

**EXPUNGEMENT FEE WAIVERS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karianne Lisonbee**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses the waiver of fees for expungement of a criminal record.

**Highlighted Provisions:**

This bill:

- ▶ defines the term "indigent" for purposes of a petition for expungement;
- ▶ requires the Bureau of Criminal Identification to waive certain fees related to expungement of a criminal record if a court finds that the individual filing the petition for expungement is indigent; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63I-1-277**, as last amended by Laws of Utah 2022, Chapter 384 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 384

**77-40a-101**, as last amended by Laws of Utah 2022, Chapters 116, 430 and renumbered and amended by Laws of Utah 2022, Chapter 250

**77-40a-301**, as enacted by Laws of Utah 2022, Chapter 250



28 **77-40a-304**, as last amended by Laws of Utah 2022, Chapter 384 and renumbered and  
29 amended by Laws of Utah 2022, Chapter 250 and last amended by Coordination  
30 Clause, Laws of Utah 2022, Chapter 384

31 **77-40a-306**, as enacted by Laws of Utah 2022, Chapter 250



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

34 Section 1. Section **63I-1-277** is amended to read:

35 **63I-1-277. Repeal dates: Title 77.**

36 [~~Subsection **77-40a-304**(5), regarding the suspension of issuance fees for certificates of~~  
37 ~~eligibility, is repealed on July 1, 2023.~~]

38 Section 2. Section **77-40a-101** is amended to read:

39 **77-40a-101. Definitions.**

40 As used in this chapter:

41 (1) "Agency" means a state, county, or local government entity that generates or  
42 maintains records relating to an investigation, arrest, detention, or conviction for an offense for  
43 which expungement may be ordered.

44 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
45 Safety established in Section **53-10-201**.

46 (3) "Certificate of eligibility" means a document issued by the bureau stating that the  
47 criminal record and all records of arrest, investigation, and detention associated with a case that  
48 is the subject of a petition for expungement is eligible for expungement.

49 (4) (a) Except as provided in Subsection (4)(c), "clean slate eligible case" means a  
50 case:

51 (i) where each conviction within the case is:

52 (A) a misdemeanor conviction for possession of a controlled substance in violation of  
53 Subsection **58-37-8**(2)(a)(i);

54 (B) a class B or class C misdemeanor conviction; or

55 (C) an infraction conviction;

56 (ii) that involves an individual:

57 (A) whose total number of convictions in Utah state courts, not including infractions,  
58 traffic offenses, or minor regulatory offenses, does not exceed the limits described in

59 Subsections 77-40a-303(5) and (6) without taking into consideration the exception in  
60 Subsection 77-40a-303(8); and  
61 (B) against whom no criminal proceedings are pending in the state; and  
62 (iii) for which the following time periods have elapsed from the day on which the case  
63 is adjudicated:  
64 (A) at least five years for a class C misdemeanor or an infraction;  
65 (B) at least six years for a class B misdemeanor; and  
66 (C) at least seven years for a class A conviction for possession of a controlled  
67 substance in violation of Subsection 58-37-8(2)(a)(i).  
68 (b) "Clean slate eligible case" includes a case:  
69 (i) that is dismissed as a result of a successful completion of a plea in abeyance  
70 agreement governed by Subsection 77-2a-3(2)(b) if:  
71 (A) except as provided in Subsection (4)(c), each charge within the case is a  
72 misdemeanor for possession of a controlled substance in violation of Subsection  
73 58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;  
74 (B) the individual involved meets the requirements of Subsection (4)(a)(ii); and  
75 (C) the time periods described in Subsections (4)(a)(iii)(A) through (C) have elapsed  
76 from the day on which the case is dismissed; or  
77 (ii) where charges are dismissed without prejudice if each conviction, or charge that  
78 was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or  
79 (b)(i).  
80 (c) "Clean slate eligible case" does not include a case:  
81 (i) where the individual is found not guilty by reason of insanity;  
82 (ii) where the case establishes a criminal accounts receivable, as defined in Section  
83 77-32b-102, that:  
84 (A) has been entered as a civil accounts receivable or a civil judgment of restitution, as  
85 those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt  
86 Collection under Section 77-18-114; or  
87 (B) has not been satisfied according to court records; or  
88 (iii) that resulted in one or more pleas held in abeyance or convictions for the following  
89 offenses:

- 90 (A) any of the offenses listed in Subsection 77-40a-303(1)(a);
- 91 (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against  
92 the Individual;
- 93 (C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
- 94 (D) sexual battery in violation of Section 76-9-702.1;
- 95 (E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
- 96 (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence  
97 and Reckless Driving;
- 98 (G) damage to or interruption of a communication device in violation of Section  
99 76-6-108;
- 100 (H) a domestic violence offense as defined in Section 77-36-1; or
- 101 (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor  
102 other than a class A misdemeanor conviction for possession of a controlled substance in  
103 violation of Subsection 58-37-8(2)(a)(i).
- 104 (5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty  
105 after trial, a plea of guilty, or a plea of nolo contendere.
- 106 (6) "Criminal protective order" means the same as that term is defined in Section  
107 78B-7-102.
- 108 (7) "Criminal stalking injunction" means the same as that term is defined in Section  
109 78B-7-102.
- 110 (8) "Department" means the Department of Public Safety established in Section  
111 53-1-103.
- 112 (9) "Drug possession offense" means an offense under:
  - 113 (a) Subsection 58-37-8(2), except:
    - 114 (i) any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of  
115 marijuana;
    - 116 (ii) any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional  
117 facility; or
    - 118 (iii) driving with a controlled substance illegally in the person's body and negligently  
119 causing serious bodily injury or death of another, as codified before May 4, 2022, Laws of Utah  
120 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

