

JUVENILE OFFENDER PENALTY AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Stephanie Pitcher

LONG TITLE

Committee Note:

The Government Operations Interim Committee recommended this bill.

Legislative Vote: 8 voting for 1 voting against 7 absent

General Description:

This bill addresses penalties imposed on an individual for certain sexual offenses committed as a juvenile.

Highlighted Provisions:

This bill:

- ▶ defines a term;
- ▶ subject to an exception for certain repeat offenders, provides that, if an individual is sentenced in district court for certain sexual offenses committed while the individual was a juvenile:
 - the individual is not required to register on the sex and kidnap offender registry;
 - the individual will be sentenced consistent with the disposition that would have been made in juvenile court; and
 - incarceration is limited to certain circumstances and subject to certain limitations;
- ▶ subject to an exception, provides for expungement of the conviction of an individual described in the preceding paragraph; and
- ▶ makes technical changes.



Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-209, as enacted by Laws of Utah 2016, Chapter 277**77-40-102**, as last amended by Laws of Utah 2020, Chapter 354**77-40-105**, as last amended by Laws of Utah 2020, Chapters 177 and 218**77-40-107**, as last amended by Laws of Utah 2020, Chapters 12, 12, and 54**77-41-113**, as enacted by Laws of Utah 2020, Chapter 237

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **76-3-209** is amended to read:**76-3-209. Limitation on sentencing for crimes committed by juveniles.**(1) As used in this section, "qualifying sexual offense" means:(a) an offense described in Chapter 5, Part 4, Sexual Offenses;(b) Section **76-9-702**, lewdness;(c) Section **76-9-702.1**, sexual battery; or(d) Section **76-9-702.5**, lewdness involving a child.(2) (a) This Subsection (2) only applies prospectively to an individual sentenced on or after May 10, 2016.(b) Notwithstanding any provision of law, ~~[a person]~~ an individual may not be sentenced to life without parole if:(i) ~~the individual is~~ convicted of a crime punishable by life without parole ~~[if, at the time of the commission of the crime, the person was younger than 18 years of age.]; and~~(ii) at the time the individual committed the crime, the individual was less than 18 years old.(c) The maximum punishment that may be imposed on ~~[a person described in this section]~~ an individual described in Subsection (2)(b) is an indeterminate prison term of not less than 25 years and that may be for life. ~~[This section shall only apply prospectively to~~

individuals sentenced on or after May 10, 2016.]

(3) Except as provided in Subsection (4), if an individual is convicted in district court of a qualifying sexual offense and, at the time of the offense, the individual was at least 14 years old, but under 18 years old:

(a) the individual is not, based on the conviction, subject to the registration requirements described in Title 77, Chapter 41, Sex and Kidnap Offender Registry;

(b) the district court shall impose a sentence consistent with the disposition that would have been made in juvenile court; and

(c) the district court may not impose incarceration unless the court enters specific written findings that incarceration is warranted based on a totality of the circumstances, taking into account:

(i) the time that elapsed after the individual committed the offense;

(ii) the age of the individual at the time of the offense;

(iii) the age of the victim at the time of the offense;

(iv) the criminal history of the individual after the individual committed the offense;

(v) any treatment assessments or validated risk tools; and

(vi) public safety concerns.

(4) Subsection (3) does not apply if:

(a) before the individual described in Subsection (3) is convicted of the qualifying sexual offense, the individual is convicted of a qualifying sexual offense that the individual committed when the individual was 18 years old or older; or

(b) the individual is convicted in district court, before the victim is 18 years old, of a violation of Section 76-5-405, aggravated sexual assault.

(5) If the district court imposes incarceration under Subsection (3)(c), the term of incarceration may not exceed:

(a) seven years for a violation of Section 76-5-405, aggravated sexual assault;

(b) except as provided in Subsection (5)(a), four years for a felony violation of Chapter 5, Part 4, Sexual Offences; or

(c) the maximum sentence described in Section 76-3-204 for:

(i) a misdemeanor violation of Chapter 5, Part 4, Sexual Offenses;

(ii) a violation of Section 76-9-702, lewdness;

(iii) a violation of Section [76-9-702.1](#), sexual battery; or

(iv) a violation of Section [76-9-702.5](#), lewdness involving a child.

Section 2. Section **77-40-102** is amended to read:

77-40-102. Definitions.

As used in this chapter:

(1) "Administrative finding" means a decision upon a question of fact reached by an administrative agency following an administrative hearing or other procedure satisfying the requirements of due process.

(2) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.

(3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section [53-10-201](#).

(4) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.

