consider the defendant's
57 ability to pay the fines, fees, costs, or assessments imposed. A court may not presume that a defendant is able to pay fines,
58 fees, costs, or assessments. Nothing in this section may be construed to create or expand any substantive right to the
59 appointment of counsel.

60 (1) A defendant is entitled to a hearing on the defendant's ability to pay fines, fees, costs, and assessments.

61 a. A court shall enact rules or administrative orders to govern an ability to pay hearing under this
62 paragraph (a)(1) of this section.

63 b. At least 10 business days before a defendant's ability to pay hearing, the court shall provide the
64 defendant written notice of the opportunity to provide proof relevant to the courts' determination of the
65 defendant's ability to pay.

66 c. In determining ability to pay, the court shall consider the defendant's efforts to earn money, secure
67 employment, and borrow money, as well as any limitations on the defendant's ability to engage in such efforts due
68 to homelessness, health and mental health issues, temporary and permanent disabilities, limited access to public
69 transportation, limitations on driving privileges, existing court ordered financial obligations, and other relevant
70 factors.

71 d. A defendant who qualifies for the services of the Office of Defense Services, receives Medicaid,
72 Medicare, TANF, SSI, SSD, SNAP, Low Income Utilities Assistance, earns less than 125% of the federal poverty
73 guidelines, or is homeless is presumptively unable to pay fines, fees, costs, and assessments. Absent a showing by
74 clear and convincing evidence of the defendant's ability to pay, a court shall waive, suspend, or modify all fines,
75 fees, costs, penalties, or assessments for a defendant who is presumptively unable to pay at the time of sentencing.

76 1. Notwithstanding any law or court rule to the contrary, the court may waive, suspend, or modify
77 payment of any fine, fee, cost, penalty, or assessment, including those otherwise deemed mandatory or not
78 subject to waiver or suspension when the court finds the defendant is not able to pay.

79 2. The court may waive, suspend, or modify fines imposed before [the effective date of this Act].

80 e. At an ability to pay hearing, a defendant has the right to be represented by counsel, to cross-examine
81 witnesses, and to present evidence.

82 f. A defendant may waive an ability to pay hearing if a court finds that the waiver is knowingly,
83 intelligently, and voluntarily made.

84 g. A defendant's ability or inability to pay fines, fees, costs, and assessments may not influence a court's
85 decision whether to impose a custodial or probationary sentence.

86 (2) If a court finds that a defendant is able to pay fines, fees, costs, and assessments, the court may not impose
87 an amount that exceeds 1 day of the defendant's pay.

88 (3) A court shall advise a defendant on the record and in writing of the financial obligations and the possible
89 sanctions for noncompliance.

90 (b)(1) When a court imposes a fine, ~~costs~~ fee, cost, assessment, or restitution upon a defendant, the court or justice
91 of the peace may direct as follows ~~may order any of the following:~~

92 (1) a. That the defendant pay the entire amount at the time sentence is ~~imposed;~~ imposed.

93 (2) b. That the defendant pay a specified portion of the fine, ~~costs~~ fee, cost, assessment, or restitution at
94 designated periodic ~~intervals, and in such case~~ intervals. The court may ~~direct~~ order that the fine, ~~costs~~ fee, cost,
95 assessment, or restitution be remitted to a probation officer who ~~shall~~ must report to the court, at such periods as
96 the court may direct, any failure to comply with the ~~orders;~~ or court's order.

97 (3) c. Where the defendant is sentenced to a period of probation as well as ~~to pay a fine, costs or~~
98 restitution ~~fee, cost, assessment, or restitution,~~ that payment of the fines, ~~costs or restitution shall be~~ fees, costs,
99 assessments, or restitution is a condition of the probation.

100 (2)a. A court may not impose an additional fee for any of the following:

101 1. The payment of a fine, fee, cost, assessment, or restitution that is made at designated periodic
102 intervals.

103 2. A late payment of a fine, fee, cost, assessment, or restitution.

104 3. Supervision by probation of the payment of a fine, fee, cost, assessment, or restitution.

105 4. The defendant's request for an ability to pay or work hearing.

106 b. A court may not charge interest for a payment of a fine, fee, cost, assessment, or restitution that is
107 made late or at designated periodic intervals.

108 (3) The Supreme Court, or its designee, shall develop policies and procedures that enable the courts to provide
109 defendants with a statewide aggregate total of the amount owed in fines, fees, costs, penalties, assessments, and
110 restitution across all courts and counties; information as to the payment amounts and due dates across all courts and

111 counties; and a payoff figure, on request. The Court shall implement these policies and procedures no later than April
112 1, 2020.

