

What is an Expungement?

- Expunging a record means the court orders the records of the arrest, investigation, detention and conviction in the criminal case sealed.
- If a government agency (court, jail, probation, etc.) does not receive the expungement order, they are not required to seal their records.
- After a government agency has received an expungement order, they will respond to a public inquiry as though that arrest and/or conviction did not occur.
- Someone who has had his or her record expunged may respond to an inquiry as though that arrest and/or conviction never occurred.
- The expungement order applies only to government agencies.

THE EXPUNGEMENT PROCESS:

Determine Eligibility

A. Records of Crimes without a Conviction:

- a. Someone may expunge records of an arrest, investigation, and detention for a crime for where there was **no** conviction if the following conditions have been met:
 - i. At least 30 days have passed since the arrest;
 - ii. There are no criminal cases pending; and
 - iii. One of the following occurred:
 - iv. No charges were filed;
 - v. Charges were filed, but the case was dismissed with prejudice (the case cannot be litigated again);
 - vi. Charges were filed, but the person was acquitted (found not guilty) at trial; or
 - vii. The statute of limitations has expired. -UTAH CODE 77-40-104

B. Records of Crimes with a Conviction

- a. To be eligible for an expungement of records for crimes with a conviction:
 - The person must **first** pay all fines, fees, restitution and interest. Unless a person has been pardoned for the offense, records of the following crimes cannot be expunged:
 - A capital felony (aggravated murder);
 - First-degree felony (murder, rape, child kidnapping, aggravated burglary, aggravated robbery or arson, and possession with intent to distribute controlled substances near a school);
 - Violent felony
 - Automobile homicide
 - Felony driving under the influence
 - A registerable sex offense
 - A criminal case cannot be **pending**.
 - You cannot have been convicted of **two or more felonies** (other than for drug possession) in separate criminal episodes.*

- You cannot have been convicted of **two or more class A misdemeanors** (other than for drug possession), if you have been convicted in **three or more separate criminal episodes**.
- You cannot have been convicted of **three or more class B misdemeanors** (other than for drug possession), if you have been convicted in **four or more separate criminal episodes**.
- **You cannot have been convicted of five or more separate criminal episodes of any degree** (other than for drug possession).
- **DRUG POSSESSION CONVICTIONS**
- You cannot have been convicted of **three or more felony convictions for drug possession**.
- Any combination of **five or more convictions for drug possession offenses**, each contained in a separate criminal episode.

Timeline: Since the date you were convicted or released from incarceration, probation or parole, whichever occurred last, have the following time periods passed:

Misdemeanor conviction of Subsection 41-6a-501(2)	10 years
Felony conviction of Subsection 58-37-8(2)(g)	10 years
Felony	7 years
Class A Misdemeanor	5 years
Class B Misdemeanor	4 years
Other Misdemeanor or Infraction	3 years

402 REDUCTON MOTIONS:

When to apply for a 402 Reduction:

1. Time Restrictions

When a person is not eligible for an expungement because the above time period has not yet elapsed, they can apply for a 402 reduction in order to obtain an expungement sooner. If a conviction is reduced, for example from a Class A to a Class B, then the applicable time period would be 4 years rather than 5.

2. Conviction Limitations

When a person is not eligible for an expungement because they have too many convictions of a certain type or too many convictions in general, they may petition for a reduction so that their convictions qualify. In order to receive a reduction you must have successfully completed probation. There are one step and two step reductions; however, you cannot receive a two-step reduction unless you have the written permission of the prosecutor.

PARDON PROCESS:

- If someone is not eligible for an expungement, and they cannot become eligible through a 402 reduction, then they may apply for a Pardon with the Utah Board of Pardons and Parole.
- In order to be eligible for a pardon, all restitution must be paid and there must be at least 5 years from the time of parole or probation to be considered.
- The pardon process is detailed and lengthy, requiring a BCI report, copies of all police and pre-sentence investigation reports, and extensive patience in completing all paperwork.
- The Board of Pardons has informed our office that the factors that they look for with a Pardon are: ties to the community, stability in life, a job, home, relationships, etc. They want someone who can present themselves well, who can show many factors that exemplify their change in life, and their likelihood of success.
- This is more of a “last resort” option.