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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 77-41-102(1);
 - (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.

- (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.