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JUVENILE EXPUNGEMENT

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott Daniels

This act modifies expungement proceedings for juvenile offenses. It requires that a person be 18 years or older before he may petition the court for expungement of juvenile offenses. This act also requires that the person obtain a certificate of eligibility before the court can hear the petition, and the court must send notice of the petition to the victim of the offense. If expungement is granted, the person must also serve copies of the order on all agencies affected.

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

AMENDS:

78-3a-905, as last amended by Chapter 1, Laws of Utah 2000

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

Section 1. Section **78-3a-905** is amended to read:

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

(1) (a) Any person 18 years of age or older who has been adjudicated under this chapter may, after the expiration of one year from the date of termination of the continuing jurisdiction of the juvenile court or, ~~[in case]~~ if he was committed to a secure youth corrections facility, one year from the date of his unconditional release from the facility, petition the court for the expungement of his record in the juvenile court and the records of other agencies. The petitioner shall file with the petition, a certificate of eligibility issued by the Department of Public Safety.

(b) (i) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the county attorney or, if within a prosecution district, district attorney, and the agency with custody of the records of the pendency of the petition and of the date of the hearing. The court shall mail to the victim at the victim's last-known address as shown by the records of the court, notice of the petition and the date, time, and place of the hearing.

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

(2) (a) ~~[If the court finds upon the hearing that]~~ The petitioner shall prove by a preponderance of the evidence that:

(i) the petitioner is 18 years of age or older;

(ii) the petitioner has not been convicted of a felony or ~~[of a]~~ misdemeanor involving moral turpitude since the termination of the court's jurisdiction or his unconditional release from a secure youth corrections facility ~~[and that];~~

(iii) no proceeding involving a felony or misdemeanor is pending or being instituted against ~~[him, and if the court further finds that]~~ the petitioner; and

(iv) the rehabilitation of the petitioner has been attained to the satisfaction of the court~~[- it shall order sealed].~~

(b) Upon finding that the petitioner has proved all elements, the court shall enter an order to expunge all records in the petitioner's case in the custody of the juvenile court and any records in the custody of any other agency or official pertaining to the petitioner's adjudicated juvenile court cases, except fingerprint records. Fingerprint records shall be retained in the custody of the juvenile court and any other agency or official. ~~[Copies]~~

(c) The petitioner shall serve a copy of the order ~~[shall be sent to]~~ on each agency or official named in the order and any entity notified of the original adjudication under Subsection 78-3a-118(1)(b). To avoid destruction or sealing of the records in whole or in part, the agency or entity receiving the expungement order shall only expunge all references to the petitioner's name in the records pertaining to the adjudicated juvenile court cases. The petitioner, based on good cause, may petition the court to expunge the records in whole or in part.

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

Legislative Review Note

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

Office of Legislative Research and General Counsel