

HB0111S02 compared with HB0111S01

~~deleted text~~ shows text that was in HB0111S01 but was deleted in HB0111S02.

Inserted text shows text that was not in HB0111S01 but was inserted into HB0111S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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;
- ▶ amends eligibility for removing the link between personal identifying information and court case dismissed;
- ▶ amends eligibility for expungement of conviction for a domestic violence offense;
- and
- ▶ makes technical and conforming changes.

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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

77-40-105, as last amended by Laws of Utah 2018, Chapter 266

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

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

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

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

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

(a) any drug possession offense;

(b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(c) Sections 73-18-13 through 73-18-13.6;

(d) those defined in Title 76, Utah Criminal Code; or

(e) any local ordinance that is substantially similar to those offenses listed in Subsections ~~[(10)]~~ (11)(a) through (d).

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

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

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

(ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;

(iii) Title 73, Chapter 18, State Boating Act; and

(iv) all local ordinances that are substantially similar to those offenses.

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(b) "Traffic offense" does not mean:

(i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(ii) Sections 73-18-13 through 73-18-13.6; or

(iii) any local ordinance that is substantially similar to the offenses listed in

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

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

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

(1) ~~[A person]~~ Except as described in Subsection (3), an individual who is arrested or formally charged with an offense may apply to the bureau for a certificate of eligibility to expunge the records of arrest, investigation, and detention that may have been made in the case, subject to the following conditions:

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

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

(c) one of the following occurs:

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

(ii) the entire case is dismissed with prejudice;

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

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

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

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

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

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

(3) (a) An individual formally charged with a domestic violence offense that is dismissed with prejudice as a result of a successfully completed plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, may not apply to the bureau as described in Subsection (1) before five years after the day on which the ~~charge no longer may be used for~~

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enhancement purposes} individual entered the plea in abeyance agreement.

(b) Subsection (3)(a) does not affect an individual's eligibility to remove the link between personal identifying information and a dismissed court case under Section ~~77-36-1~~ 77-40-104.1.

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

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

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

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

~~[(ii)]~~ (b) date of birth.

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

(a) 30 days have passed from the day on which the case is dismissed; and

(b) no appeal is filed for the dismissed case within the 30-day period described in Subsection (2)(a) ~~[, and]~~.

~~[(c) no charge in the case was a domestic violence offense.]~~

(3) Removing the link to personal identifying information of a court record under Subsection (2) does not affect a prosecuting, arresting, or other agency's records.

(4) A case history, unless expunged under this chapter, remains public and accessible through a search by case number.

Section 4. Section 77-40-105 is amended to read:

77-40-105. Eligibility for expungement of conviction -- Requirements.

(1) A person convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.

(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

(a) the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

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(iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) felony automobile homicide;

(v) a felony violation of Subsection 41-6a-501(2);

(vi) a registerable sex offense as defined in Subsection 77-41-102(17); or

(vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);

(b) a criminal proceeding is pending against the petitioner; or

(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.

(3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) all fines and interest ordered by the court related to the conviction for which expungement is sought have been paid in full;

(b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) The bureau may not count pending or previous infractions, traffic offenses, or minor regulatory offenses, or fines or fees arising from the infractions, traffic offenses, or minor regulatory offenses, when determining expungement eligibility.

(5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following, except as provided

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in Subsection (8):

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.

(6) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or

(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

(7) If the petitioner's criminal history contains convictions for both a drug possession offense and a non drug possession offense arising from the same criminal episode, that criminal episode shall be counted as provided in Subsection (5) if any non drug possession offense in that episode:

(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (3) than any drug possession offense in that episode.

(8) If at least 10 years have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions, then each eligibility limit defined in Subsection (5) shall be increased by one.

(9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes pursuant to Section 77-27-5.1.

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(10) An individual convicted of a domestic violence offense may not apply to the bureau as described in Subsection (1) before the day on which the charge no longer may be used for enhancement purposes under Section 77-36-1.1.