

HUMAN TRAFFICKING EXPUNGEMENT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill addresses the expungement of offenses for human trafficking victims.

Highlighted Provisions:

This bill:

- ▶ allows an individual to file a petition for expungement, without a certificate of eligibility, if the individual is seeking an expungement of records for prostitution, aiding prostitution, or sexual solicitation and the individual was subject to force, fraud, or coercion at the time of the conduct;
- ▶ addresses an order for expungement when the individual is seeking an expungement of records for prostitution, aiding prostitution, or sexual solicitation; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

77-40a-305, as last amended by Laws of Utah 2023, Chapters 265, 330

77-40a-306, as last amended by Laws of Utah 2023, Chapter 330



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

Section 1. Section **77-40a-301** is amended to read:

77-40a-301. Requirements for expunging a criminal record -- Penalty for false or misleading information on application.

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

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

(b) if the individual is ~~[qualified]~~ eligible to receive a certificate of eligibility, pay the issuance fee for the certificate of eligibility as described in Section **77-40a-304**; and

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

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

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

Section 2. Section **77-40a-305** is amended to read:

77-40a-305. Petition for expungement -- Prosecutorial responsibility -- Hearing.

(1) (a) The petitioner shall file a petition for expungement~~;~~ in accordance with Rule 42 of the Utah Rules of Criminal Procedure~~[-that includes]~~.

(b) A petitioner shall include the identification number for the certificate of eligibility described in Subsection **77-40a-304(1)(d)(ii)** in the petition for expungement, unless the petitioner is not required to obtain a certificate of eligibility under Subsection (3).

~~[(b)]~~ (c) Information on a certificate of eligibility is incorporated into a petition by reference to the identification number for the certificate of eligibility.

(2) (a) If a petition for expungement is filed under Subsection (1)(a), the court shall obtain a certificate of eligibility from the bureau.

(b) A court may not accept a petition for expungement if the certificate of eligibility is no longer valid as described in Subsection **77-40a-304(1)(d)(i)**.

(3) Notwithstanding Subsection (2), the petitioner may file a petition ~~[for expungement of]~~ to expunge records, without obtaining a certificate of eligibility, of:

~~(a)~~ (a) a traffic offense case ~~[without obtaining a certificate of eligibility]~~ if:

~~[(a)(i)]~~ (i) (A) for a traffic offense case with a class C misdemeanor or infraction, at least three years have passed after the day on which the petitioner was convicted; or

~~[(ii)]~~ (B) for a traffic offense case with a class B misdemeanor, at least four years have passed after the day on which the petitioner was convicted;

~~[(b)]~~ (ii) there is no traffic offense case pending against the petitioner;

~~[(c)]~~ (iii) there is no plea in abeyance for a traffic offense case pending against the petitioner; and

~~[(d)]~~ (iv) the petitioner is not currently on probation for a traffic offense case[-];

~~[(4) Notwithstanding Subsection (2), a petitioner may file a petition for expungement of a record for]~~

(b) a conviction related to cannabis possession ~~[without a certificate of eligibility]~~ if the petition demonstrates that:

~~[(a)]~~ (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

~~[(b)]~~ (ii) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection ~~[(4)(a)]~~ (3)(b)(i); or

(c) an arrest, a charge, or a conviction for prostitution under Section [76-10-1302](#), aiding prostitution under Section [76-10-1304](#), or sexual solicitation under Section [76-10-1313](#), if the petition demonstrates that the petitioner was subject to force, fraud, or coercion at the time of the conduct giving rise to the arrest, charge, or conviction.

~~[(5)]~~ (4) (a) The court shall provide notice of a filing of a petition and certificate of eligibility to the prosecutorial office that handled the court proceedings within three days after the day on which the petitioner's filing fee is paid or waived.

(b) If there were no court proceedings, the court shall provide notice of a filing of a petition and certificate of eligibility to the county attorney's office in the jurisdiction where the arrest occurred.

(c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention, or conviction, was a city attorney's office, the county attorney's office in the jurisdiction where

the arrest occurred shall immediately notify the city attorney's office that the county attorney's office has received a notice of a filing of a petition for expungement.

~~[(6)]~~ (5) (a) Upon receipt of a notice of a filing of a petition for expungement of a conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney shall make a reasonable effort to provide notice to any victim of the conviction or charge.

(b) The notice under Subsection ~~[(6)(a)]~~ (5)(a) shall:

(i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable to the petition;

(ii) state that the victim has a right to object to the expungement; and

(iii) provide instructions for registering an objection with the court.

~~[(7)]~~ (6) (a) The prosecuting attorney may respond to the petition by filing a recommendation or objection with the court within 35 days after the day on which the notice of the filing of the petition is sent by the court to the prosecuting attorney.

(b) If there is a victim of the offense for which expungement is sought, the victim may respond to the petition by filing a recommendation or objection with the court within 60 days after the day on which the petition for expungement was filed with the court.

~~[(8)]~~ (7) (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.

(b) If requested, the response prepared by the Division of Adult Probation and Parole shall include:

(i) the reasons probation was terminated; and

(ii) certification that the petitioner has completed all requirements of sentencing and probation or parole.

(c) The Division of Adult Probation and Parole shall provide a copy of the response to the petitioner and the prosecuting attorney.

~~[(9)]~~ (8) The petitioner may respond in writing to any objections filed by the prosecuting attorney or the victim and the response prepared by the Division of Adult Probation and Parole within 14 days after the day on which the objection or response is received.

~~[(10)]~~ (9) (a) If the court receives an objection concerning the petition from any party,

the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing.

(b) The prosecuting attorney shall notify the victim of the date set for the hearing.

(c) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.

(d) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.

~~[(H)]~~ (10) If no objection is received within 60 days from the day on which the petition for expungement is filed with the court, the expungement may be granted without a hearing.

Section 3. Section **77-40a-306** is amended to read:

77-40a-306. Order of expungement.

(1) If a petition 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 **77-40a-305(3)** ~~[or (4)]~~, the petition and certificate of eligibility are sufficient;

(b) the statutory requirements 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]~~ for a conviction related to cannabis possession as described in Subsection **77-40a-305(3)**:

(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) the petitioner was subject to force, fraud, or coercion at the time of the conduct giving rise to the arrest, charge, or conviction if the petitioner seeks expungement without a certificate of eligibility as described in Subsection **77-40a-305(3)** for an arrest, a charge, or a conviction for a violation of Section **76-10-1302**, prostitution, Section **76-10-1304**, aiding

prostitution, or Section [76-10-1313](#), sexual solicitation;

~~[(e)]~~ (f) 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)]~~ (g) 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)]~~ (1)(f), 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](#).

Section 4. **Effective date.**

This bill takes effect on May 1, 2024.