

Effective 5/4/2022

Part 3
Petition for Expungement

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:
 - (a) except as provided in Subsection 77-40a-305(3) or (4), apply to the bureau for a certificate of eligibility for expungement of the criminal record and pay the application fee as described in Section 77-40a-304;
 - (b) if the individual is qualified to receive a certificate of eligibility, pay the issuance fee for the certificate of eligibility as described in Section 77-40a-304; and
 - (c) file a petition for expungement in accordance with Section 77-40a-305.
- (2)
 - (a) An individual who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.
 - (b) Regardless of whether the individual is prosecuted, the bureau may deny a certificate of eligibility to anyone who knowingly provides false information on an application.

Enacted by Chapter 250, 2022 General Session

77-40a-302 Requirements for certificate of eligibility to expunge records of arrest, investigation, and detention.

- (1) Except as provided in Subsection (2), if a petitioner is arrested or charged with an offense, the petitioner is eligible to receive a certificate of eligibility from the bureau to expunge records of the arrest, investigation, and detention in the case for the offense if:
 - (a) at least 30 days have passed after the day on which the individual is arrested or charged for the offense;
 - (b) one of the following occurs:
 - (i) an investigating law enforcement agency and the prosecuting attorney have screened the case and determined that no charges will be filed against the petitioner;
 - (ii) all charges in the case are dismissed with prejudice;
 - (iii) if a charge in the case is dismissed without prejudice or without condition:
 - (A) the prosecuting attorney consents in writing to the issuance of a certificate of eligibility; or
 - (B) at least 180 days have passed after the day on which the charge is dismissed;
 - (iv) the petitioner is acquitted at trial on all of the charges in the case; or
 - (v) the statute of limitations expires on all of the charges in the case; and
 - (c)
 - (i) there is a conviction in the case for a traffic offense that is a class C misdemeanor or an infraction, at least three years have passed after the day on which the petitioner was convicted of the traffic offense; or
 - (ii) there is a conviction in the case for a traffic offense that is a class B misdemeanor, at least four years have passed after the day on which the petitioner was convicted of the traffic offense.
- (2) A petitioner is not eligible for a certificate of eligibility under Subsection (1) if:

- (a) there is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense;
- (b) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense;
- (c) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense; or
- (d) there is a criminal protective order or a criminal stalking injunction in effect for the case.

Amended by Chapter 265, 2023 General Session

77-40a-303 Requirements for a certificate of eligibility to expunge records of a conviction.

- (1) Except as otherwise provided by this section, a petitioner is eligible to receive a certificate of eligibility from the bureau to expunge the records of a conviction if:
 - (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 under Section 77-38b-205; and
 - (c) the following time periods have passed after the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for the conviction that the petitioner seeks to expunge:
 - (i) 10 years for the conviction of a misdemeanor under Subsection 41-6a-501(2);
 - (ii) 10 years for the conviction of a felony for operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);
 - (iii) seven years for the conviction of a felony;
 - (iv) five years for the conviction of a drug possession offense that is a felony;
 - (v) five years for the conviction of a class A misdemeanor;
 - (vi) four years for the conviction of a class B misdemeanor; or
 - (vii) three years for the conviction of a class C misdemeanor or infraction.
- (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau to expunge the records of a conviction under Subsection (1) if:
 - (a) except as provided in Subsection (3), the conviction for which expungement is sought is:
 - (i) a capital felony;
 - (ii) a first degree felony;
 - (iii) a felony conviction of a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);
 - (iv) a felony conviction described in Subsection 41-6a-501(2);
 - (v) an offense, or a combination of offenses, that would require the individual to register as a sex offender, as defined in Section 77-41-102; or
 - (vi) a registerable child abuse offense as defined in Subsection 77-43-102(2);
 - (b) there is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense;
 - (c) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense;
 - (d) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense;
 - (e) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility;

