

EXPUNGEMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

General Description:

This bill makes specific changes regarding the expungement of information in state agency files and creates a statement of legislative intent with regard to expungement.

Highlighted Provisions:

This bill:

- ▶ creates a new definition of "expunge";
- ▶ requires that an administrative agency remove information regarding expunged convictions from public databases;
- ▶ creates a statement of legislative intent for expungement; and
- ▶ provides a stated purpose for expungement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-40-101, as enacted by Laws of Utah 2010, Chapter 283

77-40-102, as last amended by Laws of Utah 2014, Chapter 199



28 77-40-107, as last amended by Laws of Utah 2014, Chapter 263

29 77-40-108, as last amended by Laws of Utah 2013, Chapters 20 and 41



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

32 Section 1. Section **77-40-101** is amended to read:

33 **77-40-101. Title -- Purpose -- Legislative intent.**

34 (1) This chapter is known as the "Utah Expungement Act."

35 (2) The Legislature recognizes that an individual who has committed a criminal act and
36 paid the individual's debt to society should, under certain circumstances, be able to move
37 forward and rebuild the individual's life without being hindered by the past.

38 (3) The Legislature, therefore, finds and declares the following:

39 (a) The inability to obtain an expungement can prevent certain individuals from
40 obtaining gainful employment, however, the need for employment should be balanced
41 appropriately against the desire for public safety.

42 (b) It is the intent of the Legislature that allowing for the expungement of certain
43 criminal offenses will provide an opportunity to:

44 (i) break the cycle of criminal recidivism;

45 (ii) increase public safety;

46 (iii) assist the growing population of offenders reentering the community to establish a
47 self-sustaining life through opportunities in employment; and

48 (iv) restore certain civil liberties to an offender to allow the offender to fully participate
49 in society.

50 (4) This chapter further requires that an agency remove or redact certain identifying
51 information from the agency's public records and maintain that information only for internal
52 record keeping purposes to preserve the integrity of the agency's files.

53 Section 2. Section **77-40-102** is amended to read:

54 **77-40-102. Definitions.**

55 As used in this chapter:

56 [~~(1) "Administrative finding" means a decision upon a question of fact reached by an~~
57 ~~administrative agency following an administrative hearing or other procedure satisfying the~~
58 ~~requirements of due process.]~~

59 (1) "Administrative record" means a record held by an agency, other than a criminal
60 record, that is related to the incident giving rise to an investigation, arrest, detention, or
61 conviction for which an expungement has been ordered.

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

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

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

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

73 (6) "Department" means the Department of Public Safety established in Section
74 [53-1-103](#).

75 (7) "Drug possession offense" means an offense under:

76 (a) Subsection [58-37-8\(2\)](#), except any offense under Subsection [58-37-8\(2\)\(b\)\(i\)](#),
77 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection
78 [58-37-8\(2\)\(e\)](#), violation in a correctional facility or Subsection [58-37-8\(2\)\(g\)](#), driving with a
79 controlled substance illegally in the person's body and negligently causing serious bodily injury
80 or death of another;

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

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

83 (d) any local ordinance which is substantially similar to any of the offenses described
84 in this Subsection (7).

85 (8) "Expunge" means to [~~seal or otherwise restrict access to the~~] completely remove
86 from an agency's records the petitioner's criminal record [~~held by an agency~~] when the record
87 includes any reference to a criminal investigation, detention, arrest, or conviction.

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

90 (10) "Petitioner" means a person seeking expungement under this chapter.

91 (11) "Seal" means to restrict public access to a petitioner's administrative record or the
92 relevant portion of the petitioner's administrative record held by an agency.

93 [~~(11)~~] (12) "Traffic offense" means all offenses in the following parts and all local
94 ordinances that are substantially similar to the offenses:

95 (a) Title 41, Chapter 6a, Part 3, Traffic-Control Devices;

96 (b) Title 41, Chapter 6a, Part 6, Speed Restrictions;

97 (c) Title 41, Chapter 6a, Part 7, Driving on Right Side of Highway and Passing;

98 (d) Title 41, Chapter 6a, Part 8, Turning and Signaling for Turns;

99 (e) Title 41, Chapter 6a, Part 9, Right-of-Way;

100 (f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;

101 (g) Title 41, Chapter 6a, Part 11, Bicycles and Other Vehicles, Regulation of
102 Operation;

103 (h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and
104 Safety Zones;

105 (i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;

106 (j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;

107 (k) Title 41, Chapter 6a, Part 15, Special Vehicles;

108 (l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;

109 (m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and

110 (n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.

