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

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

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

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

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

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

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

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

(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.

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

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

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

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

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

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

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

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

77 (a) a capital felony;

78 (b) a first degree felony;

79 (c) a second degree forcible felony;

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

81 (e) an offense for which a certificate of eligibility may not be issued under Section
82 77-18-12.

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

84 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior**
85 **convictions.**

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

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

- 90 (i) a capital felony;
- 91 (ii) a first degree felony;
- 92 (iii) a second degree forcible felony;
- 93 (iv) automobile homicide;
- 94 (v) a felony violation of Section 41-6a-502;
- 95 (vi) a conviction involving a sexual act against a minor;
- 96 (vii) any registerable sex offense as defined in Subsection 77-27-21.5(1)(f); or
- 97 (viii) an attempt, solicitation, or conspiracy to commit any offense listed in Subsection
- 98 77-27-21.5(1)(f);

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

104 (c) the petitioner has previously obtained expungement in any jurisdiction of a crime
 105 which would be ~~[classified as]~~ a felony ~~[in]~~ under Utah law;

106 (d) the petitioner has previously obtained expungement in any jurisdiction of two or
 107 more convictions which would be ~~[classified as]~~ misdemeanors ~~[in]~~ under Utah law unless the
 108 convictions would be ~~[classified as]~~ class B or class C misdemeanors ~~[in]~~ under Utah law and
 109 15 years have passed since these misdemeanor convictions;

110 (e) the petitioner was convicted in any jurisdiction, subsequent to the conviction for
 111 which expungement is sought and within the time periods ~~[as]~~ provided in Subsection (2), of a
 112 crime ~~[which]~~ that would be ~~[classified in Utah as]~~ a felony, misdemeanor, or infraction under
 113 Utah law;

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

120 (g) a proceeding involving a crime is pending or being instituted in any jurisdiction

121 against the petitioner; or

122 (h) the petitioner has not paid the full amount of court ordered restitution pursuant to
123 Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6 on the
124 conviction for which the person is seeking an expungement.

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

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

130 (b) ten years in the case of:

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

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

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

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

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

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

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

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

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

Legislative Review Note
as of 9-21-07 8:29 AM

Office of Legislative Research and General Counsel

H.B. 70 - Expungement Law Amendments

Fiscal Note

2008 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.

1/11/2008, 8:17:00 AM, Lead Analyst: Syphus, G.

Office of the Legislative Fiscal Analyst