

KANE COUNTY JUSTICE COURT
State of Utah
76 North Main Street, Kanab, UT 84741
(435) 644-2351 – telephone; (435) 644-2052 – fax
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Checklist for Petition to Expunge Adult Criminal Records

Make certain that you have all the necessary forms

- Certificate of eligibility
- Petition to expunge records
- Acceptance of service
- Consent and waiver of hearing
- Prosecutor/Victim statement
- Victim checklist
- Petitioner's reply
- Findings of fact and conclusions of law

Step 1: Apply for a Certificate of Eligibility

- The Application for a Certificate of Eligibility is available from the Bureau of Criminal Identification (BCI) at:
<http://www.publicsafety.utah.gov/bci/forms.html#Expungement>. Follow the instructions provided by BCI.
- If you are eligible to have records of any incidents expunged, BCI will identify them in the certificate. You must file the **original** certificate with the court. If you are not eligible to have any records expunged, BCI will notify you.
- It can take several weeks for BCI to determine your eligibility.
- The certificate is valid for 90 days. You must file your petition before the 90 days expires. If the petition is not filed on time, you must obtain a new certificate.

Step 2: Select the Correct Petition Packet

- There are four types of petitions to expunge records and you should select the correct petition for your situation. You must file a separate petition in each case you are seeking to expunge. The four types of petitions are:
 - Petition to Expunge Records (Conviction)**. You should use this petition when you are seeking to expunge records of a conviction.

- Petition to Expunge Records (Dismissal or Acquittal).** You should use this petition when a court case was filed against you, but the case was dismissed without a conviction or you were acquitted of the charges.
- Petition to Expunge Records (Charges Never Filed).** You should use this petition if you were arrested but charges were never filed.
- Petition to Expunge Records (Special Certificate).** You should use this petition when BCI has issued you a Special Certificate instead of a Certificate of Eligibility for expungement. The Special Certificate indicates that BCI was unable to determine whether you are eligible for expungement.
- Petition to Expunge Records (Drug Possession Conviction).** You should use this petition when you are seeking to expunge records of a drug possession offense. You should carefully review this petition to ensure that the petition applies to your situation.

Step 3: Provide the Necessary Information

- Complete each paragraph of the petition that you are filing. The Certificate of Eligibility may contain some of the necessary information.
- Print your name and contact information at the top of the first page. Check whether you are the Petitioner appearing on your own or you have an attorney to represent you.
- Complete the heading. Check the correct box to show whether you are filing the petition in the district court or the justice court. Print the number of the judicial district, the name of the county and the court address. Print your name in the line above "Petitioner." If you are filing the petition in an existing case, list the case number. Otherwise, leave the "case number" and the "judge" name blank.
- Complete other portions of the petition that seek information such as court case numbers and law enforcement file numbers. Do not leave any of the spaces blank.
- Provide a detailed explanation on why expunging your records will not affect the public's interest. Use additional pages if necessary.
- Date and sign the form.
- Attach the Certificate of Eligibility and any other required documents and forms.

Step 4: Complete the Coversheet

- You must provide a coversheet when filing your petition. The coversheet is found on the judiciary's website.
- Print your name and address and that of the office of the prosecutor who handled your criminal case. If charges were never filed, list the prosecutor for the area in which your arrest occurred.
- You are not claiming damages, so leave that line blank or print "none." A jury trial is not permitted in this type of case, so check "no."

- On page 2, check the box next to “Expungement.” The amount listed next to the box is the filing fee.

Step 5: File the Petition

- File the original petition and attachments with the judicial services representative.

Step 6: Deliver the Petition and Other Appropriate Documents to the Prosecutor

- Deliver a copy of the petition and Certificate of Eligibility to the prosecutor and have the prosecutor sign the Acceptance of Service form.
- Provide the prosecutor with the Consent and Waiver of Hearing. The prosecutor may choose to waive the right to object to the expungement or consent to an expungement order.
- Provide the prosecutor with the prosecutor/victim’s statement and victim’s checklist.

Step 7: File the Acceptance of Service

- After the prosecutor has signed the Acceptance of Service, file it with the court.
- Instead of having the prosecutor sign the Acceptance of Service, you may also choose to have a process server serve the petition on the prosecutor. The process server should file a return of service.
- Forms and instructions for Proof of Service are available at:
http://www.utcourts.gov/howto/service/service_of_process.html#Forms

Step 8: Follow-up with the Prosecutor

- The prosecutor will research the case and decide whether expungement is appropriate. After the prosecutor has had an opportunity to research the case, you may follow-up with the prosecutor to determine whether the prosecutor is willing to sign the Consent and Waiver of Hearing.
- If the prosecutor agrees to sign the Consent and Waiver of Hearing, have the prosecutor designate whether there was a victim in the case.
- If there was a victim, have the prosecutor designate whether the victim has been contacted and waived the right to object.