- (f) there is a criminal protective order or a criminal stalking injunction in effect for the case; or
 - (g) the bureau determines that the petitioner's criminal history makes the petitioner ineligible for a certificate of eligibility under Subsection (4) or (5).
- (3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as defined in Section 76-3-209, if, at the time of the offense, a petitioner who committed the offense was at least 14 years old but under 18 years old, unless the petitioner was convicted by a district court as an adult in accordance with Title 80, Chapter 6, Part 5, Transfer to District Court.
- (4) Subject to Subsections (6), (7), and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:
- (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.
- (5) Subject to Subsections (7) and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the 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.
- (6) 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, the bureau shall count that criminal episode as a conviction under Subsection (4) 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 (1)(c) than any drug possession offense in that episode.
- (7) Except as provided in Subsection (8), if at least 10 years have passed after the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions:
- (a) each numerical eligibility limit under Subsections (4)(a) and (b) shall be increased by one; and
 - (b) each numerical eligibility limit under Subsections (4)(c) and (d) is not applicable if the highest level of convicted offense in the criminal episode is:
 - (i) a class B misdemeanor;
 - (ii) a class C misdemeanor;
 - (iii) a drug possession offense if none of the non-drug possession offenses in the criminal episode are a felony or a class A misdemeanor; or
 - (iv) an infraction.

- (8) When determining whether a petitioner is eligible for a certificate of eligibility under Subsection (4), (5), or (7), the bureau may not consider a petitioner's pending case or prior conviction for:
- (a) an infraction;
 - (b) a traffic offense;
 - (c) a minor regulatory offense; or
 - (d) a clean slate eligible case that was automatically expunged in accordance with Section 77-40a-201.
- (9) If the petitioner received a pardon before May 14, 2013, from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes in accordance with Section 77-27-5.1.

Amended by Chapter 265, 2023 General Session

77-40a-304 Certificate of eligibility process -- Issuance of certificate -- Fees.

- (1)
- (a) When a petitioner applies for a certificate of eligibility as described in Subsection 77-40a-301(1), the bureau shall perform a check of records of governmental agencies, including national criminal data bases, to determine whether the petitioner is eligible to receive a certificate of eligibility under this chapter.
 - (b) For purposes of determining eligibility under this chapter, the bureau may review records of arrest, investigation, detention, and conviction that have been previously expunged, regardless of the jurisdiction in which the expungement occurred.
 - (c) Once the eligibility process is complete, the bureau shall notify the petitioner.
 - (d) If the petitioner meets all of the criteria under Section 77-40a-302 or 77-40a-303:
 - (i) the bureau shall issue a certificate of eligibility that is valid for a period of 180 days from the day on which the certificate is issued;
 - (ii) the bureau shall provide a petitioner with an identification number for the certificate of eligibility; and
 - (iii) the petitioner shall pay the issuance fee established by the department as described in Subsection (2).
 - (e) If, after reasonable research, a disposition for an arrest on the criminal history file is unobtainable, the bureau may issue a special certificate giving determination of eligibility to the court, except that the bureau may not issue the special certificate if:
 - (i) there is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense;
 - (ii) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense; or
 - (iii) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense.
- (2)
- (a) The bureau shall charge application and issuance fees for a certificate of eligibility or special certificate in accordance with the process in Section 63J-1-504.
 - (b) The application fee shall be paid at the time the petitioner submits an application for a certificate of eligibility to the bureau.
 - (c) If the bureau determines that the issuance of a certificate of eligibility or special certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a certificate of eligibility or special certificate unless Subsection (2)(d) applies.

- (d) An issuance fee may not be assessed against a petitioner who qualifies for a certificate of eligibility under Section 77-40a-302 unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.
- (e) Funds generated under this Subsection (2) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.
- (3) The bureau shall include on the certificate of eligibility all information that is needed for the court to issue a valid expungement order.
- (4) The bureau shall provide clear written instructions to the petitioner that explain:
 - (a) the process for a petition for expungement; and
 - (b) what is required of the petitioner to complete the process for a petition for expungement.

Amended by Chapter 265, 2023 General Session

77-40a-305 Petition for expungement -- Prosecutorial responsibility -- Hearing.

- (1)
 - (a) The petitioner shall file a petition for expungement, in accordance with the Utah Rules of Criminal Procedure, that includes the identification number for the certificate of eligibility described in Subsection 77-40a-304(1)(d)(ii).
 - (b) Information on a certificate of eligibility is incorporated into a petition by reference to the identification number for the certificate of eligibility.
- (2)
 - (a) If a petition for expungement is filed under Subsection (1)(a), the court shall obtain a certificate of eligibility from the bureau.
 - (b) A court may not accept a petition for expungement if the certificate of eligibility is no longer valid as described in Subsection 77-40a-304(1)(d)(i).
- (3) Notwithstanding Subsection (2), the petitioner may file a petition for expungement of a traffic offense case without obtaining a certificate of eligibility if:
 - (a)
 - (i) for a traffic offense case with a class C misdemeanor or infraction, at least three years have passed after the day on which the petitioner was convicted; or
 - (ii) for a traffic offense case with a class B misdemeanor, at least four years have passed after the day on which the petitioner was convicted;
 - (b) there is no traffic offense case pending against the petitioner;
 - (c) there is no plea in abeyance for a traffic offense case pending against the petitioner; and
 - (d) the petitioner is not currently on probation for a traffic offense case.
- (4) Notwithstanding Subsection (2), a petitioner may file a petition for expungement of a record for a conviction related to cannabis possession without a certificate of eligibility if the petition demonstrates that:
 - (a) 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 26B-4-201; and
 - (b) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (4)(a).
- (5)
 - (a) The court shall provide notice of a filing of a petition and certificate of eligibility to the prosecutorial office that handled the court proceedings within three days after the day on which the petitioner's filing fee is paid or waived.

- (b) If there were no court proceedings, the court shall provide notice of a filing of a petition and certificate of eligibility to the county attorney's office in the jurisdiction where the arrest occurred.
 - (c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention, or conviction, was a city attorney's office, the county attorney's office in the jurisdiction where the arrest occurred shall immediately notify the city attorney's office that the county attorney's office has received a notice of a filing of a petition for expungement.
- (6)
- (a) Upon receipt of a notice of a filing of a petition for expungement of a conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney shall make a reasonable effort to provide notice to any victim of the conviction or charge.
 - (b) The notice under Subsection (6)(a) 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.
- (7)
- (a) The prosecuting attorney may respond to the petition by filing a recommendation or objection with the court within 35 days after the day on which the notice of the filing of the petition is sent by the court to the prosecuting attorney.
 - (b) If there is a victim of the offense for which expungement is sought, the victim may respond to the petition by filing a recommendation or objection with the court within 60 days after the day on which the petition for expungement was filed with the court.
- (8)
- (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.
- (9) The petitioner may respond in writing to any objections filed by the prosecuting attorney or the victim and the response prepared by the Division of Adult Probation and Parole within 14 days after the day on which the objection or response is received.
- (10)
- (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.
 - (b) The prosecuting attorney shall notify the victim of the date set for the hearing.
 - (c) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.
 - (d) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.
- (11) If no objection is received within 60 days from the day on which the petition for expungement is filed with the court, the expungement may be granted without a hearing.

Amended by Chapter 265, 2023 General Session

Amended by Chapter 330, 2023 General Session

77-40a-306 Order of expungement.

- (1) If a petition is filed in accordance with Section 77-40a-305, the court shall issue an order of expungement if the court finds, by clear and convincing evidence, that:
 - (a) except as provided in Subsection 77-40a-305(3) or (4), the petition and 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 prosecuting attorney provided written consent and has not filed and does not intend to refile related charges;
 - (d) if the petitioner seeks expungement without a certificate of eligibility for expungement under Subsection 77-40a-305(4) 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 26B-4-201; and
 - (ii) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (1)(d)(i);
 - (e) 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
 - (f) the interests of the public would not be harmed by granting the expungement.
- (2)
 - (a) If the court denies a petition described in Subsection (1)(c) because the prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of eligibility if charges are not refiled within 180 days after the day on which the court denies the petition.
 - (b) A prosecuting attorney 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 prosecuting attorney is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (1)(c).
- (3) If the court grants a petition described in Subsection (1)(e), the court shall make the court's findings in a written order.
- (4) 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 77-40a-302 or 77-40a-303.

Amended by Chapter 330, 2023 General Session