



# Collateral Consequences of Criminal Convictions

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*Employment*  
*Professional Licensing*  
*Public Assistance*  
*Student Loans*  
*Voting*  
*Firearms*

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*Expungement Eligibility*

*“Clean Slate” law*



**What is a CONVICTION?**



**Does a “conviction” include a ... ?**

**Guilty  
Verdict**

**YES**

**Guilty Plea**

**YES**

**Plea in  
Abeyance**

**YES**

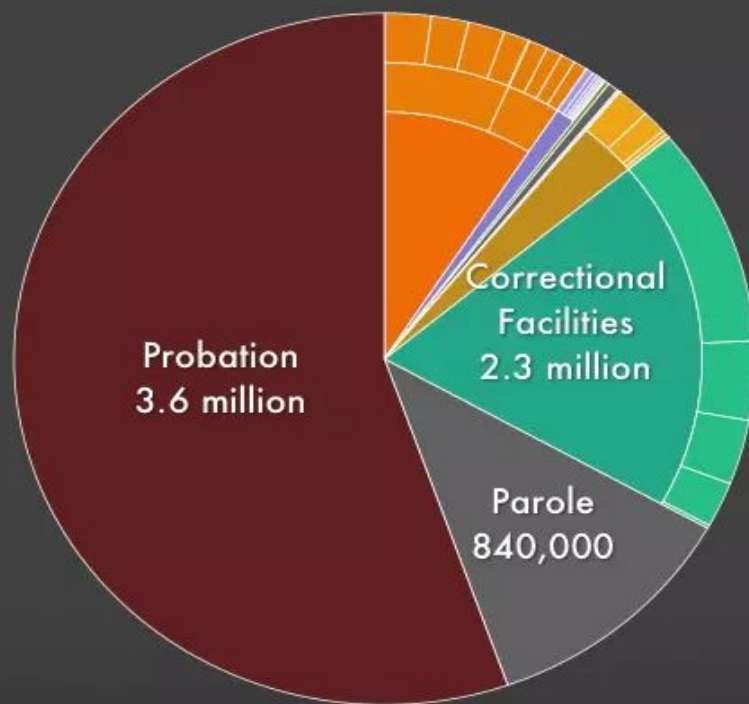


**Who has CONVICTIONS?**



# Incarceration is just one piece of the much larger system of correctional control

The U.S. justice system controls almost 7 million people, more than half of whom are on probation.





# Employment



## **Collateral Consequence: Employment**

- ◆ 87% of employers conduct criminal background checks for some or all job applicants.
- ◆ The existence of a criminal record reduces job callbacks by 50% on average.





## **Private employers**

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Can employers ask about criminal convictions?

**YES**

Can employers ask about expunged convictions?

**YES**

**Utah Code 34-52-301.** *An applicant seeking employment from a private employer may answer a question related to an expunged criminal record as though the action underlying the expunged criminal record never occurred.*



## Public employers

Can employer ask about criminal convictions?

**NO**

**Utah Code 34-52-201.** *A public employer cannot requires an applicant to disclose, on an employment application, a criminal conviction.*

### Exceptions:

- law enforcement agencies
- public employers part of the criminal or juvenile justice system
- public employers that work with children or vulnerable adults
- DABC & State Tax Commission
- employer whose primary purpose is performing financial or fiduciary functions



## Public employers

Can employer ask about expunged convictions?

**NO**

**Utah Code 34-52-201(3).** *A public employer may not make any inquiry related to an applicant's expunged criminal history.*

### Exceptions:

- law enforcement agencies
- public employers part of the criminal or juvenile justice system
- public employers that work with children or vulnerable adults
- DABC & State Tax Commission
- employer whose primary purpose is performing financial or fiduciary functions



# **Professional Licensing**



## Collateral Consequence: Professional Licensing

- ◆ Division of Occupational & Professional Licensing (DOPL)
  - ◆ Architect, Armored Car Security, Athlete Agent, Carpenter, Court Reporter, Dietitian, Dental Hygienist, Engineer, Funeral Service Director, Genetic Counselor, Geologist, Plumber, Therapist, Roofing Contractor, Solar Photovoltaic Contractor, Veterinarian...
  - ◆ **regulates over 200 categories of licensure**



## Collateral Consequence: Professional Licensing

- ◆ Lawyers
  - ◆ Utah State Bar and Court
  
- ◆ Teachers
  - ◆ Utah Professional Practices Advisory Commission



“

*Pled guilty to, no contest to,  
entered into a plea in  
abeyance or been convicted  
of a misdemeanor in any  
jurisdiction within the past  
ten (10) years?*



“

*Have you ever pled guilty to,  
no contest to, or been  
convicted of a felony in any  
jurisdiction?*





“

*Have you, in the past ten (10) years, been allowed to plea guilty or no contest to any criminal charge that was later dismissed (i.e. plea-in-abeyance or deferred sentence)?*



## **Collateral Consequence: Professional Licensing**

- ◆ A licensed educator who is **arrested, cited or charged...** shall report the arrest, citation, or charge within 48 hours.
  
