

EXPUNGEMENT AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill modifies provisions related to expungement.

Highlighted Provisions:

This bill:

- ▶ addresses expungement and fines, fees, or interest;
- ▶ addresses expungement and pending or previous infractions, traffic offenses, or minor regulatory offenses;
- ▶ provides for a certificate of eligibility if certain conditions are met after a case is dismissed without prejudice or condition;
- ▶ addresses when the court shall issue an order of expungement;
- ▶ provides for applying for a certificate of eligibility after a petition for expungement is denied; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-40-104, as last amended by Laws of Utah 2012, Chapter 136

77-40-105, as last amended by Laws of Utah 2017, Chapters 282 and 356

77-40-107, as last amended by Laws of Utah 2017, Chapter 356

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31 *Be it enacted by the Legislature of the state of Utah:*32 Section 1. Section **77-40-104** is amended to read:33 **77-40-104. Eligibility for expungement of records of arrest, investigation, and**
34 **detention -- Requirements.**35 (1) A person who ~~[has been]~~ is arrested or formally charged with an offense may apply
36 to the bureau for a certificate of eligibility to expunge ~~[all]~~ the records of arrest, investigation,
37 and detention ~~[which]~~ that may have been made in the case, subject to the following
38 conditions:39 (a) at least 30 days have passed since the day of the arrest for which a certificate of
40 eligibility is sought;

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

42 (c) one of the following ~~[occurred]~~ occurs:43 (i) charges ~~[were]~~ are screened by the investigating law enforcement agency and the
44 prosecutor ~~[has made]~~ makes a final determination that no charges will be filed in the case;45 (ii) the entire case ~~[was]~~ is dismissed with prejudice;46 (iii) the entire case is dismissed without prejudice or without condition and:47 (A) the prosecutor consents in writing to the issuance of a certificate of eligibility; or48 (B) at least 180 days have passed since the day on which the case is dismissed;49 ~~[(iii)]~~ (iv) the person ~~[was]~~ is acquitted at trial on all of the charges contained in the
50 case; or51 ~~[(iv)]~~ (v) the statute of limitations ~~[has expired]~~ expires on all of the charges contained
52 in the case.53 (2) Notwithstanding Subsection (1)(a), the bureau shall issue a certificate of eligibility
54 on an expedited basis to a petitioner seeking expungement under Subsection [(1)(c)(iii)] shall be
55 issued a certificate of eligibility on an expedited basis] (1)(c)(iv).56 Section 2. Section **77-40-105** is amended to read:57 **77-40-105. Eligibility for expungement of conviction -- Requirements.**

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

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

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

62 (i) a capital felony;

63 (ii) a first degree felony;

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

65 (iv) felony automobile homicide;

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

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

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

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

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

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

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

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

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

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

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

85 (iii) five years in the case of any class A misdemeanor or a felony drug possession

86 offense;

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

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

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

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

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

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

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

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

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

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

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

113 (7) If the petitioner's criminal history contains convictions for both a drug possession

114 offense and a non drug possession offense arising from the same criminal episode, that criminal
115 episode shall be counted as provided in Subsection (5) if any non drug possession offense in
116 that episode:

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

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

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

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

126 Section 3. Section 77-40-107 is amended to read:

127 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
128 **Standard of proof -- Exception.**

129 (1) The petitioner shall file a petition for expungement and the certificate of eligibility
130 in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to
131 the prosecuting agency. If the certificate is filed electronically, the petitioner or the petitioner's
132 attorney shall keep the original certificate until the proceedings are concluded. If the original
133 certificate is filed with the petition, the clerk of the court shall scan it and return it to the
134 petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

135 (2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting
136 attorney shall provide notice of the expungement request by first-class mail to the victim at the
137 most recent address of record on file.

138 (b) The notice shall:

139 (i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable
140 to the petition[;];

141 (ii) state that the victim has a right to object to the expungement[;]; and

142 (iii) provide instructions for registering an objection with the court.

143 (3) The prosecuting attorney and the victim, if applicable, may respond to the petition
144 by filing a recommendation or objection with the court within 35 days after receipt of the
145 petition.

146 (4) (a) The court may request a written response to the petition from the Division of
147 Adult Probation and Parole within the Department of Corrections.

148 (b) If requested, the response prepared by the Division of Adult Probation and Parole
149 shall include:

150 (i) the reasons probation was terminated; and

151 (ii) certification that the petitioner has completed all requirements of sentencing and
152 probation or parole.

153 (c) [~~A~~] The Division of Adult Probation and Parole shall provide a copy of the
154 response [~~shall be provided~~] to the petitioner and the prosecuting attorney.

155 (5) The petitioner may respond in writing to any objections filed by the prosecutor or
156 the victim and the response prepared by the Division of Adult Probation and Parole within 14
157 days after receipt.

158 (6) (a) If the court receives an objection concerning the petition from any party, the
159 court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the
160 date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the
161 hearing.

162 (b) The petitioner, the prosecuting attorney, the victim, and any other person who has
163 relevant information about the petitioner may testify at the hearing.

164 (c) The court shall review the petition, the certificate of eligibility, and any written
165 responses submitted regarding the petition.

166 (7) If no objection is received within 60 days from the date the petition for
167 expungement [~~was~~] is filed with the court, the expungement may be granted without a hearing.

168 (8) The court shall issue an order of expungement if [~~it~~] the court finds by clear and
169 convincing evidence that:

170 (a) the petition and certificate of eligibility are sufficient;

171 (b) the statutory requirements have been met;

172 (c) if the petitioner seeks expungement after a case is dismissed without prejudice or
173 without condition, the prosecutor provided written consent and has not filed and does not
174 intend to refile related charges;

175 [~~(c)~~] (d) if the petitioner seeks expungement of drug possession offenses allowed under
176 Subsection 77-40-105(6), the petitioner is not illegally using controlled substances and is
177 successfully managing any substance addiction; and

178 [~~(d)~~] (e) it is not contrary to the interests of the public to grant the expungement.

179 (9) (a) If the court denies a petition described in Subsection (8)(c) because the
180 prosecutor intends to refile charges, the person seeking expungement may again apply for a
181 certificate of eligibility if charges are not refiled within 180 days of the day on which the court
182 denies the petition.

183 (b) A prosecutor who opposes an expungement of a case dismissed without prejudice
184 or without condition shall have a good faith basis for the intention to refile the case.

185 (c) A court shall consider the number of times that good faith basis of intention to
186 refile by the prosecutor is presented to the court in making the court's determination to grant
187 the petition for expungement described in Subsection (8)(c).

188 [~~(9)~~] (10) A court may not expunge a conviction of an offense for which a certificate of
189 eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.