

**Senator Todd Weiler** proposes the following substitute bill:

**EXPUNGEMENT AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Michael K. McKell

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to expungement.

**Highlighted Provisions:**

This bill:

11a **§→** ▶ addresses expungement and fines, fees, or interest;

11b ▶ addresses expungement and pending or previous infractions, traffic offenses, or

11c minor regulatory offenses; ←**§**

12 ▶ provides for a certificate of eligibility if certain conditions are met after a case is  
13 dismissed without prejudice or condition;

14 ▶ addresses when the court shall issue an order of expungement;

15 ▶ provides for applying for a certificate of eligibility after a petition for expungement  
16 is denied; and

17 ▶ makes technical amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-40-104**, as last amended by Laws of Utah 2012, Chapter 136



24a **§→ 77-40-105, as last amended by Laws of Utah 2017, Chapters 282 and 356 ←§**

25 **77-40-107**, as last amended by Laws of Utah 2017, Chapter 356

26

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

28 Section 1. Section 77-40-104 is amended to read:

29 **77-40-104. Eligibility for expungement of records of arrest, investigation, and**  
30 **detention -- Requirements.**31 (1) A person who [~~has been~~] is arrested or formally charged with an offense may apply  
32 to the bureau for a certificate of eligibility to expunge [~~all~~] the records of arrest, investigation,  
33 and detention [~~which~~] that may have been made in the case, subject to the following  
34 conditions:35 (a) at least 30 days have passed since the day of the arrest for which a certificate of  
36 eligibility is sought;

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

38 (c) one of the following [~~occurred~~] occurs:39 (i) charges [~~were~~] are screened by the investigating law enforcement agency and the  
40 prosecutor [~~has made~~] makes a final determination that no charges will be filed in the case;41 (ii) the entire case [~~was~~] is dismissed with prejudice;42 (iii) the entire case is dismissed without prejudice or without condition and:43 (A) the prosecutor consents in writing to the issuance of a certificate of eligibility; or44 (B) at least 180 days have passed since the day on which the case is dismissed;45 [~~(iii)~~] (iv) the person [~~was~~] is acquitted at trial on all of the charges contained in the  
46 case; or47 [~~(iv)~~] (v) the statute of limitations [~~has expired~~] expires on all of the charges contained  
48 in the case.49 (2) Notwithstanding Subsection (1)(a), the bureau shall issue a certificate of eligibility  
50 on an expedited basis to a petitioner seeking expungement under Subsection [(1)(c)(iii)] shall be  
51 issued a certificate of eligibility on an expedited basis] (1)(c)(iv).51a **§→ Section 2. Section 77-40-105 is amended to read:**51b **77-40-105. Eligibility for expungement of conviction -- Requirements.**51c (1) A person convicted of an offense may apply to the bureau for a certificate of eligibility to  
51d expunge the record of conviction as provided in this section.

51e (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

51f (a) the conviction for which expungement is sought is:

51g (i) a capital felony;

51h (ii) a first degree felony;

51i (iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

- 51j           ⊕(iv) felony automobile homicide;
- 51k           (v) a felony violation of Subsection 41-6a-501(2);
- 51l           (vi) a registerable sex offense as defined in Subsection 77-41-102(17); or
- 51m           (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);
- 51n           (b) a criminal proceeding is pending against the petitioner; or
- 51o           (c) the petitioner intentionally or knowingly provides false or misleading information on the
- 51p application for a certificate of eligibility.
- 51q           (3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to
- 51r receive a certificate of eligibility from the bureau until all of the following have occurred:
- 51s           (a) all fines and interest ordered by the court ~~§~~→related to the conviction for which
- 51t expungement is sought←~~§~~ have been paid in full;
- 51u           (b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of
- 51v Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and
- 51w           (c) the following time periods have elapsed from the date the petitioner was convicted or
- 51x released from incarceration, parole, or probation, whichever occurred last, for each conviction the
- 51y petitioner seeks to expunge:
- 51z           (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony
- 51aa conviction of Subsection 58-37-8(2)(g);
- 51ab           (ii) seven years in the case of a felony;
- 51ac           (iii) five years in the case of any class A misdemeanor or a felony drug possession offense;
- 51ad           (iv) four years in the case of a class B misdemeanor; or
- 51ae           (v) three years in the case of any other misdemeanor or infraction.
- 51af           (4) The bureau may not count ~~§~~→ [a] pending or previous ←~~§~~ infractions, traffic offenses, or
- 51ag minor regulatory offenses ~~§~~→ , or fines or fees arising from the infractions, traffic offenses, or minor
- 51ah regulatory offenses, ←~~§~~ when determining expungement eligibility.
- 51ai           (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a
- 51aj certificate of eligibility, the bureau determines that the petitioner's criminal history, including
- 51ak previously expunged convictions, contains any of the following, except as provided in Subsection (8):
- 51al           (a) two or more felony convictions other than for drug possession offenses, each of which is
- 51am contained in a separate criminal episode;
- 51an           (b) any combination of three or more convictions other than for drug possession offenses that
- 51ao include two class A misdemeanor convictions, each of which is contained in a separate criminal
- 51ap episode;
- 51aq           (c) any combination of four or more convictions other than for drug possession offenses that
- 51ar include three class B misdemeanor convictions, each of which is contained in a separate criminal
- 51as episode; or
- 51at           (d) five or more convictions other than for drug possession offenses of any degree⊕

51au **☛**whether misdemeanor or felony, each of which is contained in a separate criminal episode.

51av **(6) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a**  
 51aw **certificate of eligibility, the bureau determines that the petitioner's criminal history, including**  
 51ax **previously expunged convictions, contains any of the following:**

51ay **(a) three or more felony convictions for drug possession offenses, each of which is contained in**  
 51az **a separate criminal episode; or**

51ba **(b) any combination of five or more convictions for drug possession offenses, each of which is**  
 51bb **contained in a separate criminal episode.**

51bc **(7) If the petitioner's criminal history contains convictions for both a drug possession offense**  
 51bd **and a non drug possession offense arising from the same criminal episode, that criminal episode shall**  
 51be **be counted as provided in Subsection (5) if any non drug possession offense in that episode:**

51bf **(a) is a felony or class A misdemeanor; or**

51bg **(b) has the same or a longer waiting period under Subsection (3) than any drug possession**  
 51bh **offense in that episode.**

51bi **(8) If at least 10 years have elapsed from the date the petitioner was convicted or released**  
 51bj **from incarceration, parole, or probation, whichever occurred last, for all convictions, then each**  
 51bk **eligibility limit defined in Subsection (5) shall be increased by one.**

51bl **(9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of**  
 51bm **Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes**  
 51bn **pursuant to Section 77-27-5.1. ←~~§~~**

52 Section ~~§~~→ [2] 3 ←~~§~~ . Section 77-40-107 is amended to read:

53 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**  
 54 **Standard of proof -- Exception.**

55 **(1) The petitioner shall file a petition for expungement and the certificate of eligibility**  
 56 **in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to**