- ◆ A licensed educator shall report **convictions, including pleas in abeyance and diversion agreements** within 48 hours.



# **Public Assistance**



## **Collateral Consequence: Public Assistance**

**Social Security Income (SSI)**

**Social Security Disability Income (SSDI)**

- ◆ Incarceration suspends benefits
- ◆ Incarceration less than 1 year
  - ◆ Benefits reinstated the month after release



## **Collateral Consequence: Public Assistance**

**Social Security Income (SSI)**

**Social Security Disability Income (SSDI)**

- ◆ Incarceration more than 1 year
  - ◆ benefits terminated; individual must reapply for those benefits
  - ◆ reapplication process is cumbersome, requiring detailed documentation from prison administrators



# **Student Loans**



## Collateral Consequence: Federal Student Loans

- ◆ Is an incarcerated person eligible for federal student loans?

**NO**

- ◆ Can an incarcerated person apply for federal student loans?

**YES**

*Apply for aid before released so aid is processed in time to start school.*



## Collateral Consequence: Federal Student Loans

Conviction for possession or distribution drugs while student receiving aid?

Benefits suspended.

The D.A.R.E. logo is displayed on a black rectangular background. The word "D.A.R.E." is written in a large, red, stylized font with a dripping effect. Below it, the words "DRUGS ARE REALLY EXCELLENT" are written in a smaller, white, sans-serif font.

**D.A.R.E.**  
**DRUGS ARE REALLY  
EXCELLENT**





## **Collateral Consequence: Federal Student Loans**

To reinstate eligibility:

- ◆ Complete approved drug rehabilitation program
- ◆ Pass two unannounced drug tests administered by an approved drug rehabilitation program



## Collateral Consequence: Federal Student Loans

- ◆ FAFSA application
  - ◆ Asks about drug convictions
  - ◆ Worksheet will determine eligibility
- ◆ Conviction *after* FAFSA application
  - ◆ Lose eligibility and possibly liable for returning any financial aid received during the period of ineligibility



# Voting



## **Collateral Consequence: Voting**

In Utah, a person with a felony conviction is eligible to vote when:

- A. person is sentenced to probation.
- B. person is released from jail or prison.
- C. all of the above.
- D. none of the above.
- E. conviction reduced to misdemeanor.



## **Collateral Consequence: Voting**

In Utah, a person with a felony conviction is eligible to vote when:

- A. person is sentenced to probation.
- B. person is released from jail or prison.
- C. **all of the above.**
- D. none of the above.
- E. conviction reduced to misdemeanor.

*Utah Code 20A-2-101.5*



# Firearms



## **Collateral Consequence: Concealed Firearms**

State may **deny, suspend, or revoke** a concealed firearm permit if convicted of:

- ◆ felony
- ◆ crime of violence
- ◆ offense involving the use of alcohol or drugs
- ◆ offense involving moral turpitude
- ◆ offense involving domestic violence
- ◆ adjudicated as mentally incompetent



## **Collateral Consequence: Firearms**

### **Category I Restrictions:**

1. Violent Felony conviction
2. Probation parole for any felony
3. Probation for possession of drugs
4. Juvenile delinquency for violent felony within the last 10 years
5. Undocumented immigrant





## **Collateral Consequence: Firearms**

### **Category II Restrictions:**

1. Any felony conviction
2. Unlawful user of a drugs
3. Knowingly possess drugs & dangerous weapon
4. Juvenile delinquency for violent felony within the last 7 years
5. Convicted of DV assault or agg assault
6. dishonorably discharged from the armed forces



# **Driver License**



# Expungements



## What is an Expungement?

Expunging a criminal record means that the court orders the history of the case sealed. This includes:

- records of the arrest,
- investigation,
- detention, and
- conviction, including a verdict or finding of guilty after trial or a guilty plea.

The expungement order applies only to government agencies. Other records, such as news accounts of an arrest or conviction, are not affected.

If the government agency doesn't receive the expungement order, they are not required to seal their records.

After a record is expunged, an agency's sealed records can still be viewed and copied by some government officials, and the court can order the records unsealed under some conditions.



## Who is Ineligible for Expungement?

- A capital felony, first degree felony or violent felony (as defined in [Utah Code Section 76-3-203.5](#));
- Felony automobile homicide;
- Felony violation of [Utah Code Section 41-6a-501\(2\)](#) (driving under the influence);
- A registerable sex offense ([Utah Code Section 77-41-102](#)); or
- A registerable child abuse offense ([Utah Code Section 77-43-102](#))



## Who is Ineligible for Expungement?

The petitioner also ineligible for expungement if:

- ◆ They have a criminal case pending;
- ◆ There are fines, fees or interest that still need to be paid (even at the Office of State Debt Collection)
- ◆ There is any restitution still outstanding.



