

Underage Drinking Enforcement Training Center

Monthly Resource Alert

May 2010



11720 Beltsville Drive ■ Suite 900 ■ Calverton, MD 20705 ■ Toll Free 877-335-1287

Please visit our enhanced website at www.udetc.org for the latest information on underage drinking.

12th Annual National Enforcing Underage Drinking Laws (EUDL) Leadership Conference Spotlight:

Host Hotel—Anaheim Marriott

The conference is being held in the Anaheim Marriott, conveniently located in the heart of the Anaheim Resort District. The Marriott offers amenities and service unrivaled by other Anaheim hotels. Hotel rooms can be booked online now at the discounted group rate of \$135 single/double per night plus applicable fees and taxes by visiting our Web site: www.udetc.org and clicking on the conference icon. You can also contact the hotel's reservation department at 800-228-9290 to make a reservation. Be sure to mention the OJJDP's 12th National EUDL Leadership Conference to receive the discounted group rate. The group rate is available until July 25, 2010. Please don't wait; rooms are going quick!

May 2010 Resource Alert Legal Case

"A young man, now over 21, seeks to have his plea agreement conviction expunged for underage drinking and driving. How does Colorado law treat his request?"

On March 18, 2010, the Court of Appeals of Colorado, Division Two handed down its opinion in the case of *People v. Connors*, 09CA0847 (COCA). Connors was charged with three offenses: (1) underage drinking and driving, (2) possession of a controlled substance outside of original container and (3) possession of marijuana. Connors pleaded guilty to the underage-drinking and-driving charge, and the remaining charges were dismissed. Four years after the conviction, he sought to have his record expunged under Colorado law. How did the State of Colorado respond to this request?

To read more about this interesting case, go to the link below: http://www.courts.state.co.us/Courts/Court_of_Appeals/opinion/2010/09CA0847.pdf

Success Story: Massachusetts

Collaborative Enforcement Efforts Bring Massachusetts District Attorneys into the Statewide EUDL Plan

Since the inception of the Enforcing Underage Drinking Laws (EUDL) program, Massachusetts has funded local law enforcement, state alcohol enforcement and college communities in an effort to change perceptions related to underage drinking and encourage a comprehensive enforcement approach. In 2009, the Massachusetts Executive Office of Public Safety and Security and Massachusetts Highway Safety Division (HSD), took a bold step in addressing underage alcohol problems by bringing a group of new partners to the table. Berkshire County District Attorney David Capeless lead the path for this new partnership through his work with coalitions across the county in a campaign against underage drinking. Recognizing the impact District Attorneys could have with EUDL efforts, Massachusetts' HSD's developed an Application for Grant Funding targeted at district attorneys. This is the

UDETC's first Story highlighting a targeted partnership with District Attorneys offices and shares how Massachusetts recognized an opportunity to expand their collaborative network while building a regional, hands-on approach to address the problem.

To read more about this interesting Success Story please go to the link below:

http://www.udetc.org/documents/success_stories/ma0510.pdf

May National Electronic Seminar

2010 ID Update: What's in Your Wallet?

Date: Thursday, May 20, 2010

Time: 3:00-4:15 p.m., Eastern Time

Speakers: Lieutenant. James Wilson, NH State Liquor Commission, Concord, NH, and Investigator Caroline Wilichoski, Commonwealth of Massachusetts Alcohol Beverage Control Commission, Boston, MA

Many people younger than 21 continue to look to commercial sources of alcohol as their preferred option to acquire alcohol or as a place to socialize with friends older than 21. To purchase alcoholic beverages from these sources, many rely on misrepresenting their ages by using fraudulent identification.

Today's driver's license may contain more security features for use by law enforcement and others who have a need to verify the authenticity of the card. These features may include ghost imaging, guilloche patterns (fine lines), an ultraviolet light feature, microtext, 1D and 2D bar codes, and more. So how can retailers keep up with this information? Does your law enforcement agency have the right tools to evaluate authenticity? What do community members need to know to support law enforcement's efforts to address fraudulent identification?

Our speakers will take us through some of the changes and additions adopted by many States and governmental entities as they move forward in the production of various forms of identification. They will also discuss some of the tools available and needed to properly recognize many of the new security features.

