

1 **JUVENILE EXPUNGEMENT AMENDMENTS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Pete Suazo**

5 AN ACT RELATING TO THE JUDICIAL CODE; ALLOWING FOR THE EXPUNGEMENT
6 AND DESTRUCTION OF JUVENILE FINGERPRINTS.

7 This act affects sections of Utah Code Annotated 1953 as follows:

8 AMENDS:

9 **78-3a-904**, as last amended by Chapter 108, Laws of Utah 1998

10 **78-3a-905**, as last amended by Chapter 365, Laws of Utah 1997

11 *Be it enacted by the Legislature of the state of Utah:*

12 Section 1. Section **78-3a-904** is amended to read:

13 **78-3a-904. When photographs, fingerprints, or HIV infection tests may be taken --**
14 **Distribution -- Expungement.**

15 (1) Photographs may be taken of a minor 14 years of age or older who:

16 (a) is taken into custody for the alleged commission of an offense under Sections
17 78-3a-104, 78-3a-601, and 78-3a-602 that would also be an offense if the minor were 18 years of
18 age or older; or

19 (b) has been determined to be a serious habitual offender for tracking under Section
20 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of Youth
21 Corrections.

22 (2) (a) Fingerprints may be taken of a minor 14 years of age or older who:

23 (i) is taken into custody for the alleged commission of an offense that would be a felony
24 if the minor were 18 years of age or older; or

25 (ii) has been determined to be a serious habitual offender for tracking under Section
26 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of Youth
27 Corrections.

28 (b) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be
29 stored by electronic medium.

30 (3) HIV testing may be conducted on a minor who is taken into custody after having been
31 adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter 5, Part
32 4, Sexual Offenses, upon the request of the victim or the parent or guardian of a minor victim.

33 (4) HIV tests, photographs, and fingerprints may not be taken of a minor younger than 14
34 years of age without the consent of the court.

35 (5) (a) Photographs may be distributed or disbursed to individuals or agencies other than
36 state or local law enforcement agencies only when a minor 14 years of age or older is charged with
37 an offense which would be a felony if committed by an adult.

38 (b) Fingerprints may be distributed or disbursed to individuals or agencies other than state
39 or local law enforcement agencies.

40 (6) When a minor's juvenile record is expunged, all photographs and other records as
41 ordered shall upon court order be destroyed by the law enforcement agency. [~~Fingerprint records
42 may not be destroyed.~~]

43 Section 2. Section **78-3a-905** is amended to read:

44 **78-3a-905. Expungement of juvenile court record -- Petition -- Procedure.**

45 (1) (a) Any person who has been adjudicated under this chapter may, after the expiration
46 of one year from the date of termination of the continuing jurisdiction of the juvenile court or, in
47 case he was committed to a secure youth corrections facility, one year from the date of his
48 unconditional release from the facility, petition the court for the expungement of his record in the
49 juvenile court.

50 (b) (i) Upon the filing of a petition, the court shall set a date for a hearing and shall notify
51 the county attorney or, if within the prosecution district, district attorney of the pendency of the
52 petition and of the date of the hearing.

53 (ii) The county attorney or district attorney and any other person who may have relevant
54 information about the petitioner may testify at the hearing.

55 (2) (a) If the court finds upon the hearing that the petitioner has not been convicted of a
56 felony or of a misdemeanor involving moral turpitude since the termination of the court's
57 jurisdiction or his unconditional release from a secure youth corrections facility and that no
58 proceeding involving the felony or misdemeanor is pending or being instituted against him, and

59 if the court further finds that the rehabilitation of the petitioner has been attained to the satisfaction
60 of the court, it shall order sealed all records in the petitioner's case in the custody of the juvenile
61 court and any records in the custody of any other agency or official[, except fingerprint records.
62 Fingerprint records shall be retained in the custody of the juvenile court and any other agency or
63 official]. Copies of the order shall be sent to each agency or official named in the order and any
64 entity notified of the original adjudication under Subsection 78-3a-118(1)(b).

65 (b) Upon the entry of the order, the proceedings in the petitioner's case shall be considered
66 never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the
67 matter. Inspection of the records may thereafter only be permitted by the court upon petition by
68 the person who is the subject of the records, and only to persons named in the petition.

Legislative Review Note
as of 1-25-99 11:42 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel