

**EXPUNGEMENT FEE WAIVER AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jerry W. Stevenson**

House Sponsor: Tyler Clancy

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**LONG TITLE**

**General Description:**

This bill addresses the waiver of fees for expungement.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires the Bureau of Criminal Identification to issue a certificate of eligibility, or a special certificate, for expungement without requiring the payment of an issuance fee in certain circumstances;
- ▶ allows an individual to bring a petition for expungement without paying a fee for the petition when the individual is receiving services for the expungement from a nonprofit organization or a public benefit corporation that provides services to low-income individuals seeking expungement; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-40a-304**, as last amended by Laws of Utah 2023, Chapter 265



28 [78A-2-302](#), as last amended by Laws of Utah 2023, Chapter 184



30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **77-40a-304** is amended to read:

32 **77-40a-304. Certificate of eligibility process -- Issuance of certificate -- Fees.**

33 (1) (a) When a petitioner applies for a certificate of eligibility as described in  
34 Subsection [77-40a-301](#)(1), the bureau shall perform a check of records of governmental  
35 agencies, including national criminal data bases, to determine whether the petitioner is eligible  
36 to receive a certificate of eligibility under this chapter.

37 (b) For purposes of determining eligibility under this chapter, the bureau may review  
38 records of arrest, investigation, detention, and conviction that have been previously expunged,  
39 regardless of the jurisdiction in which the expungement occurred.

40 (c) Once the eligibility process is complete, the bureau shall notify the petitioner.

41 (d) If the petitioner meets all of the criteria under Section [77-40a-302](#) or [77-40a-303](#):

42 (i) the bureau shall issue a certificate of eligibility that is valid for a period of 180 days  
43 from the day on which the certificate is issued;

44 (ii) the bureau shall provide a petitioner with an identification number for the  
45 certificate of eligibility; and

46 (iii) the petitioner shall pay the issuance fee established by the department as described  
47 in Subsection (2).

48 (e) If, after reasonable research, a disposition for an arrest on the criminal history file is  
49 unobtainable, the bureau may issue a special certificate giving determination of eligibility to  
50 the court, except that the bureau may not issue the special certificate if:

51 (i) there is a criminal proceeding for a misdemeanor or felony offense pending against  
52 the petitioner, unless the criminal proceeding is for a traffic offense;

53 (ii) there is a plea in abeyance for a misdemeanor or felony offense pending against the  
54 petitioner, unless the plea in abeyance is for a traffic offense; or

55 (iii) the petitioner is currently incarcerated, on parole, or on probation, unless the  
56 petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory  
57 offense.

58 (2) (a) The bureau shall charge application and issuance fees for a certificate of

59 eligibility or special certificate in accordance with the process in Section 63J-1-504.

60 (b) The application fee shall be paid at the time the petitioner submits an application  
61 for a certificate of eligibility to the bureau.

62 (c) If the bureau determines that the issuance of a certificate of eligibility or special  
63 certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a  
64 certificate of eligibility or special certificate unless Subsection (2)(d) applies.

65 (d) ~~[An issuance fee may not be assessed against a petitioner who]~~ The bureau shall  
66 issue a certificate of eligibility or a special certificate without requiring the payment of the  
67 issuance fee if the petitioner:

68 (i) qualifies for a certificate of eligibility under Section 77-40a-302 unless the charges  
69 were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in  
70 Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and  
71 Diversion[-]; or

72 (ii) is not required to pay the fee for a petition for expungement as described in  
73 Subsection 78A-2-302(2)(b).

74 (e) Funds generated under this Subsection (2) shall be deposited in the General Fund as  
75 a dedicated credit by the department to cover the costs incurred in determining eligibility.

76 (3) The bureau shall include on the certificate of eligibility all information that is  
77 needed for the court to issue a valid expungement order.

78 (4) The bureau shall provide clear written instructions to the petitioner that explain:

79 (a) the process for a petition for expungement; and

80 (b) what is required of the petitioner to complete the process for a petition for  
81 expungement.

82 Section 2. Section 78A-2-302 is amended to read:

83 **78A-2-302. Waiver of court fees, costs, and security -- Indigent litigants --**

84 **Affidavit.**

85 (1) As used in Sections 78A-2-302 through 78A-2-309:

86 (a) "Convicted" means:

87 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental  
88 condition, no contest; and

89 (ii) a conviction of any crime or offense.

90 (b) "Indigent" means an individual who is financially unable to pay fees and costs or  
91 give security.

92 (c) "Public benefit corporation" means:

93 (i) a benefit corporation as defined in Section 16-10b-103; or

94 (ii) a business corporation that is incorporated as a public benefit corporation in  
95 another state.

96 (d) "Nonprofit organization" means an organization that:

97 (i) qualifies as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;

98 and

99 (ii) has a charitable purpose.

100 [~~e~~] (e) "Prisoner" means an individual who has been convicted of a crime and is  
101 incarcerated for that crime or is being held in custody for trial or sentencing.

102 (2) An individual may institute, prosecute, defend, or appeal any cause in a court in this  
103 state without prepayment of fees and costs or security if:

104 (a) the individual submits an affidavit demonstrating that the individual is indigent[-];

105 or

106 (b) the cause is a petition for expungement and the individual is receiving services for  
107 the expungement from a nonprofit organization, or a public benefit corporation, that provides  
108 services to low-income individuals seeking expungement.

109 (3) A court shall find an individual indigent if the individual's affidavit under  
110 Subsection [~~2~~] (2)(a) demonstrates:

111 (a) the individual has an income level at or below 150% of the United States poverty  
112 level as defined by the most recent poverty income guidelines published by the United States  
113 Department of Health and Human Services;

114 (b) the individual receives benefits from a means-tested government program,  
115 including Temporary Assistance to Needy Families, Supplemental Security Income, the  
116 Supplemental Nutrition Assistance Program, or Medicaid;

117 (c) the individual receives legal services from a nonprofit provider or a pro bono  
118 attorney through the Utah State Bar; or

119 (d) the individual has insufficient income or other means to pay the necessary fees and  
120 costs or security without depriving the individual, or the individual's family, of food, shelter,

121 clothing, or other necessities.

122 (4) An affidavit demonstrating that an individual is indigent under Subsection (3)(d)  
123 shall contain complete information on the individual's:

124 (a) identity and residence;

125 (b) amount of income, including any government financial support, alimony, or child  
126 support;

127 (c) assets owned, including real and personal property;

128 (d) business interests;

129 (e) accounts receivable;

130 (f) securities, checking and savings account balances;

131 (g) debts; and

132 (h) monthly expenses.

133 (5) If the individual under Subsection (3) is a prisoner, the prisoner shall disclose the  
134 amount of money held in the prisoner's trust account at the time the affidavit under Subsection  
135 (2) is executed in accordance with Section [78A-2-305](#).

136 (6) An affidavit of indigency under this section shall state the following:

137 I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear  
138 the expenses of the action or legal proceedings which I am about to commence or the appeal  
139 which I am about to take, and that I believe I am entitled to the relief sought by the action, legal  
140 proceedings, or appeal.

140a ~~§→ (7) §→ [If an individual is seeking a waiver of a filing fee for a petition for expungement under~~  
140b ~~Subsection (2)(b), the individual shall indicate on the signed petition that] For a petition for~~  
140b1 ~~expungement, the signed petition shall indicate whether ←§ the individual is~~  
140c ~~receiving services for the expungement from a nonprofit organization, or a public benefit~~  
140d ~~corporation, that provides services to low-income individuals seeking expungement. ←§~~

141 Section 3. **Effective date.**

142 This bill takes effect on May 1, 2024.