

**EXPUNGEMENT AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

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**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

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*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 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 held by an agency, other than a criminal  
56 record, that is related to the incident giving rise to an investigation, arrest, detention, or  
57 conviction for which an expungement has been 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, or an  
60 administrative action related to a criminal investigation or conviction for an offense for which  
61 expungement may be ordered.

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

64 (4) "Certificate of eligibility" means a document issued by the bureau stating that the  
65 criminal record and all records of arrest, investigation, and detention associated with a case that  
66 is the subject of a petition for expungement is eligible for expungement.

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

69 (6) "Department" means the Department of Public Safety established in Section  
70 53-1-103.

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

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

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

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

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

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

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

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

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

89 [(11)] (12) "Traffic offense" means all offenses in the following parts and all local  
90 ordinances that are substantially similar to the offenses:

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

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

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

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

- 95 (e) Title 41, Chapter 6a, Part 9, Right-of-Way;
- 96 (f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;
- 97 (g) Title 41, Chapter 6a, Part 11, Bicycles, Regulation of Operation;
- 98 (h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and
- 99 Safety Zones;
- 100 (i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;
- 101 (j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;
- 102 (k) Title 41, Chapter 6a, Part 15, Special Vehicles;
- 103 (l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;
- 104 (m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and
- 105 (n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.

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

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

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

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

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

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

126 days after receipt of the petition.

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

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

130 (i) the reasons probation was terminated; and

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

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

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

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

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

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

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

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

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

153 (b) the statutory requirements have been met;

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

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

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

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

161 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**  
162 **Administrative proceedings -- Bureau requirements -- Agency action.**

163 (1) (a) A person who receives an order of expungement under this chapter or Section  
164 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected  
165 ~~[criminal justice]~~ agencies and officials including the court, arresting agency, booking agency,  
166 prosecuting agency, Department of Corrections, ~~[and]~~ the bureau, and any agencies that  
167 maintain administrative records relating to the incident for which expungement is ordered.

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

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

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

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

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

183 (c) Neither the timing nor manner of the agency's acquisition or creation of related  
184 administrative records may affect the agency's duty to seal the records under this section.

185 (5) A record sealed under this chapter and retained by the agency under Subsection  
186 4(b) may be:

187 (a) used by the agency in any manner consistent with the agency's procedures, if the

188 record is not made available to the public;

189 (b) shared by the agency with law enforcement or a court;

190 (c) shared by the agency with another agency, if the receiving agency agrees to not  
191 make the record available to the public; and

192 (d) distributed by the agency as directed by court order.

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

195 ~~[(5)]~~ (7) Unless ordered by a court to do so, or in accordance with Subsection  
196 77-40-109(2), a government agency or official may not divulge information or records which  
197 have been expunged or sealed regarding the petitioner contained in a record of arrest,  
198 investigation, detention, or conviction after receiving an expungement order.

199 ~~[(6)]~~ (8) (a) An order of expungement may not restrict an agency's use or dissemination  
200 of records in its ordinary course of business until the agency has received a copy of the order.

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

203 ~~[(7)]~~ (9) An order of expungement may not:

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

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

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