

# Expungement of Criminal Records – Idaho

## **What is an expungement?**

The process of legally destroying, obliterating or striking out records or information in files, computers and other depositories relating to criminal charges.

## **Do the records just “disappear”?**

No. The records cannot be accessed for general law enforcement or civil use. Upon order of the court to expunge DNA records, the Idaho state police shall destroy the DNA sample relating to the person convicted, unless the police determine that the person has otherwise become obligated to submit to DNA sample and thumbprint impression as a result of a separate conviction. The bureau of forensic services is not required to destroy an item of physical evidence obtained from the DNA sample if evidence relating to another person would be destroyed. I.C. § 19-5513.

## **What records may be expunged?**

DNA records, fingerprints, photos of juveniles, registration of sexual offenders in a central registry, and criminal history records may be expunged. I.C. § 19-5513, I.C. § 19-2604, I.C. § 20-516, I.C. § 67-3004, § I.C. 18-8310, I.C. 20-525A.

## **Who is eligible for an expungement?**

1. A juvenile taken into custody and photographed and fingerprinted. I.C. § 20-516.
2. Any person who was arrested or served a criminal summons and who was not charged by indictment or information within one year of the arrest or summons and any person who was acquitted of all offenses. I. C. § 67-3004.
3. A person who is granted exemption from registration as a sexual offender. I. C. § 18-8310.
4. A person whose DNA profile has been included in the state database and databank whose conviction upon which the authority for including the DNA profile was based has been reversed and the case dismissed. § 19-5513.
5. Juvenile offenders, except for those offenses and conditions lists under I.C. 20-525A (see below).

## **How do I get records expunged?**

1. A person not charged by indictment or information within one year of the arrest or summons and any person who was acquitted of all offenses arising from an arrest or criminal summons may have the fingerprint and criminal history record taken in connection with the incident expunged by a written request directed to the department retaining those records. I. C. § 67-3004.
2. In regard to a person who is granted exemption from registration as a sexual offender, with the entry of any order exempting the petitioner from the reporting requirement, the court may further order that any information regarding the petitioner be expunged from the central registry, I. C. § 18-8310.
3. In the case of a DNA profile of a person, the person requesting expungement must send a copy of his request, with proof of service on all parties to the following: the trial court which entered the conviction or rendered disposition in the case; the bureau of forensic services; and the prosecuting attorney of the county in which he was convicted. The court has the discretion to grant or deny the request for expungement. A trial court’s denial of a request for expungement is an order not subject to appeal. I.C. §19-5513.

4. For juvenile offenders:

20-525A. Expungement of record — Hearing — Findings necessary — Special index — Effect of order.

- a.) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed a felony offense or having been committed to the department of juvenile corrections may, after the expiration of five (5) years from the date of termination of the continuing jurisdiction of the court, or, in case the juvenile was committed to the juvenile corrections center, five (5) years from the date of his release from the juvenile corrections center, or after reaching age eighteen (18), whichever occurs last, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and of the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.
- b.) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed misdemeanor or status offenses only and not having been committed to the department of juvenile corrections may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.
- c.) In any case where the prosecuting attorney has elected to utilize the diversion process or the court orders an informal adjustment pursuant to section 20-511, Idaho Code, the person may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.)
- d.) The court may not expunge a conviction for any of the following crimes from a juvenile's record:
  - Administering poison with intent to kill (18-4014, Idaho Code)
  - Aggravated battery (18-907, Idaho Code)
  - Armed robbery (chapter 65, title 18, Idaho Code)
  - Arson (chapter 8, title 18, Idaho Code)
  - Assault with intent to commit a serious felony (18-909, Idaho Code)
  - Assault with intent to murder (18-4015, Idaho Code)
  - Assault or battery upon certain personnel, felony (18-915, Idaho Code)
  - Forcible sexual penetration by use of a foreign object (18-6608, Idaho Code)
  - Infamous crime against nature, committed by force or violence(18-6605, Idaho Code)
  - Injury to child, felony (18-1501, Idaho Code)

- Kidnapping (18-4501, Idaho Code)
  - Murder of any degree (18-4001 and 18-4003, Idaho Code)
  - Rape, excluding statutory rape (18-6101 and 18-6108, Idaho Code)
  - Ritualized abuse of a child (18-1506A, Idaho Code)
  - Sexual exploitation of a child (18-1507, Idaho Code)
  - Unlawful use of destructive device or bomb (18-3320, Idaho Code)
  - Voluntary manslaughter (18-40061., Idaho Code)
  - A violation of the provisions of section 37-2732(a)(1)(A), (B) or (C), Idaho Code, when the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school;
  - A violation of the provisions of section 37-2732B, Idaho Code, related to drug trafficking or manufacturing of illegal drugs.
5. If the court finds after hearing that the petitioner has not been adjudicated as a juvenile for any of the crimes identified in subsection (4) of this section, and has not been convicted of a felony, or of a misdemeanor wherein violence toward another person was attempted or committed since the termination of the court's jurisdiction or his release from the juvenile corrections center, and that no proceeding involving such felony or misdemeanor is pending or being instituted against him, and if the court further finds to its satisfaction that the petitioner has been held accountable, is developing life skills necessary to become a contributing member of the community and that the expungement of the petitioner's record will not compromise public safety, it shall order all records in the petitioner's case in the custody of the court and all such records, including law enforcement investigatory reports and fingerprint records, in the custody of any other agency or official sealed; and shall further order all references to said adjudication, diversion or informal adjustment removed from all indices and from all other records available to the public. However, a special index of the expungement proceedings and records shall be kept by the court ordering expungement, which index shall not be available to the public and shall be revealed only upon order of a court of competent jurisdiction. Copies of the order shall be sent to each agency or official named in the order. Upon the entry of the order the proceedings in the petitioner's case shall be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter be permitted only by the court upon petition by the person who is the subject of the records or by any other court of competent jurisdiction, and only to persons named in the petition.