

Effective 5/7/2025

77-40a-306 Order of expungement.

- (1) If a petition for expungement 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 (1)(b) and Subsection 77-40a-305(3) or (4):
 - (i) the certificate of eligibility is valid at the time the petition for expungement was filed with the court and contains the information needed for the court to issue an order for expungement; and
 - (ii) the statutory requirements for expungement have been met;
 - (b) if the petitioner obtained a special certificate from the bureau:
 - (i) the special certificate is valid at the time the petition for expungement was filed with the court; and
 - (ii) there is sufficient information in the petition for the court to determine that the statutory requirements for expungement 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.
- (5) If the court issues an order of expungement under this section, the court shall:
 - (a) expunge all records of the case as described in Section 77-40a-401;
 - (b) notify the bureau of the order of expungement in a manner specified by the department; and
 - (c) provide the bureau with the order of expungement and all relevant information available to the court that the bureau will need to identify an expunged record.
- (6)
 - (a) The petitioner may request certified copies of an order of expungement within 28 days after the day on which the court issues an order of expungement.

(b) If a petitioner makes a request under Subsection (6)(a), the court shall provide the petitioner with certified copies of the order of expungement.

Amended by Chapter 239, 2025 General Session