

Representative Karianne Lisonbee proposes the following substitute bill:

AMENDMENTS TO EXPUNGEMENT

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill addresses the expungement of records.

Highlighted Provisions:

This bill:

- ▶ repeals sunset dates regarding issuance and filing fees for expungement;
- ▶ repeals language relating to the suspension of issuance fees for certificates of eligibility for expungement and filing fees for petitions for expungement;
- ▶ allows a court to issue an order of expungement for a plea in abeyance when the defendant has completed a problem solving court program and the court dismisses the case against the defendant;
- ▶ defines terms related to expungement;
- ▶ clarifies automatic deletion of a traffic offense;
- ▶ amends provisions related to the automatic expungement of a case, including:
 - requiring an individual to submit a form to receive an automatic expungement on and after October 1, 2024, and before October 1, 2027;
 - providing that a court automatically expunge cases that are eligible for expungement on and after October 1, 2027;
 - for an individual seeking an automatic expungement on and after January 1,



26 2025, prohibiting an automatic expungement if the individual is incarcerated in the state prison
27 or on probation or parole that is supervised by the Department of Corrections; and
28 • prohibiting an automatic expungement if there is a criminal proceeding pending
29 in this state against the individual for a misdemeanor or felony offense, unless
30 the proceeding is for a traffic offense;
31 ▶ provides that the court and Bureau of Criminal Identification are the only agencies
32 that expunge records affected by an automatic expungement order;
33 ▶ clarifies the certificate of eligibility process;
34 ▶ allows for the waiver of an issuance fee for a certificate of eligibility or a special
35 certificate if a court finds that the individual filing the petition for expungement is
36 indigent;
37 ▶ requires a court to consider the total number of cases for which an individual has
38 received a certificate of expungement when determining whether the individual is
39 indigent;
40 ▶ requires a subsequent court to waive a filing fee for a petition for expungement if a
41 prior court found the individual to be indigent within 180 days before the filing of
42 the petition for expungement;
43 ▶ clarifies the distribution of an expungement order based on a petition and the
44 expungement of records affected by an expungement order based on a petition;
45 ▶ establishes the priority of expungement orders that are processed by a court and the
46 Bureau of Criminal Identification;
47 ▶ requires an agency to develop and implement a process to identify expunged records
48 and keep, index, and maintain all expunged records of arrest;
49 ▶ clarifies the effect of an expungement;
50 ▶ addresses the waiver of a fee for a petition for expungement when the individual has
51 previously received a waiver for a petition for expungement from a prior court;
52 ▶ requires a court to find an individual indigent if the individual submits an affidavit
53 of indigency demonstrating that the individual has an income at or below 175% of
54 the United States poverty level;
55 ▶ requires the Administrative Office of the Courts to include a warning on an affidavit
56 of indigency;

- 57 ▶ clarifies the expungement of records regarding protective orders, stalking
- 58 injunctions, and juvenile records;
- 59 ▶ repeals a statute regarding the time periods for expungement or deletion and
- 60 identifying and processing clean slate eligible cases; and
- 61 ▶ makes technical and conforming changes.

62 **Money Appropriated in this Bill:**

63 None

64 **Other Special Clauses:**

65 This bill provides a special effective date.

66 **Utah Code Sections Affected:**

67 AMENDS:

68 **63I-1-277**, as last amended by Laws of Utah 2022, Chapter 384 and last amended by
69 Coordination Clause, Laws of Utah 2022, Chapter 384

70 **63I-1-278**, as last amended by Laws of Utah 2022, Chapters 188, 318, 384, and 423

