

Human Trafficking Expungement Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ariel Defay

LONG TITLE**General Description:**

This bill addresses the expungement of offenses for human trafficking victims.

Highlighted Provisions:

This bill:

- ▶ allows an individual to file a petition for expungement, without a certificate of eligibility, if the individual is seeking an expungement of records for prostitution, aiding prostitution, or sexual solicitation and the individual was subject to force, fraud, or coercion at the time of the conduct;

- ▶ addresses an order for expungement when the individual is seeking an expungement of records for prostitution, aiding prostitution, or sexual solicitation; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

77-40a-301, as last amended by Laws of Utah 2024, Chapter 180

77-40a-305, as last amended by Laws of Utah 2024, Chapter 180

77-40a-306, as last amended by Laws of Utah 2024, Chapter 180

78A-2-302, as last amended by Laws of Utah 2024, Chapter 180

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

Section 1. Section **77-40a-301** is amended to read:

77-40a-301 . Application for certificate of eligibility for expungement -- Penalty for false or misleading information on application.

(1) If an individual seeks to expunge the individual's criminal record in regard to an arrest, investigation, detention, or conviction, the individual shall:

- 32 (a) except as provided in Subsection 77-40a-305(3)[~~or (4)~~], apply to the bureau for a
33 certificate of eligibility for expungement of the criminal record and pay the
34 application fee as described in Section 77-40a-304;
- 35 (b) except as provided in Subsections 77-40a-304(3) and (7), pay the issuance fee for the
36 certificate of eligibility or special certificate as described in Section 77-40a-304 if the
37 individual is eligible to receive a certificate of eligibility or special certificate; and
38 (c) file a petition for expungement in accordance with Section 77-40a-305.
- 39 (2)(a) An individual who intentionally or knowingly provides any false or misleading
40 information to the bureau when applying for a certificate of eligibility is guilty of a
41 class B misdemeanor and subject to prosecution under Section 76-8-504.6.
- 42 (b) Regardless of whether the individual is prosecuted, the bureau may deny a certificate
43 of eligibility to anyone who knowingly provides false information on an application.
44 Section 2. Section **77-40a-305** is amended to read:
- 45 **77-40a-305 . Petition for expungement -- Prosecutorial responsibility -- Hearing.**
- 46 (1)(a) The petitioner shall file a petition for expungement in accordance with Rule 42 of
47 the Utah Rules of Criminal Procedure.
- 48 (b) A petitioner shall include the identification number for the certificate of eligibility or
49 special certificate described in Subsection 77-40a-304(2)(b)(ii) in the petition for
50 expungement, unless the petitioner is not required to obtain a certificate of eligibility
51 under Subsection (3)[~~or (4)~~].
- 52 (c) Information on a certificate of eligibility is incorporated into a petition by reference
53 to the identification number for the certificate of eligibility.
- 54 (d) A petitioner shall bring a petition for expungement:
55 (i) in the court where the criminal case was filed; or
56 (ii) if charges were never filed, in the district court in the county in which the arrest
57 occurred or the citation is issued.
- 58 (2)(a) If a petition for expungement is filed under Subsection (1)(a), the court shall
59 obtain a certificate of eligibility or special certificate from the bureau.
- 60 (b) A court may not accept a petition for expungement if the certificate of eligibility or
61 special certificate is no longer valid as described in Subsection 77-40a-304(2)(b)(i).
- 62 (3) Notwithstanding Subsection (2), the petitioner may file a petition [~~for expungement of a~~
63 ~~traffic offense case~~] to expunge records, without obtaining a certificate of eligibility[~~if~~],
64 of:
- 65 (a) a traffic offense case if:

