

Expungement 101 in 2020

Presentation by Paul Tonks
AAG Counsel for Division of Archives



Paul Tonks, Assistant Attorney General

- **Assigned Counsel for Division of Archives and the State Records Committee since 2008**
- **Practicing law since 1996**
- **Staff Attorney for Ohio Courts of Appeals (10th and 12th Appellate Districts) 1996-2002**
- **Ohio Assistant Attorney General 2002-2004**
- **Associate Attorney Perez & Morris LLC**
- **Utah Assistant Attorney General 2008 to present**
- **Also currently represent Department of Administrative Services, Division of Purchasing, Division of Finance, Division of Fleet Services, and the Office of Administrative Rules.**



Expungement:

Expungement:

X-



-ment

Expunge: To erase or
completely remove.









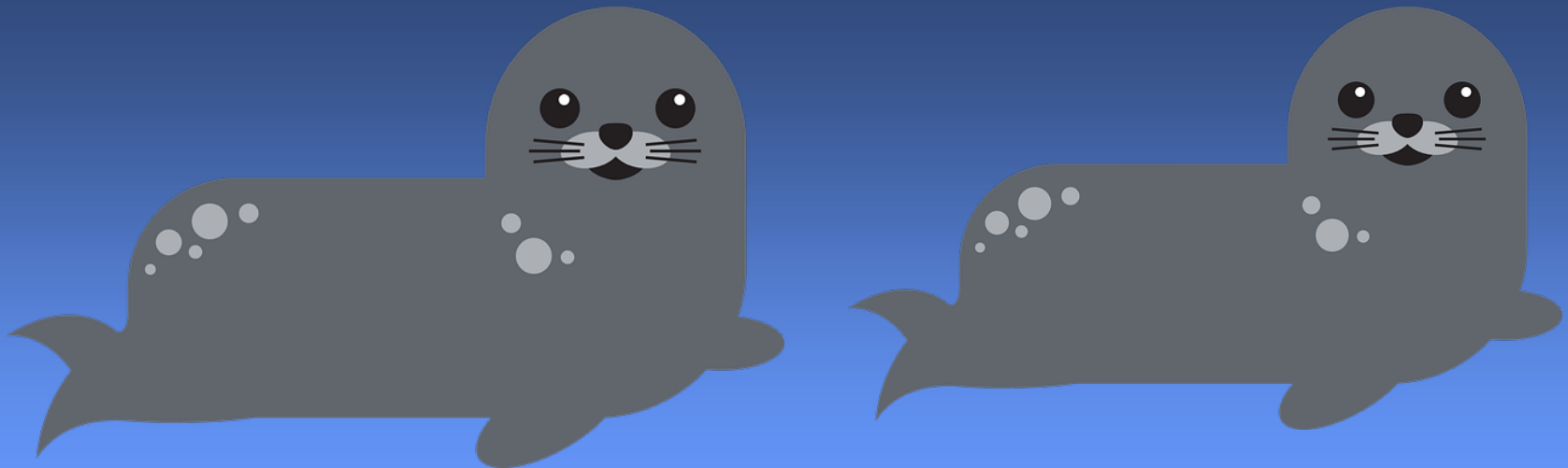


Expunge: To erase or completely
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Expungement is to Records Officers is like...

Hot is to Cold

Day is to Night

Winter is to Summer

North is to South

High is to Low

Good is to Evil

Utes are to Cougars

Buckeyes are to Wolverines

Republicans are to Democrats

A cartoon illustration of a grand, classical-style building with a pediment and columns. A sign above the entrance reads "SPRINGFIELD HALL OF RECORDS" and "NOT THE GOOD KIND OF RECORDS, HISTORICAL ONES". A person is walking up the steps. The building has several windows and a circular emblem in the pediment.

SPRINGFIELD HALL OF RECORDS

NOT THE GOOD KIND OF RECORDS,
HISTORICAL ONES



Why is Expungement Bad??

We preserve records because:

- **Preserving records preserves history**
- **Important information is contained within records**
- **The public has a right to know what happens within government**



TL Roberts©

Why is Expungement/Sealing Good??

