

EXPUNGEMENT OF DRUG OFFENSES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: _____

LONG TITLE

General Description:

This bill provides a special procedure for expunging drug-related offenses.

Highlighted Provisions:

This bill:

- ▶ provides that a petitioner with two or more controlled substance related offenses may petition for an expungement;
- ▶ requires the petitioner to apply for and receive a certificate of eligibility;
- ▶ requires that the prosecutor, upon receiving a petition for expungement, provide a copy of the petitioner's presentence report and other documentation considered of interest to the court; and
- ▶ allows the court, after a hearing, to expunge any or all offenses on the petitioner's record.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

77-40-114, Utah Code Annotated 1953



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

29 Section 1. Section **77-40-114** is enacted to read:

30 **77-40-114. Provisions regarding drug offenses.**

31 (1) This section governs the process for petitioners with two or more controlled
32 substance offenses, but none of the offenses listed in Subsection 77-40-105(2), in their criminal
33 history.

34 (2) A petitioner may apply for and receive a certificate of eligibility from the bureau if:

35 (a) the petitioner's criminal history contains two or more violations of Title 58, Chapter
36 37, Utah Controlled Substances Act;

37 (b) the petitioner's record does not contain any of the offenses listed in Subsection
38 77-40-105(2);

39 (c) the petitioner has completed all rehabilitation and paid all restitution ordered by the
40 court;

41 (d) at least five years have elapsed since the petitioner was convicted or released from
42 incarceration, parole, or probation, whichever occurred last; and

43 (e) the petitioner pays all fees associated with applying for and receiving a certificate of
44 eligibility.

45 (3) The petitioner shall file a petition for expungement and the certificate of eligibility
46 in the district court where the petitioner resides.

47 (4) The petitioner shall deliver a copy of the petition to the prosecutor's office that
48 prosecuted the last offense in the petitioner's criminal history.

49 (5) The prosecutor's office:

50 (a) shall provide to the court the presentence report and any other documentation the
51 office determines necessary; and

52 (b) may file an objection or recommendation regarding the expungement.

53 (6) The court shall:

54 (a) review the petition, certificate of eligibility, petitioner's criminal history,
55 presentence report, and any other documents received pertaining to the petition for
56 expungement; and

57 (b) hold a hearing in which it may receive testimony from:

58 (i) the petitioner;

- 59 (ii) the prosecutor; and
60 (iii) any other person who has relevant information about the petitioner.
61 (7) The court may issue an order expunging any or all of the offenses on the petitioner's
62 criminal history if the court finds by clear and convincing evidence that:
63 (a) some or all of the offenses on the petitioner's criminal history were the direct result
64 of an addiction to a controlled substance;
65 (b) the petitioner has completed all rehabilitation required by the court and is no longer
66 addicted to controlled substances;
67 (c) the petitioner has demonstrated the ability to obtain and maintain employment; and
68 (d) the petitioner has become a contributing member of society.
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Legislative Review Note
as of 2-7-12 12:45 PM

Office of Legislative Research and General Counsel