

EXPUNGEMENT FEE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill addresses the waiver of fees imposed on an individual seeking to expunge a criminal record.

Highlighted Provisions:

This bill:

- ▶ defines the term "indigent" for purposes of a petition for expungement;
- ▶ requires the Bureau of Criminal Identification to waive certain fees if a court finds that an individual petitioning to expunge a criminal record is indigent; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

This bill appropriates for fiscal year 2024:

- ▶ To the Department of Public Safety - Bureau of Criminal Identification, as an ongoing appropriation:
 - from the General Fund, \$136,300.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

63I-1-277, as last amended by Laws of Utah 2022, Chapter 384 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 384

77-40a-101, as last amended by Laws of Utah 2022, Chapters 116, 430 and renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-301, as enacted by Laws of Utah 2022, Chapter 250

77-40a-304, as last amended by Laws of Utah 2022, Chapter 384 and renumbered and amended by Laws of Utah 2022, Chapter 250 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 384

77-40a-306, as enacted by Laws of Utah 2022, Chapter 250

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

35 Section 1. Section **63I-1-277** is amended to read:

36 **63I-1-277. Repeal dates: Title 77.**

37 [~~Subsection 77-40a-304(5), regarding the suspension of issuance fees for certificates of~~
38 ~~eligibility, is repealed on July 1, 2023.~~]

39 Section 2. Section **77-40a-101** is amended to read:

40 **77-40a-101. Definitions.**

41 As used in this chapter:

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

45 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public
46 Safety established in Section 53-10-201.

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

50 (4) (a) Except as provided in Subsection (4)(c), "clean slate eligible case" means a
51 case:

52 (i) where each conviction within the case is:

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

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

56 (C) an infraction conviction;

57 (ii) that involves an individual:

58 (A) whose total number of convictions in Utah state courts, not including infractions,
59 traffic offenses, or minor regulatory offenses, does not exceed the limits described in
60 Subsections 77-40a-303(5) and (6) without taking into consideration the exception in
61 Subsection 77-40a-303(8); and

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

63 (iii) for which the following time periods have elapsed from the day on which the case

64 is adjudicated:

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

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

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

69 (b) "Clean slate eligible case" includes a case:

70 (i) that is dismissed as a result of a successful completion of a plea in abeyance
71 agreement governed by Subsection 77-2a-3(2)(b) if:

72 (A) except as provided in Subsection (4)(c), each charge within the case is a
73 misdemeanor for possession of a controlled substance in violation of Subsection
74 58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;

75 (B) the individual involved meets the requirements of Subsection (4)(a)(ii); and

76 (C) the time periods described in Subsections (4)(a)(iii)(A) through (C) have elapsed
77 from the day on which the case is dismissed; or

78 (ii) where charges are dismissed without prejudice if each conviction, or charge that
79 was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or
80 (b)(i).

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

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

83 (ii) where the case establishes a criminal accounts receivable, as defined in Section
84 77-32b-102, that:

85 (A) has been entered as a civil accounts receivable or a civil judgment of restitution, as
86 those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt
87 Collection under Section 77-18-114; or

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

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

91 (A) any of the offenses listed in Subsection 77-40a-303(1)(a);

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

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

- 95 (D) sexual battery in violation of Section 76-9-702.1;
- 96 (E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
- 97 (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence
98 and Reckless Driving;
- 99 (G) damage to or interruption of a communication device in violation of Section
100 76-6-108;
- 101 (H) a domestic violence offense as defined in Section 77-36-1; or
- 102 (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor
103 other than a class A misdemeanor conviction for possession of a controlled substance in
104 violation of Subsection 58-37-8(2)(a)(i).
- 105 (5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty
106 after trial, a plea of guilty, or a plea of nolo contendere.
- 107 (6) "Criminal protective order" means the same as that term is defined in Section
108 78B-7-102.
- 109 (7) "Criminal stalking injunction" means the same as that term is defined in Section
110 78B-7-102.
- 111 (8) "Department" means the Department of Public Safety established in Section
112 53-1-103.
- 113 (9) "Drug possession offense" means an offense under:
- 114 (a) Subsection 58-37-8(2), except:
- 115 (i) any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of
116 marijuana;
- 117 (ii) any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional
118 facility; or
- 119 (iii) driving with a controlled substance illegally in the person's body and negligently
120 causing serious bodily injury or death of another, as codified before May 4, 2022, Laws of Utah
121 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);
- 122 (b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;
- 123 (c) Section 58-37b-6, possession or use of an imitation controlled substance; or
- 124 (d) any local ordinance which is substantially similar to any of the offenses described
125 in this Subsection (9).

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

129 (11) "Indigent" means a court found a petitioner financially unable to pay the fee to file
130 a petition for expungement under Section 78A-2-302.

131 ~~[(11)]~~ (12) "Jurisdiction" means a state, district, province, political subdivision,
132 territory, or possession of the United States or any foreign country.

