

## HB0083S01 compared with HB0083

~~text~~ shows text that was in HB0083 but was deleted in HB0083S01.

Inserted text shows text that was not in HB0083 but was inserted into HB0083S01.

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Representative Andrew Stoddard proposes the following substitute bill:

### EXPUNGEMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Andrew Stoddard**

Senate Sponsor: \_\_\_\_\_

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#### 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:

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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

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*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.**

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

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

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

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

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

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

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

(2) (a) Upon receipt of a petition for expungement of a conviction or a charge

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dismissed in accordance with a plea in abeyance, the prosecuting attorney shall provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.

(b) The notice shall:

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

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

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

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

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

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

(i) the reasons probation was terminated; and

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

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

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

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

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

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

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

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

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

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

(b) the statutory requirements have been met;

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

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

~~(e)~~ ~~and~~

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

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

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

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

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

(10) ~~If the petition for expungement is for a plea in abeyance of an offense eligible for enhancement, and~~ If the court grants ~~the~~ a petition described in Subsection (8)(e), the court shall make the court's findings in a written order ~~explaining why the court granted the petition~~.

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

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

Section 3. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect on May 1, 2020.