



28 agency to provide services required for the administration of criminal justice;

29 (ii) the agreement shall specifically authorize access to data, limit the use of the data to  
30 purposes for which given, and ensure the security and confidentiality of the data;

31 (e) agencies or individuals for the purpose of a preplacement adoptive study, in accordance  
32 with the requirements of Section 78-30-3.5;

33 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose of  
34 research, evaluative, or statistical activities pursuant to an agreement with a criminal justice  
35 agency; and

36 (ii) private security agencies through guidelines established by the commissioner for  
37 employment background checks for their own employees and prospective employees;

38 (g) a qualifying entity for employment background checks for their own employees and  
39 persons who have applied for employment with the qualifying entity; and

40 (h) other agencies and individuals as the commissioner authorizes and finds necessary for  
41 protection of life and property and for offender identification, apprehension, and prosecution  
42 pursuant to an agreement.

43 (2) An agreement under Subsection (1)(f) or (1)(h) shall specifically authorize access to  
44 data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity  
45 of individuals to whom the information relates, and ensure the confidentiality and security of the  
46 data.

47 (3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must  
48 obtain a signed waiver from the person whose information is requested.

49 (b) The waiver must notify the signee:

50 (i) that a criminal history background check will be conducted;

51 (ii) who will see the information; and

52 (iii) how the information will be used.

53 (c) Information received by a qualifying entity under Subsection (1)(g) may only be:

54 (i) available to persons involved in the hiring or background investigation of the employee;

55 and

56 (ii) used for the purpose of assisting in making an employment or promotion decision.

57 (d) A person who disseminates or uses information obtained from the division under  
58 Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to

59 any penalties provided under this section, is subject to civil liability.

60 (e) A qualifying entity that obtains information under Subsection (1)(g) shall provide the  
61 employee or employment applicant an opportunity to:

62 (i) review the information received as provided under Subsection (8); and

63 (ii) respond to any information received.

64 (f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
65 division may make rules to implement this Subsection (3).

66 (g) (i) The applicant fingerprint card fee under Subsection (1)(g) is \$15.

67 (ii) The name check fee under Subsection (1)(g) is \$10.

68 (iii) These fees remain in effect until changed by the division through the process under  
69 Section 63-38-3.2.

70 (iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be deposited  
71 in the General Fund as a dedicated credit by the department to cover the costs incurred in providing  
72 the information.

73 (h) The division or its employees are not liable for defamation, invasion of privacy,  
74 negligence, or any other claim in connection with the contents of information disseminated under  
75 Subsection (1)(g).

76 (4) Any criminal history record information obtained from division files may be used only  
77 for the purposes for which it was provided and may not be further disseminated.

78 (5) If an individual has no prior criminal convictions, criminal history record information  
79 contained in the division's computerized criminal history files may not include arrest or disposition  
80 data concerning an individual who has been acquitted, his charges dismissed, or when no  
81 complaint against him has been filed.

82 (6) (a) This section does not preclude the use of the division's central computing facilities  
83 for the storage and retrieval of criminal history record information.

84 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by  
85 unauthorized agencies or individuals.

86 (7) Direct access through remote computer terminals to criminal history record information  
87 in the division's files is limited to those agencies authorized by the commissioner under  
88 procedures designed to prevent unauthorized access to this information.

89 (8) (a) The commissioner shall establish procedures to allow an individual right of access

90 to review and receive a copy of his criminal history [record information] report.

91 (b) A processing fee for the right of access service, including obtaining a copy of the  
 92 individual's criminal history report under Subsection (8)(a) is \$10. This fee remains in effect until  
 93 changed by the commissioner through the process under Section 63-38-3.2.

94 (c) (i) The commissioner shall establish procedures for an individual to challenge the  
 95 completeness and accuracy of criminal history record information contained in the division's  
 96 computerized criminal history files regarding that individual.

97 (ii) These procedures shall include provisions for amending any information found to be  
 98 inaccurate or incomplete.

99 (9) The private security agencies as provided in Subsection (1)(f)(ii):

100 (a) shall be charged for access; and

101 (b) shall be registered with the division according to rules made by the division under Title  
 102 63, Chapter 46a, Utah Administrative Rulemaking Act.

103 (10) Before providing information requested under this section, the division shall give  
 104 priority to criminal justice agencies needs.

105 (11) (a) Misuse of access to criminal history record information is a class B misdemeanor.

106 (b) The commissioner shall be informed of the misuse.

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

108 **78-3a-905. Expungement of juvenile court record -- Petition -- Procedure.**

109 (1) (a) ~~[Any]~~ A person who has been adjudicated under this chapter may~~[, after the~~  
 110 ~~expiration of one year]~~ petition the court for the expungement of his record in the juvenile court  
 111 if:

112 (i) he has reached 18 years of age; and

113 (ii) one year has elapsed from the date of termination of the continuing jurisdiction of the  
 114 juvenile court or, in case he was committed to a secure youth corrections facility, one year from  
 115 the date of his unconditional release from the ~~[facility, petition the court for the expungement of~~  
 116 ~~his record in the juvenile court]~~ custody of the Division of Youth Corrections.

