

# 1st Sub. S.B. 62

## EXPUNGEMENT AMENDMENTS

Senator **Todd Weiler** proposes the following amendments:

1. *Page 1, Lines 11 through 13:*

11 This bill:

▶ **addresses expungement and fines, fees, or interest;**

▶ **addresses expungement and pending or previous infractions, traffic offenses, or 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;

2. *Page 1, Line 24:*

24 77-40-104, as last amended by Laws of Utah 2012, Chapter 136

= **77-40-105, as last amended by Laws of Utah 2017, Chapters 282 and 356**

3. *Page 2, Line 51:*

51 issued a certificate of eligibility on an expedited basis] (1)(c)(iv).

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

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

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

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

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

(i) a capital felony;

(ii) a first degree felony;

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

(iv) felony automobile homicide;

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

(vi) a registerable sex offense as defined in Subsection 77-41-102(17); or

(vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);

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

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

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

(a) all fines and interest ordered by the court related to the conviction for which expungement is sought have been paid in full;

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

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

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

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

(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;

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

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

(4) The bureau may not count ~~{a}~~ pending or previous infractions, traffic offenses, or minor regulatory offenses , or fines or fees arising from the infractions, traffic offenses, or minor regulatory offenses, when determining expungement eligibility.

(5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following, except as provided in Subsection (8):

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.

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

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

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

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

(a) is a felony or class A misdemeanor; or

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

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

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