

**REVISIONS TO DRIVING UNDER THE
INFLUENCE**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: A. Lamont Tyler

This act modifies the Motor Vehicles Code by expanding the felony driving while intoxicated violations. This act expands the time frame for counting prior DUI convictions and the waiting period for expungement purposes. This act restricts public access to Driver License Division records to a six-year period.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

41-6-44, as last amended by Chapters 333 and 334, Laws of Utah 2000

41-6-44.7, as last amended by Chapter 334, Laws of Utah 2000

53-3-109, as enacted by Chapter 255, Laws of Utah 2000

77-18-12, as last amended by Chapter 98, Laws of Utah 2000

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

Section 1. Section **41-6-44** is amended to read:

41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.

(1) As used in this section:

(a) "educational series" means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(b) "prior conviction" means any conviction for a violation of:

(i) this section;

(ii) alcohol-related reckless driving under Subsections (9) and (10);

(iii) local ordinances similar to this section or alcohol-related reckless driving adopted in

28 compliance with Section 41-6-43;

29 (iv) automobile homicide under Section 76-5-207; or

30 (v) statutes or ordinances in effect in any other state, the United States, or any district,
31 possession, or territory of the United States which would constitute a violation of this section or
32 alcohol-related reckless driving if committed in this state, including punishments administered
33 under 10 U.S.C. Sec. 815;

34 (c) "screening and assessment" means a substance abuse addiction and dependency
35 screening and assessment obtained at a substance abuse program that is approved by the Board of
36 Substance Abuse in accordance with Section 62A-8-107;

37 (d) "serious bodily injury" means bodily injury that creates or causes serious permanent
38 disfigurement, protracted loss or impairment of the function of any bodily member or organ, or
39 creates a substantial risk of death;

40 (e) "substance abuse treatment" means treatment obtained at a substance abuse program
41 that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

42 (f) "substance abuse treatment program" means a state licensed substance abuse program;

43 (g) a violation of this section includes a violation under a local ordinance similar to this
44 section adopted in compliance with Section 41-6-43; and

45 (h) the standard of negligence is that of simple negligence, the failure to exercise that
46 degree of care that an ordinarily reasonable and prudent person exercises under like or similar
47 circumstances.

48 (2) (a) A person may not operate or be in actual physical control of a vehicle within this
49 state if the person:

50 (i) has sufficient alcohol in his body that a chemical test given within two hours of the
51 alleged operation or physical control shows that the person has a blood or breath alcohol
52 concentration of .08 grams or greater; or

53 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and
54 any drug to a degree that renders the person incapable of safely operating a vehicle.

55 (b) The fact that a person charged with violating this section is or has been legally entitled
56 to use alcohol or a drug is not a defense against any charge of violating this section.

57 (c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100
58 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol

59 per 210 liters of breath.

60 (3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty
61 of a:

62 (i) class B misdemeanor; or

63 (ii) class A misdemeanor if the person:

64 (A) has also inflicted bodily injury upon another as a proximate result of having operated
65 the vehicle in a negligent manner; or

66 (B) had a passenger under 16 years of age in the vehicle at the time of the offense.

67 (b) A person convicted of a violation of Subsection (2) is guilty of a third degree felony
68 if the person has also inflicted serious bodily injury upon another as a proximate result of having
69 operated the vehicle in a negligent manner.

70 (4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a
71 mandatory jail sentence of not less than 48 consecutive hours.

72 (b) The court may, as an alternative to all or part of a jail sentence, require the person to:

73 (i) work in a compensatory-service work program for not less than 24 hours; or

74 (ii) participate in home confinement through the use of electronic monitoring in
75 accordance with Subsection (13).

76 (c) In addition to the jail sentence, compensatory-service work program, or home
77 confinement, the court shall:

78 (i) order the person to participate in a screening and assessment;

79 (ii) order the person to participate in an educational series if the court does not order
80 substance abuse treatment as described under Subsection (4)(d); and

81 (iii) impose a fine of not less than \$700.

82 (d) The court may order the person to obtain substance abuse treatment if the substance
83 abuse treatment program determines that substance abuse treatment is appropriate.

84 (e) The court may order probation for the person in accordance with Subsection (14).

