

UTAH EXPUNGEMENT ACT

U.C.A. 77-40-101 *et.al.*

- I. Eligibility for Expungement of Records of Arrest, Investigation, and Detention (*see* §77-40-104)
 - A. Person who has been **arrested or formally charged** may apply for certificate of eligibility to expunge all **records of arrest, investigation, and detention** which may have been made in the case, subject to following:
 1. At least **30 days** after arrest;
 2. **No** criminal proceedings pending; and
 3. One of following:
 - a. Charges screened, prosecutor **filed no charges**; or
 - b. Entire **case dismissed** with prejudice; or
 - c. **Acquitted** of all charges; or
 - d. **Statute of limitations** has expired.
- II. Eligibility for Expungement of Conviction §77-40-105
 - A. **NOT** eligible for certificate if:
 1. Statute of limitations has not been met (*see* §77-40-104(1)(c)(iv));
 2. Conviction is: (*see* §77-40-105(2)(a));
 - a. Capital felony;
 - b. First degree felony;
 - c. Violent felony
 - d. Felony automobile homicide;
 - e. Felony violation of DUI; or
 - f. Registerable sex offense.
 3. **Criminal proceeding is pending** (*see* §77-40-105(2)(b));
 4. Petitioner **intentionally or knowingly provides false or misleading information** on the application for the certificate (*see* §77-40-105(2)(c));
 5. All **finances, interest** have **NOT** been paid (*see* §77-40-105(3)(a));
 6. All **restitution** has **NOT** paid (*see* §77-40-105(3)(b));
 7. The following time periods have elapsed from date of conviction or release from incarceration, parole, or probation, whichever occurred last, for each conviction petitioner seeks to expunge (*see* §77-40-105(3)(c)):
 - a. **10 years** for misdemeanor conviction of **DUI** (§41-6a-501(2)) or **felony conviction of §58-37-8(2)** (having measurable amount of controlled substance, driving in negligent manner, causing serious bodily injury or death);
 - b. **7 years** in case of **felony**;
 - c. **5 years** in case of **Class A** misdemeanor;
 - d. **4 years** in case of **Class B** misdemeanor;
 - e. **3 years** in case of **Class C** misdemeanor or Infraction.

- B. May NOT issue certificate if petitioner's history, including previously expunged convictions, contains any of the following (*see* §77-40-105(4)):
1. 2 or more felony convictions, other than for drug possession offenses, each in a separate criminal episode; or
 2. Any combination of 3 or more convictions, other than for drug possession offenses, that include 2 Class A misdemeanor convictions, each in a separate criminal episode; or
 3. Any combination of 4 or more convictions, other than drug possession offenses, that include 3 Class B misdemeanor convictions, each in a separate criminal episode; or
 4. 5 or more convictions of any degree (felony or misdemeanor), other than drug offenses, excluding infractions and traffic offenses, each contained in separate criminal episode.

- C. May NOT issue certificate if petitioner's history, including previously expunged convictions, contains any of the following (*see* §77-40-105(5)):
1. 3 or more felony convictions for drug possession offenses, each in a separate criminal episode; or
 2. Any combination of 5 or more convictions for drug possession offenses, each in a separate criminal episode.

III. Information Contained on BCI Webpage; www.publicsafety.utah.gov/bci/expunge

- A. Your expungement eligibility will be based upon your total criminal history, not just what has been reported to the Bureau of Criminal Identification (BCI). This includes incidents in all states and previous expungements. We will conduct a thorough background check and you will be notified by mail of your approval or denial.
- B. Traffic Cases
1. Most traffic offenses can be expunged without limit as long as time periods have been met and have no pending cases or fines owed.
 2. Traffic charges are not included in determining if a person is eligible for future certificates of eligibility and expungement.
 3. When expunging a traffic offense the record will only be deleted from court records and will not affect the Utah Driver License files.
- C. Infractions: there are no limit on the number of infractions that may be expunged.
- D. Expungement Eligibility – Drug Possession Offenses
1. Your expungement eligibility will be based upon your total criminal history, not just what has been reported to the Bureau of Criminal Identification (BCI).
 - a. This includes incidents in all states and previous expungements, we will conduct a thorough background check and you will be notified by mail of your approval or denial.

2. In ADDITION to criteria for non drug possession offenses, the petitioner is allowed up to 4 drug possession offenses eligible for expungement.
- E. Drug Possession Offenses defined in U.C.A. 77-40-102(7)
1. Possession of controlled substance U.C.A. 58-37-8(2);
 2. Use or possession of drug paraphernalia U.C.A. 58-37a-5(1);
 3. Possession or use of an imitation controlled substance U.C.A. 58-37b-6
- F. Drug Offenses NOT defined as a drug possession offense:
1. Possession of 100 pounds or more of marijuana U.C.A. 58-37-8(2)(b)(I);
 2. Enhanced for violation in a correctional facility U.C.A. 58-37-8(2)(e);
 3. Driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another U.C.A. 58-37-8(2)(g)
- G. Reasons for denial for Drug Possession Offenses:
1. 3 or more felony possession convictions U.C.A. 77-40-105(5)(a)
 2. 5 or more possession convictions U.C.A. 77-40-105(5)(b)
- H. Both a drug and non drug related offense in the same criminal incident:
1. As defined in U.C.A. 77-40-105(5)(6)
 - a. The criminal episode shall be counted as a NON drug related offense if any non drug possession offense in that episode is:
 - (1) a felony or class A misdemeanor; or has the same; or
 - (2) a longer waiting period under 77-40-105(4) than any drug possession offense in that episode.
- I. Time periods for Drug Possession Offenses:
1. 5 years-Class A Misdemeanor or Felony;
 2. 4 years-Class B Misdemeanor;
 3. 3 years-Class C Misdemeanor and infractions;
 4. Dismissals-Statute of limitations has expired