To print a hard copy of this month's *Resource Alert*, visit: www.udetc.org/documents/ResourceAlerts/ResourceAlert0510.pdf

Quick Fact

A national survey of more than 2,500 11th and 12th graders indicates that 90% of teens believe their counterparts are more likely to drink and drive on prom night, but only 29% of teens believe that driving on prom night comes with a high degree of danger USA Today Reports. More details from the study in its entirety can be found here: http://www.sadd.org/press/prom_season.htm



Success Stories

Enforcing the Underage Drinking Laws Program

NEWS FROM THE FIELD

May 2010

www.udetc.org

Collaborative Enforcement Efforts Bring Massachusetts District Attorneys into the Statewide EUDL Plan

Since the inception of the Enforcing Underage Drinking Laws (EUDL) program, Massachusetts has funded local law enforcement, state alcohol enforcement, and college communities in an effort to change perceptions related to underage drinking and encourage a comprehensive enforcement approach to combating the problem.

Massachusetts Highway Safety Division (HSD) Director, Sheila Burgess, and her staff have been leaders in building community support and awareness of the importance of addressing underage alcohol problems using the broadest degree of community support possible. In 2009, the Massachusetts Executive Office of Public Safety and Security (EOPSS), HSD, took a bold step in addressing underage alcohol problems by bringing a group of new partners to the table. Berkshire County District Attorney David Capeless led the path for this new partnership through his work with coalitions across the county in an ongoing campaign against underage drinking. Always on the lookout for new partners and creative ways to address underage drinking, Ms. Burgess's recognition of the effect district attorneys could have with EUDL efforts prompted her to develop an Application for Grant Funding targeted at district attorneys across the State, hoping to generate the same level of commitment demonstrated in Berkshire County.

The AGF was well received, and five proposals were submitted to EOPSS for funding of up to \$17,000 for each applicant. Funds were for each office to use for conference activities and to bring together not only law enforcement and court personnel, but also school personnel, coaches, athletic directors, health service providers, and youth service providers to increase their knowledge and readiness to work collaboratively to develop a uniform response to incidents of underage drinking in the county. The four successful applicants included:

- Attorney William R. Keating, Norfolk County
- Attorney Timothy R. Cruz, Plymouth County
- Attorney Joseph D. Early, Jr., Middle District of Worcester County
- Attorney David F. Capeless, Berkshire County

Although each proposal was unique to the needs of their county, they all recognized the importance of the district attorney's office assuming a leadership role in both the education of the community and the opportunity to nudge law enforcement to embrace their important role in curbing underage alcohol use by aggressively enforcing the laws. The conferences gave key representatives from across the county the opportunity to network and recognize potential partnerships outside of their expertise.

This is the UDETC's first Success Story highlighting a targeted partnership with the district attorneys' office. It shares how Massachusetts recognized an opportunity to expand its collaborative network to keep underage drinking a priority issue while building a regional, hands-on approach to address the problem.

For Further Information Contact:

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The views expressed in this document do not necessarily represent the views of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) or the Underage Drinking Enforcement Training Center (UDETC) and are solely of the author/source.



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Resource Alert Legal Case Descriptor

May 2010

“A young man, now over 21, seeks to have his plea agreement conviction expunged for underage drinking and driving. How does Colorado law treat his request?”

On March 18, 2010, the Court of Appeals of Colorado, Division Two handed down their opinion in the case of *People v. Connors*, 09CA0847 (COCA)

Connors was charged with three offenses: (1) Underage Drinking and Driving, (2) Possession of a Controlled Substance Outside of Original Container and (3) Possession of Marihuana. Connors pleaded guilty to the UDD charge, and the possession charges were dismissed. Four years after the conviction he sought to have his record expunged under Colorado law. How did the State of Colorado respond to this request?

To read more about this interesting case please click on the link below.

http://www.courts.state.co.us/Courts/Court_of_Appeals/opinion/2010/09CA0847.pdf

The People of the State of Colorado, Plaintiff-Appellant, and Boulder County Sheriff's Office,
Appellant,

v.

