

EXPUNGEMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill amends provisions related to the expungement of pleas in abeyance.

Highlighted Provisions:

This bill:

- ▶ requires a prosecutor to notify a victim of an expungement request for a charge dismissed in accordance with a plea in abeyance agreement;
- ▶ requires a court to make specific findings when granting an expungement for a plea in abeyance; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

77-38-14 as last amended by Laws of Utah 2010, Chapter 283

77-40-107 (Effective 05/01/20), as last amended by Laws of Utah 2019, Chapter 448

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

Section 1. Section **77-38-14** is amended to read:

77-38-14. Notice of expungement petition -- Victim's right to object.

29 (1) The Department of Corrections or the Juvenile Probation Department shall prepare
30 a document explaining the right of a victim or a victim's representative to object to a petition
31 for expungement under Section 77-40-107 or 78A-6-1105 and the procedures for obtaining
32 notice of any such petition. The department or division shall also provide each trial court a
33 copy of the document which has jurisdiction over delinquencies or criminal offenses subject to
34 expungement.

35 (2) The prosecuting attorney in any case leading to a conviction [~~or~~], a charge
36 dismissed in accordance with a plea in abeyance agreement, or an adjudication subject to
37 expungement shall provide a copy of the document to each person who would be entitled to
38 notice of a petition for expungement under Sections 77-40-107 and 78A-6-1105.

39 Section 2. Section 77-40-107 (Effective 05/01/20) is amended to read:

40 **77-40-107 (Effective 05/01/20). Petition for expungement -- Prosecutorial**
41 **responsibility -- Hearing -- Standard of proof -- Exception.**

42 (1) (a) The petitioner shall file a petition for expungement and the certificate of
43 eligibility in the court specified in Section 77-40-103 and deliver a copy of the petition and
44 certificate to the prosecuting agency.

45 (b) If the petitioner files the certificate of eligibility electronically, the petitioner or the
46 petitioner's attorney shall keep the original certificate until the proceedings are concluded.

47 (c) If the petitioner files the original certificate of eligibility with the petition, the clerk
48 of the court shall scan and return the original certificate to the petitioner or the petitioner's
49 attorney, who shall keep the original certificate until the proceedings are concluded.

50 (2) (a) Upon receipt of a petition for expungement of a conviction or a charge
51 dismissed in accordance with a plea in abeyance, the prosecuting attorney shall provide notice
52 of the expungement request by first-class mail to the victim at the most recent address of record
53 on file.

54 (b) The notice shall:

55 (i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable

56 to the petition;

57 (ii) state that the victim has a right to object to the expungement; and

58 (iii) provide instructions for registering an objection with the court.

59 (3) The prosecuting attorney and the victim, if applicable, may respond to the petition
60 by filing a recommendation or objection with the court within 35 days after receipt of the
61 petition.

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

64 (b) If requested, the response prepared by the Division of Adult Probation and Parole
65 shall include:

66 (i) the reasons probation was terminated; and

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

69 (c) The Division of Adult Probation and Parole shall provide a copy of the response to
70 the petitioner and the prosecuting attorney.

71 (5) The petitioner may respond in writing to any objections filed by the prosecutor or
72 the victim and the response prepared by the Division of Adult Probation and Parole within 14
73 days after receipt.

74 (6) (a) (i) If the court receives an objection concerning the petition from any party, the
75 court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the
76 date set for the hearing.

77 (ii) The prosecuting attorney shall notify the victim of the date set for the hearing.

78 (b) The petitioner, the prosecuting attorney, the victim, and any other individual who
79 has relevant information about the petitioner may testify at the hearing.

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

82 (7) If no objection is received within 60 days from the date the petition for

83 expungement is filed with the court, the expungement may be granted without a hearing.

84 (8) The court shall issue an order of expungement if the court finds, by clear and
85 convincing evidence, that:

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

87 (b) the statutory requirements have been met;

88 (c) if the petitioner seeks expungement after a case is dismissed without prejudice or
89 without condition, the prosecutor provided written consent and has not filed and does not
90 intend to refile related charges;

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

94 (e) if an objection is received, the petition for expungement is for a charge dismissed in
95 accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used
96 for enhancement, there is good cause for the court to grant the expungement; and

97 ~~[(e)]~~ (f) it is not contrary to the interests of the public to grant the expungement.

98 (9) (a) If the court denies a petition described in Subsection (8)(c) because the
99 prosecutor intends to refile charges, the individual seeking expungement may again apply for a
100 certificate of eligibility if charges are not refiled within 180 days of the day on which the court
101 denies the petition.

102 (b) A prosecutor who opposes an expungement of a case dismissed without prejudice
103 or without condition shall have a good faith basis for the intention to refile the case.

104 (c) A court shall consider the number of times that good faith basis of intention to
105 refile by the prosecutor is presented to the court in making the court's determination to grant
106 the petition for expungement described in Subsection (8)(c).

107 (10) If the court grants a petition described in Subsection (8)(e), the court shall make
108 the court's findings in a written order.

109 ~~[(10)]~~ (11) A court may not expunge a conviction of an offense for which a certificate

110 of eligibility may not be or should not have been issued under Section [77-40-104](#) or [77-40-105](#).

111 Section 3. **Effective date.**

112 If approved by two-thirds of all the members elected to each house, this bill takes effect

113 on May 1, 2020.