

EXPUNGEMENT LAW AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Ed Mayne

LONG TITLE

General Description:

This bill modifies the Utah Code of Criminal Procedure regarding granting an expungement for any crime that has been pardoned by the Board of Pardons and Parole.

Highlighted Provisions:

This bill:

▶ provides that a person who has been granted a pardon by the Board of Pardons and Parole for a criminal offense may also petition for the expungement of the record of the pardoned offense; and

▶ that prior offenses that have been pardoned may not be considered regarding qualifying for an expungement request.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-18-11, as last amended by Chapter 228, Laws of Utah 2004

77-18-12, as last amended by Chapters 50, 189 and 269, Laws of Utah 2006

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



28 Section 1. Section 77-18-11 is amended to read:

29 **77-18-11. Petition -- Expungement of conviction -- Certificate of eligibility -- Fee**
30 **-- Notice -- Written evaluation -- Objections -- Hearing.**

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

33 (b) If a person has received a pardon granted by the Utah Board of Pardons and Parole,
34 the person is entitled to an expungement of all pardoned crimes, subject to the exceptions
35 under Subsection 77-18-12(1)(a).

36 (2) (a) The court shall require receipt of a certificate of eligibility issued by the division
37 under Section 77-18-12.

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

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

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

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

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

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

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

57 (b) If expungement is recommended, the evaluation shall include certification that the
58 petitioner has completed all requirements of sentencing and probation or parole and state any

59 rationale that would support or refute consideration for expungement.

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

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

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

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

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

74 (11) A court may not expunge a conviction of:

75 (a) a capital felony;

76 (b) a first degree felony;

77 (c) a second degree forcible felony;

78 (d) any sexual act against a minor; or

79 (e) an offense for which a certificate of eligibility may not be issued under Section
80 77-18-12.

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

82 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior**
83 **convictions.**

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

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

88 (i) a capital felony;

89 (ii) a first degree felony;

- 90 (iii) a second degree forcible felony;
- 91 (iv) automobile homicide;
- 92 (v) a felony violation of Section 41-6a-502;
- 93 (vi) a conviction involving a sexual act against a minor;
- 94 (vii) any registerable sex offense as defined in Subsection 77-27-21.5(1)(f); or
- 95 (viii) an attempt, solicitation, or conspiracy to commit any offense listed in Subsection
- 96 77-27-21.5(1)(f);

97 (b) the petitioner's record includes two or more convictions for any type of offense
98 which would be classified as a felony under Utah law, not arising out of a single criminal
99 episode, regardless of the jurisdiction in which the convictions occurred, unless the petitioner
100 has received a pardon from the Board of Pardons and Parole for either or both of the
101 convictions;

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

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

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

111 (f) the petitioner has a combination of three or more convictions not arising out of a
112 single criminal episode including any conviction for an offense which would be classified
113 under Utah law as a class B or class A misdemeanor or as a felony, including any misdemeanor
114 and felony convictions previously expunged, regardless of the jurisdiction in which the
115 conviction or expungement occurred, unless the petitioner has received a pardon from the
116 Board of Pardons and Parole for one or more of the convictions;

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

119 (h) the petitioner has not paid the full amount of court ordered restitution pursuant to
120 Section 77-38a-302, or by the Board of Pardons pursuant to Section 77-27-6 on the conviction

121 for which the person is seeking an expungement.

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

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

127 (b) ten years in the case of:

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

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

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

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

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

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

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

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

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

Legislative Review Note
as of 1-8-07 3:08 PM

Office of Legislative Research and General Counsel

H.B. 179 - Expungement Law Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/30/2007, 10:01:19 AM, Lead Analyst: Byrne, D.

Office of the Legislative Fiscal Analyst