

JUVENILE EXPUNGEMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses expungement of a juvenile delinquency record.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a minor's juvenile delinquency court record may only be disclosed to a law enforcement agency in the state;
- ▶ creates a process by which a record for a juvenile arrest, investigation, detention, or case dismissal may be expunged;
- ▶ modifies the circumstances under which an adjudication in a juvenile case may be expunged;
- ▶ creates an automatic expungement process for certain juvenile records;
- ▶ requires a state agency to submit an affidavit to the court indicating compliance with a juvenile expungement order;
- ▶ prohibits a court and a state agency from charging a fee for expunging a juvenile court record;
- ▶ requires the Administrative Office of the Courts to create forms and certain processes for expungement of a juvenile record;
- ▶ provides that the process for expungement of a juvenile court record applies retroactively; and



28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 77-38-14, as last amended by Laws of Utah 2010, Chapter 283

36 78A-6-116, as last amended by Laws of Utah 2010, Chapter 38

37 ENACTS:

38 78A-6-1501, Utah Code Annotated 1953

39 78A-6-1502, Utah Code Annotated 1953

40 78A-6-1503, Utah Code Annotated 1953

41 78A-6-1505, Utah Code Annotated 1953

42 78A-6-1506, Utah Code Annotated 1953

43 78A-6-1507, Utah Code Annotated 1953

44 78A-6-1508, Utah Code Annotated 1953

45 78A-6-1509, Utah Code Annotated 1953

46 RENUMBERS AND AMENDS:

47 78A-6-1504, (Renumbered from 78A-6-1105, as last amended by Laws of Utah 2015,
48 Chapter 389)



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

51 Section 1. Section 77-38-14 is amended to read:

52 **77-38-14. Notice of expungement petition -- Victim's right to object.**

53 (1) (a) The Department of Corrections or the Juvenile Probation Department shall
54 prepare a document explaining the right of a victim or a victim's representative to object to a
55 petition for expungement under Section 77-40-107 or [~~78A-6-1105~~] 78A-6-1504 and the
56 procedures for obtaining notice of [~~any such~~] the petition.

57 (b) The department or division shall [~~also~~] provide each trial court a copy of the
58 document [~~which~~] that has jurisdiction over delinquencies or criminal offenses subject to

59 expungement.

60 (2) The prosecuting attorney in any case leading to a conviction or an adjudication
61 subject to expungement shall provide a copy of the document to each person who would be
62 entitled to notice of a petition for expungement under Sections [77-40-107](#) and [~~78A-6-1105~~]
63 [78A-6-1504](#).

64 Section 2. Section **78A-6-116** is amended to read:

65 **78A-6-116. Minor's cases considered civil proceedings -- Adjudication of**
66 **jurisdiction by juvenile court not conviction of crime -- Exceptions -- Minor not to be**
67 **charged with crime -- Exception -- Traffic violation cases -- Abstracts to Department of**
68 **Public Safety.**

69 (1) Except as provided in Sections [78A-6-701](#), [78A-6-702](#), and [78A-6-703](#),
70 proceedings in a minor's case shall be regarded as civil proceedings with the court exercising
71 equitable powers.

72 (2) An adjudication by a juvenile court that a minor is within its jurisdiction under
73 Section [78A-6-103](#) is not considered a conviction of a crime, except in cases involving traffic
74 violations. An adjudication may not operate to impose any civil disabilities upon the minor nor
75 to disqualify the minor for any civil service or military service or appointment.

76 (3) A minor may not be charged with a crime or convicted in any court except as
77 provided in Sections [78A-6-701](#), [78A-6-702](#), and [78A-6-703](#), and in cases involving traffic
78 violations. When a petition has been filed in the juvenile court, the minor may not later be
79 subjected to criminal prosecution based on the same facts except as provided in Section
80 [78A-6-702](#) or [78A-6-703](#).