- 66 ~~[(a)]~~ ~~(i)~~~~(i)~~ (A) for a traffic offense case with a class C misdemeanor or infraction,
 67 at least three years have passed after the day on which the case was adjudicated
 68 or dismissed; or
- 69 ~~[(ii)]~~ (B) for a traffic offense case with a class B misdemeanor, at least four years
 70 have passed after the day on which the case was adjudicated or dismissed;
- 71 ~~[(b)]~~ (ii) there is no traffic offense case pending against the petitioner;
- 72 ~~[(c)]~~ (iii) there is no plea in abeyance for a traffic offense case pending against the
 73 petitioner; and
- 74 ~~[(d)]~~ (iv) the petitioner is not currently on probation for a traffic offense case~~[-]~~ ;
- 75 ~~[(4)]~~ (b) ~~[Notwithstanding Subsection (2), a petitioner may file a petition for~~
 76 ~~expungement of a record for]~~ a conviction related to cannabis possession ~~[without a~~
 77 ~~certificate of eligibility]~~ if the petition demonstrates that:
- 78 ~~[(a)]~~ (i) the petitioner had, at the time of the relevant arrest or citation leading to the
 79 conviction, a qualifying condition, as that term is defined in Section 26B-4-201;
 80 and
- 81 ~~[(b)]~~ (ii) the possession of cannabis in question was in a form and an amount to
 82 medicinally treat the qualifying condition described in Subsection ~~[(4)(a)-]~~ (3)(b)(i);
 83 or
- 84 (c) an arrest, a charge, or a conviction for prostitution under Section 76-10-1302, aiding
 85 prostitution under Section 76-10-1304, or sexual solicitation under Section
 86 76-10-1313, if the petition demonstrates that the petitioner was subject to force,
 87 fraud, or coercion at the time of the conduct giving rise to the arrest, charge, or
 88 conviction.
- 89 ~~[(5)]~~ (4)(a) The court shall provide notice of a filing of a petition and certificate of
 90 eligibility or special certificate to the prosecutorial office that handled the court
 91 proceedings within three days after the day on which the petitioner's filing fee is paid
 92 or waived.
- 93 (b) If there were no court proceedings, the court shall provide notice of a filing of a
 94 petition and certificate of eligibility or special certificate to the county attorney's
 95 office in the jurisdiction where the arrest occurred.
- 96 (c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention, or
 97 conviction, was a city attorney's office, the county attorney's office in the jurisdiction
 98 where the arrest occurred shall immediately notify the city attorney's office that the
 99 county attorney's office has received a notice of a filing of a petition for expungement.

- 100 ~~[(6)]~~ (5)(a) Upon receipt of a notice of a filing of a petition for expungement of a
101 conviction or a charge dismissed in accordance with a plea in abeyance, the
102 prosecuting attorney shall make a reasonable effort to provide notice to any victim of
103 the conviction or charge.
- 104 (b) The notice under Subsection ~~[(6)(a)]~~ (5)(a) shall:
- 105 (i) include a copy of the petition, certificate of eligibility or special certificate,
106 statutes, and rules applicable to the petition;
- 107 (ii) state that the victim has a right to object to the expungement; and
- 108 (iii) provide instructions for registering an objection with the court.
- 109 ~~[(7)]~~ (6)(a) The prosecuting attorney may respond to the petition by filing a
110 recommendation or objection with the court within 35 days after the day on which
111 the notice of the filing of the petition is sent by the court to the prosecuting attorney.
- 112 (b) If there is a victim of the offense for which expungement is sought, the victim may
113 respond to the petition by filing a recommendation or objection with the court within
114 60 days after the day on which the petition for expungement was filed with the court.
- 115 ~~[(8)]~~ (7)(a) The court may request a written response to the petition from the Division of
116 Adult Probation and Parole within the Department of Corrections.
- 117 (b) If requested, the response prepared by the Division of Adult Probation and Parole
118 shall include:
- 119 (i) the reasons probation was terminated; and
- 120 (ii) certification that the petitioner has completed all requirements of sentencing and
121 probation or parole.
- 122 (c) The Division of Adult Probation and Parole shall provide a copy of the response to
123 the petitioner and the prosecuting attorney.
- 124 ~~[(9)]~~ (8) The petitioner may respond in writing to any objections filed by the prosecuting
125 attorney or the victim and the response prepared by the Division of Adult Probation and
126 Parole within 14 days after the day on which the objection or response is received.
- 127 ~~[(10)]~~ (9)(a) If the court receives an objection concerning the petition from any party, the
128 court shall set a date for a hearing and notify the petitioner and the prosecuting
129 attorney of the date set for the hearing.
- 130 (b) The prosecuting attorney shall notify the victim of the date set for the hearing.
- 131 (c) The petitioner, the prosecuting attorney, the victim, and any other person who has
132 relevant information about the petitioner may testify at the hearing.
- 133 (d) The court shall review the petition, the certificate of eligibility or special certificate,

134 and any written responses submitted regarding the petition.

