

EXPUNGEMENT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: John Dougall

LONG TITLE

General Description:

This bill expands the eligibility for expungement of records to include most traffic offenses.

Highlighted Provisions:

This bill:

- ▶ allows most traffic offenses to be expunged without limit;
- ▶ amends the conditions under which a person may qualify for a certificate of eligibility for an expungement; and
- ▶ provides that traffic offenses are not included in determining if a person is eligible for future certificates of eligibility and expungement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-40-102, as renumbered and amended by Laws of Utah 2010, Chapter 283

77-40-104, as last amended by Laws of Utah 2011, Chapter 26

77-40-105, as last amended by Laws of Utah 2011, Chapter 26

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

Section 1. Section **77-40-102** is amended to read:

30 **77-40-102. Definitions.**

31 As used in this chapter:

32 (1) "Administrative finding" means a decision upon a question of fact reached by an
33 administrative agency following an administrative hearing or other procedure satisfying the
34 requirements of due process.

35 (2) "Agency" means a state, county, or local government entity that generates or
36 maintains records relating to an investigation, arrest, detention, or conviction for an offense for
37 which expungement may be ordered.

38 (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public
39 Safety established in Section 53-10-201.

40 (4) "Certificate of eligibility" means a document issued by the bureau stating that the
41 criminal record which is the subject of a petition for expungement is eligible for expungement.

42 (5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty
43 after trial, a plea of guilty, or a plea of nolo contendere.

44 (6) "Department" means the Department of Public Safety established in Section
45 53-1-103.

46 (7) "Expunge" means to seal or otherwise restrict access to the petitioner's record of
47 arrest, investigation, detention, or conviction held by an agency.

48 (8) "Jurisdiction" means a state, district, province, political subdivision, territory, or
49 possession of the United States or any foreign country.

50 (9) "Petitioner" means a person seeking expungement under this chapter.

51 (10) "Traffic offense" means all offenses in the following parts and all local ordinances
52 that are substantially similar to the offenses:

53 (a) Title 41, Chapter 6a, Part 3, Traffic-control Devices;

54 (b) Title 41, Chapter 6a, Part 6, Speed Restrictions;

55 (c) Title 41, Chapter 6a, Part 7, Driving on Right Side of Highway and Passing;

56 (d) Title 41, Chapter 6a, Part 8, Turning and Signaling for Turns;

57 (e) Title 41, Chapter 6a, Part 9, Right-of-Way;

- 58 (f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;
- 59 (g) Title 41, Chapter 6a, Part 11, Bicycles, Regulation of Operation;
- 60 (h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and
- 61 Safety Zones;
- 62 (i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;
- 63 (j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;
- 64 (k) Title 41, Chapter 6a, Part 15, Special Vehicles;
- 65 (l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;
- 66 (m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and
- 67 (n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.

68 Section 2. Section **77-40-104** is amended to read:

69 **77-40-104. Eligibility for expungement of records of arrest, investigation, and**
70 **detention -- Requirements.**

71 (1) A person who has been arrested [~~with or without a warrant~~] or formally charged
72 with an offense may apply to the bureau for a certificate of eligibility to expunge all records of
73 arrest, investigation, and detention which may have been made in the case, subject to the
74 following conditions:

75 (a) at least 30 days have passed since the arrest for which a certificate of eligibility is
76 sought;

77 (b) there are no criminal proceedings pending against the petitioner; and

78 (c) one of the following occurred:

79 (i) charges were screened by the investigating law enforcement agency and the
80 prosecutor has made a final determination that no charges will be filed in the case;

81 (ii) the [~~action against the person~~] entire case was dismissed with prejudice;

82 (iii) the person was acquitted at trial on all of the charges contained in the case; or

83 (iv) the statute of limitations has expired on [~~the offense~~] all of the charges contained
84 in the case.

85 (2) Notwithstanding Subsection (1)(a), a petitioner seeking expungement under

86 Subsection (1)(c)(iii) shall be issued a certificate of eligibility on an expedited basis.

87 Section 3. Section **77-40-105** is amended to read:

88 **77-40-105. Eligibility for expungement of conviction -- Requirements.**

89 (1) A person convicted of [~~a crime~~] an offense may apply to the bureau for a certificate
90 of eligibility to expunge the record of conviction as provided in this section.

91 (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

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

93 (i) a capital felony;

94 (ii) a first degree felony;

95 (iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

96 (iv) automobile homicide;

97 (v) a felony violation of Subsection 41-6a-501(2); or

98 (vi) a registerable sex offense as defined in Subsection 77-27-21.5(1)(n);

99 (b) a criminal proceeding is pending against the petitioner; or

100 (c) the petitioner intentionally or knowingly provides false or misleading information
101 on the application for a certificate of eligibility.

102 (3) A petitioner seeking to obtain expungement for a [~~criminal~~] record of conviction is
103 not eligible to receive a certificate of eligibility from the bureau until all of the following have
104 occurred:

105 (a) all fines and interest ordered by the court have been paid in full;

106 (b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board
107 of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and

108 (c) the following time periods have elapsed from the date the petitioner was convicted
109 or released from incarceration, parole, or probation, whichever occurred last, for each
110 conviction the petitioner seeks to expunge:

111 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a
112 felony [~~violation~~] conviction of Subsection 58-37-8(2)(g);

113 (ii) seven years in the case of a felony;

- 114 (iii) five years in the case of a class A misdemeanor;
- 115 (iv) four years in the case of a class B misdemeanor; or
- 116 (v) three years in the case of any other misdemeanor or infraction.
- 117 (4) The bureau may not issue a certificate of eligibility if, at the time the petitioner
- 118 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
- 119 including previously expunged convictions, contains any of the following:
- 120 (a) two or more felony convictions, each of which is contained in a separate criminal
- 121 episode;
- 122 (b) any combination of three or more convictions that include two class A
- 123 misdemeanor convictions, each of which is contained in a separate criminal episode;
- 124 (c) any combination of four or more convictions that include three class B
- 125 misdemeanor convictions, each of which is contained in a separate criminal episode; or
- 126 (d) five or more convictions of any degree whether misdemeanor or felony, excluding
- 127 infractions and any traffic offenses, each of which is contained in a separate criminal episode.
- 128 (5) If the petitioner has received a pardon from the Utah Board of Pardons and Parole,
- 129 the petitioner is entitled to a certificate of eligibility for all pardoned crimes.