81 (4) An adjudication by a juvenile court that a minor is within its jurisdiction under
82 Section [78A-6-103](#) is considered a conviction for the purposes of determining the level of
83 offense for which a minor may be charged and enhancing the level of an offense in the juvenile
84 court. A prior adjudication may be used to enhance the level or degree of an offense
85 committed by an adult only as otherwise specifically provided.

86 (5) Abstracts of court records for all adjudications of traffic violations shall be
87 submitted to the Department of Public Safety as provided in Section [53-3-218](#).

88 (6) (a) Except as provided in Subsection (6)(b), a court or state agency with custody of
89 a minor's juvenile court record may not disclose or allow access to the juvenile court record.

90 (b) A record described in Subsection (6)(a) may be disclosed to or accessed by a law
91 enforcement agency in the state.

92 [~~6~~] (7) Information necessary to collect unpaid fines, fees, assessments, bail, or
93 restitution may be forwarded to employers, financial institutions, law enforcement, constables,
94 the Office of Recovery Services, or other agencies for purposes of enforcing the order as
95 provided in Section 78A-6-117.

96 Section 3. Section 78A-6-1501 is enacted to read:

97 **Part 15. Juvenile Delinquency Expungement Act**

98 **78A-6-1501. Title.**

99 This part is known as the "Juvenile Delinquency Expungement Act."

100 Section 4. Section 78A-6-1502 is enacted to read:

101 **78A-6-1502. Definitions.**

102 (1) "Agency" means a state, county, or local government entity that generates or
103 maintains records relating to an investigation, arrest, detention, or adjudication for which
104 expungement may be ordered under this part.

105 (2) "Expunge" means to seal or otherwise restrict access to an individual's record held
106 by an agency when the record includes a juvenile delinquency investigation, detention, arrest,
107 or adjudication.

108 Section 5. Section 78A-6-1503 is enacted to read:

109 **78A-6-1503. Requirements to apply to expunge records of arrest, investigation,**
110 **detention, and dismissal.**

111 (1) (a) An individual who is arrested, investigated, or detained while the individual is
112 under 18 years old, or has a petition, based on allegations made against the individual when the
113 individual is under 18 years old, dismissed, may petition the court for an order to expunge the
114 individual's juvenile court record and any related records in the custody of an agency, if:

115 (i) the individual has reached 18 years old;

116 (ii) at least 30 days have passed since day of the arrest, investigation, or detention, or
117 the day on which the petition was dismissed;

118 (iii) there are no delinquency proceedings pending against the individual; and

119 (iv) for the case for which expungement of records is being sought, one of the
120 following occurs:

121 (A) charges are screened by the investigating law enforcement agency and the
122 prosecutor makes a final determination that no charges will be filed against the individual;
123 (B) the entire case is dismissed with prejudice;
124 (C) the entire case is dismissed without prejudice or condition and the prosecutor
125 consents in writing to expungement of the record or at least 180 days have passed since the day
126 on which the case is dismissed without prejudice or condition; or

127 (D) the statute of limitations expires on all charges contained in the case.

128 (b) The court may waive the 180-day requirement in Subsection (1)(a)(iv)(C), if the
129 court finds, and states on the record, the reason why the waiver is appropriate.

130 (2) The petitioner shall include in the petition:

131 (a) any agencies known or alleged to have any records related to the offense for which
132 expungement is being sought; and

133 (b) if known, any agency incident number.

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

136 (4) Upon the filing of the petition, the court shall, if the petitioner meets the
137 requirements described in Subsection (1)(a), order the petitioner's records described in
138 Subsection (1)(a), that are under the control of the juvenile court or any other agency or
139 official, including relevant records contained in the Management Information System created in
140 Section [62A-4a-1003](#) and the Licensing Information System created in Section [62A-4a-1005](#),
141 be expunged without a hearing.

142 (5) (a) The petitioner is responsible for service of the expungement order issued under
143 Subsection (1)(a) to all affected agencies and officials.

144 (b) To avoid destruction or sealing of the records in whole or in part, the agency or
145 official receiving the expungement order shall only expunge all references to the individual's
146 name in the records pertaining to the individual's arrest, investigation, detention, or case
147 dismissal.

