

EXPUNGEMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Eric K. Hutchings

LONG TITLE

Committee Note:

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

General Description:

This bill makes changes to provisions regarding expungements and pardons.

Highlighted Provisions:

This bill:

- ▶ adds definitions;
- ▶ prevents the dissemination of information regarding pardons and expungements ~~§~~ **→ by a**

person authorized to view expunged records pursuant to statute ~~←§~~ ;

~~§~~ **→ [**~~→ provides for the sealing of records of certain court cases;~~**]** ~~←§~~

▶ specifies that infractions, traffic offenses, and certain minor offenses will not count towards expungement eligibility;

▶ allows for an increase in the number of convictions counted to be eligible for expungement; ~~§~~ **→ and** ~~←§~~

~~§~~ **→ [**~~→ decreases the waiting period after the petition for expungement is filed; and]~~ **←§**

▶ allows the court during sentencing in a criminal prosecution to take into account if the level of the offense has been reduced since the defendant's conviction.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



307 (b) The petitioner, the prosecuting attorney, the victim, and any other person who has
308 relevant information about the petitioner may testify at the hearing.

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

311 ~~§→ [(7) (a) If no objection is received within [60 days from the date the petition for
312 expungement was filed with the court] 35 days after receipt by the prosecutor, the
313 expungement may be granted without a hearing.~~

314 ~~—— (b) Receipt by the prosecutor may be established by verification of electronic
315 transmittal by the court to the prosecutor's inbox, post office mailing stamp, certificate of
316 delivery, or personal service.~~

317 ~~—— (c) The time period may be extended for 28 additional days upon the filing of a motion
318 and a finding of the court that good cause exists to extend the time period.~~

319 ~~—— (8) (7) ←§~~ The court shall issue an order of expungement if it finds by clear and convincing
320 evidence that:

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

322 (b) the statutory requirements have been met;

323 (c) if the petitioner seeks expungement of drug possession offenses allowed under
324 Subsection 77-40-105~~[(5)](6)~~, the petitioner is not illegally using controlled substances and is
325 successfully managing any substance addiction; and

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

327 ~~§→ [(9) (8) ←§~~ A court may not expunge a conviction of an offense for which a certificate
327a of

328 eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

329 Section 7. Section 77-40-108 is amended to read:

330 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**

331 **Administrative proceedings -- Bureau requirements.**

332 (1) (a) A person who receives an order of expungement under this chapter or Section
333 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected
334 criminal justice agencies and officials including the court, arresting agency, booking agency,
335 prosecuting agency, Department of Corrections, and the bureau.

336 (b) A person who receives an order of expungement under Section 77-27-5.1, shall pay
337 a processing fee to the bureau, established in accordance with the process in Section 63J-1-504,

338 before the bureau's record may be expunged.

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

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

345 (4) An agency receiving an expungement order shall expunge the petitioner's
 346 identifying information contained in records in its possession relating to the incident for which
 347 expungement is ordered.

348 (5) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2),
 349 a government agency or official may not divulge information or records which have been
 350 expunged regarding the petitioner contained in a record of arrest, investigation, detention, or
 351 conviction after receiving an expungement order.

352 (6) (a) An order of expungement may not restrict an agency's use or dissemination of
 353 records in its ordinary course of business until the agency has received a copy of the order.

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

356 (7) An order of expungement may not:

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

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

362 (c) remove any evidence relating to the petitioner including records of arrest, which the
 363 administrative body has used or may use in these proceedings[-]; or

364 (d) prevent ~~§~~ → **[the Driver License Division]** **an agency** ← ~~§~~ from maintaining, sharing, or
 364a distributing any
 365 record required by law.

366 ~~§~~ → **[(8) Notwithstanding any other provision of the Utah Code, any agency that maintains**
 367 **an administrative record relating to an incident for which an order of expungement was issued**
 368 **may file with the court an objection to an order of expungement if:** ☉

369 ~~☛~~ ~~(a) the agency files the objection to the order of expungement within 60 days of the~~
 370 ~~agency receiving the order of expungement;~~
 371 ~~(b) at the time the petition for expungement was filed with the court, the agency did not~~
 372 ~~receive a copy of the petition for expungement that resulted in the issuance of the order of~~
 373 ~~expungement; and~~
 374 ~~(c) enforcement of the order of expungement would adversely interfere with the~~
 375 ~~agency's ability to perform its regular duties in relation to the incident for which the order of~~
 376 ~~expungement was issued.~~
 377 ~~(9) A court shall vacate an order of expungement if the court determines that an~~
 378 ~~agency's objection meets the requirements set out in Subsection (8).] ←§~~

379 Section 8. Section 77-40-109 is amended to read:

380 **77-40-109. Retention and release of expunged records -- Agencies.**

381 (1) The bureau shall keep, index, and maintain all expunged records of arrests and
 382 convictions.

383 (2) (a) Employees of the bureau may not divulge any information contained in its index
 384 to any person or agency without a court order unless specifically authorized by statute.

385 (b) The following organizations may receive information contained in expunged
 386 records upon specific request:

387 (i) the Board of Pardons and Parole;

388 (ii) Peace Officer Standards and Training;

389 (iii) federal authorities, [~~unless prohibited~~] only as required by federal law;

390 (iv) the Department of Commerce;

391 (v) the Department of Insurance;

392 (vi) the State Board of Education; and

393 (vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating
 394 applicants for judicial office.

395 (c) A person or agency authorized by this Subsection (2) to view expunged records
 396 may not reveal or release any information obtained from the expunged records to anyone
 397 outside the court order or specific request, including distribution on a public website.

398 (3) The bureau may also use the information in its index as provided in Section

399 [53-5-704](#).

400 (4) If, after obtaining an expungement, the petitioner is charged with a felony, the state
401 may petition the court to open the expunged records upon a showing of good cause.

402 (5) (a) For judicial sentencing, a court may order any records expunged under this
403 chapter [~~or Section 77-27-5.1~~] to be opened and admitted into evidence.

404 (b) The records are confidential and are available for inspection only by the court,
405 parties, counsel for the parties, and any other person who is authorized by the court to inspect
406 them.

407 (c) At the end of the action or proceeding, the court shall order the records expunged
408 again.

409 (d) Any person authorized by this Subsection (5) to view expunged records may not
410 reveal or release any information obtained from the expunged records to anyone outside the
411 court.

412 (6) Records released under this chapter are classified as protected under Section
413 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to
414 Records.

415 Section 9. Section 77-40-112 is amended to read:

416 **77-40-112. Penalty.**

417 Any person ~~§~~ **→ authorized to view expunged records pursuant to Section 77-40-109 ←** ~~§~~
417a who [~~willfully violates any prohibition in this chapter~~] knowingly or
418 intentionally discloses any identifying information from any record of conviction that has been
419 pardoned or expunged, unless allowed by law, is guilty of a class A misdemeanor [~~unless the~~
420 ~~prohibition specifically indicates a different penalty~~].

Legislative Review Note
Office of Legislative Research and General Counsel