

Effective 5/7/2025

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

- (1)
 - (a) The petitioner shall file a petition for expungement in accordance with Rule 42 of the Utah Rules of Criminal Procedure.
 - (b) A petitioner shall include the identification number for the certificate of eligibility or special certificate described in Subsection 77-40a-304(2)(b)(ii) in the petition for expungement, unless the petitioner is not required to obtain a certificate of eligibility under Subsection (3) or (4).
 - (c) Information on a certificate of eligibility is incorporated into a petition by reference to the identification number for the certificate of eligibility.
 - (d) A petitioner shall bring a petition for expungement, including a petition for expungement for which the petitioner obtained a special certificate:
 - (i) in the court where the criminal case was filed;
 - (ii) if the court in which the criminal case was filed no longer exists, in the court that would have jurisdiction over the criminal case if the criminal case were filed on the day on which the petition is brought; or
 - (iii) if charges were never filed, in the district court in the county in which the arrest occurred or the citation is issued.
- (2)
 - (a) If a petition for expungement is filed under Subsection (1)(a), the court shall obtain a certificate of eligibility or special certificate from the bureau.
 - (b) A court may not accept a petition for expungement if the certificate of eligibility or special certificate is no longer valid as described in Subsection 77-40a-304(2)(b)(i).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 case was adjudicated or dismissed; or
 - (ii) for a traffic offense case with a class B misdemeanor, at least four years have passed after the day on which the case was adjudicated or dismissed;
 - (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 or special certificate 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 or special certificate 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 or special certificate, 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 created in Section 64-14-202.
 - (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 or special certificate, 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.
- (12)
 - (a) If the petitioner seeks a waiver of the fee required for a petition for expungement in accordance with Section 78A-2-302, the court shall consider the total number of cases for which the petitioner has received a certificate of eligibility and is seeking expungement in

determining whether the petitioner is indigent under Subsection 78A-2-302(3)(e) even if the court does not have jurisdiction over a case for which the petitioner is seeking expungement.

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

Amended by Chapter 214, 2025 General Session

Amended by Chapter 239, 2025 General Session