

EXPUNGEMENT OF CRIMINAL RECORDS IN WYOMING

1. EXPUNGEMENT OF RECORDS

What is expungement?

Distinguished from correction of record.

Records that may be affected: arrest and incarceration records, court records including issuance of warrants, criminal charges, criminal adjudications.

2. TRADITIONAL LAW

Division of authority as to whether courts have inherent power to expunge records.

3. WYOMING LAW PRIOR TO 2003

Courts have no inherent power to expunge records of criminal convictions.

Stanton v. State, 686 P.2d 587 (Wyo. 1984)

Billis v. State, 800 P.2d 401 (Wyo. 1990)

Johnson v. State, 971 P.2d 973 (Wyo. 1998)

Oler v. United States, 2001 WY 9, 17 P.3d 27 (Wyo. 2001)

Unclear as to extent of inherent power to expunge arrest and other records.

Expungement of juvenile records: W.S. § 14-6-241.

4. W.S. § 7-13-1401 (2003): EXPUNGEMENT OF RECORDS WHERE THERE IS NO CRIMINAL CONVICTION

5. W.S. § 7-13-1501(2004): EXPUNGEMENT OF RECORDS OF MISDEMEANOR CONVICTIONS.

FEDERAL STATUTES: Title 18, Chapter 44 — Firearms: 18 U.S.C. §§ 921, 922.
§ 921. Definitions

(a) As used in this chapter — * * *

(33)(A) Except as provided in subparagraph (C), the term “misdemeanor crime of domestic violence” means an offense that —

(i) is a misdemeanor under Federal or State or Tribal law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabitated with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim;

(B) (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless —

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

§ 922. Unlawful acts * * *

(g) It shall be unlawful for any person — * * *

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

ARTICLE 14. EXPUNGEMENT OF CRIMINAL RECORDS

§ 7-13-1401. Petition for expungement; records of arrest, dismissal of charges, disposition; eligibility; no filing fee.

(a) A person may petition the court in which a proceeding occurred, or would have occurred, for an order expunging records of arrest, charges or dispositions which may have been made in the case, subject to the following limitations:

(i) At least one hundred eighty (180) days have passed since the arrest, or from the date the charge or charges were dismissed for which expungement is sought, there are no formal charges pending against the person when the petition is filed, there were no dispositions pursuant to W.S. 7-13-301 to any charge or charges as the result of the incident leading to the arrest, including dispositions to a different or lesser charge, there were no dispositions pursuant to W.S. 35-7-1037 to any charge or charges as the result of the incident leading to the arrest, including dispositions to a different or lesser charge, there were no dispositions pursuant to former W.S. 7-13-203 to any charge or charges as the result of the incident leading to the arrest, including dispositions to a different or lesser charge, the petitioner sufficiently demonstrates that his petition satisfies all the requirements of this section, and at least one (1) of the following applies:

(A) There were no convictions pursuant to any charge or charges, including a conviction pursuant to a different or lesser charge as the result of the incident leading to the arrest;

(B) No criminal charges of any nature were filed in any court as the result of the incident leading to the arrest; or

(C) All criminal proceedings against the person were dismissed by the prosecutor or the court, and such proceedings were the result of the incident which led to the arrest.

(b) Any petition filed under this section shall be verified by the petitioner, served upon and reviewed by the prosecuting attorney, and no order granting expungement shall be issued prior to the expiration of twenty (20) days after service was made.

(c) The prosecuting attorney shall file with the court, an objection, if any, to the petition within twenty (20) days after service. If an objection is filed, the court shall set the matter for hearing. If no objection is filed, the court may summarily enter an order if the court finds that the petitioner is otherwise eligible for relief under this section.

(d) If the court finds that the petitioner is eligible for relief under this section, it shall issue an order granting the expungement of the applicable record. The court shall also place the court file under seal, available only for inspection by order of that court. The court shall transmit a certified copy of the order to the division of criminal investigation.

(e) There shall be no filing fee for a petition filed under this section.

(f) A person who has received an order of expungement under this section may respond to any inquiry as though the arrest, or charge or charges did not occur, unless otherwise provided by law.

(g) The state, through the prosecuting attorney, may appeal any order of expungement issued by any court under this section.

(h) Notwithstanding W.S. 1-39-101 through 1-39-120, the division of criminal investigation and its employees are immune from liability, either as an agency or individually, for any actions, inactions or omissions by the agency or any employee thereof, pursuant to this section.

(j) As used in this section:

(i) "Expungement" means only the classification of the record maintained in the files of the state central repository at the division of criminal investigation as defined by W.S. 7-19-107(a), in a manner reasonably tailored to ensure that the record will not be available for dissemination purposes other than to a criminal justice agency of any state or a federal criminal justice agency, to be used solely for criminal justice purposes. Expungement shall not include investigatory files of any local, state or federal criminal justice agency, where those files are being used solely for criminal justice purposes;

(ii) "Record" means any notation of the arrest, charge or disposition maintained in the state central repository at the division of criminal investigation, whether in paper or electronic format. (Laws 2003, ch. 137, § 1; 2005, ch. 137, § 1.)

