

EXPUNGEMENT CHANGES

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to expungement.

Highlighted Provisions:

This bill:

- ▶ prohibits the Bureau of Criminal Identification from considering a petitioner's clean slate eligible case that has been automatically expunged when determining whether to issue a certificate of eligibility for expungement;
- ▶ provides that an acquittal due to a defendant being found not guilty by reason of insanity does not qualify for automatic expungement;
- ▶ makes consistent the number of days that a petitioner has to respond to a response from the Division of Adult Probation and Parole; 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:

53-3-414, as last amended by Laws of Utah 2013, Chapter 411

77-40-103 (Effective 05/01/20), as last amended by Laws of Utah 2019, Chapter 448



28 [77-40-105](#) (Effective 05/01/20), as last amended by Laws of Utah 2019, Chapter 448

29 [77-40-114](#) (Effective 05/01/20), as enacted by Laws of Utah 2019, Chapter 448

30

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

32 Section 1. Section **53-3-414** is amended to read:

33 **53-3-414. CDL disqualification or suspension -- Grounds and duration --**

34 **Procedure.**

35 (1) (a) [~~A person~~] An individual who holds or is required to hold a CDL is disqualified
36 from driving a commercial motor vehicle for a period of not less than one year effective seven
37 days from the date of notice to the driver if convicted of a first offense of:

38 (i) driving a motor vehicle while under the influence of alcohol, drugs, a controlled
39 substance, or more than one of these;

40 (ii) driving a commercial motor vehicle while the concentration of alcohol in the
41 person's blood, breath, or urine is .04 grams or more;

42 (iii) leaving the scene of an accident involving a motor vehicle the person was driving;

43 (iv) failing to provide reasonable assistance or identification when involved in an
44 accident resulting in:

45 (A) death in accordance with Section [41-6a-401.5](#); or

46 (B) personal injury in accordance with Section [41-6a-401.3](#);

47 (v) using a motor vehicle in the commission of a felony;

48 (vi) refusal to submit to a test to determine the concentration of alcohol in the person's
49 blood, breath, or urine;

50 (vii) driving a commercial motor vehicle while the person's commercial driver license
51 is disqualified in accordance with the provisions of this section for violating an offense

52 described in this section; or

53 (viii) operating a commercial motor vehicle in a negligent manner causing the death of
54 another including the offenses of automobile homicide under Section [76-5-207](#), manslaughter
55 under Section [76-5-205](#), or negligent homicide under Section [76-5-206](#).

56 (b) The division shall subtract from any disqualification period under Subsection

57 (1)(a)(i) the number of days for which a license was previously disqualified under Subsection

58 (1)(a)(ii) or (14) if the previous disqualification was based on the same occurrence upon which

59 the record of conviction is based.

60 (2) If any of the violations under Subsection (1) occur while the driver is transporting a
61 hazardous material required to be placarded, the driver is disqualified for not less than three
62 years.

63 (3) (a) Except as provided under Subsection (4), a driver of a motor vehicle who holds
64 or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if
65 convicted of or administrative action is taken for two or more of any of the offenses under
66 Subsection (1), (5), or (14) arising from two or more separate incidents.

67 (b) Subsection (3)(a) applies only to those offenses committed after July 1, 1989.

68 (4) (a) Any driver disqualified for life from driving a commercial motor vehicle under
69 this section may apply to the division for reinstatement of the driver's CDL if the driver:

70 (i) has both voluntarily enrolled in and successfully completed an appropriate
71 rehabilitation program that:

72 (A) meets the standards of the division; and

73 (B) complies with 49 C.F.R. Sec. 383.51;

74 (ii) has served a minimum disqualification period of 10 years; and

75 (iii) has fully met the standards for reinstatement of commercial motor vehicle driving
76 privileges established by rule of the division.

77 (b) If a reinstated driver is subsequently convicted of another disqualifying offense
78 under this section, the driver is permanently disqualified for life and is ineligible to again apply
79 for a reduction of the lifetime disqualification.

80 (5) A driver of a motor vehicle who holds or is required to hold a CDL is disqualified
81 for life from driving a commercial motor vehicle if the driver uses a motor vehicle in the
82 commission of any felony involving the manufacturing, distributing, or dispensing of a
83 controlled substance, or possession with intent to manufacture, distribute, or dispense a
84 controlled substance and is ineligible to apply for a reduction of the lifetime disqualification
85 under Subsection (4).

86 (6) (a) Subject to Subsection (6)(b), a driver of a commercial motor vehicle who holds
87 or is required to hold a CDL is disqualified for not less than:

88 (i) 60 days from driving a commercial motor vehicle if the driver is convicted of two
89 serious traffic violations; and

90 (ii) 120 days if the driver is convicted of three or more serious traffic violations.

