

EXPUNGEMENT OF JUVENILE RECORDS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott Daniels

This act modifies the Juvenile Court Act by clarifying the steps necessary to expunge a record in the Juvenile Court. It requires that the petitioner be over 18 years of age, have completed all court requirements, and not have an adult criminal record. The statute is further modified by requiring notification of victims and allowing for expungement of nonjudicial closures.

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

AMENDS:

53-10-108, as last amended by Chapter 227, Laws of Utah 1999

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 **53-10-108** is amended to read:

53-10-108. Restrictions on access, use, and contents of division records -- Limited use of records for employment purposes -- Challenging accuracy of records -- Usage fees -- Missing children records.

(1) Dissemination of information from a criminal history record or warrant of arrest information from division files is limited to:

(a) criminal justice agencies for purposes of administration of criminal justice and for employment screening by criminal justice agencies;

(b) noncriminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;

(c) agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice;

(ii) the agreement shall specifically authorize access to data, limit the use of the data to

purposes for which given, and ensure the security and confidentiality of the data;

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

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

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

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

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

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

(3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must obtain

a signed waiver from the person whose information is requested.

(b) The waiver must notify the signee:

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

(ii) who will see the information; and

(iii) how the information will be used.

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

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

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

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

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

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

- (i) review the information received as provided under Subsection (8); and
- (ii) respond to any information received.

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

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

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

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

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

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

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

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

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

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

(7) Direct access through remote computer terminals to criminal history record information

in the division's files is limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.

(8) (a) The commissioner shall establish procedures to allow an individual right of access to review and receive a copy of his criminal history [record information] report.

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

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

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

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

(a) shall be charged for access; and

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

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

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

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

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

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

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

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

(ii) one year has elapsed from the date of termination of the continuing jurisdiction of the juvenile court or, in case 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]~~ custody of the Division of Youth Corrections.

(b) The court may waive the requirements in Subsection (1)(a), if the court finds, and states on the record, the reason why the waiver is appropriate.

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

(d) The petitioner shall send a copy of the petition to the county attorney or, if within a prosecution district, the district attorney.

~~[(b)]~~ (e) (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. Notice shall be given at least 30 days prior to the hearing.

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

~~[(ii) The]~~ (2) (a) At the hearing, the county attorney or district attorney, a victim, 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 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 no proceeding involving a felony or misdemeanor is pending or being instituted against him, and if the court further finds that]~~

(b) In deciding whether to grant a petition for expungement, the court shall consider whether the rehabilitation of the petitioner has been attained to the satisfaction of the court, [it shall order

~~sealed all records in the petitioner's case in the custody]~~ taking into consideration the petitioner's response to programs and treatment, his behavior subsequent to adjudication, and the nature and seriousness of the conduct.

(c) The court may order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records [in] under the [custody] control 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 of the order shall be sent to each agency or official named in the order and any entity notified of the original adjudication under Subsection 78-3a-118(1)(b).]~~ if the court finds that:

(i) the petitioner has not, since the termination of the court's jurisdiction or his unconditional release from the Division of Youth Corrections, been convicted of a:

(A) felony; or

(B) misdemeanor involving moral turpitude; and

(ii) no proceeding involving a felony or misdemeanor is pending or being instituted against him.

(3) The petitioner shall be responsible for service of the order of expungement to all affected state, county, and local entities, agencies, and officials. 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 petitioner's adjudicated juvenile court cases. ~~[The petitioner, based on good cause, may petition the court to expunge the records in whole or in part.]~~

~~[(b)]~~ (4) 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.

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

(a) Section 76-5-202, aggravated murder; or

(b) Section 76-5-203, murder.

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

(i) has reached 18 years of age; and

(ii) has completed the conditions of the nonjudicial adjustments.

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