148 Section 6. Section **78A-6-1504**, which is renumbered from Section 78A-6-1105 is
149 renumbered and amended to read:

150 **~~[78A-6-1105].~~ 78A-6-1504. Requirements to apply to expunge an**
151 **adjudication.**

152 (1) (a) ~~[A person]~~ An individual who has been adjudicated under this chapter may
153 petition the court for ~~[the expungement of the person's]~~ an order to expunge the individual's
154 juvenile court record and any related records in the custody of ~~[a state]~~ an agency, if:

155 (i) the ~~[person]~~ individual has reached 18 years ~~[of age]~~ old; and

156 (ii) one year has ~~[elapsed from]~~ passed since the date of termination of the continuing
157 jurisdiction of the juvenile court or, if the ~~[person was]~~ individual is committed to a secure
158 youth corrections facility, one year ~~[from]~~ since the date of the ~~[person's]~~ individual's
159 unconditional release from the custody of the Division of Juvenile Justice Services.

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

162 (c) The petitioner shall include in the petition:

163 (i) any agencies known or alleged to have any ~~[documents]~~ records related to the
164 offense for which expungement is being sought~~[-];~~ and

165 ~~[(d)]~~ (ii) ~~[The petitioner shall include with the petition]~~ the original criminal history
166 report obtained from the Bureau of Criminal Identification in accordance with the provisions of
167 Section 53-10-108.

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

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

171 (A) set a date for a hearing;

172 (B) notify the county attorney or district attorney, and the agency with custody of the
173 records at least 30 days ~~[prior to]~~ before the day on which the hearing of the pendency of the
174 petition is set; and

175 (C) notify the county attorney or district attorney, and the agency with records the
176 petitioner is asking the court to expunge of the date of the hearing.

177 (ii) (A) The court shall provide a victim with the opportunity to request notice of a
178 petition for expungement. ~~[A]~~

179 (B) Upon the victim's request under Subsection (1)(e)(ii)(A), the victim shall receive
180 notice of a petition for expungement at least 30 days ~~[prior to]~~ before the day on which the
181 hearing is set if, ~~[prior to the entry of]~~ before the day on which an expungement order is made,
182 the victim or, in the case of a child or ~~[a person]~~ an individual who is incapacitated or

183 deceased, the victim's next of kin or authorized representative, submits a written and signed
 184 request for notice to the court in the judicial district in which the ~~[crime]~~ offense occurred or
 185 judgment ~~[was]~~ is entered.

186 (C) The notice described in Subsection (1)(e)(ii)(B) shall include a copy of the petition
 187 and statutes and rules applicable to the petition.

188 (2) (a) At the hearing, the county attorney or district attorney, a victim, and any other
 189 ~~[person]~~ individual who may have relevant information about the petitioner may testify.

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

194 (c) The court may ~~[order sealed]~~ expunge all petitioner's records under the control of
 195 the juvenile court and any of petitioner's records under the control of any other agency or
 196 official pertaining to the petitioner's adjudicated juvenile court cases, including relevant related
 197 records contained in the Management Information System created ~~[by]~~ in Section 62A-4a-1003
 198 and the Licensing Information System created ~~[by]~~ in Section 62A-4a-1005, if the court finds
 199 that:

200 (i) the petitioner has not, ~~[since the termination of the court's jurisdiction or the~~
 201 ~~petitioner's unconditional release from the Division of Juvenile Justice Services]~~ in the five
 202 years preceding the day on which the petition is filed, been convicted of a ~~[:]~~ violent felony, as
 203 defined in Section 76-3-203.5;

204 ~~[(A) felony; or]~~

205 ~~[(B) misdemeanor involving moral turpitude;]~~

206 (ii) ~~[no proceeding involving a felony or misdemeanor is pending or being instituted]~~
 207 there are no delinquency proceedings pending against the petitioner; and

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

210 (3) (a) The petitioner ~~[shall be]~~ is responsible for service of the ~~[order of]~~ expungement
 211 order to all affected ~~[state, county, and local entities;]~~ agencies~~;~~ and officials.

