



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE April 28, 2022

TO Joint Judiciary Committee

FROM Brian Fuller, Senior Staff Attorney

SUBJECT Topic Summary: Juvenile Expungement: In re RH (RH v. State)

This summary provides background information on one of the Wyoming Supreme Court cases where the Court interpreted statutes and considered the Legislature's intent in deciding the case. This summary discusses In re RH (RH v. State), a case where the Wyoming Supreme Court considered whether Wyoming statute (specifically, W.S. 14-6-241) allows the expungement of a juvenile record where a delinquency petition was ultimately dismissed, but the delinquent act initially charged was a violent felony (as that term is defined in Wyoming statute).

Approved Interim Topic

Priority No. 2: Review of Recent Court Opinions.

The Committee will study and consider recent opinions where courts interpreted Wyoming statutes, noted the absence of legislative action, or called for legislative action.

Background

The Legislature established juvenile courts in Wyoming in 1951; an iteration of an act resembling today's Juvenile Justice Act was enacted in 1971.¹ The Act provides for "special proceedings" for children accused of criminal acts that promote not only the concept of punishment, but to also provide treatment, training, and rehabilitation for children.² Among other things, statute states that the Juvenile Justice Act must be

¹ 1951 Wyo. Session Laws Ch. 125; 1971 Wyo. Session Laws Ch. 255.

² W.S. 14-6-201(c)(ii)(A) & (C); TPJ v. State, 2003 WY 49, ¶ 25, 66 P.3d 710, 715 (Wyo. 2003).

construed to effectuate various public-policy purposes, including one to "remove, where appropriate, the taint of criminality from children committing certain unlawful acts."³

The Act provides for the expungement of certain records in juvenile courts. W.S. 14-6-241(a) specifies that any person who has been "adjudicated delinquent as a result of having committed a delinquent act other than a violent felony as defined by W.S. 6-1-104(a)(xii)" may petition the juvenile court for expungement of the record after reaching the age of majority.⁴ The entire text of the subsection follows:

(a) Any person adjudicated delinquent as a result of having committed a delinquent act other than a violent felony as defined by W.S. 6-1-104(a)(xii), under the provisions of this act may petition the court for the expungement of his record in the juvenile court upon reaching the age of majority. 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. 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 an objection is filed and after investigation the court finds that the petitioner has not been convicted of a felony since adjudication, that no proceeding involving a felony is pending or being instituted against the petitioner and the rehabilitation of the petitioner has been attained to the satisfaction of the court or the prosecuting attorney, it shall order expunged all records in any format including electronic records in the custody of the court or any agency or official, pertaining to the petitioner's case. 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 subsection. Copies of the order shall be sent to each agency or official named in the order. The prosecuting attorney, to the extent practicable and if the state filed the petition for expungement as authorized by W.S. 7-13-1401, shall inform the juvenile of the order of expungement and of the practical effects of the expungement. Upon entry of an order the proceedings in the petitioner's case are deemed never to have occurred and the petitioner may reply accordingly upon any inquiry in the matter.⁵

³ W.S. 14-6-201(c)(ii)(B).

⁴ W.S. 14-6-241(a).

⁵ Id. (emphases added).

For a person to have a juvenile record expunged under W.S. 14-6-241(a), the person, among other things: (1) must have been adjudicated delinquent; and (2) must not have been adjudicated delinquent for having committed a delinquent act that satisfies the definition of "violent felony" in Wyoming's criminal code.⁶

In 2019, the Legislature (through a bill that this Committee sponsored) amended W.S. 14-6-241 to provide a process by which a person could seek to expunge juvenile records in cases where there was no delinquency adjudication.⁷ The following subsections were inserted in W.S. 14-6-241:

(d) The record of a minor admitted to a diversion program or granted a deferral pursuant to Wyoming statute may be expunged in the same manner and subject to the same limitations as provided in subsection (a) of this section by petition to the court ordering the diversion program or deferral.

