

Senator Gregory S. Bell proposes the following substitute bill:

RESTITUTION AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Scott L Wyatt

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 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

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

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



26 **76-3-402. Conviction of lower degree of offense.**

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

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

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

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

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

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

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

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

48 (5) A judgment for a conviction under Subsection (2)(b) may not be entered if there
49 remains any unpaid balance on court ordered restitution for that particular offense entered
50 pursuant to Section 77-38a-302.

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

52 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior**
53 **convictions.**

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

- 57 (a) the conviction for which expungement is sought is:
- 58 (i) a capital felony;
- 59 (ii) a first degree felony;
- 60 (iii) a second degree forcible felony;
- 61 (iv) automobile homicide;
- 62 (v) a felony violation of Section 41-6a-502;
- 63 (vi) a conviction involving a sexual act against a minor;
- 64 (vii) any registerable sex offense as defined in Subsection 77-27-21.5(1)~~(f)~~ (e); or
- 65 (viii) an attempt, solicitation, or conspiracy to commit any offense listed in Subsection
- 66 77-27-21.5(1)~~(f)~~ (e);
- 67 (b) the petitioner's record includes two or more convictions for any type of offense
- 68 which would be classified as a felony under Utah law, not arising out of a single criminal
- 69 episode, regardless of the jurisdiction in which the convictions occurred;
- 70 (c) the petitioner has previously obtained expungement in any jurisdiction of a crime
- 71 which would be classified as a felony in Utah;
- 72 (d) the petitioner has previously obtained expungement in any jurisdiction of two or
- 73 more convictions which would be classified as misdemeanors in Utah unless the convictions
- 74 would be classified as class B or class C misdemeanors in Utah and 15 years have passed since
- 75 these misdemeanor convictions;
- 76 (e) the petitioner was convicted in any jurisdiction, subsequent to the conviction for
- 77 which expungement is sought and within the time periods as provided in Subsection (2), of a
- 78 crime which would be classified in Utah as a felony, misdemeanor, or infraction;
- 79 (f) the ~~person~~ petitioner has a combination of three or more convictions not arising
- 80 out of a single criminal episode including any conviction for an offense which would be
- 81 classified under Utah law as a class B or class A misdemeanor or as a felony, including any
- 82 misdemeanor and felony convictions previously expunged, regardless of the jurisdiction in
- 83 which the conviction or expungement occurred; ~~or~~
- 84 (g) a proceeding involving a crime is pending or being instituted in any jurisdiction
- 85 against the petitioner~~[-]; or~~
- 86 (h) the petitioner has not paid the full amount of restitution ordered by a court pursuant
- 87 to Section 77-38a-302, or by the Board of Pardons pursuant to Section 77-27-6 on the

88 conviction for which the person is seeking an expungement.

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

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

94 (b) ten years in the case of:

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

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

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

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

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

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

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

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

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