

Representative Eric K. Hutchings proposes the following substitute bill:

BUREAU OF CRIMINAL IDENTIFICATION

FEE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Jon J. Greiner

LONG TITLE

General Description:

This bill modifies fees charged for services provided by the Bureau of Criminal Identification.

Highlighted Provisions:

This bill:

- ▶ adds an application fee for a certificate of eligibility for expungement of \$25; and
- ▶ changes the Bureau of Criminal Identification fees for:
 - fingerprint cards from \$15 to \$20;
 - name check from \$10 to \$15;
 - issuance of a certificate of eligibility for expungement from \$25 to \$56 unless exempted in Subsection 77-18-10(6); and
 - right of access service and an individual's criminal history report from \$10 to \$15.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 21, Expungement Revisions, by providing technical



26 amendments.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **53-10-108**, as last amended by Laws of Utah 2009, Chapter 183

30 **53-10-202.5**, as enacted by Laws of Utah 1999, Chapter 227

31 **77-18-11**, as last amended by Laws of Utah 2009, Chapter 183

32 **Utah Code Sections Affected by Coordination Clause:**

33 AMENDS:

34 **53-10-202.5**, as enacted by Laws of Utah 1999, Chapter 227



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

37 Section 1. Section **53-10-108** is amended to read:

38 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**
39 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
40 **-- Missing children records.**

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

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

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

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

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

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

53 (e) agencies or individuals for the purpose of a preplacement adoptive study, in
54 accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

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

57 agency; and

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

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

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

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

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

71 (b) The waiver must notify the signee:

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

73 (ii) who will see the information; and

74 (iii) how the information will be used.

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

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

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

79 (d) A person who disseminates or uses information obtained from the division under
80 Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to
81 any penalties provided under this section, is subject to civil liability.

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

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

85 (ii) respond to any information received.

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

- 88 (g) (i) The applicant fingerprint card fee under Subsection (1)(g) is [~~\$15~~] \$20.
- 89 (ii) The name check fee under Subsection (1)(g) is [~~\$10~~] \$15.
- 90 (iii) These fees remain in effect until changed by the division through the process under
91 Section 63J-1-504.
- 92 (iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be
93 deposited in the General Fund as a dedicated credit by the department to cover the costs
94 incurred in providing the information.
- 95 (h) The division or its employees are not liable for defamation, invasion of privacy,
96 negligence, or any other claim in connection with the contents of information disseminated
97 under Subsection (1)(g).
- 98 (4) (a) Any criminal history record information obtained from division files may be
99 used only for the purposes for which it was provided and may not be further disseminated,
100 except [~~that a~~] under Subsection (4)(b).
- 101 (b) A criminal history provided to an agency pursuant to Subsection (1)(e) may be
102 provided by the agency to the person who is the subject of the history, another licensed
103 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
104 adoption.
- 105 (5) If an individual has no prior criminal convictions, criminal history record
106 information contained in the division's computerized criminal history files may not include
107 arrest or disposition data concerning an individual who has been acquitted, the person's charges
108 dismissed, or when no complaint against [~~him~~] the person has been filed.
- 109 (6) (a) This section does not preclude the use of the division's central computing
110 facilities for the storage and retrieval of criminal history record information.
- 111 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
112 unauthorized agencies or individuals.
- 113 (7) Direct access through remote computer terminals to criminal history record
114 information in the division's files is limited to those agencies authorized by the commissioner
115 under procedures designed to prevent unauthorized access to this information.
- 116 (8) (a) The commissioner shall establish procedures to allow an individual right of
117 access to review and receive a copy of the individual's criminal history report.
- 118 (b) A processing fee for the right of access service, including obtaining a copy of the

119 individual's criminal history report under Subsection (8)(a) is [~~\$10~~] \$15. This fee remains in
 120 effect until changed by the commissioner through the process under Section 63J-1-504.

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

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

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

127 (a) shall be charged for access; and

128 (b) shall be registered with the division according to rules made by the division under
 129 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

135 Section 2. Section **53-10-202.5** is amended to read:

136 **53-10-202.5. Bureau services -- Fees.**

137 (1) The bureau shall collect fees for the following services:

138 [~~(1)~~] (a) applicant fingerprint card as determined by Section 53-10-108;

139 [~~(2)~~] (b) bail enforcement licensing as determined by Section 53-11-115;

140 [~~(3)~~] (c) concealed firearm permit as determined by Section 53-5-707;

141 [~~(4)~~] (d) [~~expungement~~] application for and issuance of a certificate of eligibility for
 142 expungement as determined by Section 77-18-11;

143 [~~(5)~~] (e) firearm purchase background check as determined by Section 76-10-526;

144 [~~(6)~~] (f) name check as determined by Section 53-10-108;

145 [~~(7)~~] (g) private investigator licensing as determined by Section 53-9-111; and

146 [~~(8)~~] (h) right of access as determined by Section 53-10-108.