121 (b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;  
122 (c) Section 58-37b-6, possession or use of an imitation controlled substance; or  
123 (d) any local ordinance which is substantially similar to any of the offenses described  
124 in this Subsection (9).

125 (10) "Expunge" means to seal or otherwise restrict access to the individual's record  
126 held by an agency when the record includes a criminal investigation, detention, arrest, or  
127 conviction.

128 (11) "Indigent" means a court found a petitioner financially unable to pay the fee to file  
129 a petition for expungement under Section 78A-2-302.

130 [(11)] (12) "Jurisdiction" means a state, district, province, political subdivision,  
131 territory, or possession of the United States or any foreign country.

132 [(12)] (13) (a) Except as provided in Subsection [(12)(c)] (13)(c), "minor regulatory  
133 offense" means a class B or C misdemeanor or a local ordinance.

134 (b) "Minor regulatory offense" includes an offense under Section 76-9-701 or  
135 76-10-105.

136 (c) "Minor regulatory offense" does not include:

137 (i) any drug possession offense;

138 (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and  
139 Reckless Driving;

140 (iii) an offense under Sections 73-18-13 through 73-18-13.6;

141 (iv) except as provided in Subsection [(12)(b)] (13)(b), an offense under Title 76, Utah  
142 Criminal Code; or

143 (v) any local ordinance that is substantially similar to an offense listed in Subsections  
144 [(12)(c)(i)] (13)(c)(i) through (iv).

145 [(13)] (14) "Petitioner" means an individual applying for expungement under this  
146 chapter.

147 [(14)] (15) (a) "Traffic offense" means:

148 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,  
149 Chapter 6a, Traffic Code;

150 (ii) an offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;

151 (iii) an offense under Title 73, Chapter 18, State Boating Act; and

152 (iv) all local ordinances that are substantially similar to an offense listed in Subsections  
153 ~~[(14)(a)(i)]~~ (15)(a)(i) through (iii).

154 (b) "Traffic offense" does not mean:

155 (i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and  
156 Reckless Driving;

157 (ii) an offense under Sections 73-18-13 through 73-18-13.6; or

158 (iii) any local ordinance that is substantially similar to an offense listed in Subsection  
159 ~~[(14)(b)(i)]~~ (15)(b)(i) or (ii).

160 ~~[(15)]~~ (16) "Traffic offense case" means that each offense in the case is a traffic  
161 offense.

162 Section 3. Section **77-40a-301** is amended to read:

163 **77-40a-301. Application for certificate of eligibility for expungement -- Penalty**  
164 **for false or misleading information on application.**

165 (1) If an individual seeks to expunge the individual's criminal record in regard to an  
166 arrest, investigation, detention, or conviction, the individual shall:

167 (a) except as provided in Subsection 77-40a-305(3) or (4), apply to the bureau for a  
168 certificate of eligibility for expungement of the criminal record and pay the application fee as  
169 described in Section 77-40a-304;

170 (b) if the individual is qualified to receive a certificate of eligibility, except as provided  
171 in Subsection 77-40a-304(2)(d) or (5)(a), pay the issuance fee for the certificate of eligibility as  
172 described in Section 77-40a-304; and

173 (c) file a petition for expungement in accordance with Section 77-40a-305.

174 (2) (a) An individual who intentionally or knowingly provides any false or misleading  
175 information to the bureau when applying for a certificate of eligibility is guilty of a class B  
176 misdemeanor and subject to prosecution under Section 76-8-504.6.

177 (b) Regardless of whether the individual is prosecuted, the bureau may deny a  
178 certificate of eligibility to anyone who knowingly provides false information on an application.

179 Section 4. Section **77-40a-304** is amended to read:

180 **77-40a-304. Certificate of eligibility process -- Issuance of certificate -- Fees --**  
181 **Waiver of issuance fee.**

182 (1) (a) When a petitioner applies for a certificate of eligibility as described in

183 Subsection 77-40a-301(1), the bureau shall perform a check of records of governmental  
184 agencies, including national criminal data bases, to determine whether the petitioner is eligible  
185 to receive a certificate of eligibility under this chapter.

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

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

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

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

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

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

197 (e) If, after reasonable research, a disposition for an arrest on the criminal history file is  
198 unobtainable, the bureau may issue a special certificate giving determination of eligibility to  
199 the court if:

200 (i) there are no criminal proceedings or pleas in abeyance pending against the  
201 petitioner; and

202 (ii) the petitioner is not currently on probation or parole.