Matthew Gibson Connors, Defendant-Appellee.

No. 09CA0847

Court of Appeals of Colorado, Division II

March 18, 2010

The People of the State of Colorado and the Boulder County Sheriff's Office (Boulder Sheriff) appeal those portions of the district court magistrate's orders expunging two charges relating to controlled substance possession brought against Matthew Gibson Connors. Because we conclude that the magistrate erred in expunging these charges, we affirm in part, reverse in part, and remand for further proceedings.

I. Background

Connors was charged with three offenses: (1) Driving with Excessive Alcohol Content – Under 21, pursuant to section 42-4- 1301(2)(a.5), C.R.S. 2009 (underage drinking and driving or UDD); (2) Possession of a Controlled Substance Outside of Original Container, pursuant to section 18-18-413, C.R.S. 2009; and (3) Possession of Marihuana – One Ounce or Less, pursuant to section 18-18-406(1), C.R.S. 2009. Subsequently, as part of a plea agreement, Connors pleaded guilty to the UDD charge, and the possession charges were dismissed.

Approximately four years later, Connors filed a verified motion for expungement of his UDD conviction pursuant to section 42-4- 1715, C.R.S. 2009. Because Connors only requested expungement of the UDD conviction and because he met the statutory requirements for such relief, the People and the Boulder Sheriff did not object to Connors's motion.

The magistrate entered an order expunging "the criminal records information specifically relating to and contained in" agency case number 04-7718 and district court case number 04CR2193, which included not only the UDD charge but also the two possession charges. Shortly thereafter, the Boulder Sheriff filed a motion for reconsideration or clarification, and the People filed a motion for clarification. Both the Boulder Sheriff and the People objected to the expungement of Connors's possession charges.

The magistrate then issued an "Order Clarifying Order to Expunge Pursuant to § 42-4-1715(1)(b)(I)." The magistrate made clear that she had intended to expunge both the UDD charge *and* the possession charges. The magistrate reasoned, "While [section 42-4-1715(1)(b)(I)] covers only UDD charges, it is not possible to expunge one charge in a criminal case without expunging the other two charges that were dismissed." The magistrate did not explain this statement further.

This appeal ensued.

II. Discussion

The People and the Boulder Sheriff contend that it was error for the magistrate to expunge the two possession charges pursuant to section 42-4-1715(1)(b)(I), C.R.S. 2009. We agree.

Section 42-4-1715(1)(b)(I) provides that "[u]pon application by a person, the court shall expunge all records concerning a conviction of the person for UDD" if certain requirements are met. The People and the Boulder Sheriff do not dispute that the requirements for expungement of the UDD charge were satisfied. Section 42-4-1715(1)(b)(I), however, does not provide for the expungement of other charges, even if brought at the same time or in the same document as the UDD charge. Nonetheless, as noted above, the magistrate expunged the two possession charges, as well as the UDD charge, concluding, without elaboration, that it is not possible to expunge one charge in a criminal case without expunging other charges that were dismissed. In making this determination, the magistrate appears to have misunderstood the nature and scope of her expungement authority under section 42-4-1715(1)(b)(I). Accordingly, we turn now to the meaning of "expunge" under that statute.

A. Statutory Interpretation

In interpreting statutory language, we must strive to give effect to the legislature's intent. *Hygiene Fire Protection Dist. v. Board of County Comm'rs*, 205 P.3d 487, 490 (Colo.App. 2008), *aff'd*, 221 P.3d 1063 (Colo. 2009). In doing so, our starting point is the plain meaning of the language used. *Id.* We should read the statute in such a way as to give effect to every word. *Id.* We also must consider the language used in the context of the statute as a whole, and we must give effect to the ordinary meaning of the language and read the provisions as a whole, construing each consistently and in harmony with the overall statutory design, if possible. *Id.* Interpretations that will render words or phrases superfluous should be rejected. *Id.* Likewise, we must avoid interpretations that produce illogical or absurd results. *People v. Cross*, 127 P.3d 71, 74 (Colo. 2006). Only if a statute is reasonably susceptible of more than one meaning may we look to other sources to aid our interpretation. *Hygiene Fire Protection Dist.*, 205 P.3d at 490. Statutory interpretation is a question of law that we review de novo. *Sherritt v. Rocky Mountain Fire Dist.*, 205 P.3d 544, 545 (Colo.App. 2009).