147 ~~H→ [(2) Fees may be modified under Subsection (1) pursuant to Section 63J-1-504.] ←H~~

148 Section 3. Section **77-18-11** is amended to read:

149 **77-18-11. Petition -- Expungement of conviction -- Certificate of eligibility -- Fee**

150 -- Notice -- Written evaluation -- Objections -- Hearing.

151 (1) (a) A person convicted of a crime may petition the convicting court for an
152 expungement of the record of conviction as provided in this section.

153 (b) If a person has received a pardon from the Utah Board of Pardons and Parole, the
154 person is entitled to an expungement of all pardoned crimes, subject to the exceptions under
155 Subsection 77-18-12(1)(a).

156 (2) (a) The court shall require receipt of a certificate of eligibility issued by the division
157 under Section 77-18-12.

158 (b) (i) The application fee for a certificate of expungement is \$25.

159 (ii) The issuance fee for each certificate of eligibility is [~~\$25~~] \$56, unless exempted in
160 Subsection 77-18-10(6). [~~This fee remains~~]

161 (iii) These fees remain in effect until changed by the division through the process under
162 Section 63J-1-504.

163 (c) Funds generated under Subsection (2)(b) shall be deposited in the General Fund as
164 a dedicated credit by the department to cover the costs incurred in providing the information.

165 (3) The petition and certificate of eligibility shall be filed with the court and served
166 upon the prosecuting attorney and the Department of Corrections.

167 (4) A victim shall receive notice of a petition for expungement if, prior to the entry of
168 an expungement order, the victim or, in the case of a minor or a person who is incapacitated or
169 deceased, the victim's next of kin or authorized representative, submits a written and signed
170 request for notice to the office of the Department of Corrections in the judicial district in which
171 the crime occurred or judgment was entered.

172 (5) The Department of Corrections shall serve notice of the expungement request by
173 first-class mail to the victim at the most recent address of record on file with the department.
174 The notice shall include a copy of the petition, certificate of eligibility, and statutes and rules
175 applicable to the petition.

176 (6) The court in its discretion may request a written evaluation by Adult Parole and
177 Probation of the Department of Corrections.

178 (a) The evaluation shall include a recommendation concerning the petition for
179 expungement.

180 (b) If expungement is recommended, the evaluation shall include certification that the

181 petitioner has completed all requirements of sentencing and probation or parole and state any
182 rationale that would support or refute consideration for expungement.

183 (c) The conclusions and recommendations contained in the evaluation shall be
184 provided to the petitioner and the prosecuting attorney.

185 (7) If the prosecuting attorney or a victim submits a written objection to the court
186 concerning the petition within 30 days after service of the notice, or if the petitioner objects to
187 the conclusions and recommendations in the evaluation within 15 days after receipt of the
188 conclusions and recommendations, the court shall set a date for a hearing and notify the
189 prosecuting attorney for the jurisdiction, the petitioner, and the victim of the date set for the
190 hearing.

191 (8) Any person who has relevant information about the petitioner may testify at the
192 hearing.

193 (9) The prosecuting attorney may respond to the court with a recommendation or
194 objection within 30 days.

195 (10) If an objection is not received under Subsection (7), the expungement may be
196 granted without a hearing.

197 (11) A court may not expunge a conviction of:

198 (a) a capital felony;

199 (b) a first degree felony;

200 (c) a second degree forcible felony;

201 (d) any sexual act against a minor; or

202 (e) an offense for which a certificate of eligibility may not be issued under Section
203 77-18-12.

204 **Section 4. Coordinating H.B. 178 with H.B. 21 -- Technical amendments.**

205 If this H.B. 178 and H.B. 21, Expungement Revisions, both pass, it is the intent of the
206 Legislature that the Office of Legislative Research and General Counsel in preparing the Utah
207 code database for publication modify Subsection 53-10-202.5(1)(d) to read:

208 "[~~(4)~~] (d) [~~expungement~~] application for and issuance of a certificate of eligibility for
209 expungement as determined by Section [~~77-18-11~~] 77-40-106;"

H.B. 178 1st Sub. (Buff) - Bureau of Criminal Identification Fee Amendments

Fiscal Note

2010 General Session
State of Utah

State Impact

Fee increases authorized by this bill will generate about \$637,500 in dedicated credits for the Department of Public Safety.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
Dedicated Credits	\$0	\$0	\$0	\$0	\$637,500	\$637,500
Total	\$0	\$0	\$0	\$0	\$637,500	\$637,500

Individual, Business and/or Local Impact

Fees will increase for individuals purchasing services rendered by the Bureau of Criminal Identification.