113 ~~(b) Any court, including a justice of the peace, may, in its discretion, permit any person sentenced to pay a fine~~
114 ~~upon conviction of crime, in lieu of the payment of the fine ordered, to execute a bond acknowledging the amount of the~~
115 ~~fine imposed upon the person as a debt due and owing to this State and binding the person unto this State in an amount~~
116 ~~equal to 10 times the fine imposed. The bond shall be so conditioned that, should the amount of the fine imposed be paid to~~
117 ~~this State on or before the tenth day next following the day on which the fine is imposed, then in that event the bond shall~~
118 ~~be null and void. The bond shall contain a warrant of attorney authorizing the Prothonotary or any attorney of record in this~~
119 ~~State or elsewhere to appear in any court, including a justice of the peace, and confess judgment against the person so~~
120 ~~bound. Upon execution of the bond the convicted person shall be required to list on the reverse thereof all motor vehicles~~
121 ~~and real property owned by the person or in which the person has any title or interest with a description and the location~~
122 ~~thereof.~~

123 ~~(c)(1) Any A court may, in its discretion, may direct any person a defendant sentenced to pay a fine or restitution~~
124 ~~fine, fee, cost, assessment, or restitution upon conviction of a crime, who is employed within this State or by a Delaware~~
125 ~~resident or employer, to execute an assignment of a specified periodic sum not to exceed 1/3 of the person's total earnings,~~
126 ~~which assignment shall 25% of the defendant's disposable earnings or the amount by which the defendant's disposable~~
127 ~~earnings are greater than 30 times the federal minimum wage, whichever is lesser. For purposes of this subsection,~~
128 ~~"disposable earnings" means the amount of an individual's earnings left after legally required deductions are made. The~~
129 ~~assignment must direct the person's defendant's employer to withhold and remit that amount to this State up to the total of~~
130 ~~the fine, costs fee, cost, assessment, and restitution imposed.~~

131 ~~(2) An assignment of earnings executed in accordance with under this subsection shall be is binding upon an~~
132 ~~employer in the same manner as an attachment of wages pursuant to under Title 10, except that an assignment need be~~
133 ~~filed only once with the defendant's employer who shall make the withholding and remittances until the full amount is~~
134 ~~paid. An amount of total earnings consistent with federal law may be assigned. An employer shall take no A~~
135 ~~defendant's employer may not take an action against an employee a defendant who has executed an assignment, and~~
136 ~~the penalty imposed upon an employee a defendant solely because of an assignment under this subsection shall must be~~
137 ~~in accordance with the manner set forth for attachments.~~

138 ~~(d) For purposes of ensuring the payment of fines, restitution fees, costs, assessments, and restitution, and the~~
139 ~~enforcement of any orders imposed under this section, the court shall retain jurisdiction over the convicted person a~~
140 ~~defendant until any fine or a fine, fee, cost, assessment, or restitution imposed shall have been is paid in full. The court may~~

141 write off the fines, ~~costs~~ fees, costs, assessments, and restitution of ~~any convicted person~~ a defendant when the court
142 receives evidence that ~~such person~~ the defendant is deceased.

143 (e) ~~Whenever any person lawfully possessed of an operator's license theretofore issued to the person by the~~
144 ~~Division of Motor Vehicles of the Department of Transportation of the State, or under the laws of any other state or~~
145 ~~territory, or of the District of Columbia, shall be arrested and charged with any violation of the traffic or criminal laws of~~
146 ~~this State, or of any political subdivision thereof, a court, as a condition of sentencing, may take and hold, as security for~~
147 ~~the payment of any fine, costs, restitution or Victims Compensation Fund assessment, the operator's license so issued to the~~
148 ~~defendant. Neither the Division of Motor Vehicles of the Department of Transportation nor a court may suspend a~~
149 ~~defendant's driver's license as a penalty for nonpayment of a fine, fee, cost, assessment, or restitution.~~

150 (1) A defendant whose driver's license was suspended before [the enactment date of this Act] only as a
151 penalty for nonpayment of a fine, fee, cost, penalty, assessment, or restitution is eligible for restoration of the
152 defendant's driving privileges.

153 (2) The Division of Motor Vehicles of the Department of Transportation shall develop policies and procedures
154 to implement the restoration of driving privileges under paragraph (e)(1) of this section. The Division shall implement
155 these policies and procedures by April 1, 2020.

