

**EXPUNGEMENT OF CERTAIN FELONY
RECORDS**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Neal B. Hendrickson

Brent H. Goodfellow

This act modifies provisions relating to expungement of criminal records. It clarifies that a court may not expunge a criminal conviction without an eligibility certificate from the Bureau of Criminal Identification. The act also provides that an original conviction for certain offenses may not be expunged even if reduced after the fact and makes minor technical and stylistic corrections.

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

AMENDS:

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

77-18-11, as last amended by Chapter 227, Laws of Utah 1999

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

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

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

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

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

(a) the judge designates the sentence to be for a class A misdemeanor and the sentence

28 imposed is within the limits provided by law for a class A misdemeanor; or

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

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

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

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

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

40 Section 2. Section **77-18-11** is amended to read:

41 **77-18-11. Petition -- Expungement of conviction -- Certificate of eligibility -- Fee --**
42 **Notice -- Written evaluation -- Objections -- Hearing.**

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

45 (2) (a) The court shall require receipt of a certificate of eligibility issued by the division
46 under Section 77-18-12 before a conviction may be expunged.

47 (b) The fee for each certificate of eligibility is \$25. This fee remains in effect until
48 changed by the division through the process under Section 63-38-3.2.

49 (c) Funds generated under Subsection (2)(b) shall be deposited in the General Fund as a
50 dedicated credit by the department to cover the costs incurred in providing the information.

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

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

58 (5) The Department of Corrections shall serve notice of the expungement request by

59 first-class mail to the victim at the most recent address of record on file with the department. The
 60 notice shall include a copy of the petition, certificate of eligibility, and statutes and rules applicable
 61 to the petition.

62 (6) The court in its discretion may request a written evaluation by Adult Parole and
 63 Probation of the Department of Corrections.

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

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

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

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

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

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

80 (10) If an objection is not received under Subsection (7), the expungement may be granted
 81 without a hearing.

82 (11) (a) A court may not ~~[expunge a]~~ order the expungement of a conviction ~~[of a:]~~ for an
 83 offense listed in Subsection (11)(b), even if the conviction is later reduced under Section 76-3-402.

84 (b) Offenses for which convictions may not be ordered expunged are:

85 ~~[(a)]~~ (i) a capital felony;

86 ~~[(b)]~~ (ii) a first degree felony;

87 ~~[(c)]~~ (iii) a second degree forcible felony; ~~[or]~~

88 ~~[(d)]~~ (iv) any sexual act against a minor[-:]; or

89 (v) any registerable sex offense as defined in Subsection 77-27-21.5(1)(d) or any attempt,

90 solicitation, or conspiracy to commit any registerable sex offense.

Legislative Review Note
as of 1-15-01 11:10 AM

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

Office of Legislative Research and General Counsel