135 ~~[(H)]~~ (10) If no objection is received within 60 days from the day on which the petition for
136 expungement is filed with the court, the expungement may be granted without a hearing.

137 ~~[(H2)]~~ (11)(a) If the petitioner seeks a waiver of the fee required for a petition for
138 expungement in accordance with Section 78A-2-302, the court shall consider the
139 total number of cases for which the petitioner has received a certificate of eligibility
140 and is seeking expungement in determining whether the petitioner is indigent under
141 Subsection 78A-2-302(3)(e) even if the court does not have jurisdiction over a case
142 for which the petitioner is seeking expungement.

143 (b) If a court grants a waiver of the fee required for a petition for expungement in
144 accordance with Section 78A-2-302, and only upon a request from the petitioner, a
145 subsequent court shall grant a waiver of a fee for a petition for expungement if the
146 prior court waived the fee for a petition for expungement within 180 days before the
147 day on which the petitioner filed the petition for expungement with the subsequent
148 court.

149 Section 3. Section **77-40a-306** is amended to read:

150 **77-40a-306 . Order of expungement.**

151 (1) If a petition for expungement is filed in accordance with Section 77-40a-305, the court
152 shall issue an order of expungement if the court finds, by clear and convincing evidence,
153 that:

154 (a) except as provided in Subsection (1)(b) and Subsection 77-40a-305(3)~~[or (4)]~~:

155 (i) the certificate of eligibility is valid and contains the information needed for the
156 court to issue an order for expungement; and

157 (ii) the statutory requirements for expungement have been met;

158 (b) if the petitioner obtained a special certificate from the bureau:

159 (i) the special certificate is valid; and

160 (ii) there is sufficient information in the petition for the court to determine that the
161 statutory requirements for expungement have been met;

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

165 (d) if the petitioner seeks expungement without a certificate of eligibility for
166 expungement ~~[under Subsection 77-40a-305(4) for a record of]~~ for a conviction
167 related to cannabis possession as described in Subsection 77-40a-305(3)(b):

- 168 (i) the petitioner had, at the time of the relevant arrest or citation leading to the
 169 conviction, a qualifying condition, as that term is defined in Section 26B-4-201;
 170 and
- 171 (ii) the possession of cannabis in question was in a form and an amount to
 172 medicinally treat the qualifying condition described in Subsection (1)(d)(i);
- 173 (e) the petitioner was subject to force, fraud, or coercion at the time of the conduct
 174 giving rise to the arrest, charge, or conviction if the petitioner seeks expungement
 175 without a certificate of eligibility as described in Subsection 77-40a-305(3)(c) for an
 176 arrest, a charge, or a conviction for prostitution under Section 76-10-1302, aiding
 177 prostitution under Section 76-10-1304, or sexual solicitation under Section
 178 76-10-1313;
- 179 [(e)] (f) if an objection is received, the petition for expungement is for a charge dismissed
 180 in accordance with a plea in abeyance agreement, and the charge is an offense
 181 eligible to be used for enhancement, there is good cause for the court to grant the
 182 expungement; and
- 183 [(f)] (g) the interests of the public would not be harmed by granting the expungement.
- 184 (2)(a) If the court denies a petition described in Subsection (1)(c) because the
 185 prosecuting attorney intends to refile charges, the petitioner may apply again for a
 186 certificate of eligibility if charges are not refiled within 180 days after the day on
 187 which the court denies the petition.
- 188 (b) A prosecuting attorney who opposes an expungement of a case dismissed without
 189 prejudice, or without condition, shall have a good faith basis for the intention to refile
 190 the case.
- 191 (c) A court shall consider the number of times that good faith basis of intention to refile
 192 by the prosecuting attorney is presented to the court in making the court's
 193 determination to grant the petition for expungement described in Subsection (1)(c).
- 194 (3) If the court grants a petition described in Subsection [~~(1)(e)~~] (1)(f), the court shall make
 195 the court's findings in a written order.
- 196 (4) A court may not expunge a conviction of an offense for which a certificate of eligibility
 197 may not be, or should not have been, issued under Section 77-40a-302 or 77-40a-303.
- 198 (5) If the court issues an order of expungement under this section, the court shall:
- 199 (a) expunge all records of the case as described in Section 77-40a-401;
 200 (b) notify the bureau of the order of expungement; and
 201 (c) provide the bureau with the order of expungement and all relevant information