203 (2) (a) The bureau shall charge application and issuance fees for a certificate of  
204 eligibility or special certificate in accordance with the process in Section 63J-1-504.

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

207 (c) ~~[H]~~ Except as provided in Subsection (2)(d), if the bureau determines that the  
208 issuance of a certificate of eligibility or special certificate is appropriate, the petitioner [will be  
209 charged] shall pay an additional fee for the issuance of a certificate of eligibility or special  
210 certificate [unless Subsection (2)(d) applies].

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

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

218 (ii) indicates on the application for a certificate of eligibility that the petitioner  
219 reasonably believes, as of the date of the application, that the fee to file a petition for  
220 expungement is likely to be waived by a court because the petitioner is indigent.

221 (e) Funds generated under this Subsection (2) shall be deposited [in] into the General  
222 Fund as a dedicated credit by the department to cover the costs incurred in determining  
223 eligibility.

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

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

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

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

230 (5) (a) If the bureau issues a certificate of eligibility or a special certificate without  
231 requiring payment of the issuance fee under Subsection (2)(d)(ii), the bureau shall charge the  
232 petitioner the issuance fee upon the bureau's receipt of an order deciding a petition for  
233 expungement unless:

234 (i) the order indicates that the fee to file the petition for expungement is waived  
235 because the petitioner is indigent; or

236 (ii) the court where the petition for expungement is filed communicates to the bureau  
237 that the fee to file the petition for expungement is waived because the petitioner is indigent.

238 (b) If the petitioner qualifies for a waiver of the issuance fee under Subsection (5)(a)  
239 and the order grants the petition for expungement, the bureau shall process the order in  
240 accordance with Section 77-40a-401 as if the petitioner paid the issuance fee.

241 (c) If the petitioner does not qualify for a waiver of the issuance fee under Subsection  
242 (5)(a) and the order grants the petition for expungement, the bureau may not process the order  
243 in accordance with Section 77-40a-401 until the petitioner pays the issuance fee.

244 (6) If, pursuant to Subsection (2)(d)(ii), the bureau issues a certificate of eligibility or



245 special certificate without requiring payment of the issuance fee, the bureau may not charge the  
246 petitioner an issuance fee on the grounds that the validity of the certificate described in  
247 Subsection (1)(d)(i) has expired.

248 ~~[(5) (a) The requirement for a petitioner to pay an issuance fee for a certificate of~~  
249 ~~eligibility or a special certificate of eligibility under Subsection (2) is suspended from May 4,~~  
250 ~~2022, to June 30, 2023.]~~

251 ~~[(b) The bureau may not charge a fee for the issuance of a certificate of eligibility or a~~  
252 ~~special certificate of eligibility during the time period described in Subsection (5)(a).]~~

253 Section 5. Section **77-40a-306** is amended to read:

254 **77-40a-306. Order of expungement.**

255 (1) If a petition is filed in accordance with Section **77-40a-305**, the court shall issue an  
256 order of expungement if the court finds, by clear and convincing evidence, that:

257 (a) except as provided in Subsection **77-40a-305**(3) or (4), the petition and certificate  
258 of eligibility are sufficient;

259 (b) the statutory requirements have been met;

260 (c) if the petitioner seeks expungement after a case is dismissed without prejudice or  
261 without condition, the prosecuting attorney provided written consent and has not filed and does  
262 not intend to refile related charges;

263 (d) if the petitioner seeks expungement without a certificate of eligibility for  
264 expungement under Subsection **77-40a-305**(4) for a record of conviction related to cannabis  
265 possession:

266 (i) the petitioner had, at the time of the relevant arrest or citation leading to the  
267 conviction, a qualifying condition, as that term is defined in Section **26-61a-102**; and

268 (ii) the possession of cannabis in question was in a form and an amount to medicinally  
269 treat the qualifying condition described in Subsection (1)(d)(i);

270 (e) if an objection is received, the petition for expungement is for a charge dismissed in  
271 accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used  
272 for enhancement, there is good cause for the court to grant the expungement; and

273 (f) the interests of the public would not be harmed by granting the expungement.

274 (2) (a) If the court denies a petition described in Subsection (1)(c) because the  
275 prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of

276 eligibility if charges are not refiled within 180 days after the day on which the court denies the  
277 petition.

278 (b) A prosecuting attorney who opposes an expungement of a case dismissed without  
279 prejudice, or without condition, shall have a good faith basis for the intention to refile the case.

280 (c) A court shall consider the number of times that good faith basis of intention to  
281 refile by the prosecuting attorney is presented to the court in making the court's determination  
282 to grant the petition for expungement described in Subsection (1)(c).

283 (3) If the court grants a petition described in Subsection (1)(e), the court shall make the  
284 court's findings in a written order.

285 (4) A court may not expunge a conviction of an offense for which a certificate of  
286 eligibility may not be, or should not have been, issued under Section [77-40a-302](#) or  
287 [77-40a-303](#).

288 (5) If the petitioner requests the court to waive the fee to file a petition for  
289 expungement because the petitioner is indigent, an order issued under this section shall indicate  
290 whether the request is granted or denied.