

Senator Lyle W. Hillyard proposes the following substitute bill:

**EXPUNGEMENT OF DIVISION OF CHILD
AND FAMILY SERVICES RECORDS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Lorie D. Fowlke

LONG TITLE

General Description:

This bill provides that a person may petition the court for the expungement of records in custody of state agencies that are related to the person's juvenile court records.

Highlighted Provisions:

This bill:

- clarifies that records under the control of state agencies may be expunged.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-1105, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **78A-6-1105** is amended to read:

78A-6-1105. Expungement of juvenile court record -- Petition -- Procedure.



26 (1) (a) A person who has been adjudicated under this chapter may petition the court for
27 the expungement of the person's ~~[record in the juvenile court if]~~ juvenile court record and any
28 related records in the custody of a state agency, if:

29 (i) the person has reached 18 years of age; and

30 (ii) one year has elapsed from the date of termination of the continuing jurisdiction of
31 the juvenile court or, if the person was committed to a secure youth corrections facility, one
32 year from the date of the person's unconditional release from the custody of the Division of
33 Juvenile Justice Services.

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

36 (c) The petitioner shall include in the petition any agencies known or alleged to have
37 any documents related to the offense for which expungement is being sought.

38 ~~[(e)]~~ (d) The petitioner shall include with the petition the original criminal history
39 report obtained from the Bureau of Criminal Identification in accordance with the provisions of
40 Subsection 53-10-108(8).

41 ~~[(d)]~~ (e) The petitioner shall send a copy of the petition to the county attorney or, if
42 within a prosecution district, the district attorney.

43 ~~[(e)]~~ (f) (i) Upon the filing of a petition, the court shall:

44 (A) set a date for a hearing ~~[and shall]~~;

45 (B) notify the county attorney or district attorney, and the agency with custody of the
46 records at least 30 days prior to the hearing of the pendency of the petition; and

47 (C) notify the county attorney or district attorney, and the agency with records the
48 petitioner is asking the court to expunge of the date of the hearing. ~~[Notice shall be given at~~
49 ~~least 30 days prior to the hearing.]~~

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

57 (2) (a) At the hearing, the county attorney or district attorney, a victim, and any other
58 person who may have relevant information about the petitioner may testify.

59 (b) In deciding whether to grant a petition for expungement, the court shall consider
60 whether the rehabilitation of the petitioner has been attained to the satisfaction of the court,
61 taking into consideration the petitioner's response to programs and treatment, the petitioner's
62 behavior subsequent to adjudication, and the nature and seriousness of the conduct.

63 (c) The court may order sealed all petitioner's records under the control of the juvenile
64 court and any of petitioner's records under the control of any other agency or official pertaining
65 to the petitioner's adjudicated juvenile court cases, including relevant related records contained
66 in the Management Information System created by Section 62A-4a-1003 and the Licensing
67 Information System created by Section 62A-4a-1005, if the court finds that:

68 (i) the petitioner has not, since the termination of the court's jurisdiction or his
69 unconditional release from the Division of Juvenile Justice Services, been convicted of a:

70 (A) felony; or

71 (B) misdemeanor involving moral turpitude;

72 (ii) no proceeding involving a felony or misdemeanor is pending or being instituted
73 against the petitioner; and

74 (iii) a judgment for restitution entered by the court on the conviction for which the
75 expungement is sought has been satisfied.

76 (3) The petitioner shall be responsible for service of the order of expungement to all
77 affected state, county, and local entities, agencies, and officials. To avoid destruction or
78 sealing of the records in whole or in part, the agency or entity receiving the expungement order
79 shall only expunge all references to the petitioner's name in the records pertaining to the
80 petitioner's adjudicated juvenile court cases.

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

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

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

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

90 (6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments

91 as provided in Section 78A-6-602 may petition the court for expungement of the person's

92 record if the person:

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

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

95 (b) The court shall, without a hearing, order sealed all petitioner's records under the

96 control of the juvenile court and any of petitioner's records under the control of any other

97 agency or official pertaining to the petitioner's nonjudicial adjustments.

Fiscal Note

**S.B. 180 1st Sub. (Green) - Expungement of Division of Child and Family
Services Records**

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