We expunge/seal records because:

- A “new start” is needed
- Actions took place prior to a person becoming an adult
- The original record does not accurately reflect what actually happened

Expungement



**Public's Right to Access
to information concerning
conduct of the public's business.**

**Right to Privacy for
some information gathered
by governmental entities.**

Utah Code and Expungement

- 1. Utah Expungement Act
Title 77 Chapter 40**
- 2. Juvenile Expungement Act
Title 78A Chapter 6**

1. Utah Expungement Act

Title 77 Chapter 40

- Does not apply to an offense in juvenile court
- Is part of Title 77 the “Utah Code of Criminal Procedure”
- “Agency” is defined as a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered

1. Utah Expungement Act

Title 77 Chapter 40

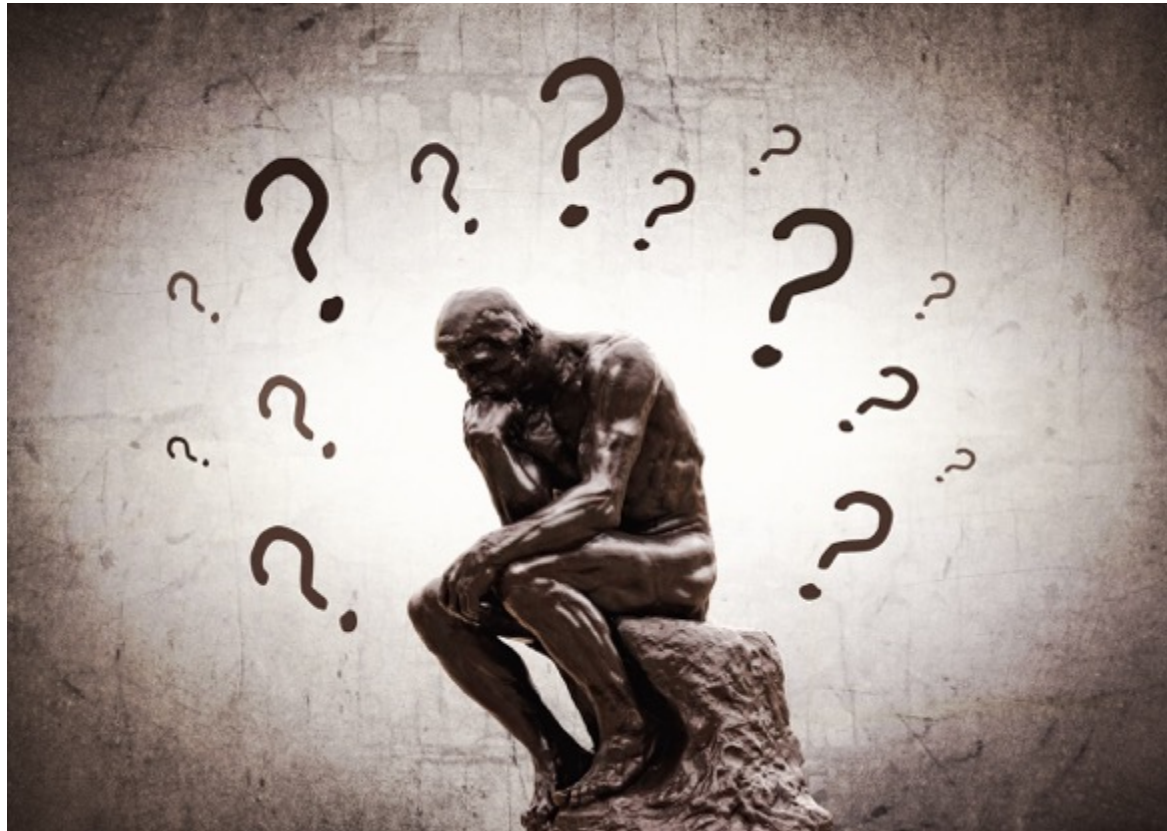
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Do we have to worry about procedures for creating an order of expungement?



Who is responsible for an Order of Expungement?

Utah Code § 77-40-108(1)

An individual who receives an order of expungement...shall be responsible for delivering a copy of the order to all affected criminal justice agencies and officials including the court, arresting agency, booking agency, prosecuting agency, Department of Corrections, and the Bureau of Criminal Identification of the Department of Public Safety.

What kind of effect does an Order of Expungement have?

Utah Code § 77-40-108(2)

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What kind of effect does an Order of Expungement have?

Utah Code § 77-40-108(4)

An Agency receiving an expungement order shall expunge the individual's identifying information contained in records in the Agency's possession relating to the incident for which expungement is ordered.

What kind of effect does an Order of Expungement have?

Utah Code § 77-40-108(5)

Unless ordered by the court to do so or in accordance with -109(2), a government agency or official may not divulge information or records that have been expunged.

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What is missing...?

What is missing...?

Expungement does not
necessarily mean

Destroy

What kind of effect does an Order of Expungement have?

Utah Code § 77-40-109(1)

The Bureau of Criminal Identification “shall keep, index, and maintain all expunged records of arrests and convictions.”

What kind of effect does an Order of Expungement have?