212 (b) To avoid destruction or sealing of the records in whole or in part, the agency or
 213 ~~[entity]~~ official receiving the expungement order shall only expunge all references to the

214 petitioner's name in the records pertaining to the petitioner's adjudicated juvenile court cases.

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

220 ~~[(5)]~~ (4) The court may not expunge a juvenile court record if the record contains an
221 adjudication of:

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

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

224 ~~[(6) (a) A person whose juvenile court record consists solely of nonjudicial~~
225 ~~adjustments as provided in Section 78A-6-602 may petition the court for expungement of the~~
226 ~~person's record if the person:]~~

227 ~~[(i) has reached 18 years of age; and]~~

228 ~~[(ii) has completed the conditions of the nonjudicial adjustments.]~~

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

232 Section 7. Section 78A-6-1505 is enacted to read:

233 **78A-6-1505. Automatic expungement.**

234 (1) (a) On or after May 1, 2021, the court shall issue, without a petition, an order to
235 expunge an individual's juvenile court record that consists solely of nonjudicial adjustments, as
236 provided in Section 78A-6-602, if:

237 (i) the individual has reached 18 years old; and

238 (ii) any judgement for restitution ordered by the court has been satisfied.

239 (b) Except as provided in Subsection (2), the court shall issue an expungement order
240 under Subsection (1)(a) within 30 days after the day on which the individual turns 18 years old.

241 (2) If an individual who is eligible for expungement under Subsection (1)(a) turns 18
242 years old before May 1, 2021, the court shall order the individual's record be expunged under
243 Subsection (1)(a) within one year after the day on which the court identifies the individual is
244 eligible for expungement under Subsection (1)(a) or before May 1, 2023, whichever is earlier.

245 (3) (a) The court is responsible for service of the expungement order to all affected
246 agencies and officials.

247 (b) To avoid destruction or sealing of the records in whole or in part, the agency or
248 official receiving the expungement order shall only expunge all references to the individual's
249 name in the records pertaining to the individual's nonjudicial adjustments.

250 Section 8. Section **78A-6-1506** is enacted to read:

251 **78A-6-1506. Effect of an expunged record -- Agency duties.**

252 (1) Upon receipt of an expungement order under this part, an agency shall expunge all
253 records described in the expungement order that are under the control of the agency.

254 (2) (a) Upon the entry of the expungement order the proceedings in the petitioner's case
255 are considered to have never occurred and the petitioner may properly reply accordingly upon
256 an inquiry in the matter.

257 (b) An expunged record may only be inspected upon a petition by the individual who is
258 the subject of the record and only to persons named in the petition.

259 (3) The court shall order an agency named in an expungement order under this part to
260 mail, within a time set by the court, an affidavit to the court verifying the agency has complied
261 with the expungement order.

262 Section 9. Section **78A-6-1507** is enacted to read:

263 **78A-6-1507. Fees.**

264 Neither the court nor an agency may charge a fee for:

265 (1) an automatic expungement under this part;

266 (2) issuance of an expungement order under this part; or

267 (3) expungement of a record under this part.

268 Section 10. Section **78A-6-1508** is enacted to read:

269 **78A-6-1508. Forms -- Notice.**

270 The Administrative Office of the Courts shall:

271 (1) implement procedures for processing an expungement under this part;

272 (2) create forms and determine information necessary to be provided to the courts for
273 an expungement under this part; and

274 (3) develop procedures for providing notice to an individual who qualifies for an
275 expungement under this part.

276 Section 11. Section **78A-6-1509** is enacted to read:

277 **78A-6-1509. Retroactivity.**

278 This part applies retroactively to all arrests, investigations, detentions, dismissals, and

279 adjudications regardless of the date on which the arrests, investigations, detentions, and

280 dismissals were made or adjudications were entered.