B. Meaning of "Expunge"

Here, the term "expunge" is not defined in section 42-4-1715(1)(b)(I). When a statute does not define a term but the words used are terms of common usage, we may refer to dictionary definitions to determine the plain and ordinary meanings of those words. *People v. Daniels*, ___ P.3d ___, ___ (Colo.App. No. 08CA2586, Dec. 10, 2009).

Black's Law Dictionary 621 (8th ed. 2004) defines "expunge" as "[t]o erase or destroy." It further defines "expungement of record" as "[t]he removal of a conviction (esp. for a first offense) from a person's criminal record." *Id.* Similarly, *Webster's Third New International*

Dictionary 803 (2002) defines "expunge" as, among other things, "to strike out, obliterate, or mark for deletion (as a word, line, or sentence)."

These definitions suggest that "expunge" within the meaning of section 42-4-1715(1)(b)(I) may well encompass partial expungement or redaction of documents. Because the statute itself is not wholly clear as to whether the legislature envisioned the possibility of partial expungement, however, we may look to other aids of statutory construction to assist us. *See Hygiene Fire Protection Dist.*, 205 P.3d at 490.

Consideration of other statutes dealing with the same subject is one type of extrinsic aid that can be useful in deciding questions of statutory interpretation, because the General Assembly is presumed to intend that statutes concerning the same subject be construed consistently and harmoniously. *B.G.'s, Inc. v. Gross*, 23 P.3d 691, 694 (Colo. 2001). As pertinent here, the Colorado Children's Code defines "expungement" as "the designation of juvenile delinquency records whereby such records are deemed never to have existed." § 19-1-103(48), C.R.S. 2009. Expungement, as the term is used in the Children's Code, is "effectuated by physically sealing or conspicuously indicating on the face of the record or at the beginning of the computerized file of the record that said record has been designated as expunged." § 19-1-306(2)(b), C.R.S. 2009. Although "record" is not defined for purposes of this provision, it is commonly understood to mean, "[a] documentary account of past events" or "[i]nformation that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form." *Black's Law Dictionary*, at 1301. Thus, the Children's Code also suggests that "expunge" can mean something short of expunging an entire document, because one could redact specific information in a document and note on the face of the document that the information has been expunged.

Finally, case law from both Colorado and other jurisdictions suggests that expungement of a record does not necessarily require expungement of the entire document containing the information to be expunged. For example, in *Berman v. People*, 41 Colo.App. 488, 489, 589 P.2d 508, 509 (1978), Berman was identified by name in two indictments brought against a third person. Specifically, he was named as an "unindicted co-conspirator" in one indictment, and his name appeared in numerous places in both indictments. *Id.* After the charges against the third person were dismissed, Berman brought an action seeking to expunge all references to him in the indictments. *Id.* The People moved to dismiss Berman's complaint, and the district court granted their motion. Berman then appealed, and a division of this court reversed, instructing the district court to enter an order expunging all references to Berman in the two indictments, but not the indictments themselves. *Id.*

Similarly, in *Eslick v. State*, 942 S.W.2d 559, 559 (Tenn. Crim. App. 1996), the petitioners appealed the denial of their petition to expunge public records concerning certain charges that were resolved in their favor. Petitioners claimed that they had a statutory right to have any dismissed or acquitted charges expunged. *Id.* The district court concluded, however, that the

records of those charges were so intertwined with other charges of which they were convicted that expungement "should not occur." *Id.*

The appellate court reversed, stating:

Obviously, some records that relate to several charges, some resulting in convictions and others resulting in acquittals, may be of such a character that it is impractical to redact the part dealing with the dismissed charges. However, the mandatory nature of the expunction statute means that any exception to it must be for cause shown. In this respect, a blanket refusal to expunge any records relating to a dismissed charge is inherently suspect and it is incumbent upon the opponent of expunction to insure that the record justifies less than full redaction of relevant records. *Id.* at 560.