## Who is Ineligible for Expungement?

These time periods must have passed from the date the petitioner was convicted or released from incarceration, probation or parole, whichever occurred last:

- |   |           |
|---|-----------|
| -DUI/DMCS   | -10 Years |
| -Felony   | -7 Years  |
| -Class A misdemeanor or felony<br>drug possession | -5 Years  |
| -Class B misdemeanor                              | -4 Years  |
| -Class C misdemeanor or<br>Infraction             | -3 Years  |



## **Who is Ineligible for Expungement?**

To qualify, the petitioner cannot be convicted in separate criminal episodes of:

- two or more felonies (other than drug possession);
- three or more crimes (other than drug possession) of which two are class A misdemeanors;
- four or more crimes (other than drug possession) of which three are class B misdemeanors;
- five or more crimes of any degree (other than drug possession);
- three or more felonies for drug possession; or
- five or more crimes of any degree for drug possession.





## **What To Do as Attorneys**

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1. Seek 402 Reductions (even 2-step)
2. Close PIAs at the end of the terms
3. Close cases with prejudice wherever possible
4. Use expungement website for the court or Salt Lake County if you have questions:

[www.utcourts.gov/howto/expunge/](http://www.utcourts.gov/howto/expunge/)

[slco.org/cji/expungement/expungement-clinic/](http://slco.org/cji/expungement/expungement-clinic/)



## **“Clean State” Expungements**

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- ◆ HB431 created an automatic process to expunge criminal records for low-level, nonviolent offenders who stayed out of trouble.
  
- ◆ Passed unanimously in both House and Senate.
  
- ◆ Effective on May 1, 2020.
  - ◆ Current Update



## “Clean State” Expungements Eligibility

Class A misdemeanor  
conviction for  
*Possession of a  
Controlled Substance*

At least **7 years**  
since adjudication

Any Class B  
convictions

At least **6 years**  
since adjudication

Any Class C or  
Infraction  
convictions,

At least **5 years**  
since adjudication



## “Clean State” Expungements Eligibility

### Does not include:

Any offense against a person in UCA 76-5.

- Assault
- Stalking
- Threat of Violence
- Violation PO
- Child Abuse
- DV Presence Child

Sexual Battery  
76-9-702.1

Lewdness  
76-9-702 or  
76-9-702.5

DUI, DMCS, or  
Impaired Driving

Damage/interruption  
communication device  
76-6-108

Any DV offense

Any Traffic offense



## “Clean State” Expungement Updates

**Non-conviction records.** Eligible non-conviction records (certain dismissals and all acquittals) have been identified by the court and are ready for clearance, but there are a couple of steps remaining. The courts are collecting and verifying the email addresses of prosecutors to provide notice of case clearance, and some additional research is required to determine whether one additional court rule may be needed in order to start the actual clearing work.

**Misdemeanor conviction records.** Code for America's preliminary identification and analysis of Clean Slate eligible cases is complete and has been presented to the court. The next step is to validate the work, to make sure we are correctly identifying eligible cases. While we are still working out the details, the validation will likely be done in partnership with a University of Utah research team and BCI. We have no set date for when this work will be complete, but are hoping it will be complete by sometime this summer.



## Code For America Screening Tool re Expungement

**Call for Attorneys.** In order to help individuals determine their potential eligibility for clean slate and other criminal record expungement, I am working with Code for America on a Utah Regulatory Sandbox authorized project to use court data to build an expungement eligibility tool. This tool will be designed to tell individuals whether they are likely eligible for an expungement under Utah law. In order for this tool to be effective, it needs to work. To that end, I am seeking attorney volunteers who are willing to:

- Review client cases for potential expungement eligibility (this review will be compared to the results/legal recommendation of the tool);
- If the client is eligible for an expungement, and has cases that must go through the petition-based process, volunteer to complete the petition-based paperwork to help the client complete the expungement process.\*

\*a barrier to this in the past has been BCI and court filing fees. Often clients do not have the resources to cover these costs. To help address this issue, I have started a non-profit called Clean Slate Utah. It still has pending status, but we hope to use this vehicle to accept community donations to help cover the cost of these fees. In the meantime, I have applied for and received grant funding to cover the \$65 BCI application cost for the first 25 clients we serve.

Interested attorneys can contact Noella Sudbury at [noella@sudburyconsulting.com](mailto:noella@sudburyconsulting.com) if they want to volunteer. Work will be needed beginning in May or June.

**Utah Code 77-40-102**

**Thanks!**

**Any questions?**

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