

## **EXPUNGEMENT UNDER IDAHO LAW**

The term “expungement” is used to denote both: (1) the setting aside of a conviction or plea of guilty; and (2) the sealing, removal or destruction of records of a case, charge or arrest. The ability to obtain expungement in the second sense is quite limited in Idaho law.

Some statutes provide specific authority for expungement of records in certain types of cases. Under current case law, it appears that the power of courts to order expungement is limited to those situations where expungement is explicitly authorized by statute.

### **1. Statutory Authority for Expungement**

The following statutes provide authority for expungement of some records in Juvenile Corrections Act and adult criminal cases.

#### **I.C. §§ 20-516 and 20-525A – Juvenile Corrections Act cases**

I.C. § 20-525A allows the expungement of records in J.C.A. cases. In cases where the juvenile was found to have committed a felony or was committed to the Department of Juvenile Corrections, the juvenile may apply for expungement five years after: (1) termination of the jurisdiction of the court; (2) release from the Department; or (3) reaching the age of 18 years, whichever occurs last. In other cases, the juvenile may apply for expungement one year after: (1) termination of the jurisdiction of the court; or (2) reaching the age of 18 years, whichever occurs later. The statute lists 19 crimes for which expungement is not allowed. Subsection (5) lists several conditions that must be met before the court may order the expungement. If the application is granted, the court orders all records of the juvenile’s case in the custody of the courts or any other agency or official to be sealed, and all references to the adjudication, diversion or informal adjustment of the case removed from all indices and other records available to the public. The court retains a special index of the expungement proceedings and records, which is not available to the public and may be revealed only upon court order. The procedure for applying for expungement is governed by Rule 28 of the Idaho Juvenile Rules.

I.C. § 20-516(3) states that a juvenile taken into custody may be fingerprinted and photographed, and subsection (8) of that statute provides that a juvenile taken into detention shall be fingerprinted and photographed. Both subsections state that the court, upon a finding of good cause, may order that the fingerprints and photographs of the juvenile be expunged.

#### **I.C. § 18-8310 – Sexual Offender Registry**

This statute allows persons who are required to register as sexual offenders to petition the court for exemption from the duty to register. The application may be made

ten years after the petitioner was released from incarceration, or placed on parole, supervised release or probation, whichever is later. The statute lists several requirements that must be met before the exemption may be granted. Subsection (2) of the statute provides that when the court enters an order granting exemption, it “may further order that any information regarding the petitioner be expunged from the central registry.”

#### I.C. § 19-5513 – DNA database and databank

This statute provides that a person whose DNA profile has been included in the DNA database or databank may request that a court order expungement of materials from the database and databank on the grounds that the underlying conviction has been reversed and the case dismissed. The trial court has discretion to grant or deny the request; the statute provides that denial of a request is not subject to appeal. When the court orders expungement, the Idaho State Police must destroy the DNA sample unless the ISP determines that the person was obligated to submit a DNA sample and thumbprint as a result of a separate conviction.

#### I.C. § 67-3004 – Expungement of Bureau of Criminal Identification Records

This statute requires the expungement of B.C.I. records in certain cases. Subsection (10) of the statute states, “Any person who was arrested or served a criminal summons and who subsequently was not charged by indictment or information within one (1) 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 pursuant to the person's written request directed to the [Idaho State Police].”

### **2. I.C. § 19-2604 and the power of the courts to order expungement**

It has been argued that courts have broader powers than those set forth in the above statutes to order the expungement of criminal records. These arguments have been based on: (1) I.C. § 19-2604, as it was written prior to its amendment in 2006; and (2) the inherent powers of the courts.

I.C. § 19-2604 provides for the reduction or setting aside of criminal convictions. Subsection (1) allows defendants who have been placed on probation to ask the court to set aside their convictions. Subsection (2) applies to cases where the court has retained jurisdiction and subsequently placed the defendant on probation. The defendants in such cases may seek to have the conviction reduced from a felony to a misdemeanor.

Prior to July 1, 2006, subsection (3) stated:

Subsection 2 of this section shall not apply to any judgment of conviction for a violation of the provisions of sections 18-1506, 18-1507 or 18-1508,

Idaho Code. A judgment of conviction for a violation of the provisions of any section listed in this subsection shall not be expunged from a person's criminal record.

Any argument premised on the term "expunged" in subsection (3) of I.C. § 19-2604 would no longer be valid in view of the amendment of that subsection in 2006. The pertinent sentence now reads, "A judgment of conviction for a violation of any offense requiring sex offender registration as set forth in section 18-8304, Idaho Code, shall not be subject to dismissal or reduction under this section." The term "expunged" has been removed.

In State v. Parkinson, 144 Idaho 825, 172 P.3d 1100 (2007), the defendant sought expungement of any record of his conviction from the NCIC database. He argued that the court had the authority to issue such an order under the earlier version of I.C. § 19-2604 and as part of the court's inherent powers. The Supreme Court rejected this argument and held that the courts did not have any such power. The Court stated that I.C. § 19-2604 "does not require or authorize the complete expungement of all records and references to the charge." 144 Idaho at 828, 172 P.3d at 1103.

### **3. Sealing of records in a criminal case under ICAR 32**

In some cases, an individual may be able to have the court records of a criminal case sealed under Rule 32 of the Idaho Court Administrative Rules. The Supreme Court pointed out this possibility in State v. Turpen, 147 Idaho 869, 216 P.3d 627 (2009). A jury acquitted Turpen of the misdemeanor charge of sexual exploitation by a medical care provider. Turpen then filed a motion seeking to expunge the records reflecting his arrest, the filing of the charges, and the subsequent acquittal. The trial court denied the motion and Turpen appealed. He argued that the court had the inherent power to order expungement.

The Supreme Court first pointed out that in considering the possibility of expungement, it was not contemplating the destruction of physical records, but simply "the issuance of a court order requiring physical or electronic sequestration of such records from public access or inspection." 147 Idaho at 870, 216 P.3d at 628. The Court went on to say that it need not address the extent of the inherent power of the courts in this area since there was a court rule granting courts the authority to grant the relief sought in certain cases, namely ICAR 32(i). This rule permits the court to order sealing of records upon the making of certain findings and after determining "whether the interest in privacy or public disclosure predominates." Even were a court to issue such an order, it would only pertain to court records and would not require the expungement of records of law enforcement agencies.