(e) A record of arrest, charges or disposition of a minor resulting in dismissal, declined prosecution or otherwise not resulting in a conviction or an adjudication of delinquency or an adjudication of being a child in need of supervision may be expunged in the same manner and subject to the same limitations as provided in subsection (a) of this section by petition to the court.⁸

Subsection (d) authorizes the expungement of juvenile records of persons who were admitted to a diversion program or granted a deferral.⁹ Subsection (e) authorizes the expungement of an arrest record, charges, or other disposition (dismissal, declined prosecution, "or otherwise not resulting" in a conviction or delinquency adjudication).¹⁰ Both subsections direct that expungement of those records must take place "in the same manner and subject to the same limitations as provided in subsection (a) of this section [W.S. 14-6-241(a)]."¹¹

⁶ *Id.* A "violent felony" is defined as "murder, manslaughter, kidnapping, sexual assault in the first or second degree, robbery, aggravated assault, strangulation of a household member, aircraft hijacking, arson in the first or second degree, aggravated burglary, a violation of W.S. 6-2-314(a)(i) or 6-2-315(a)(ii) or a third, or subsequent, domestic battery under W.S. 6-2-511(a) and (b)(iii)." W.S. 6-1-104(a)(xii).

⁷ 2019 Wyo. Session Laws Ch. 29.

⁸ W.S. 14-6-241(d)–(e) (emphases added).

⁹ W.S. 14-6-241(d).

¹⁰ W.S. 14-6-241(e).

¹¹ W.S. 14-6-241(d)–(e).

RH v. State

In 2019, the state filed a delinquency petition against RH (then age 16), charging RH with first-degree sexual assault of a minor—an offense that is included in the definition of "violent felony" under W.S. 6-1-104.¹² Pursuant to a consent decree, the state agreed to defer the delinquency petition against RH, who was placed on probation for one year.¹³ The agreement provided that, in exchange for RH's successfully completing probation, the charges in the delinquency petition would be dismissed.¹⁴ RH did successfully complete his probation, and the state moved to terminate the juvenile court's jurisdiction and to close and seal RH's file.¹⁵ The juvenile court granted that motion and ordered the file closed and sealed.¹⁶

In 2021, RH petitioned the juvenile court to have the record of the juvenile-delinquency proceedings expunged.¹⁷ In his petition, RH asserted that: (1) he had reached the age of majority in March; (2) he had not been convicted of a felony and did not have any proceedings pending; and (3) he had been fully rehabilitated, was attending school and counseling, and was starting a new job.¹⁸ The state objected to RH's petition, arguing that RH was statutorily ineligible to have the record expunged because he was initially charged with—and granted a deferral for—a violent felony.¹⁹

The juvenile court agreed and denied RH's petition.²⁰ The juvenile court interpreted W.S. 14-6-241(a)—which excludes persons adjudicated delinquent for having committed a delinquent act that is a violent felony from possible expungement—to also apply to W.S. 14-6-241(d) and (e).²¹ In other words, if the act for which there is a juvenile record but no delinquency adjudication was a violent felony, the person would not be eligible for record expungement under W.S. 14-6-241.²² The juvenile court reasoned that the violent-felony limitation in W.S. 14-6-241(a), which the juvenile court found to be unambiguous, showed that the Legislature "clearly intended to be eligible for expungement of juvenile

¹² In re RH (RH v. State), 2022 WY 33, ¶ 3, 505 P.3d 205, 206 (Wyo. 2022). The victim in the case was RH's twelve-year-old female cousin. Id.

¹³ Id. ¶ 4, 505 P.3d at 206.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. ¶ 5, 505 P.3d at 206.

¹⁸ Id.

¹⁹ Id. ¶ 6, 505 P.3d at 206.

²⁰ Id.

²¹ Id. ¶ 11, 505 P.3d at 208.

²² See id.

records only those petitioners who fall outside the limitations of subsection (a)."²³ And even without a delinquency adjudication, the juvenile court concluded that W.S. 14-6-241(d) and (e) were also subject to the violent-felony exclusion in W.S. 14-6-241(a), and any other interpretation would negate the necessity of W.S. 14-6-241(d) and (e).²⁴

RH appealed, and the Wyoming Supreme Court reversed. The Court concluded that W.S. 14-6-241(d) and (e) were enacted "to broaden the types of juvenile records that are eligible for expungement," and the Court disagreed that there was any interpretation that did not apply the violent-felony restriction that would negate the necessity of those two subsections.²⁵