156 (3) A defendant who seeks to restore the defendant's driving privileges under paragraph (e)(1) of this section
157 may not be required to pay a fee to do so.

158 (f) ~~Any person whose operator's license has been deposited with a court, pursuant to subsection (e) of this section~~
159 ~~above, shall be issued a receipt by the court taking said license upon a form substantially as set forth in this subsection, and~~
160 ~~thereafter said person shall be permitted to operate a motor vehicle upon the highways of the State during the pendency of~~
161 ~~the case in which the license was taken, unless the person's license or privilege to operate a motor vehicle is otherwise~~
162 ~~revoked, suspended or cancelled.~~

163 **FORM OF RECEIPT**

164 ~~The operator's license of....., license number..... is held by the..... Court, State of Delaware, as security for the~~
165 ~~payment of a fine, costs, restitution or Victims Compensation Fund assessment in Case No..... Please accept this receipt as~~
166 ~~a substitute for that license as provided by Title 11, § 4104(e), Delaware Code, as amended. Payment is due by..... This~~
167 ~~receipt is not valid after said date. Failure to appear will result in license suspension. An attempt to secure, or the securing~~
168 ~~of, a duplicate operator's license during the period in which this court holds an operator's license shall be considered as a~~
169 ~~contempt of court under 11 Del. C., § 1271(3).~~

170 Judge A court may not charge a penalty, assessment, or fee to a defendant for the cancellation of a capias issued
171 due to the defendant's nonpayment of a fine, fee, costs, assessment, or restitution.

172 ~~(g) The clerk of the court in which the sentence was imposed and for which a person's license was taken as~~
173 ~~security, pursuant to subsection (e) of this section, shall immediately forward to the Division of Motor Vehicles of the State~~
174 ~~the license if the person fails to pay by the date indicated in the receipt as prescribed by subsection (f) of this section above.~~
175 ~~The Director of the Division of Motor Vehicles shall, upon receipt of a license so forwarded by the clerk, suspend the~~
176 ~~operator's license and driving privileges of the defaulting driver until notified by the court that payment of the fine, costs,~~
177 ~~restitution or Victims Compensation Fund assessment has been made. If the person be from another state or territory or the~~
178 ~~District of Columbia of the United States, the Director of the Division of Motor Vehicles shall further advise the motor~~
179 ~~vehicle administrator of the state, territory or the District of Columbia of this State's suspension and request that said~~
180 ~~person's license to drive be suspended until the fine, costs, restitution or Victims Compensation Fund assessment have been~~
181 ~~paid. A court shall waive a defendant's outstanding fines, fees, costs, and assessments 10 years after the later of one of the~~
182 following:

183 (1) The imposition of the fine, fee, cost, or assessment.

184 (2) The defendant's release from imprisonment.

185 ~~(h)(1) The clerk of the court in which the sentence was imposed and for which a person's operator's license was~~
186 ~~taken as security, pursuant to subsection (e) of this section, shall immediately return the person's operator's license upon~~
187 ~~payment of the fine, costs, restitution or Victims Compensation Fund assessment within the period as prescribed by the~~
188 ~~sentencing judge and as reflected in the form set forth in subsection (f) of this section. A court shall collect and report~~
189 annually all of the following data:

190 a. The amount of fines, fees, costs, assessments, or restitution imposed and collected by the court,
191 disaggregated by those deemed unable to pay and all other defendants.

192 b. The methods used by the court to collect the fines, fees, costs, assessments, or restitution imposed.

193 c. The disbursement of collected fines, fees, costs, assessments, or restitution.

194 d. The costs of collecting the fines, fees, costs, assessments, or restitution imposed.

195 e. The number of waivers based on defendants' inability to pay a fine, fee, cost, or assessment.

196 f. The number of revocations of probation for failure to pay a fine, fee, cost, assessment, or restitution.

197 g. The number of defendants referred to the work referral program under § 4105(b) of this title.

198 h. The number of contempt charges issued for failure to complete work referral under § 4105(b)(7) of this
199 title.

200 (2) A court shall analyze the data under paragraph (h)(1) of this section to identify disparities in race, gender,
201 or ethnicity. The court shall include its findings in the report required under paragraph (h)(1) of this section.

202 (3) A court shall make the report required under paragraph (h)(1) of this section available on the court's
203 website.

204 Section 4. Amend § 4105, Title 11 of the Delaware Code by making deletions as shown by strike through and
205 insertions as shown by underline as follows:

206 § 4105. Default in payment of fine; inability to pay.