71 **77-2a-3**, as last amended by Laws of Utah 2023, Chapters 113, 415

72 **77-40a-101**, as last amended by Laws of Utah 2023, Chapter 265

73 **77-40a-104**, as last amended by Laws of Utah 2023, Chapter 265

74 **77-40a-201**, as renumbered and amended by Laws of Utah 2022, Chapter 250

75 **77-40a-202**, as renumbered and amended by Laws of Utah 2022, Chapter 250

76 **77-40a-301**, as enacted by Laws of Utah 2022, Chapter 250

77 **77-40a-302**, as last amended by Laws of Utah 2023, Chapter 265

78 **77-40a-303**, as last amended by Laws of Utah 2023, Chapter 265

79 **77-40a-304**, as last amended by Laws of Utah 2023, Chapter 265

80 **77-40a-305**, as last amended by Laws of Utah 2023, Chapters 265, 330

81 **77-40a-306**, as last amended by Laws of Utah 2023, Chapter 330

82 **77-40a-401**, as last amended by Laws of Utah 2023, Chapter 265

83 **77-40a-402**, as last amended by Laws of Utah 2023, Chapter 265

84 **77-40a-403**, as last amended by Laws of Utah 2023, Chapter 265

85 **77-40a-404**, as last amended by Laws of Utah 2023, Chapter 265

86 **78A-2-302**, as last amended by Laws of Utah 2023, Chapter 184

87 **78A-7-209.5**, as enacted by Laws of Utah 2022, Chapter 276

- 88 **78B-7-1001**, as enacted by Laws of Utah 2022, Chapter 270
- 89 **78B-7-1004**, as enacted by Laws of Utah 2022, Chapter 270
- 90 **80-6-1001**, as last amended by Laws of Utah 2023, Chapter 115
- 91 **80-6-1006.1**, as enacted by Laws of Utah 2023, Chapter 115

92 ENACTS:

- 93 **77-40a-204**, Utah Code Annotated 1953
- 94 **77-40a-205**, Utah Code Annotated 1953
- 95 **77-40a-206**, Utah Code Annotated 1953
- 96 **77-40a-207**, Utah Code Annotated 1953
- 97 **77-40a-307**, Utah Code Annotated 1953

98 REPEALS:

- 99 **77-40a-203**, as renumbered and amended by Laws of Utah 2022, Chapter 250



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

102 Section 1. Section **63I-1-277** is amended to read:

103 **63I-1-277. Repeal dates: Title 77.**

104 [~~Subsection **77-40a-304**(5), regarding the suspension of issuance fees for certificates of~~
105 ~~eligibility, is repealed on July 1, 2023.~~] Reserved.

106 Section 2. Section **63I-1-278** is amended to read:

107 **63I-1-278. Repeal dates: Title 78A and Title 78B.**

108 [~~(1) Subsections **78A-2-301**(4) and **78A-2-301.5**(12), regarding the suspension of filing~~
109 ~~fees for petitions for expungement, are repealed on July 1, 2023.~~]

110 [~~(2)~~] (1) Section **78B-3-421**, regarding medical malpractice arbitration agreements, is
111 repealed July 1, 2029.

112 [~~(3)~~] (2) Subsection **78A-7-106**(6), regarding the transfer of a criminal action involving
113 a domestic violence offense from the justice court to the district court, is repealed on July 1,
114 2024.

115 [~~(4)~~] (3) Section **78B-4-518**, regarding the limitation on employer liability for an
116 employee convicted of an offense, is repealed on July 1, 2025.

117 [~~(5)~~] (4) Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, is repealed
118 July 1, 2026.

119 [(6)] (5) Title 78B, Chapter 12, Part 4, Advisory Committee, which creates the Child
120 Support Guidelines Advisory Committee, is repealed July 1, 2026.

121 [(7)] (6) Section 78B-22-805, regarding the Interdisciplinary Parental Representation
122 Pilot Program, is repealed December 31, 2024.

123 Section 3. Section 77-2a-3 is amended to read:

124 **77-2a-3. Manner of entry of plea -- Powers of court -- Expungement.**

125 (1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be
126 done in full compliance with the Utah Rules of Criminal Procedure, Rule 11.

127 (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance
128 agreement may be entered into without a personal appearance before a magistrate.

129 (2) A plea in abeyance agreement may provide that the court may, upon finding that the
130 defendant has successfully completed the terms of the agreement:

131 (a) reduce the degree of the offense, ~~[and enter judgment of conviction and impose~~
132 ~~sentence for a lower degree of offense; or]~~ enter a judgment of conviction for the lower degree
133 of the offense, and impose a sentence for the lower degree of the offense;

134 (b) allow withdrawal of the defendant's plea and order the dismissal of the case~~[-]; or~~

135 (c) issue an order of expungement for all records of the offense if:

136 (i) the defendant successfully completes a problem solving court program that is
137 certified by the Judicial Council; and

138 (ii) the court allows the withdrawal of the defendant's plea and orders the dismissal of
139 the case.

140 (3) (a) Upon finding that a defendant has successfully completed the terms of a plea in
141 abeyance agreement and only as provided in the plea in abeyance agreement or as agreed to by
142 all parties, the court may ~~[reduce the degree of the offense or dismiss the case only as provided~~
143 ~~in the plea in abeyance agreement or as agreed to by all parties.]:~~

144 (i) reduce the degree of the offense, enter a judgment of conviction for the lower degree
145 of the offense, and impose a sentence for the lower degree of the offense;

146 (ii) allow withdrawal of the defendant's plea and order the dismissal of the case; or

147 (iii) issue an order of expungement for all records of the offense if:

148 (A) the defendant successfully completes a problem solving court program that is
149 certified by the Judicial Council; and

150 (B) the court allows the withdrawal of the defendant's plea and orders the dismissal of
151 the case.