91 (b) The disqualifications under Subsection (6)(a) are effective only if the serious traffic
92 violations:

93 (i) occur within three years of each other;

94 (ii) arise from separate incidents; and

95 (iii) involve the use or operation of a commercial motor vehicle.

96 (c) If a driver of a commercial motor vehicle who holds or is required to hold a CDL is
97 disqualified from driving a commercial motor vehicle and the division receives notice of a
98 subsequent conviction for a serious traffic violation that results in an additional disqualification
99 period under this Subsection (6), the subsequent disqualification period is effective beginning
100 on the ending date of the current serious traffic violation disqualification period.

101 (7) (a) A driver of a commercial motor vehicle who is convicted of violating an
102 out-of-service order while driving a commercial motor vehicle is disqualified from driving a
103 commercial motor vehicle for a period not less than:

104 (i) 180 days if the driver is convicted of a first violation;

105 (ii) two years if, during any 10 year period, the driver is convicted of two violations of
106 out-of-service orders in separate incidents;

107 (iii) three years but not more than five years if, during any 10 year period, the driver is
108 convicted of three or more violations of out-of-service orders in separate incidents;

109 (iv) 180 days but not more than two years if the driver is convicted of a first violation
110 of an out-of-service order while transporting hazardous materials required to be placarded or
111 while operating a motor vehicle designed to transport 16 or more passengers, including the
112 driver; or

113 (v) three years but not more than five years if, during any 10 year period, the driver is
114 convicted of two or more violations, in separate incidents, of an out-of-service order while
115 transporting hazardous materials required to be placarded or while operating a motor vehicle
116 designed to transport 16 or more passengers, including the driver.

117 (b) A driver of a commercial motor vehicle who is convicted of a first violation of an
118 out-of-service order is subject to a civil penalty of not less than \$2,500.

119 (c) A driver of a commercial motor vehicle who is convicted of a second or subsequent
120 violation of an out-of-service order is subject to a civil penalty of not less than \$5,000.

121 (8) A driver of a commercial motor vehicle who holds or is required to hold a CDL is
122 disqualified for not less than 60 days if the division determines, in its check of the driver's
123 driver license status, application, and record prior to issuing a CDL or at any time after the
124 CDL is issued, that the driver has falsified information required to apply for a CDL in this
125 state.

126 (9) A driver of a commercial motor vehicle who is convicted of violating a
127 railroad-highway grade crossing provision under Section 41-6a-1205, while driving a
128 commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period
129 not less than:

130 (a) 60 days if the driver is convicted of a first violation;

131 (b) 120 days if, during any three-year period, the driver is convicted of a second
132 violation in separate incidents; or

133 (c) one year if, during any three-year period, the driver is convicted of three or more
134 violations in separate incidents.

135 (10) (a) The division shall update its records and notify the CDLIS within 10 days of
136 suspending, revoking, disqualifying, denying, or cancelling a CDL to reflect the action taken.

137 (b) When the division suspends, revokes, cancels, or disqualifies a nonresident CDL,
138 the division shall notify the licensing authority of the issuing state or other jurisdiction and the
139 CDLIS within 10 days after the action is taken.

140 (c) When the division suspends, revokes, cancels, or disqualifies a CDL issued by this
141 state, the division shall notify the CDLIS within 10 days after the action is taken.

142 (11) (a) The division may immediately suspend or disqualify the CDL of a driver
143 without a hearing or receiving a record of the driver's conviction when the division has reason
144 to believe that the:

145 (i) CDL was issued by the division through error or fraud;

146 (ii) applicant provided incorrect or incomplete information to the division;

147 (iii) applicant cheated on any part of a CDL examination;

148 (iv) driver no longer meets the fitness standards required to obtain a CDL; or

149 (v) driver poses an imminent hazard.

150 (b) Suspension of a CDL under this Subsection (11) shall be in accordance with
151 Section 53-3-221.

152 (c) If a hearing is held under Section 53-3-221, the division shall then rescind the
153 suspension order or cancel the CDL.

154 (12) (a) Subject to Subsection (12)(b), a driver of a motor vehicle who holds or is
155 required to hold a CDL is disqualified for not less than:

156 (i) 60 days from driving a commercial motor vehicle if the driver is convicted of two
157 serious traffic violations; and

158 (ii) 120 days if the driver is convicted of three or more serious traffic violations.

159 (b) The disqualifications under Subsection (12)(a) are effective only if the serious
160 traffic violations:

161 (i) occur within three years of each other;

162 (ii) arise from separate incidents; and

163 (iii) result in a denial, suspension, cancellation, or revocation of the non-CDL driving
164 privilege from at least one of the violations.