207 (a) ~~No person~~ A court may not order a defendant sentenced to pay a fine, ~~costs~~ fee, cost, assessment, or restitution
208 upon conviction of a crime ~~shall be ordered~~ to be imprisoned in default of the payment of such fine, ~~costs~~ fee, cost,
209 assessment, or restitution.

210 (b)(1) Where a ~~person~~ defendant sentenced to pay a ~~fine, costs, restitution or all 3~~ fine, fee, cost, assessment, or
211 restitution, on conviction of a crime is unable or fails to pay such ~~fine, costs, restitution or all 3~~ fine, fee, cost, assessment,
212 or restitution, at the time of imposition of sentence or in accordance with the terms of payment set by the court, the court
213 may order the ~~person~~ defendant to report at any time to the Commissioner of the Department of Correction, or a person
214 designated by the Commissioner, for work for a number and schedule of hours necessary to discharge the fine, ~~costs~~ fee,
215 costs, assessment, or restitution imposed.

216 a. A court may not presume that a defendant is able to work to repay the defendant's fines, fees, costs,
217 assessments, or restitution.

218 b. A court shall conduct a hearing as to the defendant's ability to work to repay the defendant's fines,
219 fees, costs, assessments, or restitution. A court shall enact rules or administrative orders to govern an ability to
220 work hearing under this paragraph (b)(1) of this section.

221 c. At an ability to work hearing a defendant has the right to be represented by counsel, to cross-examine
222 witnesses, and to present evidence. Nothing in this paragraph (b)(1)c. of this section may be construed to create or
223 expand any substantive right to the appointment of counsel.

224 d. A defendant may waive an ability to work hearing if a court finds that the waiver is knowingly,
225 intelligently, and voluntarily made.

226 e. In determining ability to participate in work referral, a court shall consider any limitations on the
227 defendant's ability to engage in work programs due to homelessness, health and mental health issues, temporary
228 and permanent disabilities, limited access to public transportation, limitations on driving privileges, employment,
229 and other relevant factors.

230 f. A court may waive or modify the number of hours necessary to discharge the fines, fees, costs,
231 assessments, or restitution imposed. The court may accept the completion of any of the following in lieu of work
232 hours:

233 1. Educational programming.

234 2. Parenting courses.

235 3. Defensive driving courses.

236 4. Participation in other court ordered programs.

237 5. Participation in programs that are mandated as a condition of the receipt of public services.

238 (2) For purposes of this section, the hourly rate ~~shall~~ must be established in accordance with the then
239 prevailing federal or state minimum wage, whichever is more, and ~~shall~~ must be used in computing the amount
240 credited to ~~any person~~ a defendant discharging fines, ~~costs~~ fees, costs, assessments, and restitution.

241 (3) In cases involving Justices of the Peace Courts, the Chief Magistrate thereof shall establish guidelines for
242 the number of hours of work which may be assigned and the Courts shall adhere to ~~said~~ these guidelines.

243 (4) The Department of Correction may approve public work assignments for ~~convicted persons~~ defendants in
244 accordance with subsection (c) of this ~~section, whereupon~~ section. Once a public work assignment is approved, the
245 Commissioner, or a person designated by the Commissioner, may assign ~~the convicted person~~ a defendant to work
246 under the supervision of ~~any a state, county~~ county, or municipal agency or a nonprofit organization on any project or
247 assignment specifically certified for that purpose.

248 (5) The Department of Correction ~~shall~~ may not compensate ~~any convicted person~~ a defendant assigned to
249 work under the supervision of ~~any a state, county~~ county, or municipal agency or nonprofit organization. ~~but~~ But, the
250 Department shall credit ~~such person~~ the defendant with the number of hours of satisfactory service.

251 (6) When the number of ~~such~~ hours of work performed by a defendant equals the number of hours imposed by
252 the court that sentenced the defendant, the Department of Correction shall certify this fact to the ~~appropriate~~ court, and
253 the court shall proceed as if the fines, ~~costs~~ costs, and restitution had been paid in cash. Fines, ~~costs~~ fees, costs,
254 assessments, and restitution successfully worked off under this subsection ~~shall~~ may not be considered as receivables
255 of the court, but the records ~~shall~~ must show the hours worked.

256 (7) ~~Failure~~ A defendant's failure to comply with an order of the court to participate in work referral made
257 ~~pursuant to~~ under this section ~~shall be~~ is punishable as civil contempt and all courts ~~shall~~ have the power to punish as a
258 civil contempt ~~any convicted person~~ a defendant who fails to comply with such an order.

