



SPONSOR: Rep. Chukwuocha & Rep. Lynn & Sen. Brown
Reps. Baumbach, Kowalko; Sens. Gay, Sokola

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 447

AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO EXPUNGEMENT.

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

1 Section 1. Amend Chapter 43, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4372. Applicability; definitions; effect of expungement.

4 (b) For the purposes of this subchapter, a case is ~~terminated~~ “terminated in favor of the accused” only if 1 or more
5 of the following occurs:

6 (7) A charge or case is 7 or more years old and there is no disposition indicated or the disposition is listed as
7 unknown, unobtainable, or pending. This paragraph applies only if there are no active warrants in the case.

8 § 4373. Mandatory expungement; application through SBI.

9 (f) ~~[Repealed]~~. For purposes of eligibility determinations under this section, SBI shall treat a charge or case as
10 though it was terminated in favor of the accused if the charge or case is 7 or more years old and there is no disposition
11 indicated or the disposition is listed as unknown, unobtainable, or pending. This subsection does not apply if there is an
12 active warrant in the case.

13 § 4374. Discretionary expungement; application to court.

14 (a) *Eligibility*. — Upon petition to the appropriate court designated in subsection (c) of this section, an
15 expungement may be granted if the applicant meets 1 of the following:

16 (4) Was convicted of 1 or more violations or misdemeanors other than those listed in § 4373(b) of this title in
17 more than one case and at least 5 years have passed since the date of the most recent conviction or the date of release
18 from incarceration, whichever is later, and the person has no other prior or subsequent convictions that would not be
19 eligible for a mandatory expungement under § 4373 of this title standing alone.

20 (k) For purposes of eligibility determinations under this section, the Court shall treat a charge or case as though it
21 was terminated in favor of the accused if the charge or case is 7 or more years old and there is no disposition indicated or

22 the disposition is listed as unknown, unobtainable, or pending. This subsection does not apply if there is an active warrant
23 in the case.

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

26 § 1016. Definitions applicable to juvenile expungements.

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

28 (6) “Terminated in favor of the child” means 1 of the following occurs:

29 e. A charge or case is 7 or more years old and there is no disposition indicated or the disposition is listed as
30 unknown, unobtainable, or pending. This paragraph applies only if there are no active warrants in the case.

31 § 1017. Mandatory expungement.

32 (d) For purposes of determining eligibility for expungement under this section, the Court shall treat a charge or
33 case as though it was terminated in favor of the child if the charge or case is 7 or more years old and there is no disposition
34 indicated or the disposition is listed as unknown, unobtainable, or pending. This subsection does not apply if there is an
35 active warrant in the case.

36 § 1018. Discretionary expungement.

37 (g) For purposes of determining eligibility for expungement under this section, the Court shall treat a charge or
38 case as though it was terminated in favor of the child if the charge or case is 7 or more years old and there is no disposition
39 indicated or the disposition is listed as unknown, unobtainable, or pending. This subsection does not apply if there is an
40 active warrant in the case.

41

SYNOPSIS

This Act implements some of the recommendations of the African American Task Force's Safety and Justice Subcommittee. Specifically, it requires that cases or charges that are more than 7 years old be treated as “resolved in favor of” a child or adult if there is no disposition available for the case and no outstanding warrants. This clarification will prevent errors in record-keeping in the criminal justice system from stopping an otherwise qualified petitioner from obtaining an expungement that may otherwise be available. It will also require old cases for which no outcome is listed to be removed from a person's record if they are more than 7 years old.

In addition, this Act allow an individual with multiple violations or misdemeanors in different cases that would be eligible for a mandatory expungement if they had occurred in a single case, and the individual has no other convictions on their record, to apply directly for a discretionary expungement after 5 years have passed from the most recent conviction. The court would then consider the application under its usual “interest of justice” rubric in determining whether to grant the expungement. This saves applications to the pardon board for multiple minor misdemeanors and increases parity between applicants with similar records.