

EXPUNGEMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill makes specific changes regarding the expungement of information in state agency files and creates a statement of legislative intent with regard to expungement.

Highlighted Provisions:

This bill:

- ▶ creates a new definition of "expunge";
- ▶ requires that an administrative agency remove information regarding expunged convictions from public databases;
- ▶ creates a statement of legislative intent for expungement; and
- ▶ provides a stated purpose for expungement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 77-40-101**, as enacted by Laws of Utah 2010, Chapter 283
- 77-40-102**, as last amended by Laws of Utah 2014, Chapter 199
- 77-40-107**, as last amended by Laws of Utah 2014, Chapter 263
- 77-40-108**, as last amended by Laws of Utah 2013, Chapters 20 and 41

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-40-101** is amended to read:

77-40-101. Title -- Purpose -- Legislative intent.

(1) This chapter is known as the "Utah Expungement Act."

(2) The Legislature recognizes that an individual who has committed a criminal act and paid his or her debt to society should, under certain circumstances, be able to move forward

33 and rebuild their life without being hindered by the past.

34 (3) The Legislature, therefore, finds and declares the following:

35 (a) The inability to obtain an expungement can prevent certain individuals from
36 obtaining gainful employment; however the need for employment should be balanced
37 appropriately against the desire for public safety.

38 (b) It is the intent of the Legislature that allowing for the expungement of certain
39 criminal offenses will provide an opportunity to:

40 (i) break the cycle of criminal recidivism;

41 (ii) increase public safety;

42 (iii) assist the growing population of offenders reentering the community to establish a
43 self-sustaining life through opportunities in employment; and

44 (iv) restore certain civil liberties to offenders to allow them to fully participate in
45 society.

46 (c) This chapter further requires that state agencies remove or redact certain identifying
47 information from their public records and maintain that information only for internal record
48 keeping purposes to preserve the integrity of the agency's files.

49 Section 2. Section **77-40-102** is amended to read:

50 **77-40-102. Definitions.**

51 As used in this chapter:

52 [~~(1) "Administrative finding" means a decision upon a question of fact reached by an~~
53 ~~administrative agency following an administrative hearing or other procedure satisfying the~~
54 ~~requirements of due process.]~~

55 (1) "Administrative record" means a record, other than a criminal record, that is related
56 to an investigation, arrest, detention, or conviction for which an expungement has been
57 ordered.

58 (2) "Agency" means a state, county, or local government entity that generates or
59 maintains records relating to an investigation, arrest, detention, or conviction for an offense for
60 which expungement may be ordered.

61 (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public
62 Safety established in Section 53-10-201.

63 (4) "Certificate of eligibility" means a document issued by the bureau stating that the

64 criminal record and all records of arrest, investigation, and detention associated with a case that
65 is the subject of a petition for expungement is eligible for expungement.

66 (5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty
67 after trial, a plea of guilty, or a plea of nolo contendere.

68 (6) "Department" means the Department of Public Safety established in Section
69 53-1-103.

70 (7) "Drug possession offense" means an offense under:

71 (a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i),
72 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection
73 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a
74 controlled substance illegally in the person's body and negligently causing serious bodily injury
75 or death of another;

76 (b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

77 (c) Section 58-37b-6, possession or use of an imitation controlled substance; or

78 (d) any local ordinance which is substantially similar to any of the offenses described
79 in this Subsection (7).

80 (8) "Expunge" means to [~~seal or otherwise restrict access to the~~] completely remove
81 from a law enforcement agency's records the petitioner's record [held by an agency] when the
82 record includes any reference to a criminal investigation, detention, arrest, or conviction.

83 (9) "Jurisdiction" means a state, district, province, political subdivision, territory, or
84 possession of the United States or any foreign country.

85 (10) "Petitioner" means a person seeking expungement under this chapter.

86 (11) "Seal" means to restrict public access to a petitioner's administrative record or the
87 relevant portion of the petitioner's administrative record held by a state agency.

88 [(H)] (12) "Traffic offense" means all offenses in the following parts and all local
89 ordinances that are substantially similar to the offenses:

90 (a) Title 41, Chapter 6a, Part 3, Traffic-Control Devices;

91 (b) Title 41, Chapter 6a, Part 6, Speed Restrictions;

92 (c) Title 41, Chapter 6a, Part 7, Driving on Right Side of Highway and Passing;

93 (d) Title 41, Chapter 6a, Part 8, Turning and Signaling for Turns;

94 (e) Title 41, Chapter 6a, Part 9, Right-of-Way;

- 95 (f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;
 96 (g) Title 41, Chapter 6a, Part 11, Bicycles, Regulation of Operation;
 97 (h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and
 98 Safety Zones;
 99 (i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;
 100 (j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;
 101 (k) Title 41, Chapter 6a, Part 15, Special Vehicles;
 102 (l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;
 103 (m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and
 104 (n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.

105 Section 3. Section **77-40-107** is amended to read:

106 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
 107 **Standard of proof -- Exception.**

108 (1) The petitioner shall file a petition for expungement and the certificate of eligibility
 109 in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to
 110 the prosecuting agency and any state agencies, if applicable, that maintain administrative
 111 records relating to the incident for which expungement is sought. If the certificate is filed
 112 electronically, the petitioner or the petitioner's attorney shall keep the original certificate until
 113 the proceedings are concluded. If the original certificate is filed with the petition, the clerk of
 114 the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it
 115 until the proceedings are concluded.

116 (2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting
 117 attorney shall provide notice of the expungement request by first-class mail to the victim at the
 118 most recent address of record on file.

119 (b) The notice shall include a copy of the petition, certificate of eligibility, statutes and
 120 rules applicable to the petition, state that the victim has a right to object to the expungement,
 121 and provide instructions for registering an objection with the court.