259 (8) ~~In the event a person~~ If a defendant serves all or part of a sentence of incarceration for contempt of court in
260 accordance with this subsection, the length of the sentence being in the court's discretion and based upon the amount of
261 the outstanding ~~finest and costs~~ finest, fees, costs, and assessments, the court shall cancel all or part of the ~~finest and~~
262 ~~costs~~ finest, fees, costs, and assessments. The amount of ~~finest and costs~~ finest, fees, costs, and assessments cancelled
263 shall must be commensurate with the amount of the time served.

264 (9) For any offense in which the penalty is civil, a court may order a ~~person~~ defendant to report to the
265 Commissioner of the Department of Correction, or a person designated by the Commissioner, for work under this
266 subsection and consistent with the procedures of this subsection until the civil penalties and costs are discharged.
267 Notwithstanding paragraph (b)(7) of this section, a ~~person's~~ defendant's failure to participate in work ordered under
268 this paragraph is not punishable as contempt of court. A ~~person's~~ defendant's failure to participate in work ordered
269 under this paragraph may result in the transfer of the judgment to the Office of State Court Collections Enforcement to
270 be collected according to § 4104 of this title.

271 (c) ~~Any agency of the State, county or any municipality~~ A state, county, or municipal agency or ~~any a~~ nonprofit
272 organization approved by the court may submit public work projects or proposed assignments to the Department of
273 Correction for certification as approved public work projects under this section. Upon certification by the Department, the
274 Department shall notify the agency or nonprofit organization ~~will be notified~~ and the Commissioner of the Department of
275 Correction ~~will be authorized to~~ may begin to assign ~~convicted persons~~ defendants to the certified project or assignment.

276 (d) Notwithstanding subsection (a) of this section, where a defendant sentenced to be imprisoned is ordered to pay
277 a ~~fine, costs, restitution or all 3~~ fine, fee, cost, assessment, or restitution, the court may order an additional sentence of
278 imprisonment in lieu of requiring the payment of the ~~fine, costs, restitution or all 3~~; ~~provided, however, that this~~ fine, fee,
279 cost, assessment, or restitution. An additional sentence of imprisonment imposed under this subsection may not exceed 30
280 days, to be served concurrently or ~~consecutively~~ with the sentence originally ~~imposed, as the court may order~~ imposed.

281 (e) ~~A court having probationary powers may, in its discretion, treat any failure to comply with a court order in~~
282 ~~respect to fines, costs, restitution or all 3 either as a civil contempt or as if the defendant had been placed on probation and~~
283 ~~the probation violated; provided, however, that any sentence for violation of probation may not exceed 30 days. [Repealed.]~~

284 Section 5. Amend § 2751, Title 21 of the Delaware Code by making deletions as shown by strikethrough and
285 insertions as shown by underline as follows:

286 § 2751. Unlawful application for or use of license or identification card.

287 (r) *Penalty.* — Unless otherwise specifically provided for in Chapter 31 of this title, an individual who violates this
288 section shall be guilty of a class B misdemeanor and shall have that individual's driver's license and/or driving privileges

289 suspended for a period to be set by the Court, not to exceed 6 months. The foregoing sentence notwithstanding, an
290 individual who violates subsection (d), (e), (i) and/or (j) of this section by possessing or displaying a driver's license that
291 has been suspended or revoked by application of the following statutes shall be guilty of a violation only, provided that the
292 judicial officer adjudicating the charge or charges brought under subsections (e) and (j) of this section has made a factual
293 finding that the defendant was reasonably unaware the driver's license that defendant possessed or displayed had been
294 suspended or revoked:

295 Title 4, § 904(f)

296 Title 11, § 2106(c)

297 ~~Title 11, § 4104(g)~~

298 Title 14, § 2730(c)(7) [repealed]

299 Title 14, § 4130(e)(1) [repealed]

300 Section 314(b) of this title

301 Section 709(j)(1) of this title

302 Section 2118(n)(1) of this title

303 Section 2703(d)(5) of this title

304 Section 2710(e)(5) of this title

305 Section 2724(b) of this title.

306 Section 6. Amend § 2731, Title 21 of the Delaware Code by making deletions as shown by strike through and
307 insertions as shown by underline as follows:

308 § 2731. Duty of courts and police officers.

