

Representative Richard A. Greenwood proposes the following substitute bill:

EXPUNGEMENT OF RECORDS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: Stuart C. Reid

LONG TITLE

General Description:

This bill makes clarifying technical corrections regarding the number of convictions necessary to be eligible for expungement.

Highlighted Provisions:

This bill:

► clarifies how the number of class A and B misdemeanors necessary to make a person ineligible for expungement is taken into consideration.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-40-105, as last amended by Laws of Utah 2012, Chapters 136 and 145

77-40-108, as renumbered and amended by Laws of Utah 2010, Chapter 283

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

Section 1. Section **77-40-105** is amended to read:



26 **77-40-105. Eligibility for expungement of conviction -- Requirements.**

27 (1) A person convicted of an offense may apply to the bureau for a certificate of
28 eligibility to expunge the record of conviction as provided in this section.

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

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

31 (i) a capital felony;

32 (ii) a first degree felony;

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

34 (iv) automobile homicide;

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

36 (vi) a registerable sex offense as defined in Subsection 77-41-102(16);

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

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

40 (3) A petitioner seeking to obtain expungement for a record of conviction is not
41 eligible to receive a certificate of eligibility from the bureau until all of the following have
42 occurred:

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

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

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

49 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a
50 felony conviction of Subsection 58-37-8(2)(g);

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

52 (iii) five years in the case of a class A misdemeanor;

53 (iv) four years in the case of a class B misdemeanor; or

54 (v) three years in the case of any other misdemeanor or infraction.

55 (4) The bureau may not issue a certificate of eligibility if, at the time the petitioner
56 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,

57 including previously expunged convictions, contains any of the following:

58 (a) two or more felony convictions, each of which is contained in a separate criminal
59 episode;

60 (b) any combination of three or more convictions that include two class A
61 misdemeanor convictions, each of which is contained in a separate criminal episode;

62 (c) any combination of three or more convictions that include one felony and one class
63 A misdemeanor conviction, each of which is contained in a separate criminal episode;

64 [~~e~~] (d) any combination of four or more convictions that include three class B
65 misdemeanor convictions, each of which is contained in a separate criminal episode; [or]

66 (e) any combination of four or more convictions that include one felony and one class
67 A misdemeanor and one class B misdemeanor conviction, each of which is contained in a
68 separate criminal episode;

69 (f) any combination of four or more convictions that include two class B misdemeanors
70 and either one felony or one class A misdemeanor conviction, each of which is contained in a
71 separate criminal episode; or

72 [~~d~~] (g) five or more convictions of any degree whether misdemeanor or felony,
73 excluding infractions and any traffic offenses, each of which is contained in a separate criminal
74 episode.

75 (5) If the petitioner has received a pardon from the Utah Board of Pardons and Parole,
76 the petitioner is entitled to a certificate of eligibility for all pardoned crimes.

77 Section 2. Section **77-40-108** is amended to read:

78 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**

79 **Administrative proceedings -- Bureau requirements.**

80 (1) The petitioner shall be responsible for delivering a copy of the order of
81 expungement to all affected agencies and officials including the court, arresting agency,
82 booking agency, Department of Corrections, and the bureau.

83 (2) Unless otherwise provided by law or ordered by a court of competent jurisdiction to
84 respond differently, a person who has received an expungement of an arrest or conviction
85 under this chapter may respond to any inquiry as though the arrest or conviction did not occur.

86 (3) The bureau shall forward a copy of the expungement order to the Federal Bureau of
87 Investigation.

88 (4) An agency receiving an expungement order shall expunge the petitioner's
89 identifying information contained in records in its possession relating to the incident for which
90 expungement is ordered.

91 (5) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2),
92 a government agency or official may not divulge [~~identifying~~] information or records which
93 have been expunged regarding the petitioner contained in a record of arrest, investigation,
94 detention, or conviction after receiving an expungement order.

95 (6) (a) An order of expungement may not restrict an agency's use or dissemination of
96 records in its ordinary course of business until the agency has received a copy of the order.

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

99 (7) An order of expungement may not:

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

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

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

107 (8) The bureau shall provide clear written directions to the petitioner along with a list
108 of agencies known to be affected by the order of expungement.