

**Representative Andrew Stoddard** proposes the following substitute bill:

**EXPUNGEMENT MODIFICATIONS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Andrew Stoddard**

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

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**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.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



26 77-40-102, as last amended by Laws of Utah 2017, Chapter 356

27 77-40-104, as last amended by Laws of Utah 2018, Chapter 266

28 77-40-104.1, as enacted by Laws of Utah 2018, Chapter 278

29 77-40-105, as last amended by Laws of Utah 2018, Chapter 266



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

32 Section 1. Section 77-40-102 is amended to read:

33 **77-40-102. Definitions.**

34 As used in this chapter:

35 (1) "Administrative finding" means a decision upon a question of fact reached by an  
36 administrative agency following an administrative hearing or other procedure satisfying the  
37 requirements of due process.

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

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

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

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

48 (6) "Department" means the Department of Public Safety established in Section  
49 53-1-103.

50 (7) "Domestic violence offense" means the same as that term is defined in Section  
51 77-36-1.

52 [~~(7)~~] (8) "Drug possession offense" means an offense under:

53 (a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i),  
54 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection  
55 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a  
56 controlled substance illegally in the person's body and negligently causing serious bodily injury

57 or death of another;

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

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

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

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

62 [~~(8)~~] (9) "Expunge" means to seal or otherwise restrict access to the petitioner's record

63 held by an agency when the record includes a criminal investigation, detention, arrest, or

64 conviction.

65 [~~(9)~~] (10) "Jurisdiction" means a state, district, province, political subdivision, territory,

66 or possession of the United States or any foreign country.

67 [~~(10)~~] (11) "Minor regulatory offense" means any class B or C misdemeanor offense,

68 as well as any local ordinance, except:

69 (a) any drug possession offense;

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

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

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

73 (e) any local ordinance that is substantially similar to those offenses listed in

74 Subsections [~~(10)~~] (11)(a) through (d).

75 [~~(11)~~] (12) "Petitioner" means a person seeking expungement under this chapter.

76 [~~(12)~~] (13) (a) "Traffic offense" means:

77 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,

78 Chapter 6a, Traffic Code;

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

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

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

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

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

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

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

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

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

88           **77-40-104. Eligibility for expungement of records of arrest, investigation, and**  
89 **detention -- Requirements.**

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

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

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

97           (c) one of the following occurs:

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

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

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

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

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

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

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

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

109           (3) (a) An individual formally charged with a domestic violence offense that is  
110 dismissed with prejudice as a result of a successfully completed plea in abeyance agreement  
111 under Title 77, Chapter 2a, Pleas in Abeyance, may not apply to the bureau as described in  
112 Subsection (1) before five years after the day on which the individual entered the plea in  
113 abeyance agreement.

114           (b) Subsection (3)(a) does not affect an individual's eligibility to remove the link  
115 between personal identifying information and a dismissed court case under Section  
116 77-40-104.1.

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

118           **77-40-104.1. Eligibility for removing the link between personal identifying**

119 **information and court case dismissed.**

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

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

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

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

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

129 (b) no appeal is filed for the dismissed case within the 30-day period described in

130 Subsection (2)(a)[~~and~~].

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

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

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

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

137 **77-40-105. Eligibility for expungement of conviction -- Requirements.**

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

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

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

142 (i) a capital felony;

143 (ii) a first degree felony;

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

145 (iv) felony automobile homicide;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

172 (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner  
173 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,  
174 including previously expunged convictions, contains any of the following, except as provided  
175 in Subsection (8):

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

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

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

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

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

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

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

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

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

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

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

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

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