(5) (a) "Clean slate eligible case" means a case:

(i) where, except as provided in Subsection (5)(c), each conviction within the case is:

(A) a misdemeanor conviction for possession of a controlled substance in violation of Subsection [58-37-8\(2\)\(a\)\(i\)](#);

(B) a class B or class C misdemeanor conviction; or

(C) an infraction conviction;

(ii) that involves an individual:

(A) whose total number of convictions in Utah state courts, not including infractions, traffic offenses, or minor regulatory offenses, does not exceed the limits described in Subsections [77-40-105](#)~~[(5) and]~~ (6) and (7) without taking into consideration the exception in Subsection [77-40-105](#)~~[(8)]~~(9); and

(B) against whom no criminal proceedings are pending in the state; and

(iii) for which the following time periods have elapsed from the day on which the case is adjudicated:

(A) at least five years for a class C misdemeanor or an infraction;

(B) at least six years for a class B misdemeanor; and

(C) at least seven years for a class A conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

(b) "Clean slate eligible case" includes a case that is dismissed as a result of a successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b) if:

(i) except as provided in Subsection (5)(c), each charge within the case is:

(A) a misdemeanor for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);

(B) a class B or class C misdemeanor; or

(C) an infraction;

(ii) the individual involved meets the requirements of Subsection (5)(a)(ii); and

(iii) the time periods described in Subsections (5)(a)(iii)(A) through (C) have elapsed from the day on which the case is dismissed.

(c) "Clean slate eligible case" does not include a case:

(i) where the individual is found not guilty by reason of insanity;

(ii) where the case establishes a criminal judgment accounts receivable, as defined in Section 77-32a-101, that:

(A) has been entered as a civil judgment and transferred to the Office of State Debt Collection; or

(B) has not been satisfied according to court records; or

(iii) that resulted in one or more pleas held in abeyance or convictions for the following offenses:

(A) any of the offenses listed in Subsection 77-40-105(2)(a);

(B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against the Person;

(C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;

(D) sexual battery in violation of Section 76-9-702.1;

(E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;

(F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(G) damage to or interruption of a communication device in violation of Section 76-6-108;

(H) a domestic violence offense as defined in Section 77-36-1; or

(I) any other offense classified in the Utah Code as a felony or a class A misdemeanor other than a class A misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

(6) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

(7) "Department" means the Department of Public Safety established in Section 53-1-103.

(8) "Drug possession offense" means an offense under:

(a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana, any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another;

(b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

(c) Section 58-37b-6, possession or use of an imitation controlled substance; or

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection (8).

(9) "Expunge" means to seal or otherwise restrict access to the individual's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.

(10) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

(11) "Minor regulatory offense" means any class B or C misdemeanor offense, and any local ordinance, except:

(a) any drug possession offense;

(b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(c) Sections 73-18-13 through 73-18-13.6;

(d) those offenses defined in Title 76, Utah Criminal Code; or

(e) any local ordinance that is substantially similar to those offenses listed in

Subsections (11)(a) through (d).

(12) "Petitioner" means an individual applying for expungement under this chapter.

(13) (a) "Traffic offense" means:

(i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41, Chapter 6a, Traffic Code;

(ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;

(iii) Title 73, Chapter 18, State Boating Act; and

(iv) all local ordinances that are substantially similar to those offenses.

(b) "Traffic offense" does not mean:

(i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(ii) Sections 73-18-13 through 73-18-13.6; or

(iii) any local ordinance that is substantially similar to the offenses listed in

Subsections (13)(b)(i) and (ii).

Section 3. Section 77-40-105 is amended to read:

77-40-105. Requirements to apply for a certificate of eligibility to expunge conviction.

(1) An individual 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) ~~An~~ Except as provided in Subsection (3), an individual 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 conviction described in 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) The eligibility limitation described in Subsection (2) does not apply in relation to a conviction for a qualifying sexual offense, as defined in Subsection 76-3-209(1), if, at the time of the offense, the individual who committed the offense was at least 14 years old, but under 18 years old, unless the conviction occurred in district court after the individual was:

- (a) charged by criminal information under Section 78A-6-703.2 or 78A-6-703.3; and
- (b) bound over to district court under Section 78A-6-703.5.

~~[(3)]~~ (4) 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) the petitioner has paid in full all fines and interest ordered by the court related to the conviction for which expungement is sought;

(b) the petitioner has paid in full 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; 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)]~~ (5) When determining whether to issue a certificate of eligibility, the bureau may not consider:

(a) a petitioner's pending or previous:

(i) infraction;

(ii) traffic offense;

(iii) minor regulatory offense; or

(iv) clean slate eligible case that was automatically expunged in accordance with Section 77-40-114; or

(b) a fine or fee related to an offense described in Subsection ~~[(4)]~~ (5)(a).

~~[(5)]~~ (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, except as provided in Subsection ~~[(8)]~~ (9):

(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)]~~ (7) 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)]~~ (8) 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)]~~ (6) 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)]~~ (4) than any drug possession offense in that episode.

~~[(8)]~~ (9) 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)]~~ (6) shall be increased by one.

