

BUREAU OF CRIMINAL IDENTIFICATION

FEE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

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);
 - right of access service and an individual's criminal history report from \$10 to \$15; and
 - criminal history background check when purchasing a firearm from \$7.50 to \$10.

Monies Appropriated in this Bill:

None

Other Special Clauses:

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



28 amendments.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53-10-108**, as last amended by Laws of Utah 2009, Chapter 183

32 **53-10-202.5**, as enacted by Laws of Utah 1999, Chapter 227

33 **76-10-526**, as last amended by Laws of Utah 2009, Chapter 183

34 **77-18-11**, as last amended by Laws of Utah 2009, Chapter 183

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

36 AMENDS:

37 **53-10-202.5**, as enacted by Laws of Utah 1999, Chapter 227



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

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

41 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**
42 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
43 **-- Missing children records.**

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

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

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

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

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

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

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

58 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose

59 of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
60 agency; and

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

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

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

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

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

74 (b) The waiver must notify the signee:

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

76 (ii) who will see the information; and

77 (iii) how the information will be used.

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

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

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

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

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

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

88 (ii) respond to any information received.

89 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

90 division may make rules to implement this Subsection (3).

91 (g) (i) The applicant fingerprint card fee under Subsection (1)(g) is [~~\$15~~] \$20.

92 (ii) The name check fee under Subsection (1)(g) is [~~\$10~~] \$15.

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

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

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

101 (4) (a) Any criminal history record information obtained from division files may be
102 used only for the purposes for which it was provided and may not be further disseminated,
103 except [~~that a~~] under Subsection (4)(b).

104 (b) A criminal history provided to an agency pursuant to Subsection (1)(e) may be
105 provided by the agency to the person who is the subject of the history, another licensed
106 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
107 adoption.

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

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

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

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

119 (8) (a) The commissioner shall establish procedures to allow an individual right of
120 access to review and receive a copy of the individual's criminal history report.

121 (b) A processing fee for the right of access service, including obtaining a copy of the
122 individual's criminal history report under Subsection (8)(a) is [~~\$10~~] \$15. This fee remains in
123 effect until changed by the commissioner through the process under Section 63J-1-504.

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

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

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

130 (a) shall be charged for access; and

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

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

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

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

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

139 **53-10-202.5. Bureau services -- Fees.**

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

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

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

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

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

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

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

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

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

150 (2) The bureau may modify fees under Subsection (1) pursuant to Section 63J-1-504.

151 Section 3. Section **76-10-526** is amended to read:

152 **76-10-526. Criminal background check prior to purchase of a firearm -- Fee --**
153 **Exemption for concealed firearm permit holders.**

154 (1) For purposes of this section, "valid permit to carry a concealed firearm" does not
155 include a temporary permit issued pursuant to Section 53-5-705.

156 (2) (a) To establish personal identification and residence in this state for purposes of
157 this part, a dealer shall require an individual receiving a firearm to present one photo
158 identification on a form issued by a governmental agency of the state.

159 (b) A dealer may not accept a driving privilege card issued in accordance with Section
160 53-3-207 as proof of identification for the purpose of establishing personal identification and
161 residence in this state as required under this Subsection (2).

162 (3) A criminal history background check is required for the sale of a firearm by a
163 licensed firearm dealer in the state.

164 (4) (a) An individual, except a dealer, purchasing a firearm from a dealer shall consent
165 in writing to a criminal background check, on a form provided by the division.

166 (b) The form shall contain the following information:

167 (i) the dealer identification number;

168 (ii) the name and address of the individual receiving the firearm;

169 (iii) the date of birth, height, weight, eye color, and hair color of the individual
170 receiving the firearm; and

171 (iv) the Social Security number or any other identification number of the individual
172 receiving the firearm.

173 (5) (a) The dealer shall send the form required by Subsection (4) to the division
174 immediately upon its completion.

175 (b) No dealer shall sell or transfer any firearm to an individual until the dealer has
176 provided the division with the information in Subsection (4) and has received approval from
177 the division under Subsection (7).

178 (6) The dealer shall make a request for criminal history background information by
179 telephone or other electronic means to the division and shall receive approval or denial of the
180 inquiry by telephone or other electronic means.