309 (b) ~~The clerk or prothonotary of every court shall forward to the Department or its successor, a record of the name
310 and address of each convicted person who shall have been sentenced to pay a fine, costs or both a fine and costs and who
311 has failed to pay at the time sentence was imposed or in accordance with an order of the court. Whenever a convicted
312 person who has not paid a fine, costs or both at the time sentence was imposed shall pay, the clerk or prothonotary shall
313 provide the convicted person with a receipt confirming that the fine, costs or both have been paid so that the receipt may be
314 presented to the Department, or its successor, as notice that the fine, costs or both have been paid. [Repealed.]~~

315 Section 7. Amend § 2732, Title 21 of the Delaware Code by making deletions as shown by strike through and
316 insertions as shown by underline as follows:

317 § 2732. Mandatory revocation or suspension of license or refusal to renew or issue a duplicate license.

318 (b) Upon receiving a record of the failure of a convicted person to pay a fine, costs or both as described in §
319 2731(b) of this title, or to timely complete a course of instruction pursuant to § 4175A or § 4177D of this title, the
320 Department or its successor, shall:

321 (1) If the convicted person is a resident of this State, forthwith suspend the convicted person's license until the
322 fine, costs or both have been paid, or the court finds that the person has completed the necessary course of instruction
323 and paid all applicable fees; and

324 (2) If the convicted person is a nonresident of this State, forthwith suspend the convicted person's driving
325 privileges in this State and immediately advise the Motor Vehicle Administrator of the state wherein the convicted
326 person is a resident that the convicted person has failed to pay a fine, costs or both, or to timely complete a course of
327 instruction pursuant to § 4175A or § 4177D of this title, and requesting that the convicted person's license to drive be
328 suspended until the fine, costs or both have been paid, or the court finds that the person has completed the necessary
329 course of instruction and paid all applicable fees.

330 Section 8. Section 4104(b) through (h) of Title 11 as contained in Section 3 of this Act and Sections 5 through 7 of
331 this Act take effect immediately following this Act's enactment into law. Section 1, § 4104(a) of Title 11 as contained in
332 Section 3 of this Act, and Section 4 take effect on April 1, 2020. Section 2 takes effect on December 1, 2020.

SYNOPSIS

In 2017, 44,889 failure to pay warrants were issued for people who did not pay a fine, fee, cost, assessment, or restitution imposed for a non-felony offense. In the first 6 months of 2018, there were a total of 5,807 admissions to detention at all Level V facilities. Of these admissions, 129 were for failure to pay only and 595 were for failure to pay and another charge. When a warrant is issued for nonpayment of a fine, courts currently may and do impose fees to cancel the warrant. When defendants are late paying their fines, the courts' clerks also must forward the defendant's name to the Department of Transportation's Division of Motor Vehicles for license suspension.

This Act prohibits a court from suspending a driver's license for nonpayment of a fine, fee, cost, assessment, or restitution and from charging a penalty, assessment, or fee to a defendant for the cancellation of a warrant issued due to the defendant's nonpayment of a fine, fee, cost, assessment, or restitution. This Act also prohibits a court from imposing an additional fee on a defendant for payments that are made at designated periodic intervals or late, or when probation is ordered to supervise a defendant's payment. Nothing in this Act precludes the court from filing contempt charges against defendants who willfully fail to pay their fines imposed after their ability to pay hearing.

Further, this Act requires a court, before imposing a fine, fee, cost, or assessment, to determine if a defendant, whether an adult or a juvenile, is able to pay the fine, fee, cost, or assessment. If the court determines that a defendant is not able to pay, the court must determine if the defendant is able to participate in the work referral program. If the court determines that a defendant is able to pay, the court may not impose a fine, fee, cost, or assessment that exceeds 1 day of the defendant's pay.

Additionally, this Act requires state, county, and municipal law enforcement agencies and volunteer ambulance companies to calculate and report the total sum they receive from fines, forfeitures, and court costs and the percentage of their annual operating budget that the total sum represents. Also, this Act requires Delaware courts to collect and report the following data related to the fines, fees, costs, assessments, and restitution ordered to be collected:

- (1) The total amount imposed and collected by the court.
- (2) The methods used by the court to collect the amount.
- (3) The disbursement of the amount collected.
- (4) The costs associated with collecting the amount.

- (5) The number of waivers based on defendants' ability to pay.
- (6) The number of revocations of probation for failure to pay.
- (7) The number of defendants referred to the work referral program.
- (8) The number of contempt charges issued for failure to complete work referral.

Finally, this Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Brown