~~[(9)]~~ (10) 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.

Section 4. Section 77-40-107 is amended to read:

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

(1) The petitioner shall file a petition for expungement and, except as provided in Subsection 77-40-103(5), the certificate of eligibility in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to the prosecuting agency. If the certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded. If the original certificate is filed with the petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

(2) (a) Upon receipt of a petition for expungement of a conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney shall provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.

(b) The notice shall:

(i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable to the petition;

(ii) state that the victim has a right to object to the expungement; and

(iii) provide instructions for registering an objection with the court.

(3) The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 35 days after receipt of the petition.

(4) (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.

(b) If requested, the response prepared by the Division of Adult Probation and Parole shall include:

(i) the reasons probation was terminated; and

(ii) certification that the petitioner has completed all requirements of sentencing and probation or parole.

(c) The Division of Adult Probation and Parole shall provide a copy of the response to the petitioner and the prosecuting attorney.

(5) The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by the Division of Adult Probation and Parole within 14 days after receipt.

(6) (a) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the hearing.

(b) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.

(c) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.

(7) If no objection is received within 60 days from the date the petition for expungement is filed with the court, the expungement may be granted without a hearing.

(8) The court shall issue an order of expungement if the court finds by clear and convincing evidence that:

(a) the petition and, except as provided under Subsection 77-40-103(5), certificate of eligibility are sufficient;

(b) the statutory requirements have been met;

(c) if the petitioner seeks expungement after a case is dismissed without prejudice or without condition, the prosecutor provided written consent and has not filed and does not intend to refile related charges;

(d) if the petitioner seeks expungement of drug possession offenses allowed under Subsection 77-40-105[(6)](7), the petitioner is not illegally using controlled substances and is successfully managing any substance addiction;

(e) if the petitioner seeks expungement without a certificate of eligibility for expungement under Subsection 77-40-103(5) for a record of conviction related to cannabis possession:

(i) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and

(ii) the possession of cannabis in question was in a form and an amount to medicinally treat the condition described in Subsection (8)(e)(i);

(f) if an objection is received, the petition for expungement is for a charge dismissed in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used for enhancement, there is good cause for the court to grant the expungement; and

(g) it is not contrary to the interests of the public to grant the expungement.

(9) (a) If the court denies a petition described in Subsection (8)(c) because the prosecutor intends to refile charges, the person seeking expungement may again apply for a certificate of eligibility if charges are not refiled within 180 days of the day on which the court denies the petition.

(b) A prosecutor who opposes an expungement of a case dismissed without prejudice or without condition shall have a good faith basis for the intention to refile the case.

(c) A court shall consider the number of times that good faith basis of intention to refile by the prosecutor is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (8)(c).

(10) If the court grants a petition described in Subsection (8)(e), the court shall make the court's findings in a written order.

(11) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

Section 5. Section 77-41-113 is amended to read:

77-41-113. Removal for offenses for which registration is no longer required.

(1) An individual who is currently on the Sex and Kidnap Offender Registry because of a conviction for any of the following offenses may contact the department and request removal from the registry if the only offense or offenses for which the individual is on the registry is listed in Subsection (2).

(2) This section applies to a conviction for the following offenses:

(a) a class B or class C misdemeanor for enticing a minor, Section 76-4-401;

(b) kidnapping, based upon Subsection 76-5-301(1)(a) or (b);

(c) child kidnapping, Section 76-5-301.1, if the offender was the natural parent of the

child victim;

(d) unlawful detention, Section 76-5-304;

(e) a third degree felony for unlawful sexual intercourse before 1986, or a class B misdemeanor for unlawful sexual intercourse, Section 76-5-401; [or]

(f) sodomy, but not forcible sodomy, Section 76-5-403[-]; or

(g) unless the offender is an individual described in Subsection 77-41-102(9)(f) or (17)(f), an offense committed in Utah before the offender is 18 years old.

(3) The department, upon receipt of a request for removal from the registry shall:

(a) check the registry for the individual's current status;

(b) determine whether the individual qualifies for removal based upon this section; and

(c) notify the individual in writing of the department's determination and whether the individual:

(i) qualifies for removal from the registry; or

(ii) does not qualify for removal.

(4) If the department determines that the individual qualifies for removal from the registry, the department shall remove the offender from the registry.

(5) If the department determines that the individual does not qualify for removal from the registry, the department shall provide an explanation in writing for the department's determination. The department's determination is final and not subject to administrative review.

(6) Neither the department nor any employee may be civilly liable for a determination made in good faith in accordance with this section.

(7) The department shall provide a response to a request for removal within 30 days of receipt of the request and payment of the fee. If the response cannot be provided within 30 days, the department shall notify the individual that the response may be delayed up to 30 additional days.

(8) The department may charge a fee, not to exceed \$25, for a request for removal.