

EXPUNGEMENT OF CRIMINAL RECORD AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Pete Suazo

AN ACT RELATING TO THE CODE OF CRIMINAL PROCEDURES; DEFINING SECOND DEGREE FORCIBLE FELONY FOR EXPUNGEMENT PURPOSES; AMENDING THE EXPUNGEMENT PROCESS WITH RESPECT TO CERTIFICATES OF ELIGIBILITY, MISDEMEANORS, AND SEXUAL OFFENSES; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

77-18-9, as enacted by Chapter 143, Laws of Utah 1994

77-18-10, as last amended by Chapter 35, Laws of Utah 1996

77-18-11, as last amended by Chapter 35, Laws of Utah 1996

77-18-12, as last amended by Chapter 35, Laws of Utah 1996

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

Section 1. Section **77-18-9** is amended to read:

77-18-9. Definitions.

As used in this chapter:

(1) "Administrative finding" means a decision upon a question of fact reached by an administrative agency following an administrative hearing or other procedure satisfying the requirements of due process.

(2) "Certificate of eligibility" means a document issued by the division stating that the criminal record which is the subject of a petition for expungement is eligible for expungement.

(3) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

(4) "Division" means the Law Enforcement and Technical Services Division of the Department of Public Safety.

(5) "Expungement" means the sealing or destruction of a criminal record, including records of the investigation, arrest, detention, or conviction of the petitioner.

- (6) "Jurisdiction" means an area of authority.
- (7) "Petitioner" means a person seeking expungement under this chapter.
- (8) Second degree forcible felony includes:
 - (a) aggravated assault, if the person intentionally causes serious bodily injury;
 - (b) aggravated assault by a prisoner;
 - (c) aggravated assault on school premises;
 - (d) intentional child abuse;
 - (e) criminally negligent automobile homicide;
 - (f) reckless child abuse homicide;
 - (g) mayhem;
 - (h) manslaughter;
 - (i) kidnaping;
 - (j) forcible sexual abuse;
 - (k) robbery;
 - (l) felony fleeing causing death or serious bodily injury; or
 - (m) delivery of an explosive to a common carrier.

Section 2. Section **77-18-10** is amended to read:

77-18-10. Petition -- Expungement of records of arrest, investigation, and detention -- Eligibility conditions -- No filing fee.

(1) A person who has been arrested with or without a warrant may petition the court in which the proceeding occurred or, if there were no court proceedings, any court in the jurisdiction where the arrest occurred, for an order expunging any and all records of arrest, investigation, and detention which may have been made in the case, subject to the following conditions:

- (a) at least 30 days have passed since the arrest for which expungement is sought;
- (b) there have been no intervening arrests; and
- (c) one of the following occurred:
 - (i) the person was released without the filing of formal charges;
 - (ii) proceedings against the person were dismissed;

(iii) the person was discharged without a conviction and no charges were refiled within 30 days;

(iv) the person was acquitted at trial; or

(v) the record of any proceedings against the person has been sealed [~~under Section 77-18-13~~].

(2) (a) A person seeking expungement under Subsection (1) may petition the court for expungement before the expiration of the 30 days required by Subsection (1)(a) if he believes extraordinary circumstances exist and the court orders the division to proceed with the eligibility process.

(b) A court may, with the receipt of a certificate of eligibility, order expungement if the court finds that the petitioner is eligible for relief under this subsection and in the interest of justice the order should be issued prior to the expiration of the 30-day period required by Subsection (1)(a).

(3) As provided in Subsection 21-1-5(1)(i), there is no fee for a petition filed under Subsection (2).

(4) The petitioner shall file a certificate of eligibility issued by the division to be reviewed by the prosecuting attorney and the court prior to issuing an order granting the expungement.

(5) If the court finds that the petitioner is eligible for relief under this section, it shall issue an order granting the expungement.

(6) No filing fees or other administrative charges shall be assessed against a successful petitioner under this section.

(7) A person who has received expungement of an arrest under this section may respond to any inquiry as though the arrest did not occur, unless otherwise provided by law.

Section 3. Section **77-18-11** is amended to read:

77-18-11. Petition -- Expungement of conviction -- Certificate of eligibility -- Notice -- Written evaluation -- Objections -- Hearing.

(1) A person convicted of a crime may petition the convicting court for an expungement of the record of conviction.

(2) The court shall require receipt of a certificate of eligibility issued by the division under

Section 77-18-12.

(3) The petition and certificate of eligibility shall be filed with the court and served upon the prosecuting attorney and the Department of Corrections.

(4) A victim shall receive notice of a petition for expungement if, prior to the entry of an expungement order, the victim or, in the case of a minor or a person who is incapacitated or deceased, the victim's next of kin or authorized representative, submits a written and signed request for notice to the office of the Department of Corrections in the judicial district in which the crime occurred or judgment was entered.

(5) The Department of Corrections shall serve notice of the expungement request by first-class mail to the victim at the most recent address of record on file with the department. The notice shall include a copy of the petition, certificate of eligibility, and statutes and rules applicable to the petition.

(6) The court in its discretion may request a written evaluation by Adult Parole and Probation of the Department of Corrections~~[, except that a written evaluation shall be required for any conviction of a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, and Title 76, Chapter 5a, Sexual Exploitation of Children, or of any sexual act against a minor].~~

(a) The evaluation shall include a recommendation concerning the petition for expungement.

(b) If expungement is recommended, the evaluation shall include certification that the petitioner has completed all requirements of sentencing and probation or parole and state any rationale that would support or refute consideration for expungement.

(c) The conclusions and recommendations contained in the evaluation shall be provided to the petitioner and the prosecuting attorney.

(7) If the prosecuting attorney or a victim submits a written objection to the court concerning the petition within 30 days after service of the notice, or if the petitioner objects to the conclusions and recommendations in the evaluation within 15 days after receipt of the conclusions and recommendations, the court shall set a date for a hearing and notify the prosecuting attorney for the jurisdiction, the petitioner, and the victim of the date set for the hearing.

(8) Any person who has relevant information about the petitioner may testify at the hearing.

(9) The prosecuting attorney may respond to the court with a recommendation or objection within 30 days.

~~[(9)]~~ (10) If an objection is not received under Subsection (7), the expungement may be granted without a hearing.

~~[(10)]~~ (11) A court may not expunge a conviction of a:

- (a) capital felony;
- (b) first degree felony;
- (c) second degree forcible felony; or
- (d) any sexual act against a minor.

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

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

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

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

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

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

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

(e) the petitioner was convicted in any jurisdiction, subsequent to the conviction for which

expungement is sought and within the time periods as provided in Subsection (2), of a crime which would be classified in Utah as a felony, misdemeanor, or infraction;

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

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

(2) A conviction [~~shall~~] may not be included for purposes of Subsection (1)(e), and [~~no~~] a conviction [~~shall~~] may not be considered for expungement until, after the petitioner's release from incarceration, parole, or probation, whichever occurs last[;] and all fines ordered by the court have been satisfied, at least the following period of time has elapsed:

- (a) seven years in the case of a felony;
- (b) six years in the case of an alcohol-related traffic offense under Title 41;
- (c) five years in the case of a class A misdemeanor; [or]
- (d) three years in the case of any other misdemeanor or infraction under Title 76; or
- (e) 15 years in the case of multiple class B or class C misdemeanors.

(3) A petitioner who would not be eligible to receive a certificate of eligibility under Subsection (1)[~~(b), (c);~~] (d)[;] or (f) may receive a certificate of eligibility for [~~an~~] one additional expungement if at least [~~20~~] 15 years have elapsed since the last of any of the following:

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

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

(4) If, after reasonable research, a disposition for an arrest on the criminal history file is unobtainable, the division may issue a special certificate giving discretion of eligibility to the court.