

Effective 10/1/2024

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):
 - (i) the petitioner shall pay an application fee at the time the petitioner submits an application for a certificate of eligibility to the bureau; and
 - (ii) 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) If a disposition for an arrest on the criminal history file is unobtainable after reasonable research, 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) Once the eligibility process is complete, the bureau shall notify the petitioner.
 - (b) If the petitioner meets all of the criteria under Section 77-40a-302 or 77-40a-303 and the bureau determines that the issuance of a certificate of eligibility or special certificate is appropriate:
 - (i) the bureau shall issue a certificate of eligibility or special certificate 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 or special certificate; and
 - (iii) except as provided in Subsection (3), the petitioner shall pay an additional fee for the issuance of a certificate of eligibility or special certificate.
- (3) The bureau shall issue a certificate of eligibility or special certificate without requiring the payment of the issuance fee if the petitioner:
 - (a) 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; or
 - (b) indicates on the application for a certificate of eligibility that the petitioner reasonably believes, as of the date of the application, that the fee to file a petition for expungement is likely to be waived by a court because the petitioner is indigent.
- (4) The bureau shall include on a certificate of eligibility all information that is needed for the court to issue a valid expungement order.
- (5) 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.

- (6) If a petitioner indicates on the application for a certificate of eligibility that a court is likely to waive the fee for a petition for expungement as described in Subsection (3)(b), the bureau shall:
 - (a) inform the petitioner that the petitioner will be required to pay an issuance fee before an agency will expunge the offense if a court does not waive the fee for a petition for expungement; and
 - (b) provide the petitioner with the form for waiving a court fee for a petition for expungement.
- (7) If the bureau issues a certificate of eligibility or a special certificate without requiring payment of the issuance fee as described in Subsection (3)(b), the bureau shall charge the petitioner the issuance fee upon the bureau's receipt of an order deciding a petition for expungement unless the court communicates to the bureau that the fee to file the petition for expungement was waived because the petitioner is indigent.
- (8)
 - (a) If the petitioner qualifies for a waiver of the issuance fee under Subsection (7) and the expungement order grants the petition for expungement, the bureau shall process the expungement order in accordance with Section 77-40a-401 as if the petitioner paid the issuance fee.
 - (b) If the petitioner does not qualify for a waiver of the issuance fee under Subsection (7) and the expungement order grants the petition for expungement, the bureau may not process the expungement order as described in Section 77-40a-401, or notify other agencies affected by the expungement order as described in Section 77-40a-307, until the petitioner pays the issuance fee.
 - (c) If the bureau issues a certificate of eligibility or special certificate without requiring payment of the issuance fee under Subsection (3)(b), the bureau may not charge the petitioner an issuance fee on the grounds that the validity of the certificate described in (2)(b)(i) has expired.
- (9) 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.
- (10) The department shall deposit funds generated by application and issuance fees under this section into the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility for expungement.

Amended by Chapter 180, 2024 General Session