The 2005 amendment transferred the provisions pertaining to dispositions pursuant to §§ 7-13-301, 35-7-1037, and 7-13-203 from (a)(i)(A) to (a)(i).

Laws 2005, ch. 137, § 2, makes the act effective immediately upon completion of all acts necessary for

a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 25, 2005.

Editor's notes. — There is no subsection (i) in this section as it appears in the printed acts.

ARTICLE 15. EXPUNGEMENT OF RECORDS OF CONVICTIONS

§ 7-13-1501. Petition for expungement of records of conviction of misdemeanors; filing fee; notice; objections; hearing; definitions.

(a) A person who has pleaded guilty or nolo contendere to or been convicted of a misdemeanor or misdemeanors arising out of the same occurrence or related course of events may petition the convicting court for an expungement of the records of conviction for the purposes of restoring any firearm rights lost, subject to the following limitations:

(i) At least one (1) year has passed since the expiration of the terms of sentence imposed by the court, including any periods of probation or the completion of any program ordered by the court;

(ii) Other than convictions arising out of the same occurrence or related course of events, the petitioner has not previously pleaded guilty or nolo contendere to or been convicted of a misdemeanor for which firearm rights have been lost;

(iii) The misdemeanor or misdemeanors for which the person is seeking expungement shall not have involved the use or attempted use of a firearm.

(b) A petition filed under this section shall be verified by the petitioner and served upon the prosecuting attorney and the division of criminal investigation. The filing fee for each petition filed under this section shall be one hundred dollars (\$100.00) and shall be deposited in accordance with W.S. 5-9-144.

(c) The prosecuting attorney shall serve notice of the petition for expungement by certified mail, return receipt requested, to any identifiable victims of the misdemeanors at their last known addresses of record on file with the prosecuting attorney. The notices shall include a copy of the petition and statutes applicable to the petition. In the event that there are no identifiable victims, or that there is at least one (1) identifiable victim and the prosecuting attorney has no address of record on file or the notice sent was returned or is otherwise undeliverable, the prosecuting attorney shall notify the court and shall be deemed to have complied with the provisions of this subsection.

(d) The court in its discretion may request a written report by the division of criminal investigation concerning the criminal history of the petitioner.

(e) The prosecuting attorney shall review the petition and shall file with the court an objection or recommendation, if any, to the petition within thirty (30) days after service of the notice by the petitioner upon the prosecuting attorney. If the prosecuting attorney or an identifiable victim submits a written objection to the court concerning the petition within thirty (30) days after service of the notice by the petitioner upon the prosecuting attorney, or if the petitioner objects to the criminal history report of the division of criminal investigation if requested by the court, the court shall set a date for a hearing and notify the prosecuting attorney, the identifiable victims who have submitted written objections to the petition, the division of criminal investigation and the petitioner of the date set for the hearing. Any person who has relevant information about the petitioner may testify at the hearing.

(f) If no objection is filed to the petition within thirty (30) days after service of the notice by the petitioner upon the prosecuting attorney, the court may summarily enter an order if the court finds that the petitioner is otherwise eligible for relief under this section. No order granting expungement shall be issued prior to the expiration of thirty (30) days after service was made to the prosecuting attorney.

(g) If the court finds that the petitioner is eligible for relief under this section and that the petitioner does not represent a substantial danger to himself, any identifiable victim or society, it shall issue an order granting expungement of the applicable records. The court shall also place the court files under seal, available for inspection only by order of that court. The court shall transmit a certified copy of the order to the division of criminal investigation.

(h) The state, through the prosecuting attorney, may appeal any order of expungement issued by any court under this section.

(j) Notwithstanding W.S. 1-39-101 through 1-39-120, the division of criminal investigation and its employees and any prosecuting attorney are immune from liability, either as an agency or individually, for any actions, inactions or omissions by the agency or any employee thereof, pursuant to this section.

(k) An expungement granted pursuant to this section shall only be used for the purposes of restoring firearm rights that have been lost to persons convicted of misdemeanors. Nothing in this section shall be construed to affect the enhancement of penalties for second or subsequent convictions of misdemeanors under the laws of this state. Nothing in this section shall be construed to allow a person who has previously received an expungement of records of conviction under this section to seek a second or subsequent expungement of records of conviction under this section.

(m) As used in this section:

(i) "Expungement" means as defined in W.S. 7-13-1401(j)(i);

(ii) "Misdemeanor" means as defined by W.S. 6-10-101;

(iii) "Record" means as defined in W.S. 7-13-1401(j)(ii). (Laws 2004, ch. 69, § 1.)

Editor's notes. — There is no subsection (i) or (l) in this section as it appears in the printed acts.

Effective date. — Laws 2004, ch. 69, § 2, makes the act effective July 1, 2004.