165 (c) If a driver of a motor vehicle who holds or is required to hold a CDL is disqualified
166 from driving a commercial motor vehicle and the division receives notice of a subsequent
167 conviction for a serious traffic violation that results in an additional disqualification period
168 under this Subsection (12), the subsequent disqualification period is effective beginning on the
169 ending date of the current serious traffic violation disqualification period.

170 (13) (a) Upon receiving a notice that a person has entered into a plea of guilty or no
171 contest to a violation of a disqualifying offense described in this section which plea is held in
172 abeyance pursuant to a plea in abeyance agreement, the division shall disqualify, suspend,
173 cancel, or revoke the person's CDL for the period required under this section for a conviction of
174 that disqualifying offense, even if the charge has been subsequently reduced or dismissed in
175 accordance with the plea in abeyance agreement.

176 (b) The division shall report the plea in abeyance to the CDLIS within 10 days of
177 taking the action under Subsection (13)(a).

178 (c) A plea which is held in abeyance may not be removed from a person's driving
179 record for 10 years from the date of the plea in abeyance agreement, even if the charge is:

180 (i) reduced or dismissed in accordance with the plea in abeyance agreement; or

181 (ii) expunged under ~~[Section 77-40-105]~~ Title 77, Chapter 40, Utah Expungement Act.

182 (14) The division shall disqualify the CDL of a driver for an arrest of a violation of

183 Section 41-6a-502 when administrative action is taken against the operator's driving privilege
184 pursuant to Section 53-3-223 for a period of:

- 185 (a) one year; or
- 186 (b) three years if the violation occurred while transporting hazardous materials.

187 (15) The division may concurrently impose any disqualification periods that arise
188 under this section while a driver is disqualified by the Secretary of the United States
189 Department of Transportation under 49 C.F.R. Sec. 383.52 for posing an imminent hazard.

190 Section 2. Section 77-40-103 (Effective 05/01/20) is amended to read:

191 **77-40-103 (Effective 05/01/20). Petition for expungement procedure overview.**

192 The process for a petition for the expungement of records under this chapter regarding
193 the arrest, investigation, detention, and conviction of a petitioner is as follows:

194 (1) The petitioner shall apply to the bureau for a certificate of eligibility for
195 expungement and pay the application fee established by the department.

196 (2) Once the eligibility process is complete, the bureau shall notify the petitioner.

197 (3) If the petitioner is qualified to receive a certificate of eligibility for expungement,
198 the petitioner shall pay the issuance fee established by the department.

199 (4) (a) The petitioner shall file the certificate of eligibility with a petition for
200 expungement in the court in which the proceedings occurred.

201 (b) If there were no court proceedings, or the court no longer exists, the petitioner may
202 file the petition in the district court where the arrest occurred.

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

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

208 (5) (a) The petitioner shall deliver a copy of the petition and certificate of eligibility to
209 the prosecutorial office that handled the court proceedings.

210 (b) If there were no court proceedings, the petitioner shall deliver the copy of the
211 petition and certificate to the county attorney's office in the jurisdiction where the arrest
212 occurred.

213 (6) If the prosecutor or the victim files an objection to the petition, the court shall set a

214 hearing and notify the prosecutor and the victim of the date set for the hearing.

215 (7) If the court requests a response from the Division of Adult Probation and Parole
216 and a response is received, the petitioner may file a written reply [~~to the response within 15~~
217 ~~days of receipt of the response~~] in accordance with Section 77-40-107.

218 (8) A court may grant an expungement without a hearing if no objection is received.

219 (9) Upon receipt of an order of expungement, the petitioner shall deliver copies to all
220 government agencies in possession of records relating to the expunged matter.

221 Section 3. Section **77-40-105 (Effective 05/01/20)** is amended to read:

222 **77-40-105 (Effective 05/01/20). Requirements to apply for a certificate of**
223 **eligibility to expunge conviction -- Requirements on bureau.**

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

226 (2) An individual is not eligible to receive a certificate of eligibility from the bureau if:

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

228 (i) a capital felony;

229 (ii) a first degree felony;

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

231 (iv) felony automobile homicide;

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

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

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

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

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

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

241 (a) the petitioner has paid in full all fines and interest ordered by the court related to the
242 conviction for which expungement is sought;

243 (b) the petitioner has paid in full all restitution ordered by the court pursuant to Section
244 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6; and

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

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

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

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

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

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

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

258 (4) When determining whether to issue a certificate of eligibility, the bureau may not
259 consider:

260 (a) a petitioner's pending or previous:

261 (i) infraction;

262 (ii) traffic offense;

263 (iii) minor regulatory offense; or

264 (iv) clean slate eligible case that was automatically expunged in accordance with

