

Representative Andrew Stoddard proposes the following substitute bill:

EXPUNGEMENT MODIFICATIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Expungement Act regarding domestic violence offenses.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ limits an individual's eligibility for expungement of a domestic violence offense;

and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-40-102, as last amended by Laws of Utah 2017, Chapter 356

77-40-104, as last amended by Laws of Utah 2018, Chapter 266

77-40-104.1, as enacted by Laws of Utah 2018, Chapter 278



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

Section 1. 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.

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

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

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

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

(6) "Department" means the Department of Public Safety established in Section [53-1-103](#).

(7) "Domestic violence offense" means the same as that term is defined in Section [77-36-1](#).

~~[(7)]~~ (8) "Drug possession offense" means an offense under:

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

(b) Subsection [58-37a-5\(1\)](#), use or possession of drug paraphernalia;

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

(d) any local ordinance which is substantially similar to any of the offenses described

57 in this Subsection [~~(7)~~] (8).

58 [~~(8)~~] (9) "Expunge" means to seal or otherwise restrict access to the petitioner's record
59 held by an agency when the record includes a criminal investigation, detention, arrest, or
60 conviction.

61 [~~(9)~~] (10) "Jurisdiction" means a state, district, province, political subdivision, territory,
62 or possession of the United States or any foreign country.

63 [~~(10)~~] (11) "Minor regulatory offense" means any class B or C misdemeanor offense,
64 as well as any local ordinance, except:

- 65 (a) any drug possession offense;
- 66 (b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 67 (c) Sections 73-18-13 through 73-18-13.6;
- 68 (d) those defined in Title 76, Utah Criminal Code; or
- 69 (e) any local ordinance that is substantially similar to those offenses listed in
70 Subsections [~~(10)~~] (11)(a) through (d).

71 [~~(11)~~] (12) "Petitioner" means a person seeking expungement under this chapter.

72 [~~(12)~~] (13) (a) "Traffic offense" means:

73 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,
74 Chapter 6a, Traffic Code;

- 75 (ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;
- 76 (iii) Title 73, Chapter 18, State Boating Act; and
- 77 (iv) all local ordinances that are substantially similar to those offenses.

78 (b) "Traffic offense" does not mean:

- 79 (i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 80 (ii) Sections 73-18-13 through 73-18-13.6; or
- 81 (iii) any local ordinance that is substantially similar to the offenses listed in

82 Subsections [~~(12)~~] (13)(b)(i) and (ii).

83 Section 2. Section 77-40-104 is amended to read:

84 **77-40-104. Eligibility for expungement of records of arrest, investigation, and**
85 **detention -- Requirements.**

86 (1) [~~A person~~] Except as described in Subsection (3), an individual who is arrested or
87 formally charged with an offense may apply to the bureau for a certificate of eligibility to

88 expunge the records of arrest, investigation, and detention that may have been made in the case,
89 subject to the following conditions:

90 (a) at least 30 days have passed since the day of the arrest for which a certificate of
91 eligibility is sought;

92 (b) there are no criminal proceedings pending against the petitioner; and

93 (c) one of the following occurs:

94 (i) charges are screened by the investigating law enforcement agency and the
95 prosecutor makes a final determination that no charges will be filed in the case;

96 (ii) the entire case is dismissed with prejudice;

97 (iii) the entire case is dismissed without prejudice or without condition and:

98 (A) the prosecutor consents in writing to the issuance of a certificate of eligibility; or

99 (B) at least 180 days have passed since the day on which the case is dismissed;

100 (iv) the ~~[person]~~ individual is acquitted at trial on all of the charges contained in the
101 case; or

102 (v) the statute of limitations expires on all of the charges contained in the case.

103 (2) Notwithstanding Subsection (1)(a), the bureau shall issue a certificate of eligibility
104 on an expedited basis to a petitioner seeking expungement under Subsection (1)(c)(iv).

105 (3) An individual formally charged with a domestic violence offense may not apply to
106 the bureau as described in Subsection (1) before the day on which the charge no longer may be
107 used for enhancement purposes under Section [77-36-1.1](#).

108 Section 3. Section **77-40-104.1** is amended to read:

109 **77-40-104.1. Eligibility for removing the link between personal identifying**
110 **information and court case dismissed.**

111 (1) As used in this section~~[(a) "Domestic violence offense" means the same as that~~
112 ~~term is defined in Section [77-36-1](#). (b) "Personal~~, "personal identifying information" means:

113 [(i)] (a) a current name, former name, nickname, or alias; and

114 [(i)] (b) date of birth.

115 (2) A person whose criminal case is dismissed may move the court for an order to
116 remove the link between the person's personal identifying information from the dismissed case
117 in any publicly searchable database of the Utah state courts and the court shall grant that relief
118 if:

- 119 (a) 30 days have passed from the day on which the case is dismissed;
- 120 (b) no appeal is filed for the dismissed case within the 30-day period described in
- 121 Subsection (2)(a); and
- 122 (c) no charge in the case was a domestic violence offense.
- 123 (3) Removing the link to personal identifying information of a court record under
- 124 Subsection (2) does not affect a prosecuting, arresting, or other agency's records.
- 125 (4) A case history, unless expunged under this chapter, remains public and accessible
- 126 through a search by case number.