111 Section 3. Section **77-40-107** is amended to read:

112 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
113 **Standard of proof -- Exception.**

114 (1) The petitioner shall file a petition for expungement and the certificate of eligibility
115 in the court specified in Section **77-40-103** and deliver a copy of the petition and certificate to
116 the prosecuting agency and any agency, if applicable, that maintains an administrative record
117 relating to the incident for which expungement is sought. If the certificate is filed
118 electronically, the petitioner or the petitioner's attorney shall keep the original certificate until
119 the proceedings are concluded. If the original certificate is filed with the petition, the clerk of
120 the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it

121 until the proceedings are concluded.

122 (2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting
123 attorney shall provide notice of the expungement request by first-class mail to the victim at the
124 most recent address of record on file.

125 (b) The notice shall include a copy of the petition, certificate of eligibility, statutes and
126 rules applicable to the petition, state that the victim has a right to object to the expungement,
127 and provide instructions for registering an objection with the court.

128 (3) The prosecuting attorney [~~and~~], the victim, and any agency that maintains an
129 administrative record relating to the incident for which expungement is sought, if applicable,
130 may respond to the petition by filing a recommendation or objection with the court within 30
131 days after receipt of the petition.

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

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

135 (i) the reasons probation was terminated; and

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

138 (c) A copy of the response shall be provided to the petitioner and the prosecuting
139 attorney.

140 (5) The petitioner may respond in writing to any objections filed by the prosecutor or
141 the victim and the response prepared by Adult Probation and Parole within 15 days after
142 receipt.

143 (6) (a) If the court receives an objection concerning the petition from any party, the
144 court shall set a date for a hearing and notify the petitioner [~~and~~], the prosecuting attorney, and
145 any agency that maintains an administrative record relating to the incident for which
146 expungement is sought of the date set for the hearing. The prosecuting attorney shall notify the
147 victim of the date set for the hearing.

148 (b) The petitioner, the prosecuting attorney, the victim, any agency that maintains an
149 administrative record relating to the incident for which expungement is sought, and any other
150 person who has relevant information about the petitioner may testify at the hearing.

151 (c) The court shall review the petition, the certificate of eligibility, and any written

152 responses submitted regarding the petition.

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

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

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

158 (b) the statutory requirements have been met;

159 (c) if the petitioner seeks expungement of drug possession offenses allowed under
160 Subsection 77-40-105(5), the petitioner is not illegally using controlled substances and is
161 successfully managing any substance addiction; and

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

163 (9) A court may not expunge a conviction of an offense for which a certificate of
164 eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

165 Section 4. Section 77-40-108 is amended to read:

166 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**
167 **Administrative proceedings -- Bureau requirements -- Agency action.**

168 (1) (a) A person who receives an order of expungement under this chapter or Section
169 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected
170 [criminal justice] agencies and officials including the court, arresting agency, booking agency,
171 prosecuting agency, Department of Corrections, [and] the bureau, and any agency that
172 maintains an administrative record relating to the incident for which expungement is ordered.

173 (b) A person who receives an order of expungement under Section 77-27-5.1, shall pay
174 a processing fee to the bureau, established in accordance with the process in Section 63J-1-504,
175 before the bureau's record may be expunged.

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

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

182 (4) (a) ~~[An agency]~~ Within 30 days of receiving an expungement order an agency shall

183 expunge all qualifying criminal records and seal the petitioner's [identifying information
184 contained in] administrative records in its possession or under its control relating to the
185 incident or conviction for which expungement is ordered.

186 (b) The agency may retain the administrative record internally in its files, however, the
187 record may not be made available to the public.

188 (c) Neither the timing nor manner of the agency's acquisition or creation of a related
189 administrative record may affect the agency's duty to seal the records under this section.

190 (5) A record sealed under this chapter and retained by the agency under Subsection
191 (4)(b) may be:

192 (a) used by the agency in any manner consistent with the agency's procedures, if the
193 record is not made available to the public;

194 (b) shared by the agency with law enforcement or a court;

195 (c) shared by the agency with another agency, if the receiving agency agrees to not
196 make the record available to the public; and

197 (d) distributed by the agency as directed by court order.

198 (6) The agency shall insure that any record subject to the provisions of this section is
199 removed from any state-controlled database available to the public.

200 ~~[(5)]~~ (7) Unless ordered by a court to do so, or in accordance with Subsection
201 77-40-109(2), a government agency or official may not divulge information or records which
202 have been expunged or sealed regarding the petitioner contained in a record of arrest,
203 investigation, detention, or conviction after receiving an expungement order.

204 ~~[(6)]~~ (8) (a) An order of expungement may not restrict an agency's use or dissemination
205 of records in its ordinary course of business until the agency has received a copy of the order.

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

208 ~~[(7)]~~ (9) An order of expungement may not:

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

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

214 (c) remove any evidence relating to the petitioner including records of arrest, which the
215 administrative body has used or may use in these proceedings.

Legislative Review Note
Office of Legislative Research and General Counsel