265 Section [77-40-114](#); or

266 (b) a fine or fee related to an offense described in Subsection (4)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

301 Section 4. Section **77-40-114 (Effective 05/01/20)** is amended to read:

302 **77-40-114 (Effective 05/01/20). Automatic expungement procedure.**

303 (1) (a) Except as provided in Subsection (1)(b) and subject to Section [77-40-116](#), this
304 section governs the process for the automatic expungement of all records in:

305 (i) except as provided in Subsection (2)(d), a case that resulted in an acquittal on all
306 charges;

307 (ii) except as provided in Subsection (3)(d), a case that is dismissed with prejudice; or
308 (iii) a case that is a clean slate eligible case.

309 (b) This section does not govern automatic expungement of a traffic offense.

310 (2) (a) ~~[The]~~ Except as provided in Subsection (2)(d), the process for automatic
311 expungement of records for a case that resulted in an acquittal on all charges is as described in
312 Subsections (2)(b) through (c).

313 (b) If a court determines that the requirements for automatic expungement have been
314 met, a district court or justice court shall:

315 (i) issue, without a petition, an expungement order; and

316 (ii) based on information available, notify the bureau and the prosecuting agency
317 identified in the case of the order of expungement.

318 (c) The bureau, upon receiving notice from the court, shall notify the law enforcement
319 agencies identified in the case of the order of expungement.

320 (d) For purposes of this section, a case that resulted in acquittal on all charges does not
321 include a case that resulted in an acquittal because the individual is found not guilty by reason
322 of insanity.

323 (3) (a) The process for an automatic expungement of a case that is dismissed with
324 prejudice is as described in Subsections (3)(b) through (c).

325 (b) If a court determines that the requirements for automatic expungement have been
326 met, a district court or justice court shall:

327 (i) issue, without a petition, an expungement order; and

328 (ii) based on information available, notify the bureau and the prosecuting agency
329 identified in the case of the order of expungement.

330 (c) The bureau, upon receiving notice from the court, shall notify the law enforcement
331 agencies identified in the case of the order of expungement.

332 (d) For purposes of this Subsection (3), a case that is dismissed with prejudice does not
333 include a case that is dismissed with prejudice as a result of successful completion of a plea in
334 abeyance agreement governed by Subsection 77-2a-3(2)(b).

335 (4) (a) The process for the automatic expungement of a clean slate eligible case is as
336 described in Subsections (4)(b) through (f) and in accordance with any rules made by the
337 Judicial Council as described in Subsection (4)(g).

338 (b) A prosecuting agency shall receive notice on a monthly basis for any case
339 prosecuted by that agency that appears to be a clean slate eligible case.

340 (c) Within 35 days of the day on which the notice described in Subsection (4)(b) is
341 sent, the prosecuting agency shall provide written notice in accordance with any rules made by
342 the Judicial Council if the prosecuting agency objects to an automatic expungement for any of
343 the following reasons:

344 (i) after reviewing the agency record, the prosecuting agency believes that the case does
345 not meet the definition of a clean slate eligible case;

346 (ii) the individual has not paid court-ordered restitution to the victim; or

347 (iii) the prosecuting agency has a reasonable belief, grounded in supporting facts, that
348 an individual with a clean slate eligible case is continuing to engage in criminal activity within
349 or outside of the state.

350 (d) (i) If a prosecuting agency provides written notice of an objection for a reason
351 described in Subsection (4)(c) within 35 days of the day on which the notice described in
352 Subsection (4)(b) is sent, the court may not proceed with automatic expungement.

353 (ii) If 35 days pass from the day on which the notice described in Subsection (4)(b) is
354 sent without the prosecuting agency providing written notice of an objection for a reason
355 described in Subsection (4)(c), the court may proceed with automatic expungement.

356 (e) If a court determines that the requirements for automatic expungement have been
357 met, a district court or justice court shall:

358 (i) issue, without a petition, an expungement order; and

359 (ii) based on information available, notify the bureau and the prosecuting agency
360 identified in the case of the order of expungement.

361 (f) The bureau, upon receiving notice from the court, shall notify the law enforcement
362 agencies identified in the case of the order of expungement.

363 (g) The Judicial Council shall make rules to govern the process for automatic
364 expungement of records for a clean slate eligible case in accordance with this Subsection (4).

365 (5) Nothing in this section precludes an individual from filing a petition for
366 expungement of records that are eligible for automatic expungement under this section if an
367 automatic expungement has not occurred pursuant to this section.

368 (6) An automatic expungement performed under this section does not preclude a

369 person from requesting access to expunged records in accordance with Section 77-40-109 or
370 77-40-110.

371 Section 5. **Effective date.**

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