133 ~~[(12)]~~ (13) (a) Except as provided in Subsection ~~[(12)(c)]~~ (13)(c), "minor regulatory
134 offense" means a class B or C misdemeanor or a local ordinance.

135 (b) "Minor regulatory offense" includes an offense under Section 76-9-701 or
136 76-10-105.

137 (c) "Minor regulatory offense" does not include:

138 (i) any drug possession offense;

139 (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
140 Reckless Driving;

141 (iii) an offense under Sections 73-18-13 through 73-18-13.6;

142 (iv) except as provided in Subsection ~~[(12)(b)]~~ (13)(b), an offense under Title 76, Utah
143 Criminal Code; or

144 (v) any local ordinance that is substantially similar to an offense listed in Subsections
145 ~~[(12)(c)(i)]~~ (13)(c)(i) through (iv).

146 ~~[(13)]~~ (14) "Petitioner" means an individual applying for expungement under this
147 chapter.

148 ~~[(14)]~~ (15) (a) "Traffic offense" means:

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

151 (ii) an offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;

152 (iii) an offense under Title 73, Chapter 18, State Boating Act; and

153 (iv) all local ordinances that are substantially similar to an offense listed in Subsections
154 ~~[(14)(a)(i)]~~ (15)(a)(i) through (iii).

155 (b) "Traffic offense" does not mean:

156 (i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and

157 Reckless Driving;

158 (ii) an offense under Sections 73-18-13 through 73-18-13.6; or

159 (iii) any local ordinance that is substantially similar to an offense listed in Subsection

160 [~~(14)(b)(i)~~] (15)(b)(i) or (ii).

161 [~~(15)~~] (16) "Traffic offense case" means that each offense in the case is a traffic

162 offense.

163 Section 3. Section **77-40a-301** is amended to read:

164 **77-40a-301. Application for certificate of eligibility for expungement -- Penalty**
 165 **for false or misleading information on application.**

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

168 (a) except as provided in Subsection 77-40a-305(3) or (4), apply to the bureau for a
 169 certificate of eligibility for expungement of the criminal record and pay the application fee as
 170 described in Section 77-40a-304;

171 (b) if the individual is qualified to receive a certificate of eligibility, pay the issuance
 172 fee for the certificate of eligibility as described in Section 77-40a-304 unless Subsection
 173 77-40a-304(2) or (5) apply; and

174 (c) file a petition for expungement in accordance with Section 77-40a-305.

175 (2) (a) An individual who intentionally or knowingly provides any false or misleading
 176 information to the bureau when applying for a certificate of eligibility is guilty of a class B
 177 misdemeanor and subject to prosecution under Section 76-8-504.6.

178 (b) Regardless of whether the individual is prosecuted, the bureau may deny a
 179 certificate of eligibility to anyone who knowingly provides false information on an application.

180 Section 4. Section **77-40a-304** is amended to read:

181 **77-40a-304. Certificate of eligibility process -- Issuance of certificate -- Fees --**
 182 **Waiver of issuance fee.**

183 (1) (a) When a petitioner applies for a certificate of eligibility as described in
 184 Subsection 77-40a-301(1), the bureau shall perform a check of records of governmental
 185 agencies, including national criminal data bases, to determine whether the petitioner is eligible
 186 to receive a certificate of eligibility under this chapter.

187 (b) For purposes of determining eligibility under this chapter, the bureau may review

188 records of arrest, investigation, detention, and conviction that have been previously expunged,
189 regardless of the jurisdiction in which the expungement occurred.

190 (c) Once the eligibility process is complete, the bureau shall notify the petitioner.

191 (d) If the petitioner meets all of the criteria under Section 77-40a-302 or 77-40a-303:

192 (i) the bureau shall issue a certificate of eligibility that is valid for a period of 180 days
193 from the day on which the certificate is issued;

194 (ii) the bureau shall provide a petitioner with an identification number for the
195 certificate of eligibility; and

196 (iii) the petitioner shall pay the issuance fee established by the department as described
197 in Subsection (2).

198 (e) If, after reasonable research, a disposition for an arrest on the criminal history file is
199 unobtainable, the bureau may issue a special certificate giving determination of eligibility to
200 the court if:

201 (i) there are no criminal proceedings or pleas in abeyance pending against the
202 petitioner; and

203 (ii) the petitioner is not currently on probation or parole.

204 (2) (a) The bureau shall charge application and issuance fees for a certificate of
205 eligibility or special certificate in accordance with the process in Section 63J-1-504.

206 (b) The application fee shall be paid at the time the petitioner submits an application
207 for a certificate of eligibility to the bureau.

208 (c) If the bureau determines that the issuance of a certificate of eligibility or special
209 certificate is appropriate, the petitioner [~~will be charged~~] shall pay an additional fee for the
210 issuance of a certificate of eligibility or special certificate unless Subsection (2)(d)(i) or (ii)
211 applies.