Step 9: Potential Intermediate Steps

Victim’s Statement or Prosecutor’s Statement

- After the prosecutor has accepted service, the prosecutor notifies the victim, if there was one. Both the prosecutor and the victim have 30 days to file a statement with the court, if they choose. If either files a statement, you may file a reply, and the court will hold a hearing. If neither files a statement, the court may hold a hearing on its own initiative or grant the petition without a hearing.

Response by AP&P

- The court can ask the Division of Adult Probation and Parole (AP&P) to file a response. AP&P will file the response with the court and serve you, the prosecutor, and the victim. You may file a reply.

Reply to Victim's Statement, Prosecutor's Statement, or AP&P Response

- Do not complete this form unless either the victim or the prosecutor has filed a statement or AP&P has filed a response. Even if the victim or prosecutor has filed a statement or AP&P has filed a response, this form is optional. If you file this form, you must do so within 15 days after you receive the victim's or prosecutor's statement, or after you receive AP&P's response.
- Print your name and contact information at the top of the first page. Check whether you are the Petitioner appearing on your own or you have an attorney to represent you.
- Complete the heading exactly as it appears in the Petition.
- Paragraph (1): Quote the statement that you disagree with.
- Paragraph (2): Explain why you disagree with the statement. Use additional pages if necessary.
- Omit any private or protected information. When filed, this document is a public record. Code of Judicial Administration [Rule 4-202.09\(9\)](#) requires that you omit from a public record any information that is not itself public information. For a list of records, data and information classified as public, private, and protected, see [Rule 4-202.02](#).
- Date and sign the form.
- Complete the Certificate of Service.
- You must serve everyone who has filed a statement or response in the case. The victim is not required to disclose his or her home address so you may need to have the prosecutor send the reply to the victim.
- File the original form and certificate of service with the judicial services representative.

Step 10: Submit the Findings of Fact, Conclusions of Law, and Order on Petition to Expunge Records to the Court

- Except as explained below, the Findings of Fact, Conclusions of Law, and Order may be filed 60 days after the Acceptance of Service is filed with the court.
- If the prosecutor consents or waives the right to object to the petition and there was no victim, the Findings of Fact, Conclusions of Law, and Order may be filed after the Consent and Waiver of Hearing is filed with the court.
- If the prosecutor consents or waives the right to object and the victim has also either consented or waived the right to object, the Findings of Fact, Conclusions of Law, and Order may be filed after the Consent and Waiver of Hearing is filed.

- Print your name and contact information at the top of the first page. Check whether you are the Petitioner or you have an attorney to represent you.
- Complete the heading exactly as it appears in the Petition.
- Do not complete the rest of the form unless you are told to do so.

Step 11: Follow up with the Court to Determine When the Order is Signed

- The court has up to 60 days to decide whether to grant the expungement. You may contact the court from time to time to see if the court has made a decision.
- If the court denies the petition the court will issue an order and you may appeal that decision.

Step 12: Obtain Certified Copies of the Order

- If the court grants the expungement it is your responsibility to deliver the order to the agencies who have relevant records.
- If an agency does not receive the expungement order, it is not required to expunge its records.
- You should get as many certified copies of the order as there are agencies with records. You should get the certified copies as soon as the order is entered and before the court records are sealed. You can get copies of the order after the court records are sealed but only by a petition to unseal the record. There is a fee for each certified copy.
- You may pick up certified copies of the expungement order at the courthouse or have them mailed. To have certified copies mailed, send a request for a specific number of copies to the clerk of the court and include a 9" x 12" self-addressed envelope with sufficient return postage. (Note that large envelopes and multiple copies require additional postage.)
- There is a fee for obtaining certified copies so you will need to pay the appropriate charges before the copies will be mailed or provided.

Step 13: Serve the Order on Agencies with Records

- To have the records of a government agency sealed, you must deliver a certified copy of the expungement order to the agency. These might include:
 - the arresting agency (city police, county sheriff, Utah Highway Patrol);
 - the booking agency (county jail);
 - the Department of Corrections;
 - BCI (Attach a copy of the Certificate of Eligibility to the expungement order delivered to BCI.); or
 - Driver License Division.
- There may be other agencies with records. If requested, the clerk may provide addresses for agencies within the jurisdiction of the court. For other agencies, you must find the correct address.

- BCI will provide written directions to you along with a list of agencies known to be affected by the order. You do not have to deliver a copy of the expungement order to the Federal Bureau of Investigation; BCI will forward a copy of the order to the FBI.
- Unless otherwise provided by law or ordered by the court to respond differently, a government agency or official who has received an expungement order will respond to an inquiry as though that arrest or conviction did not occur. Unless ordered by a court to do so, a government agency or official who has received an expungement order may not divulge information identifying the petitioner. A person who has had records expunged may respond to an inquiry as though that arrest or conviction did not occur.