116a **§ (b) THE COURT MAY WAIVE THE REQUIREMENTS IN SUBSECTION (1)(a) IF THE COURT FINDS,**

116b **AND STATES ON THE RECORD, THE REASON WHY THE WAIVER IS APPROPRIATE. §**

117 **§ ~~(b)~~ (c) §** The petitioner shall include with his petition the original criminal history report  
 118 obtained from the Bureau of Criminal Identification in accordance with the provisions of  
 119 Subsection 53-10-108(8).

120 **§ ~~(c)~~ (d) §** The petitioner shall send a copy of the petition to the county attorney or, if within a

121 prosecution district, the district attorney.

122 ~~[(b)]~~ (d) (i) Upon the filing of a petition, the court shall set a date for a hearing and shall  
123 notify the county attorney or ~~[, if within a prosecution district,]~~ district attorney, and the agency  
124 with custody of the records of the pendency of the petition and of the date of the hearing. Notice  
125 shall be given at least 30 days prior to the hearing.

126 (ii) The court shall provide a victim with the opportunity to request notice of a petition for  
127 expungement. A victim shall receive notice of a petition for expungement at least 30 days prior  
128 to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a minor  
129 or a person who is incapacitated or deceased, the victim's next of kin or authorized representative,  
130 submits a written and signed request for notice to the court in the judicial district in which the  
131 crime occurred or judgment was entered. The notice shall include a copy of the petition and  
132 statutes and rules applicable to the petition.

133 ~~[(ii) The]~~ (2) (a) At the hearing, the county attorney or district attorney, a victim, and any  
134 other person who may have relevant information about the petitioner may testify [at the hearing].

135 ~~[(2) (a) If the court finds upon the hearing that the petitioner has not been convicted of a~~  
136 ~~felony or of a misdemeanor involving moral turpitude since the termination of the court's~~  
137 ~~jurisdiction or his unconditional release from a secure youth corrections facility and that no~~  
138 ~~proceeding involving a felony or misdemeanor is pending or being instituted against him, and if~~  
139 ~~the court further finds that]~~

140 (b) In deciding whether to grant a petition for expungement, the court shall consider  
141 whether the rehabilitation of the petitioner has been attained to the satisfaction of the court, [it shall  
142 order sealed all records in the petitioner's case in the custody] taking into consideration the  
143 petitioner's response to programs and treatment, his behavior subsequent to adjudication, and the  
144 nature and seriousness of the conduct.

145 (c) The court may order sealed all petitioner's records under the control of the juvenile  
146 court and any of petitioner's records [in] under the [custody] control of any other agency or official  
147 pertaining to the petitioner's adjudicated juvenile court cases[, except fingerprint records.  
148 Fingerprint records shall be retained in the custody of the juvenile court and any other agency or  
149 official. Copies of the order shall be sent to each agency or official named in the order and any  
150 entity notified of the original adjudication under Subsection 78-3a-118(1)(b).] if the court finds  
151 that:

152 (i) the petitioner has not, since the termination of the court's jurisdiction or his  
153 unconditional release from the Division of Youth Corrections, been convicted of a:  
154 (A) felony; or  
155 (B) misdemeanor involving moral turpitude; and  
156 (ii) no proceeding involving a felony or misdemeanor is pending or being instituted against  
157 him.

158 (3) The petitioner shall be responsible for service of the order of expungement to all  
159 affected state, county, and local entities, agencies, and officials. To avoid destruction or sealing  
160 of the records in whole or in part, the agency or entity receiving the expungement order shall only  
161 expunge all references to the petitioner's name in the records pertaining to the petitioner's  
162 adjudicated juvenile court cases. [~~The petitioner, based on good cause, may petition the court to~~  
163 ~~expunge the records in whole or in part.~~]

164 [~~(b)~~] (4) Upon the entry of the order, the proceedings in the petitioner's case shall be  
165 considered never to have occurred and the petitioner may properly reply accordingly upon any  
166 inquiry in the matter. Inspection of the records may thereafter only be permitted by the court upon  
167 petition by the person who is the subject of the records, and only to persons named in the petition.

168 (5) The court may not expunge a juvenile court record if the record contains an  
169 adjudication of:

- 170 (a) Section 76-5-202, aggravated murder; or
- 171 (b) Section 76-5-203, murder.

172 (6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments as  
173 provided in Section 78-3a-502 may petition the court for expungement of his record if the person:

- 174 (i) has reached 18 years of age; and
- 175 (ii) has completed the conditions of the nonjudicial adjustments.

176 (b) The court shall, without a hearing, order sealed all petitioner's records under the control  
177 of the juvenile court and any of petitioner's records under the control of any other agency or official  
178 pertaining to the petitioner's nonjudicial adjustments.

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**Legislative Review Note**  
**as of 11-15-01 1:25 PM**

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

**Office of Legislative Research and General Counsel**

**Committee Note**

The Judiciary Interim Committee recommended this bill.