In response, the state argued that the limitations in W.S. 14-6-241(a) (including the violent-felony exclusion) were incorporated in W.S. 14-6-241(d) and (e) to where expungements under W.S. 14-6-241(d) and (e) exclude expungements when the person was charged with a violent felony.²⁶ The Court framed the question as "whether the violent felony language in subsection (a) describes the category of records that may be expunged, or is a 'limitation' on expungement, as that term is used in subsections (d) and (e)."²⁷

The Court concluded that the violent-felony exclusion was a description of the category of records that may or may not be expunged under subsection (a) of W.S. 14-6-241.²⁸ The Court noted that the violent-felony language in W.S. 14-6-241(a) is in the introductory clause of that subsection, separate and apart from the language establishing the procedure for expungement and the court's findings.²⁹ The Court stated that the placement of the violent-felony exclusion "suggests the legislature intended the language would serve only to describe the category of records that may be expunged under that subsection."³⁰

Ultimately, the Court concluded that the reference in W.S. 14-6-241(d) and (e) to "limitations" in subsection (a) "is a reference to the separately listed findings a court must

²³ Id. (emphasis in original).

²⁴ Id.

²⁵ Id. ¶ 12, 505 P.3d at 208.

²⁶ Id. ¶ 13, 505 P.3d at 208–09. In other words, the state argued that the violent-felony exclusion in W.S. 14-6-241(a) is a "limitation" that is referenced in W.S. 14-6-241(d) and (e).

²⁷ Id. ¶ 15, 505 P.3d at 209.

²⁸ Id.

²⁹ Id. ¶ 16, 505 P.3d at 209.

³⁰ Id.

make."³¹ The Court stated that this interpretation was consistent with the need to interpret the statute in favor of the child's welfare.³² The Court also noted the Juvenile Justice Act's objective for removing, where appropriate, the "taint of criminality" from children committing certain unlawful acts, and disallowing the expungement of a juvenile record in a case where a juvenile is charged with a violent felony but is never adjudicated or convicted of that offense would not serve that objective.³³ The Court also noted the possible incongruity with allowing a juvenile who is adjudicated delinquent (albeit for an offense not constituting a violent felony) while not allowing a juvenile charged with a violent felony but whose delinquency petition is dismissed or deferred to seek expungement.³⁴

One justice separately concurred; he found W.S. 14-6-241(a) and (d) to be ambiguous in that the language in W.S. 14-6-241(d) referring to expungements "subject to the same limitations in subsection (a)" was unclear and subject to reasonable interpretations in various ways.³⁵ That justice reached the same conclusion as the majority and agreed that W.S. 14-6-241(d) "does not preclude an application for expungement by a juvenile who was charged with a violent felony but was not adjudicated delinquent because he completed a diversion program."³⁶

If the Committee wishes to further explore this issue, it may wish to consider:

- Whether legislative change is needed to better clarify whether a juvenile who is subject to a delinquency petition but is not adjudicated delinquent or whose petition is dismissed may seek expungement of the juvenile record.
- Whether the ability to seek expungement of a record involving a violent felony should differ between expungements for juveniles who completed a deferral or diversionary program (W.S. 14-6-241(d)) and expungements for juveniles whose delinquency petitions were dismissed or who were charged but for which prosecution was declined (W.S. 14-6-241(e)).

³¹ Id.

³² Id. ¶ 17, 505 P.3d at 209; Vaughn v. State, 2017 WY 29, ¶ 9, 391 P.3d 1086, 1091 (Wyo. 2017) ("Statutes that provide for the care and discipline of juveniles are generally given a liberal and practical construction in favor of the child's welfare.").

³³ In re RH, ¶ 17, 505 P.3d at 209.

³⁴ Id.

³⁵ Id. ¶ 21, 505 P.3d at 210 (Kautz, J., concurring).

³⁶ Id. ¶ 24, 505 P.3d at 211. This justice would not have considered the applicability of W.S. 14-6-241(e) in this case. Id. ¶ 20, 505 P.3d at 210.

This summary is meant to provide a broad and basic overview of expungement and the Juvenile Justice Act and In re RH. Please let me know if you have any questions or need further information.