212 (d) [~~An issuance fee may not be assessed against a petitioner who~~] The bureau shall
213 issue a certificate of eligibility or special certificate without requiring payment of the issuance
214 fee if the petitioner:

215 (i) qualifies for a certificate of eligibility under Section 77-40a-302 unless the charges
216 were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in
217 Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and
218 Diversion[~~;~~]; or

219 (ii) indicates on the application for a certificate of eligibility that the petitioner
220 reasonably believes, as of the date of the application, that the fee to file a petition for
221 expungement is likely to be waived by a court because the petitioner is indigent.

222 (e) Funds generated under this Subsection (2) shall be deposited in the General Fund as
223 a dedicated credit by the department to cover the costs incurred in determining eligibility.

224 (3) The bureau shall include on the certificate of eligibility all information that is
225 needed for the court to issue a valid expungement order.

226 (4) The bureau shall provide clear written instructions to the petitioner that explain:

227 (a) the process for a petition for expungement; and

228 (b) what is required of the petitioner to complete the process for a petition for
229 expungement.

230 (5) (a) If the bureau issues a certificate of eligibility or special certificate without
231 requiring payment of the issuance fee under Subsection (2)(d)(ii), the bureau shall charge the
232 petitioner an issuance fee upon the bureau's receipt of an order deciding the petition for
233 expungement unless:

234 (i) the order indicates that the fee to file the petition for expungement is waived
235 because the petitioner is indigent; or

236 (ii) a certified copy of the court docket where the petition for expungement is filed
237 indicates that the fee to file the petition is waived because the petitioner is indigent.

238 (b) If the petitioner qualifies for a waiver of the issuance fee under Subsection (5)(a)(i)
239 or (ii) and the order grants the petition for expungement, the bureau shall process the order
240 under Section 77-40a-401 as if the petitioner paid the issuance fee.

241 (c) If the petitioner does not qualify for a waiver of the issuance fee under Subsection
242 (5)(a)(i) or (ii) and the order grants the petition for expungement, the bureau may not process
243 the order under Section 77-40-401 until the petitioner pays the issuance fee.

244 (d) If the bureau issues a certificate of eligibility or special certificate without requiring
245 payment of the issuance fee under Subsection (2)(d)(ii), the bureau may not charge the
246 petitioner an issuance fee on the grounds that the validity of the certificate, as described in
247 Subsection (1)(d)(i), has expired.

248 ~~[(5)(a) The requirement for a petitioner to pay an issuance fee for a certificate of~~
249 ~~eligibility or a special certificate of eligibility under Subsection (2) is suspended from May 4,~~

250 ~~2022, to June 30, 2023.]~~

251 ~~[(b) The bureau may not charge a fee for the issuance of a certificate of eligibility or a~~
252 ~~special certificate of eligibility during the time period described in Subsection (5)(a).]~~

253 Section 5. Section **77-40a-306** is amended to read:

254 **77-40a-306. Order of expungement.**

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

257 (a) except as provided in Subsection 77-40a-305(3) or (4), the petition and certificate
258 of eligibility are sufficient;

259 (b) the statutory requirements have been met;

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

263 (d) if the petitioner seeks expungement without a certificate of eligibility for
264 expungement under Subsection 77-40a-305(4) for a record of conviction related to cannabis
265 possession:

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

268 (ii) the possession of cannabis in question was in a form and an amount to medicinally
269 treat the qualifying condition described in Subsection (1)(d)(i);

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

273 (f) the interests of the public would not be harmed by granting the expungement.

274 (2) (a) If the court denies a petition described in Subsection (1)(c) because the
275 prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of
276 eligibility if charges are not refiled within 180 days after the day on which the court denies the
277 petition.

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

280 (c) A court shall consider the number of times that good faith basis of intention to

281 refile by the prosecuting attorney is presented to the court in making the court's determination
282 to grant the petition for expungement described in Subsection (1)(c).

283 (3) If the court grants a petition described in Subsection (1)(e), the court shall make the
284 court's findings in a written order.

285 (4) A court may not expunge a conviction of an offense for which a certificate of
286 eligibility may not be, or should not have been, issued under Section 77-40a-302 or
287 77-40a-303.

288 (5) An order issued under this section shall indicate whether the fee to file the petition
289 for expungement is waived because the petitioner is indigent under Section 78A-2-302.

290 Section 6. **Appropriation.**

291 The following sums of money are appropriated for the fiscal year beginning July 1,
292 2023, and ending June 30, 2024. These are additions to amounts previously appropriated for
293 fiscal year 2024. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
294 Act, the Legislature appropriates the following sums of money from the funds or accounts
295 indicated for the use and support of the government of the state of Utah.

296 ITEM 1

297 To Department of Public Safety - Bureau of Criminal Identification

298 From General Fund \$136,300

299 Schedule of Programs:

300 Non-Government/Other Services \$136,300

301 Section 7. **Effective date.**

302 This bill takes effect on July 1, 2023.