- 202 available to the court that the bureau will need to identify an expunged record.
- 203 (6)(a) The petitioner may request certified copies of an order of expungement within 28
- 204 days after the day on which the court issues an order of expungement.
- 205 (b) If a petitioner makes a request under Subsection (6)(a), the court shall provide the
- 206 petitioner with certified copies of the order of expungement.
- 207 Section 4. Section **78A-2-302** is amended to read:
- 208 **78A-2-302 . Waiver of fees, costs, and security -- Indigent litigants -- Affidavit.**
- 209 (1) As used in Sections 78A-2-302 through 78A-2-309:
- 210 (a) "Convicted" means:
- 211 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental
- 212 condition, no contest; and
- 213 (ii) a conviction of any crime or offense.
- 214 (b) "Indigent" means a financial status that results from a court finding that a petitioner
- 215 is financially unable to pay the fee, a cost, or give security.
- 216 (c) "Prisoner" means an individual who has been convicted of a crime and is
- 217 incarcerated for that crime or is being held in custody for trial or sentencing.
- 218 (2) An individual may institute, prosecute, defend, or appeal any cause in a court in this
- 219 state without prepayment of fees and costs or security if :
- 220 (a) the individual submits an affidavit demonstrating that the individual is indigent; or
- 221 (b) the cause is a petition for expungement and the individual provides the court with
- 222 proof that another court granted a waiver of the fee for a petition for expungement as
- 223 described in Subsection [~~77-40a-305(12)(b)~~] 77-40a-305(11)(b).
- 224 (3) A court shall find an individual indigent if the individual's affidavit under Subsection (2)
- 225 demonstrates:
- 226 (a) for a cause that is not a petition for expungement, the individual has an income level
- 227 at or below 150% of the United States poverty level as defined by the most recent
- 228 poverty income guidelines published by the United States Department of Health and
- 229 Human Services;
- 230 (b) for a cause that is a petition for expungement:
- 231 (i) if the individual has a household size of one, two, or three, the individual has an
- 232 income level at or below 150% of the United States poverty level for a household
- 233 size of three, as defined by the most recent poverty income guidelines published
- 234 by the United States Department of Health and Human Services; or
- 235 (ii) if the individual has a household size of four or more, the individual has an

- 236 income level at or below 150% of the United States poverty level for that
237 individual's household size, as defined by the most recent poverty income
238 guidelines published by the United States Department of Health and Human
239 Services;
- 240 (c) the individual receives benefits from a means-tested government program, including
241 Temporary Assistance to Needy Families, Supplemental Security Income, the
242 Supplemental Nutrition Assistance Program, or Medicaid;
- 243 (d) the individual receives legal services from a nonprofit provider or a pro bono
244 attorney through the Utah State Bar; or
- 245 (e) the individual has insufficient income or other means to pay the necessary fees and
246 costs or security without depriving the individual, or the individual's family, of food,
247 shelter, clothing, or other necessities.
- 248 (4) An affidavit demonstrating that an individual is indigent under Subsection (3)(e) shall
249 contain complete information on the individual's:
- 250 (a) identity and residence;
- 251 (b) amount of income, including any government financial support, alimony, or child
252 support;
- 253 (c) assets owned, including real and personal property;
- 254 (d) business interests;
- 255 (e) accounts receivable;
- 256 (f) securities, checking and savings account balances;
- 257 (g) debts; and
- 258 (h) monthly expenses.
- 259 (5) If the individual under Subsection (3) is a prisoner, the prisoner shall disclose the
260 amount of money held in the prisoner's trust account at the time the affidavit under
261 Subsection (2) is executed in accordance with Section 78A-2-305.
- 262 (6) An affidavit of indigency under this section shall state the following:
- 263 I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear
264 the expenses of the action or legal proceedings which I am about to commence or the appeal
265 which I am about to take, and that I believe I am entitled to the relief sought by the action,
266 legal proceedings, or appeal.
- 267 (7) The Administrative Office of the Courts shall include on a form for an affidavit of
268 indigency the following warning: "It is a crime for anyone to intentionally or knowingly
269 provide false or misleading information to the court when seeking a waiver of a court

270 fee."

271 Section 5. **Effective date.**

272 This bill takes effect on May 7, 2025.