122 (3) The prosecuting attorney [~~and~~], the victim, and any state agencies that maintain
 123 administrative records relating to the incident for which expungement is sought, if applicable,
 124 may respond to the petition by filing a recommendation or objection with the court within 30
 125 days after receipt of the petition.

126 (4) (a) The court may request a written response to the petition from the Division of
127 Adult Probation and Parole within the Department of Corrections.

128 (b) If requested, the response prepared by Adult Probation and Parole shall include:

129 (i) the reasons probation was terminated; and

130 (ii) certification that the petitioner has completed all requirements of sentencing and
131 probation or parole.

132 (c) A copy of the response shall be provided to the petitioner and the prosecuting
133 attorney.

134 (5) The petitioner may respond in writing to any objections filed by the prosecutor or
135 the victim and the response prepared by Adult Probation and Parole within 15 days after
136 receipt.

137 (6) (a) If the court receives an objection concerning the petition from any party, the
138 court shall set a date for a hearing and notify the petitioner [~~and~~], the prosecuting attorney, and
139 any state agencies that maintain administrative records relating to the incident for which
140 expungement is sought of the date set for the hearing. The prosecuting attorney shall notify the
141 victim of the date set for the hearing.

142 (b) The petitioner, the prosecuting attorney, the victim, any state agencies that maintain
143 administrative records relating to the incident for which expungement is sought, and any other
144 person who has relevant information about the petitioner may testify at the hearing.

145 (c) The court shall review the petition, the certificate of eligibility, and any written
146 responses submitted regarding the petition.

147 (7) If no objection is received within 60 days from the date the petition for
148 expungement was filed with the court, the expungement may be granted without a hearing.

149 (8) The court shall issue an order of expungement if it finds by clear and convincing
150 evidence that:

151 (a) the petition and certificate of eligibility are sufficient;

152 (b) the statutory requirements have been met;

153 (c) if the petitioner seeks expungement of drug possession offenses allowed under
154 Subsection 77-40-105(5), the petitioner is not illegally using controlled substances and is
155 successfully managing any substance addiction; and

156 (d) it is not contrary to the interests of the public to grant the expungement.

157 (9) A court may not expunge a conviction of an offense for which a certificate of
158 eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

159 Section 4. Section **77-40-108** is amended to read:

160 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**

161 **Administrative proceedings -- Bureau requirements -- Agency action.**

162 (1) (a) A person who receives an order of expungement under this chapter or Section
163 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected
164 criminal justice agencies and officials including the court, arresting agency, booking agency,
165 prosecuting agency, Department of Corrections, and the bureau.

166 (b) A person who receives an order of expungement under Section 77-27-5.1, shall pay
167 a processing fee to the bureau, established in accordance with the process in Section 63J-1-504,
168 before the bureau's record may be expunged.

169 (2) Unless otherwise provided by law or ordered by a court of competent jurisdiction to
170 respond differently, a person who has received an expungement of an arrest or conviction
171 under this chapter or Section 77-27-5.1, may respond to any inquiry as though the arrest or
172 conviction did not occur.

173 (3) The bureau shall forward a copy of the expungement order to the Federal Bureau of
174 Investigation.

175 (4) ~~[An agency]~~ Within 30 days of receiving an expungement order an agency shall
176 expunge all qualifying criminal records and seal the petitioner's [identifying information
177 contained in] administrative records in its possession or under its control relating to the
178 incident or conviction for which expungement is ordered.

179 (a) If the investigation, arrest, detention, or conviction resulted from an agency's
180 investigation or referral to law enforcement, all administrative records which pertain to the act
181 or series of acts which were investigated by the agency and led to the referral shall be sealed.

182 (b) If the investigation, arrest, detention, or conviction was not based upon the agency's
183 investigation or referral and the agency suspends or revokes a petitioner's credential, all
184 administrative records of the action and resulting administrative action shall be sealed. The
185 public record may reflect that the credential is invalid.

186 (c) If the agency was not involved in the investigation, prosecution, or conviction, and
187 the petitioner maintained a credential for the duration of the process, all administrative records

188 shall be sealed.

189 (5) (a) Sealed administrative records maintained by an agency to preserve the integrity
190 of the agency's files may be referenced and considered if the petitioner seeks, at a subsequent
191 time, to reinstate a credential suspended or revoked by the agency in the same field as the
192 credential the petitioner held at the time of the investigation, arrest, detention, or conviction.

193 (b) The agency may retain the administrative record internally in its files, however the
194 information may not be made available to the public.

195 (6) The agency shall insure that any information or record subject to the provisions of
196 this section is removed from any state-controlled database available to the public.

197 ~~[(5)]~~ (7) Unless ordered by a court to do so, or in accordance with Subsection
198 77-40-109(2), a government agency or official may not divulge information or records which
199 have been expunged or sealed regarding the petitioner contained in a record of arrest,
200 investigation, detention, or conviction after receiving an expungement order.

201 ~~[(6)]~~ (8) (a) An order of expungement may not restrict an agency's use or dissemination
202 of records in its ordinary course of business until the agency has received a copy of the order.

203 (b) Any action taken by an agency after issuance of the order but prior to the agency's
204 receipt of a copy of the order may not be invalidated by the order.

205 ~~[(7)]~~ (9) An order of expungement may not:

206 (a) terminate or invalidate any pending administrative proceedings or actions of which
207 the petitioner had notice according to the records of the administrative body prior to issuance of
208 the expungement order;

209 (b) affect the enforcement of any order or findings issued by an administrative body
210 pursuant to its lawful authority prior to issuance of the expungement order; or

211 (c) remove any evidence relating to the petitioner including records of arrest, which the
212 administrative body has used or may use in these proceedings.