The court further noted that it had previously ordered the expungement of public records of dismissed counts even though a conviction was obtained on a multi-count indictment. *Id.* The court thus remanded the case to the district court for reconsideration as to whether the records could be redacted so that those portions of the records related to the charges of which the petitioners were acquitted would be expunged while information concerning the offenses of conviction would be preserved. *Id.*

Pennsylvania State Police v. Rush, 773 A.2d 1277, 1278 (Pa. Commw. Ct. 2001), similarly supports the notion of expungement of portions of documents. In that case, the court noted that Rush had filed in a related proceeding a petition to expunge part of his criminal record. *Id.* The court further noted that the court in the related proceeding had granted the petition and ordered the expungement of any reference to a particular misdemeanor offense, as opposed to expungement of the entire criminal record. *Id.*

Each of the foregoing authorities demonstrates that expungement of a record regarding a particular conviction or other information (such as the name of a co-conspirator) does not necessarily entail expungement of the entire record. Rather, these authorities demonstrate that, where possible, it is sufficient to expunge or redact relevant portions of records.

Finally, 18 U.S.C. § 3607(c) is instructive. Like the state statute at issue here, this federal statute provides that people under twenty-one years of age who are convicted and sentenced for certain types of offenses may seek, and the court shall order, expungement if certain conditions are satisfied. *Id.* The statute further provides, as pertinent here, "The expungement order shall direct that there be expunged from all official records... all references to [the defendant's] arrest for the offense, the institution of criminal proceedings against him, and the results thereof." *Id.* This statute's specification of what information should be expunged demonstrates that Congress recognized the possibility of expunging certain portions of a document without expunging the entire document.

C. Application

Based on our review of the foregoing authorities, we conclude that "expunge," as used in section 42-4-1715(1)(b)(I), does not require expungement of records concerning non-UDD charges when such charges are brought along with the UDD charges. Nor do we agree with the magistrate's blanket statement that "it is not possible to expunge one charge in a criminal case without expunging [other charges] that were dismissed." Indeed, the case law described above shows otherwise. Thus, we hold that "expunge all records concerning a conviction of the person for UDD," as that phrase is used in section 42-4-1715(1)(b)(I), means to strike out, obliterate, or mark for deletion all references to petitioner's arrest for UDD, the institution and prosecution of UDD charges against petitioner, and petitioner's conviction therefor. Based on this definition and our view that the magistrate proceeded on a misunderstanding of the nature and scope of her authority to order expungement of certain records, we reverse those portions of the orders expunging the possession charges filed against Connors.

In our view, to hold otherwise would lead to absurd results. *See Cross*, 127 P.3d at 74 (we must avoid statutory interpretations that produce illogical or absurd results). Specifically, construing section 42-4-1715(1)(b)(I) as the magistrate did here would result in the expungement of the two possession charges, even though, on the facts presented, those charges could not properly have been sealed pursuant to applicable law. *See* § 24-72-308(1)(a)(I), C.R.S. 2009 (any person in interest may petition the district court for the sealing of any arrest and criminal records information if (1) the records are a record of official actions involving a criminal offense for which said person in interest was not charged, (2) the case was completely dismissed, or (3) the person in interest was acquitted); *People v. Chamberlin*, 74 P.3d 489, 490 (Colo.App. 2003) (where the defendant was convicted on one charge and another charge was dismissed, he was not entitled to have any of the criminal records sealed, because none of the conditions set forth in section 24-72-308(1)(a)(I) was satisfied).

Sealing differs from expungement in its legal effect. For example, the statute authorizing sealing of arrest and criminal records other than convictions does not authorize the physical destruction of those records. § 24-72-308(1)(g), C.R.S. 2009. Moreover, criminal justice agencies are permitted to access and use sealed records for certain law enforcement purposes. *See, e.g.*, § 24-72-308(3)(d), C.R.S. 2009 (exempting from sealing statute arrest and criminal justice information or criminal justice records in the possession and custody of a criminal justice agency when inquiry concerning such information or records is made by another criminal justice agency). And court orders sealing records do not limit the operation of applicable discovery rules. § 24-72-308(3)(b), C.R.S. 2009.