85 (5) (a) If a person is convicted under Subsection (2) within [~~six~~] ten years of a prior
86 conviction under this section, the court shall as part of any sentence impose a mandatory jail
87 sentence of not less than 240 consecutive hours.

88 (b) The court may, as an alternative to all or part of a jail sentence, require the person to:

89 (i) work in a compensatory-service work program for not less than 240 hours; or

90 (ii) participate in home confinement through the use of electronic monitoring in
91 accordance with Subsection (13).

92 (c) In addition to the jail sentence, compensatory-service work program, or home
93 confinement, the court shall:

94 (i) order the person to participate in a screening and assessment;

95 (ii) order the person to participate in an educational series if the court does not order
96 substance abuse treatment as described under Subsection (5)(d); and

97 (iii) impose a fine of not less than \$800.

98 (d) The court may order the person to obtain substance abuse treatment if the substance
99 abuse treatment program determines that substance abuse treatment is appropriate.

100 (e) The court may order probation for the person in accordance with Subsection (14).

101 (6) (a) A [~~third or subsequent~~] conviction for a violation of Subsection (2) is a third degree
102 felony if it is committed;

103 (i) within [~~six~~] ten years of two or more prior convictions under this section [~~is a third~~
104 ~~degree felony~~]; or

105 (ii) at any time after a conviction of:

106 (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001; or

107 (B) a felony violation under this section that is committed after July 1, 2001.

108 (b) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison
109 sentence and places the defendant on probation the court shall impose:

110 (i) a fine of not less than \$1,500; and

111 (ii) a mandatory jail sentence of not less than 1,500 hours.

112 (c) For Subsection (6)(a) or (b), the court shall impose an order requiring the person to
113 obtain a screening and assessment and substance abuse treatment at a substance abuse treatment
114 program providing intensive care or inpatient treatment and long-term closely supervised
115 follow-through after treatment for not less than 240 hours.

116 (d) In addition to the penalties required under Subsection (6)(b), the court may require the
117 person to participate in home confinement through the use of electronic monitoring in accordance
118 with Subsection (13).

119 (7) The mandatory portion of any sentence required under this section may not be
120 suspended and the convicted person is not eligible for parole or probation until any sentence

121 imposed under this section has been served. Probation or parole resulting from a conviction for
122 a violation under this section may not be terminated.

123 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to
124 order a convicted person to: participate in a screening and assessment; and an educational series;
125 obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily, substance
126 abuse treatment; or do a combination of those things, apply to a conviction for a violation of
127 Section 41-6-44.6 or 41-6-45 under Subsection (9).

128 (ii) The court shall render the same order regarding screening and assessment, an
129 educational series, or substance abuse treatment in connection with a first, second, or subsequent
130 conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in
131 connection with applying respectively, the first, second, or subsequent conviction requirements of
132 Subsections (4), (5), and (6).

133 (b) If a person fails to complete all court ordered screening and assessment, educational
134 series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution
135 and treatment costs, the court shall notify the Driver License Division of a failure to comply. Upon
136 receiving the notification, the division shall suspend the person's driving privilege in accordance
137 with Subsections 53-3-221(2) and (3).

138 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a
139 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section
140 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section,
141 the prosecution shall state for the record a factual basis for the plea, including whether or not there
142 had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection
143 with the violation.

144 (ii) The statement is an offer of proof of the facts that shows whether there was
145 consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the
146 violation.

147 (b) The court shall advise the defendant before accepting the plea offered under this
148 Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

149 (c) The court shall notify the Driver License Division of each conviction of Section
150 41-6-44.6 or 41-6-45 entered under this Subsection (9).

151 (10) A peace officer may, without a warrant, arrest a person for a violation of this section

152 when the officer has probable cause to believe the violation has occurred, although not in his
153 presence, and if the officer has probable cause to believe that the violation was committed by the
154 person.

155 (11) (a) The Driver License Division shall:

156 (i) suspend for 90 days the operator's license of a person convicted for the first time under
157 Subsection (2);

158 (ii) revoke for one year the license of a person convicted of any subsequent offense under
159 Subsection (2) if the violation is committed within a period of six years from the date of the prior
160 violation; and

161 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
162 (12).

163 (b) The Driver License Division shall subtract from any suspension or revocation period
164 the number of days for which a license was previously suspended under Section 53-3-223 or
165 53-3-231, if the previous suspension was based on the same occurrence upon which the record of
166 conviction is based.

167 (12) (a) In addition to any other penalties provided in this section, a court may order the
168 operator's license of a person who is convicted of a violation of Subsection (2) to be suspended
169 or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways
170 those persons who have shown they are safety hazards.

171 (b) If the court suspends or revokes the person's license under this Subsection (12)(b), the
172 court shall prepare and send to the Driver License Division an order to suspend or revoke that
173 person's driving privileges for a specified period of time.

174 (13) (a) If the court orders a person to participate in home confinement through the use of
175 electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation
176 monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts.

177 (b) The electronic monitoring device shall be used under conditions which require:

178 (i) the person to wear an electronic monitoring device at all times;

179 (ii) that a device be placed in the home or other specified location of the person, so that
180 the person's compliance with the court's order may be monitored; and

181 (iii) the person to pay the costs of the electronic monitoring.

182 (c) The court shall order the appropriate entity described in Subsection (13)(e) to place an

183 electronic monitoring device on the person and install electronic monitoring equipment in the
184 residence of the person or other specified location.

185 (d) The court may:

186 (i) require the person's electronic home monitoring device to include a substance abuse
187 testing instrument;

188 (ii) restrict the amount of alcohol the person may consume during the time the person is
189 subject to home confinement;

190 (iii) set specific time and location conditions that allow the person to attend school
191 educational classes, or employment and to travel directly between those activities and the person's
192 home; and

193 (iv) waive all or part of the costs associated with home confinement if the person is
194 determined to be indigent by the court.

195 (e) The electronic monitoring described in this section may either be administered directly
196 by the appropriate corrections agency, probation monitoring agency, or by contract with a private
197 provider.

198 (f) The electronic monitoring provider shall cover the costs of waivers by the court under
199 Subsection (13)(c)(iv).

200 (14) (a) If supervised probation is ordered under Subsection (4)(e) or (5)(e):

201 (i) the court shall specify the period of the probation;

202 (ii) the person shall pay all of the costs of the probation; and

203 (iii) the court may order any other conditions of the probation.

204 (b) The court shall provide the probation described in this section by contract with a
205 probation monitoring agency or a private probation provider.

206 (c) The probation provider described in Subsection (14)(b) shall monitor the person's
207 compliance with all conditions of the person's sentence, conditions of probation, and court orders
208 received under this article and shall notify the court of any failure to comply with or complete that
209 sentence or those conditions or orders.

210 (d) (i) The court may waive all or part of the costs associated with probation if the person
211 is determined to be indigent by the court.

212 (ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers
213 by the court under Subsection (14)(d)(i).

214 (15) If a person is convicted of a violation of Subsection (2) and there is admissible
215 evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order:

216 (a) treatment as described under Subsection (4)(d), (5)(d), or (6)(b)(iii), then the court shall
217 enter the reasons on the record; and

218 (b) the following penalties, the court shall enter the reasons on the record:

219 (i) the installation of an ignition interlock system as a condition of probation for the person
220 in accordance with Section 41-6-44.7; or

221 (ii) the imposition of home confinement through the use of electronic monitoring in
222 accordance with Subsection (13).

223 Section 2. Section 41-6-44.7 is amended to read:

224 **41-6-44.7. Ignition interlock devices -- Use -- Probationer to pay cost --**

225 **Impecuniosity -- Fee.**

226 (1) As used in this section:

227 (a) "Commissioner" means the commissioner of the Department of Public Safety.

228 (b) "Ignition interlock system" or "system" means a constant monitoring device or any
229 similar device certified by the commissioner that prevents a motor vehicle from being started
230 without first determining the driver's breath alcohol concentration.

231 (c) "Probation provider" means the supervisor and monitor of the ignition interlock system
232 required as a condition of probation or as otherwise ordered by the court who contracts with the
233 court in accordance with Subsections 41-6-44(14)(b) and (c).

234 (2) (a) In addition to any other penalties imposed under Section 41-6-44, and in addition
235 to any requirements imposed as a condition of probation, the court may require that any person
236 who is convicted of violating Section 41-6-44 and who is granted probation may not operate a
237 motor vehicle during the period of probation unless that motor vehicle is equipped with a
238 functioning, certified ignition interlock system installed and calibrated so that the motor vehicle
239 will not start if the operator's blood alcohol concentration exceeds a level ordered by the court.

240 (b) If a person convicted of violating Section 41-6-44 was under the age of 21 when the
241 violation occurred, the court shall order the installation of the ignition interlock system as a
242 condition of probation.

243 (c) (i) If a person is convicted of a violation of Section 41-6-44 within [~~six~~] ten years of
244 a prior conviction of that section, the court shall order the installation of the ignition interlock

245 system, at the person's expense, for all motor vehicles registered to that person and all motor
246 vehicles operated by that person for three years from the date of conviction.

247 (ii) The division shall post the ignition interlock restriction on the electronic record
248 available to law enforcement.

249 (3) Except as provided in Subsection (2)(c), if the court imposes the use of an ignition
250 interlock system as a condition of probation, the court shall:

251 (a) stipulate on the record the requirement for and the period of the use of an ignition
252 interlock system;

253 (b) order that an ignition interlock system be installed on each motor vehicle owned or
254 operated by the probationer, at the probationer's expense;

255 (c) order the probationer to submit his driver license to the Driver License Division in
256 accordance with Subsection (5);

257 (d) immediately notify the Driver License Division and the person's probation provider of
258 the order; and

259 (e) require the probationer to provide proof of compliance with the court's order to the
260 probation provider within 30 days of the order.

261 (4) (a) The probationer shall provide timely proof of installation within 30 days of an order
262 imposing the use of a system or show cause why the order was not complied with to the court or
263 to the probationer's probation provider.

264 (b) The probation provider shall notify the court of failure to comply under Subsection
265 (4)(a).

266 (c) For failure to comply under Subsection (4)(a) or upon receiving the notification under
267 Subsection (4)(b), the court shall order the Driver License Division to suspend the probationer's
268 driving privileges for the remaining period during which the compliance was imposed.

269 (d) Cause for failure to comply means any reason the court finds sufficiently justifiable to
270 excuse the probationer's failure to comply with the court's order.

271 (5) (a) If use of an ignition interlock system is required under this section, the division may
272 not issue, reinstate, or renew the driver license of that person unless that requirement is coded on
273 the person's driver license.

274 (b) (i) If the division receives a notice that a person with a valid driver license that does
275 not require a driver license withdrawal is required to use an ignition interlock system, the division

276 shall notify the person that he has ten calendar days to apply to the division for an ignition
277 interlock system requirement coded on the license.

278 (ii) The division shall suspend the driver license of the person after the ten-day period until
279 the person applies to the division for an ignition interlock system requirement coded on the license.

280 (6) (a) Any probationer required to install an ignition interlock system shall have the
281 system monitored by the manufacturer or dealer of the system for proper use and accuracy at least
282 semiannually and more frequently as the court may order.

283 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the court
284 or the person's probation provider.

285 (ii) The report shall be issued within 14 days following each monitoring.

286 (7) (a) If an ignition interlock system is ordered installed, the probationer shall pay the
287 reasonable costs of leasing or buying and installing and maintaining the system.

288 (b) A probationer may not be excluded from this section for inability to pay the costs,
289 unless:

290 (i) the probationer files an affidavit of impecuniosity; and

291 (ii) the court enters a finding that the probationer is impecunious.

292 (c) In lieu of waiver of the entire amount of the cost, the court may direct the probationer
293 to make partial or installment payments of costs when appropriate.

294 (d) Subject to appropriation, the department shall lease or purchase the ignition interlock
295 system and reimburse each installer maintaining the system provided to probationers for whom
296 payment of costs has been waived or deferred on the grounds of indigency.

297 (8) (a) An additional fee of \$100 shall be paid to the court by each probationer ordered to
298 purchase, install, use, and maintain an ignition interlock system under this section.

299 (b) The fee shall be deposited with the department as a dedicated credit for the support
300 costs incurred for indigent individuals under Subsection (7)(d).

301 (c) Failure to pay the fees required under this section shall, unless excused, constitute
302 sufficient basis for a finding by the court at a hearing that the probationer has failed to comply with
303 the terms of probation.

304 (9) (a) If a probationer is required in the course and scope of employment to operate a
305 motor vehicle owned by the probationer's employer, the probationer may operate that motor
306 vehicle in the course and scope of employment without installation of an ignition interlock system

307 only if the employer has been notified that the employee is restricted and the employee has proof
308 of the notification in his possession while operating the employer's motor vehicle.

309 (b) (i) To the extent that an employer-owned motor vehicle is made available to a
310 probationer subject to this section for personal use, no exemption under this section shall apply.

311 (ii) A probationer intending to operate an employer-owned motor vehicle for personal use
312 and who is restricted to the operation of a motor vehicle equipped with an ignition interlock system
313 shall notify the employer and obtain consent in writing from the employer to install a system in the
314 employer-owned motor vehicle.

315 (c) A motor vehicle owned by a business entity that is all or partly owned or controlled by
316 a probationer subject to this section is not a motor vehicle owned by the employer and does not
317 qualify for an exemption under this Subsection (9).

318 (10) Upon conviction for violation of this section, the court shall notify the Driver License
319 Division to immediately suspend the probationer's license to operate a motor vehicle for the
320 remainder of the period of probation.

321 (11) (a) It is a class B misdemeanor for a person to:

322 (i) circumvent or tamper with the operation of an ignition interlock system;

323 (ii) knowingly furnish a motor vehicle without an ignition interlock system to someone
324 who is not authorized to drive a motor vehicle unless the motor vehicle is equipped with an
325 ignition interlock system that is in working order;

326 (iii) rent, lease, or borrow a motor vehicle without an ignition interlock system if a driving
327 restriction is imposed under this section;

328 (iv) request another person to blow into an ignition interlock system, if the person is
329 required to have a system and the person requests or solicits another to blow into the system to
330 start the motor vehicle in order to circumvent the system;

331 (v) blow into an ignition interlock system or start a motor vehicle equipped with an
332 ignition interlock system for the purpose of providing an operable motor vehicle to another person
333 required to have a system; and

334 (vi) advertise for sale, offer for sale, sell, or lease an ignition interlock system unless the
335 system has been certified by the commissioner and the manufacturer of the system has affixed a
336 warning label, as approved by the commissioner on the system, stating that the tampering,
337 circumventing, or other misuse of the system is a class B misdemeanor.

338 (b) This Subsection (11) does not apply if the starting of a motor vehicle, or the request
339 to start a motor vehicle, equipped with an ignition interlock system is done for the purpose of
340 safety or mechanical repair of the system or the motor vehicle and the person subject to the court
341 order does not drive the motor vehicle.

342 (12) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
343 the commissioner shall make rules setting standards for the certification of ignition interlock
344 systems.

345 (b) The standards shall require that the system:

346 (i) not impede the safe operation of the motor vehicle;

347 (ii) have features that make circumventing difficult and that do not interfere with the
348 normal use of the motor vehicle;

349 (iii) require a deep lung breath sample as a measure of breath alcohol concentration;

350 (iv) prevent the motor vehicle from being started if the driver's breath alcohol
351 concentration exceeds an ordered level;

352 (v) work accurately and reliably in an unsupervised environment;

353 (vi) resist tampering and give evidence if tampering is attempted;

354 (vii) operate reliably over the range of motor vehicle environments; and

355 (viii) be manufactured by a party who will provide liability insurance.

356 (c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or
357 independent laboratory tests relied upon in certification of ignition interlock systems by other
358 states.

359 (d) A list of certified systems shall be published by the commissioner and the cost of
360 certification shall be borne by the manufacturers or dealers of ignition interlock systems seeking
361 to sell, offer for sale, or lease the systems.

362 (e) In accordance with Section 63-38-3.2, the commissioner may establish an annual dollar
363 assessment against the manufacturers of ignition interlock systems distributed in the state for the
364 costs incurred in certifying. The assessment shall be apportioned among the manufacturers on a
365 fair and reasonable basis.

366 (13) There shall be no liability on the part of, and no cause of action of any nature shall
367 arise against, the state or its employees in connection with the installation, use, operation,
368 maintenance, or supervision of an interlock ignition system as required under this section.

369 Section 3. Section **53-3-109** is amended to read:

370 **53-3-109. Records -- Access -- Fees -- Rulemaking.**

371 (1) (a) Except as provided in this section, all records of the division shall be classified and
372 disclosed in accordance with Title 63, Chapter 2, Government Records Access and Management
373 Act.

374 (b) The division may only disclose personal identifying information:

375 (i) when the division determines it is in the interest of the public safety to disclose the
376 information; and

377 (ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C.
378 Chapter 123.

379 (2) A person who receives personal identifying information shall be advised by the
380 division that the person may not:

381 (a) disclose the personal identifying information from that record to any other person; or

382 (b) use the personal identifying information from that record for advertising or solicitation
383 purposes.

384 (3) The division may:

385 (a) collect fees in accordance with Section 53-3-105 for searching and compiling its files
386 or furnishing a report on the driving record of a person; and

387 (b) prepare under the seal of the division and deliver upon request, a certified copy of any
388 record of the division, and charge a fee under Section 63-38-3.2 for each document authenticated.

389 (4) Each certified copy of a driving record furnished in accordance with this section is
390 admissible in any court proceeding in the same manner as the original.

391 (5) A driving record furnished under this section may only report on the driving record of
392 a person for a period of six years.

393 [~~5~~] (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
394 the division may make rules to designate what information shall be included in a report on the
395 driving record of a person.

396 Section 4. Section **77-18-12** is amended to read:

397 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior convictions.**

398 (1) The division shall issue a certificate of eligibility to a petitioner seeking to obtain
399 expungement for a criminal record unless prior to issuing a certificate of eligibility the division

400 finds, through records of a governmental agency, including national criminal data bases that:

401 (a) the conviction for which expungement is sought is a capital felony, first degree felony,
402 second degree forcible felony, a conviction involving a sexual act against a minor, any registerable
403 sex offense as defined in Section 77-27-21.5(1)(d), or an attempt, solicitation, or conspiracy to
404 commit any offense listed in that subsection;

405 (b) the petitioner's record includes two or more convictions for any type of offense which
406 would be classified as a felony under Utah law, not arising out of a single criminal episode,
407 regardless of the jurisdiction in which the convictions occurred;

408 (c) the petitioner has previously obtained expungement in any jurisdiction of a crime
409 which would be classified as a felony in Utah;

410 (d) the petitioner has previously obtained expungement in any jurisdiction of two or more
411 convictions which would be classified as misdemeanors in Utah unless the convictions would be
412 classified as class B or class C misdemeanors in Utah and 15 years have passed since these
413 misdemeanor convictions;

414 (e) the petitioner was convicted in any jurisdiction, subsequent to the conviction for which
415 expungement is sought and within the time periods as provided in Subsection (2), of a crime which
416 would be classified in Utah as a felony, misdemeanor, or infraction;

417 (f) the person has a combination of three or more convictions not arising out of a single
418 criminal episode including any conviction for an offense which would be classified under Utah law
419 as a class B or class A misdemeanor or as a felony, including any misdemeanor and felony
420 convictions previously expunged, regardless of the jurisdiction in which the conviction or
421 expungement occurred; or

422 (g) a proceeding involving a crime is pending or being instituted in any jurisdiction against
423 the petitioner.

424 (2) A conviction may not be included for purposes of Subsection (1)(e), and a conviction
425 may not be considered for expungement until, after the petitioner's release from incarceration,
426 parole, or probation, whichever occurs last and all fines ordered by the court have been satisfied,
427 at least the following period of time has elapsed:

428 (a) seven years in the case of a felony;

429 (b) [~~six~~] ten years in the case of an alcohol-related traffic offense under Title 41, Motor
430 Vehicles;

- 431 (c) five years in the case of a class A misdemeanor;
- 432 (d) three years in the case of any other misdemeanor or infraction under Title 76, Utah
- 433 Criminal Code; or
- 434 (e) 15 years in the case of multiple class B or class C misdemeanors.
- 435 (3) A petitioner who would not be eligible to receive a certificate of eligibility under
- 436 Subsection (1)(d) or (f) may receive a certificate of eligibility for one additional expungement if
- 437 at least 15 years have elapsed since the last of any of the following:
- 438 (a) release from incarceration, parole, or probation relating to the most recent conviction;
- 439 and
- 440 (b) any other conviction which would have prevented issuance of a certificate of eligibility
- 441 under Subsection (1)(e).
- 442 (4) If, after reasonable research, a disposition for an arrest on the criminal history file is
- 443 unobtainable, the division may issue a special certificate giving discretion of eligibility to the court.

Legislative Review Note
as of 12-12-00 11:41 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel