

Effective 5/3/2023

Effective until 5/1/2024

77-40a-101 Definitions.

As used in this chapter:

- (1) "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.
- (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.
- (3) "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.
- (4)
 - (a) "Clean slate eligible case" means, except as provided in Subsection (4)(c), a case:
 - (i) where 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 77-40a-303(4) and (5) without taking into consideration the exception in Subsection 77-40a-303(7); 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:
 - (i) 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:
 - (A) except as provided in Subsection (4)(c), each charge within the case is a misdemeanor for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;
 - (B) the individual involved meets the requirements of Subsection (4)(a)(ii); and
 - (C) the time periods described in Subsections (4)(a)(iii)(A) through (C) have elapsed from the day on which the case is dismissed; or
 - (ii) where charges are dismissed without prejudice if each conviction, or charge that was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or (b)(i).
 - (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 accounts receivable, as defined in Section 77-32b-102, that:

- (A) has been entered as a civil accounts receivable or a civil judgment of restitution, as those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt Collection under Section 77-18-114; 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 77-40a-303(2)(a);
 - (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against the Individual;
 - (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).
- (5) "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.
- (6) "Criminal protective order" means the same as that term is defined in Section 78B-7-102.
- (7) "Criminal stalking injunction" means the same as that term is defined in Section 78B-7-102.
- (8) "Department" means the Department of Public Safety established in Section 53-1-103.
- (9) "Drug possession offense" means an offense under:
 - (a) Subsection 58-37-8(2), except:
 - (i) any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana;
 - (ii) any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility; or
 - (iii) driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);
 - (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 (9).
- (10) "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.
- (11) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.
- (12)
 - (a) "Minor regulatory offense" means, except as provided in Subsection (12)(c), a class B or C misdemeanor offense or a local ordinance.
 - (b) "Minor regulatory offense" includes an offense under Section 76-9-701 or 76-10-105.
 - (c) "Minor regulatory offense" does not include:
 - (i) any drug possession offense;
 - (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

- (iii) an offense under Sections 73-18-13 through 73-18-13.6;
 - (iv) except as provided in Subsection (12)(b), an offense under Title 76, Utah Criminal Code; or
 - (v) any local ordinance that is substantially similar to an offense listed in Subsections (12)(c)(i) through (iv).
- (13) "Petitioner" means an individual applying for expungement under this chapter.
- (14) "Plea in abeyance" means the same as that term is defined in Section 77-2a-1.
- (15)
- (a) "Traffic offense" means, except as provided in Subsection (15)(b):
 - (i) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 41, Chapter 6a, Traffic Code;
 - (ii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;
 - (iii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 73, Chapter 18, State Boating Act; and
 - (iv) all local ordinances that are substantially similar to an offense listed in Subsections (15)(a)(i) through (iii).
 - (b) "Traffic offense" does not mean:
 - (i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
 - (ii) an offense under Sections 73-18-13 through 73-18-13.6; or
 - (iii) any local ordinance that is substantially similar to an offense listed in Subsection (15)(b)(i) or (ii).
- (16) "Traffic offense case" means that each offense in the case is a traffic offense.