

**EXPUNGEMENT AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Julie Fisher**

Senate Sponsor: Lyle W. Hillyard

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**LONG TITLE**

**General Description:**

This bill clarifies that a person may not receive a certificate of eligibility for an expungement if a criminal charge is pending.

**Highlighted Provisions:**

This bill:

- ▶ eliminates the investigation requirement for pending proceedings regarding a petitioner for an expungement; and
- ▶ clarifies that the person is ineligible for a certificate of eligibility if the person is the subject of a pending criminal proceeding.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-40-104**, as enacted by Laws of Utah 2010, Chapter 283

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

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

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

30 (1) A person who has been arrested with or without a warrant may apply to the bureau  
31 for a certificate of eligibility to expunge all records of arrest, investigation, and detention which  
32 may have been made in the case, subject to the following conditions:

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

35 (b) there ~~[have been no intervening arrests]~~ are no criminal proceedings pending  
36 against the petitioner; and

37 (c) one of the following occurred:

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

40 (ii) the action against the person was dismissed with prejudice;

41 (iii) the person was acquitted at trial; or

42 (iv) the statute of limitations has expired on the offense.

43 (2) Notwithstanding Subsection (1)(a), a petitioner seeking expungement under  
44 Subsection (1)(c)(iii) shall be issued a certificate of eligibility on an expedited basis.

45 Section 2. Section **77-40-105** is amended to read:

46 **77-40-105. Eligibility for expungement of conviction -- Requirements.**

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

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

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

51 (i) a capital felony;

52 (ii) a first degree felony;

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

54 (iv) automobile homicide;

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

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

57 (b) a criminal proceeding ~~[involving a crime]~~ is pending ~~[or being investigated in any~~

58 jurisdiction] against the petitioner; or

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

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

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

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

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

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

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

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

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

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

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

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

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

82 (c) any combination of four or more convictions that include three class B  
83 misdemeanor convictions, each of which is contained in a separate criminal episode; or

84 (d) five or more convictions of any degree whether misdemeanor or felony, excluding  
85 infractions, each of which is contained in a separate criminal episode.

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