181 (7) When the dealer calls for or requests a criminal history background check, the
182 division shall:

183 (a) review the criminal history files, including juvenile court records, to determine if
184 the individual is prohibited from purchasing, possessing, or transferring a firearm by state or
185 federal law;

186 (b) inform the dealer that:

187 (i) the records indicate the individual is so prohibited; or

188 (ii) the individual is approved for purchasing, possessing, or transferring a firearm;

189 (c) provide the dealer with a unique transaction number for that inquiry; and

190 (d) provide a response to the requesting dealer during the call for a criminal
191 background, or by return call, or other electronic means, without delay, except in case of
192 electronic failure or other circumstances beyond the control of the division, the division shall
193 advise the dealer of the reason for the delay and give the dealer an estimate of the length of the
194 delay.

195 (8) (a) The division shall not maintain any records of the criminal history background
196 check longer than 20 days from the date of the dealer's request if the division determines that
197 the individual receiving the gun is not prohibited from purchasing, possessing, or transferring
198 the firearm under state or federal law.

199 (b) However, the division shall maintain a log of requests containing the dealer's
200 federal firearms number, the transaction number, and the transaction date for a period of 12
201 months.

202 (9) If the criminal history background check discloses information indicating that the
203 individual attempting to purchase the firearm is prohibited from purchasing, possessing, or
204 transferring a firearm, the division shall inform the law enforcement agency in the jurisdiction
205 where the person resides.

206 (10) If an individual is denied the right to purchase a firearm under this section, the
207 individual may review the individual's criminal history information and may challenge or
208 amend the information as provided in Section 53-10-108.

209 (11) The division shall make rules as provided in Title 63G, Chapter 3, Utah
210 Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all
211 records provided by the division pursuant to this part are in conformance with the requirements
212 of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

213 (12) (a) (i) All dealers shall collect a criminal history background check fee [~~which is~~

214 ~~\$7.50]~~ of \$10.

215 (ii) This fee remains in effect until changed by the division through the process under
216 Section 63J-1-504.

217 (b) (i) The dealer shall forward at one time all fees collected for criminal history
218 background checks performed during the month to the division by the last day of the month
219 following the sale of a firearm.

220 (ii) The division shall deposit the fees in the General Fund as dedicated credits to cover
221 the cost of administering and conducting the criminal history background check program.

222 (13) An individual with a concealed firearm permit issued pursuant to Title 53, Chapter
223 5, Part 7, Concealed Weapon Act, shall be exempt from the background check and
224 corresponding fee required in this section for the purchase of a firearm if:

225 (a) the individual presents the individual's concealed firearm permit to the dealer prior
226 to purchase of the firearm; and

227 (b) the dealer verifies with the division that the individual's concealed firearm permit is
228 valid.

229 Section 4. Section **77-18-11** is amended to read:

230 **77-18-11. Petition -- Expungement of conviction -- Certificate of eligibility -- Fee**
231 **-- Notice -- Written evaluation -- Objections -- Hearing.**

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

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

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

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

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

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

244 (c) Funds generated under Subsection (2)(b) shall be deposited in the General Fund as

245 a dedicated credit by the department to cover the costs incurred in providing the information.

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

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

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

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

259 (a) The evaluation shall include a recommendation concerning the petition for
260 expungement.

261 (b) If expungement is recommended, the evaluation shall include certification that the
262 petitioner has completed all requirements of sentencing and probation or parole and state any
263 rationale that would support or refute consideration for expungement.

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

266 (7) If the prosecuting attorney or a victim submits a written objection to the court
267 concerning the petition within 30 days after service of the notice, or if the petitioner objects to
268 the conclusions and recommendations in the evaluation within 15 days after receipt of the
269 conclusions and recommendations, the court shall set a date for a hearing and notify the
270 prosecuting attorney for the jurisdiction, the petitioner, and the victim of the date set for the
271 hearing.

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

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

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

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

279 (a) a capital felony;

280 (b) a first degree felony;

281 (c) a second degree forcible felony;

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

283 (e) an offense for which a certificate of eligibility may not be issued under Section

284 77-18-12.

285 Section 5. **Coordinating H.B. 178 with H.B. 21 -- Technical amendments.**

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

289 "[~~4~~] (d) [~~expungement~~] application for and issuance of a certificate of eligibility for
290 expungement as determined by Section [~~77-18-11~~] 77-40-106;"

Legislative Review Note
as of 1-18-10 4:04 PM

Office of Legislative Research and General Counsel

H.B. 178 - 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 \$862,500 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	\$862,500	\$862,500
Total	\$0	\$0	\$0	\$0	\$862,500	\$862,500

Individual, Business and/or Local Impact

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