In contrast, when a record is expunged, it is essentially erased and treated as if it never existed. *See* § 19-1-103(48); *Black's Law Dictionary*, at 621 (defining "expunge"); *Webster's Third New International Dictionary*, at 803 (defining "expunge"). Thus, in general, after expungement, only "basic identification information" contained in the expunged record remains available to law enforcement agencies. *See* § 19-1-306(3), C.R.S. 2009.

In light of these distinctions, it would be anomalous to hold that the possession charges were properly expunged, when they could not properly have been sealed under applicable law.

III. Conclusion

For these reasons, those portions of the magistrate's orders expunging the possession charges are reversed, those portions of her orders expunging the UDD charge are affirmed, and the case is remanded for further proceedings consistent with this opinion.



National Electronic Seminars Enforcing Underage Drinking Laws Program

The OJJDP Audio-TELECONFERENCE Series

2010 National Electronic Seminars Calendar

May 20, 2010 3:00 – 4:15 p.m. Eastern Time

2010 ID Update: What's in Your Wallet?

Many people younger than 21 continue to look to commercial sources of alcohol as their preferred option to acquire alcohol or as a place to socialize with friends older than 21. To purchase alcoholic beverages from these sources, many rely on misrepresenting their ages by using fraudulent identification.

Today's driver's license may contain more security features for use by law enforcement and others who have a need to verify the authenticity of the card. These features may include ghost imaging, guilloche patterns (fine lines), an ultraviolet light feature, microtext, 1D and 2D bar codes, and more. So how can retailers keep up with this information? Does your law enforcement agency have the right tools to evaluate authenticity? What do community members need to know to support law enforcement's efforts to address fraudulent identification?



June 17, 2010 3:00 – 4:15 p.m. Eastern Time

Addressing Underage Drinking in Military Communities: Effective Strategies Used to Reduce Alcohol-related Incidence Rates by Underage Airmen

Addressing underage drinking within military environments can be riddled with unique challenges, both on and off post. Presenters during this call will share information about innovative solutions to unique challenges and successes achieved through community mobilization, collaborations with military bases, enforcement practices, policy development, and strategic use of media to advance program goals.



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The Underage Drinking Enforcement Training Center
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For audio-conference registration information, please visit www.udetc.org

All programs provide opportunities for presentation, discussion, and sharing information. Telephone dial-in instructions and accompanying materials will be mailed to registrants two weeks before the audio conference.

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Enforcing Underage Drinking Laws Program

AUDIO CONFERENCE

TOPIC

“2010 ID Update: What’s in Your Wallet?”

Many young people under the age of 21 continue to look to commercial sources of alcohol as their preferred option to acquire alcohol or as a place to socialize with over 21 friends. To get to these sources many rely on misrepresenting their actual age by the use of fraudulent identification.

Not that many years ago, a driver’s license was a folder piece of paper using dot matrix printing to print information. Today’s driver license may contain more security features for use by law enforcement and others who have a need to verify the authenticity of the card. These features may include ghost imaging, guilloche patterns (fine lines), an ultraviolet light feature, microtext, 1D and 2D bar codes and more. So how can retailers keep up with this information? Does your law enforcement agency have the right tools to make evaluations of authenticity? What do community members need to know to support law enforcements efforts to address fraudulent identification?

Lieutenant Jim Wilson and Investigator Wilichoski will take us through some of the changes and additions adopted by many states and governmental entities as the move forward in the production of their documents. They will also discuss some of the tools available and needed in order to properly recognize many of the new security features.



DATE

May 20, 2010

TIME

3:00–4:15 p.m. EDT

PRESENTERS

Presenter 1:
Lieutenant James Wilson, New Hampshire State Liquor Commission, Concord, NH,
jwilson@liquor.state.nh.us

Presenter 2:
Investigator Caroline Wilichoski, Commonwealth of Massachusetts Alcohol Beverage Control Commission, Boston, MA
caroline.wilichoski@state.ma.us

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Internet users will be able to log on to our conference web page to view presentation slides and interact with

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Telephone dial-in instructions and accompanying materials for the audio conference will be mailed one (1) week before the call.