

CHAPTER 348
FORMERLY
HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 169
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO RECORDS OF ARREST AND PROSECUTION.

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

Section 1. Amend § 4373, Title 11 of the Delaware Code by adding a new subsection (f) to read as follows: ‘(f) An offense for which records have been expunged pursuant to this Section shall not have to be disclosed by the person as an arrest for any reason, except for disclosure to criminal justice agencies, as defined in § 8502(5) of this Title, for the purposes provided in § 4376(a) of this Title.’

Section 2. Amend § 4374, Title 11 of the Delaware Code by adding a new subsection (i) to read as follows: ‘(i) An offense for which records have been expunged pursuant to this Section shall not have to be disclosed by the person as an arrest for any reason, except for disclosure to criminal justice agencies, as defined in § 8502(5) of this Title, for the purposes provided in § 4376(a) of this Title.’

Section 3. Amend § 4376, Title 11 of the Delaware Code by inserting the following after the phrase ‘which ordered the record expunged.’ at the end of subsection (a):

‘In addition to such other lawful purposes as may be prescribed by statute or otherwise, criminal justice agencies shall have access to records of expunged Probations Before Judgment and past participation in the First Offenders Controlled Substance Diversion Program for the purpose of determining whether a person is eligible for a Probation Before Judgment, as set forth in § 4218 of Title 11, or for participation in the First Offenders Controlled Substance Diversion Program, as set forth in § 4764 of Title 16.’

Section 4. Further amend § 4376, Title 11 of the Delaware Code by inserting a new subsection (g) reading as follows:

‘(g) The State Bureau of Identification shall make available to criminal justice agencies such electronic records as will enable criminal justice agencies to determine whether a person who seeks to participate in the First Offenders Controlled Substance Diversion Program or to obtain a Probation Before Judgment disposition has done so before and had the record expunged.’

Section 5. Amend § 4376(c), Title 11 of the Delaware Code by striking the word ‘section’ where it appears therein and inserting in lieu thereof the word ‘subchapter.’

Section 6. Amend § 4376(e), Title 11 of the Delaware Code by striking the word ‘subsection’ where it appears therein and inserting in lieu thereof the word ‘subchapter.’

Section 7. Amend § 4378, Title 11 of the Delaware Code by striking said Section in its entirety.

Section 8. Amend § 8513, Title 11 of the Delaware Code by striking § 8513(h) in its entirety.

Section 9. Amend § 1025(d), Title 10 of the Delaware Code, by inserting the language ‘, including any electronic records,’ after the phrase ‘police records and court records’ in the first sentence.

Section 10. Amend § 1025(d)(1), Title 10 of the Delaware Code by inserting the phrase ‘or a police agency’ after the phrase ‘A court’ and before the phrase ‘which receives a notice of expungement’.

Section 11. Further amend § 1025(d)(1), Title 10 of the Delaware Code by inserting the following after the phrase ‘except as specified in this subchapter’ at the end of the second sentence: ‘Criminal justice agencies as defined in Title 11, § 8502(5) of the Code shall, however, have access to records of expunged Probations Before Judgment for the specific purpose of determining whether a person is eligible for a Probation Before Judgment, as set forth in § 4218 of this Title.’

Section 12. Amend § 1025(e), Title 10 of the Delaware Code by inserting the following after the second occurrence of the phrase ‘subsection (d) of this section’: ‘, provided, however, that where a person was

charged with a criminal offense where discretionary expungement pursuant to this subsection applies, but also was charged, within the same case, with a criminal offense where mandatory expungement pursuant to § 1025 applies, such person must file a petition in the Family Court pursuant to this Section.’

Section 13. Amend § 1025(e)(2), Title 10 of the Delaware Code by inserting the following after the phrase ‘relating to the charge’ at the end of the second sentence: ‘or case.’

Section 14. Amend § 1025(e)(5), Title 10 of the Delaware Code by inserting the following after the end of the first sentence and before the beginning of the second sentence: ‘A police agency which receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement.’

Section 15. Further Amend § 1025, Title 10 of the Delaware Code by inserting new subsections (f) and (g) reading as follows:

‘(f) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted of a misdemeanor or violation excepting those crimes specifically exempted in subsection (g) of this Section who is thereafter unconditionally pardoned by the Governor may request a discretionary expungement pursuant to the procedures set forth in § 1025(e) of this subchapter. The burden shall be on the petitioner to allege specific facts in support of his or her allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence. The fact that the petitioner was convicted of the criminal offense that is the subject of his or her expungement application shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.

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

- (1) Any misdemeanor designated as a sex offense pursuant to § 761 of Title 11;
- (2) Unlawful imprisonment pursuant to § 781 of Title 11;
- (3) Interference with custody pursuant to § 785 of Title 11; or
- (4) Coercion pursuant to § 791 of Title 11.’

Section 16. Amend § 1026, Title 10 of the Delaware Code by striking said Section in its entirety.

Section 17. Effective Date. This Act shall take effect ninety (90) days after its enactment into law.”.

Approved July 12, 2010