Utah Code § 77-40-109(2)

The following organizations may receive information contained in expunged records upon specific request:

- The Board of Pardons and Parole
- Peace Officer Standards and Training
- Federal Authorities pursuant to Federal Law
- Departments of Commerce & Insurance
- Utah State Board of Education
- Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office.

What kind of effect does an Order of Expungement have?

Utah Code § 77-40-109(4)

If, after obtaining an expungement, an individual is charged with a felony or an offense eligible for enhancement based on a prior conviction, the state may petition the court to open the expunged records upon a showing of good cause.

What kind of effect does an Order of Expungement have?

Utah Code § 77-40-109(5)

For judicial sentencing, a court may order any records expunged under Title 77 Chapter 40 to be opened and admitted into evidence.

- Records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.

What kind of effect does an Order of Expungement have?

Utah Code § 77-40-109(5)

For judicial sentencing, a court may order any records expunged under Title 77 Chapter 40 to be opened and admitted into evidence.

- At the end of the action or proceeding, the court shall order the records expunged again.
- Any person authorized to view expunged records may not reveal or release any information obtained from the expunged record to anyone outside the court.

What kind of effect does an Order of Expungement have?

Utah Code § 77-40-109(6)

Records released under Title 77 Chapter 40 “are classified as protected under Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to Records.”

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Expungement does not necessarily mean Destroy

Penalties??



What kind of effect does an Order of Expungement have?

Utah Code § 77-40-112

An employee or agent of an agency that is prohibited from disseminating information from expunged, vacated, or pardoned records under Section 77-27-5.1 or 77-40-109 who knowingly or intentionally discloses identifying information from the expunged, vacated, or pardoned record that has been pardoned, vacated, or expunged, unless allowed by law, is guilty of a class A misdemeanor.

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- Penalty for a Class A misdemeanor may be up to one year in prison and up to \$2,500.

Utah Code and Expungement

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When it comes to Juvenile Records...

...remember that the
default always is that
they are non-public.

When it comes to the Juvenile Expungement Act...

...mostly applies to
juvenile records handled
by the judiciary.

What do I do when I get
a court order?

What do I do when I get a court order?

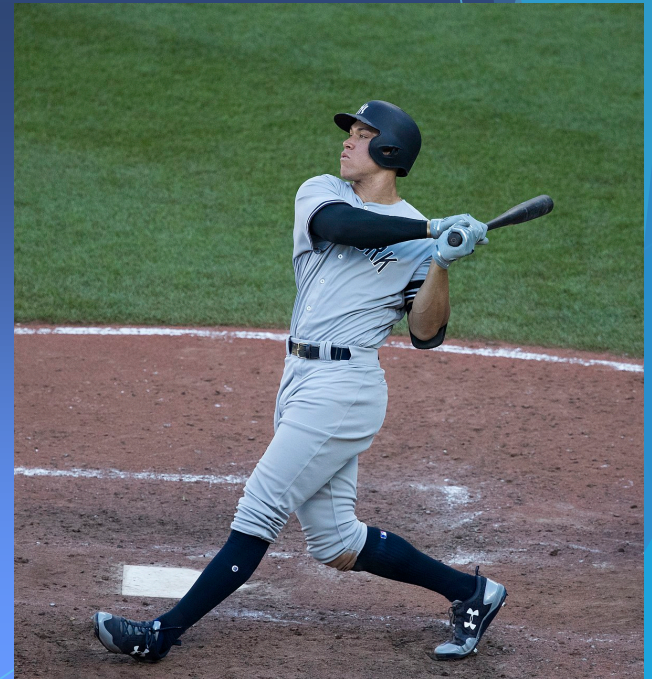


Things to remember about Court Orders:

- Typically court orders are drafted by parties appearing before the court, which are then reviewed, modified, and signed by the court.
- In an expungement proceeding, the attorney submitting the proposed court order typically is the attorney representing the person whose records are being expunged.
- Attorneys are known for representing their clients to the best of their ability.
- Expungement Orders therefore are typically written very favorably towards the person whose records are being expunged.
- Accordingly, an Expungement Order may go beyond what is in the expungement statutes.

Things to remember about Court Orders:

- A Judge's court order has the effect of law and is enforceable by the courts.
- If you have any questions regarding terms of a court order of expungement, consult your legal counsel.



The Grand Takeaway is...?

- There are public policy reasons for certain records being kept non-public through expungement/sealing of records.
- Expungement does not necessarily mean a record should be destroyed.
- Releasing information from an expunged record is always a bad thing.
- When you receive an Order of Expungement, you should consult your legal counsel to make sure everything is done correctly.

Questions??

