

EXPUNGEMENT ACT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

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 the individual's debt to society should, under certain circumstances, be able to move forward and rebuild the individual's life without being hindered by the past.

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

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

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

(i) break the cycle of criminal recidivism;

(ii) increase public safety;

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

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

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

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

77-40-102. Definitions.

As used in this chapter:

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

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

59 ordered.

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

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

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

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

70 (6) "Department" means the Department of Public Safety established in Section
71 53-1-103.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

97 (f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;

98 (g) Title 41, Chapter 6a, Part 11, Bicycles and Other Vehicles, Regulation of
99 Operation;

100 (h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and
101 Safety Zones;

102 (i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;

103 (j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;

104 (k) Title 41, Chapter 6a, Part 15, Special Vehicles;

105 (l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;

106 (m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and

107 (n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.

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

109 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
110 **Standard of proof -- Exception.**

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

119 (2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting
120 attorney shall provide notice of the expungement request by first-class mail to the victim at the

121 most recent address of record on file.

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

125 (3) The prosecuting attorney [~~and~~], the victim, and any state agency that maintains an
126 administrative record relating to the incident for which expungement is sought, if applicable,
127 may respond to the petition by filing a recommendation or objection with the court within 30
128 days after receipt of the petition.

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

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

132 (i) the reasons probation was terminated; and

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

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

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

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

145 (b) The petitioner, the prosecuting attorney, the victim, any state agency that maintains
146 an administrative record relating to the incident for which expungement is sought, and any
147 other person who has relevant information about the petitioner may testify at the hearing.

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

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

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

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

155 (b) the statutory requirements have been met;

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

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

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

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

163 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**

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

165 (1) (a) A person who receives an order of expungement under this chapter or Section
166 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected
167 criminal justice agencies and officials including the court, arresting agency, booking agency,
168 prosecuting agency, Department of Corrections, and the bureau.

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

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

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

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

182 (a) If the investigation, arrest, detention, or conviction resulted from an agency's

183 investigation or referral to law enforcement, all administrative records that pertain to the act or
184 series of acts that were investigated by the agency and led to the referral shall be sealed.

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

189 (c) If the agency was not involved in the investigation, prosecution, or conviction, and
190 the petitioner maintained a credential for the duration of the process, all administrative records
191 shall be sealed.

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

196 (b) The agency may retain the administrative record internally in the agency's files,
197 however the information may not be made available to the public.

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

200 ~~[(5)]~~ (7) Unless ordered by a court to do so, or in accordance with Subsection
201 77-40-109(2), a government agency or official may not divulge information or records [which]
202 that have been expunged or sealed regarding the petitioner contained in a record of arrest,
203 investigation, detention, or conviction after receiving an expungement order.

204 ~~[(6)]~~ (8) (a) An order of expungement may not restrict an agency's use or dissemination
205 of records in its ordinary course of business until the agency has received a copy of the order.

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

208 ~~[(7)]~~ (9) An order of expungement may not:

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel