

**RESTITUTION AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory S. Bell**

House Sponsor: Scott L Wyatt

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**LONG TITLE**

**General Description:**

This bill requires the full amount of restitution to be paid before a person can be eligible for an expungement.

**Highlighted Provisions:**

This bill:

- ▶ requires the full amount of court ordered restitution be paid:
  - before a person can be eligible for an expungement; and
  - before a court can enter a conviction to the next lower degree of a criminal offense; and
- ▶ requires a petitioner to pay the full amount of restitution ordered by a court for the criminal conviction for which the person is seeking an expungement.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-3-402**, as last amended by Chapter 7, Laws of Utah 1991

**77-18-12**, as last amended by Chapter 2, Laws of Utah 2005

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

Section 1. Section **76-3-402** is amended to read:

30 **76-3-402. Conviction of lower degree of offense.**

31 (1) If the court, having regard to the nature and circumstances of the offense of which  
32 the defendant was found guilty and to the history and character of the defendant, concludes it  
33 would be unduly harsh to record the conviction as being for that degree of offense established  
34 by statute and to sentence the defendant to an alternative normally applicable to that offense,  
35 the court may unless otherwise specifically provided by law enter a judgment of conviction for  
36 the next lower degree of offense and impose sentence accordingly.

37 (2) If a conviction is for a third degree felony the conviction is considered to be for a  
38 class A misdemeanor if:

39 (a) the judge designates the sentence to be for a class A misdemeanor and the sentence  
40 imposed is within the limits provided by law for a class A misdemeanor; or

41 (b) (i) the imposition of the sentence is stayed and the defendant is placed on probation,  
42 whether committed to jail as a condition of probation or not;

43 (ii) the defendant is subsequently discharged without violating his probation; and

44 (iii) the judge upon motion and notice to the prosecuting attorney, and a hearing if  
45 requested by either party or the court, finds it is in the interest of justice that the conviction be  
46 considered to be for a class A misdemeanor.

47 (3) An offense may be reduced only one degree under this section unless the prosecutor  
48 specifically agrees in writing or on the court record that the offense may be reduced two  
49 degrees. In no case may an offense be reduced under this section by more than two degrees.

50 (4) This section may not be construed to preclude any person from obtaining or being  
51 granted an expungement of his record as provided by law.

52 (5) Judgment for a conviction for a lower degree of offense may not be entered if there  
53 remains any unpaid balance on court ordered restitution for the offense for which the reduction  
54 is sought.

55 Section 2. Section **77-18-12** is amended to read:

56 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior**  
57 **convictions.**

58 (1) The division shall issue a certificate of eligibility to a petitioner seeking to obtain  
59 expungement for a criminal record unless prior to issuing a certificate of eligibility the division  
60 finds, through records of a governmental agency, including national criminal data bases that:

- 61 (a) the conviction for which expungement is sought is:
- 62 (i) a capital felony;
  - 63 (ii) a first degree felony;
  - 64 (iii) a second degree forcible felony;
  - 65 (iv) automobile homicide;
  - 66 (v) a felony violation of Section 41-6a-502;
  - 67 (vi) a conviction involving a sexual act against a minor;
  - 68 (vii) any registerable sex offense as defined in Subsection 77-27-21.5(1)[~~(d)~~] (e); or
  - 69 (viii) an attempt, solicitation, or conspiracy to commit any offense listed in Subsection  
70 77-27-21.5(1)[~~(d)~~] (e);

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

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

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

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

83 (f) the ~~[person]~~ petitioner has a combination of three or more convictions not arising  
84 out of a single criminal episode including any conviction for an offense which would be  
85 classified under Utah law as a class B or class A misdemeanor or as a felony, including any

86 misdemeanor and felony convictions previously expunged, regardless of the jurisdiction in  
87 which the conviction or expungement occurred; [or]

88 (g) a proceeding involving a crime is pending or being instituted in any jurisdiction  
89 against the petitioner[-]; or

90 (h) the petitioner has not paid the full amount of court ordered restitution pursuant to  
91 Section 77-38a-302, or by the Board of Pardons pursuant to Section 77-27-6 on the conviction  
92 for which the person is seeking an expungement.

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

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

98 (b) ten years in the case of:

99 (i) a misdemeanor conviction or the equivalent of a misdemeanor conviction as defined  
100 in Subsection 41-6a-501(2); or

101 (ii) a felony violation of Subsection 58-37-8(2)(g);

102 (c) five years in the case of a class A misdemeanor;

103 (d) three years in the case of any other misdemeanor or infraction under Title 76, Utah  
104 Criminal Code; or

105 (e) 15 years in the case of multiple class B or class C misdemeanors.

106 (3) A petitioner who would not be eligible to receive a certificate of eligibility under  
107 Subsection (1)(d) or (f) may receive a certificate of eligibility for one additional expungement  
108 if at least 15 years have elapsed since the last of any of the following:

109 (a) release from incarceration, parole, or probation relating to the most recent  
110 conviction; and

111 (b) any other conviction which would have prevented issuance of a certificate of  
112 eligibility under Subsection (1)(e).

113 (4) If, after reasonable research, a disposition for an arrest on the criminal history file is

114 unobtainable, the division may issue a special certificate giving discretion of eligibility to the  
115 court.