

EXPUNGEMENT OF RECORDS AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Julie Fisher

Senate Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill requires the division to issue an expedited certificate of eligibility for expungement to people who are acquitted of a crime at trial, provided that the person meets all other conditions for an expungement, and the bill allows the state to petition a court to open an expunged record if a person is charged with a new crime.

Highlighted Provisions:

This bill:

- ▶ requires the division to issue an expedited certificate of eligibility to a petitioner who has been acquitted of a crime at trial; and
- ▶ allows the state to petition the court to open expunged records, upon a showing of good cause, and allows relevant records previously expunged to be used in an investigation and trial of the new charges.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-18-10, as last amended by Laws of Utah 2008, Chapter 3

77-18-14, as last amended by Laws of Utah 1999, Chapter 259

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

30 Section 1. Section **77-18-10** is amended to read:

31 **77-18-10. Petition -- Expungement of records of arrest, investigation, and**
32 **detention -- Eligibility conditions -- No filing fee.**

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

38 (a) at least 30 days have passed since the arrest for which expungement is sought;

39 (b) there have been no intervening arrests; and

40 (c) one of the following occurred:

41 (i) the person was released without the filing of formal charges;

42 (ii) proceedings against the person were dismissed;

43 (iii) the person was discharged without a conviction and no charges were refiled

44 within 30 days;

45 [~~(iv) the person was acquitted at trial; or~~]

46 [~~(v) the record of any proceedings against the person has been sealed.]~~

47 (iv) the record of any proceedings against the person has been sealed; or

48 (v) the person was acquitted at trial.

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

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

57 [~~(3) As provided in Subsection 78A-2-301(1)(i), there is no fee for a petition filed~~]

58 ~~under Subsection (2):]~~

59 ~~[(4)]~~ (3) The petitioner seeking expungement under Subsection (1)(c)(i), (ii), (iii), or
60 (iv) shall file a certificate of eligibility issued by the division to be reviewed by the prosecuting
61 attorney and the court prior to issuing an order granting the expungement.

62 (4) Notwithstanding Subsection (1)(a), a petitioner seeking expungement under
63 Subsection (1)(c)(v), shall be issued a certificate of eligibility by the division on an expedited
64 basis unless the petitioner has had an intervening arrest. The certificate of eligibility is to be
65 reviewed by the prosecuting attorney and the court prior to issuing an order to grant the
66 expungement.

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

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

71 (7) As provided in Subsection 78A-2-301(1)(i), there is no fee for a petition filed
72 under Subsection (2).

73 ~~[(7)]~~ (8) A person who has received expungement of an arrest under this section may
74 respond to any inquiry as though the arrest did not occur, unless otherwise provided by law.

75 Section 2. Section **77-18-14** is amended to read:

76 **77-18-14. Order to expunge -- Distribution of order -- Redaction -- Receipt of**
77 **order -- Administrative proceedings -- Division requirements.**

78 (1) Except as otherwise provided in this chapter, upon approval of a petition for
79 expungement, the court shall enter an order to expunge all records in the petitioner's case
80 which are in the custody of that court or in the custody of any other court, agency, or official.

81 (2) The petitioner shall be responsible for service of the order of expungement to all
82 affected state, county, and local entities, agencies, and officials including the court, arresting
83 agency, booking agency, Department of Corrections, and the division.

84 (3) The division shall forward a copy of the expungement order to the Federal Bureau
85 of Investigation.

86 (4) In order to avoid destruction or sealing of the records in whole or in part, any state,
87 county, or local entity, agency, or official receiving an expungement order shall only expunge
88 all references to the petitioner's name. The petitioner, based on good cause, may petition the
89 court to expunge the records in whole or in part.

90 (5) No state, county, or local entity, agency, or official may, after receiving service of
91 an expungement order, divulge information contained in the expunged portion of the record.

92 (6) (a) An order of expungement shall not restrict an agency's use or dissemination of
93 records in its ordinary course of business until the agency has received service of a copy of the
94 order.

95 (b) Any action taken by an agency after issuance of the order but prior to the agency's
96 receipt of a copy of the order may not be invalidated by the order.

97 (7) An order of expungement may not:

98 (a) terminate or invalidate any pending administrative proceedings or actions of which
99 the petitioner had notice according to the records of the administrative body prior to issuance
100 of the expungement order;

101 (b) affect the enforcement of any order or findings issued by an administrative body
102 pursuant to its lawful authority prior to issuance of the expungement order; or

103 (c) remove any evidence relating to the petitioner including records of arrest, which
104 the administrative body has used or may use in these proceedings.

105 (8) The division shall provide the petitioner with a list of the agencies affected by this
106 subsection with clear written directions regarding the requirements of this section.

107 (9) If, after obtaining an expungement, the petitioner is charged with a felony, the state
108 may petition the court to open the expunged records upon a showing of good cause.