152 (b) Upon sentencing a defendant for any lesser offense in accordance with a plea in
153 abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of
154 the offense.

155 (4) The court may require the Department of Corrections to assist in the administration
156 of the plea in abeyance agreement as if the defendant were on probation to the court under
157 Section 77-18-105.

158 (5) The terms of a plea in abeyance agreement may include:

159 (a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a
160 surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in
161 the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 and a
162 surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and
163 which may not exceed in amount the maximum fine and surcharge which could have been
164 imposed upon conviction and sentencing for the same offense;

165 (b) an order that the defendant pay the costs of any remedial or rehabilitative program
166 required by the terms of the agreement; and

167 (c) an order that the defendant comply with any other conditions that could have been
168 imposed as conditions of probation upon conviction and sentencing for the same offense.

169 (6) (a) The terms of a plea in abeyance shall include:

170 (i) a specific amount of restitution that the defendant will pay, as agreed to by the
171 defendant and the prosecuting attorney;

172 (ii) a certification from the prosecuting attorney that:

173 (A) the prosecuting attorney has consulted with all victims, including the Utah Office
174 for Victims of Crime; and

175 (B) all victims, including the Utah Office for Victims of Crime, are not seeking
176 restitution; or

177 (iii) an agreement between the parties that restitution will be determined by the court at
178 a subsequent hearing in accordance with Section 77-38b-205.

179 (b) At a subsequent hearing described in Subsection (6)(a)(iii), the court shall order the
180 defendant, as a modified term of the plea in abeyance, to pay restitution to all victims for the

181 entire amount of pecuniary damages that are proximately caused by the criminal conduct of the
182 defendant.

183 (c) The court shall collect, receive, process, and distribute payments for restitution to
184 the victim, unless otherwise provided by law or by the plea in abeyance agreement.

185 (d) If the defendant does not successfully complete the terms of the plea in abeyance,
186 the court shall enter an order for restitution, in accordance with Chapter 38b, Crime Victims
187 Restitution Act, upon entering a sentence for the defendant.

188 (7) (a) A court may not hold a plea in abeyance without the consent of both the
189 prosecuting attorney and the defendant.

190 (b) A decision by a prosecuting attorney not to agree to a plea in abeyance is final.

191 (8) No plea may be held in abeyance in any case involving:

192 (a) a sexual offense against an individual who is under 14 years old; or

193 (b) a driving under the influence violation under Section [41-6a-502](#), [41-6a-502.5](#),
194 [41-6a-517](#), [41-6a-520](#), [41-6a-520.1](#), [41-6a-521.1](#), [76-5-102.1](#), or [76-5-207](#).

195 (9) (a) If the terms of a plea in abeyance agreement allow a court to issue an order of
196 expungement as described in Subsection (2)(c), the prosecuting attorney shall make a
197 reasonable effort to provide notice to any victim of the offense of the terms of the plea in
198 abeyance agreement.

199 (b) The notice under Subsection (9)(a) shall:

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

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

202 (c) If there is a victim of the offense, the victim may file an objection with the court
203 before the court makes a finding as to whether the defendant successfully completed the terms
204 of the plea in abeyance agreement as described in Subsection (3).

205 (d) The defendant may respond, in writing, to any objection filed by the victim within
206 14 days after the day on which the objection is received by the court.

207 (10) If the court issues an order of expungement under Subsection (3)(a)(iii), the court
208 shall:

209 (a) expunge all records of the case as described in Section [77-40a-401](#); and

210 (b) notify the Bureau of Criminal Identification of the order of expungement.

211 (11) (a) Upon receiving notice from the court of an expungement order as described in

212 Subsection (10), the Bureau of Criminal Identification shall notify any agency, as defined in
213 Section [77-40a-101](#), affected by the expungement order.

214 (b) For purposes of Subsection (11)(a), the Bureau of Criminal Identification may not
215 notify the Board of Pardons and Parole of an expungement order if the individual has never
216 been:

217 (i) sentenced to prison in this state; or

218 (ii) under the jurisdiction of the Board of Pardons and Parole.

219 (c) The Bureau of Criminal Identification shall forward a copy of the expungement
220 order to the Federal Bureau of Investigation.

221 (12) The defendant may deliver copies of the expungement to any agency, as defined in
222 Section [77-40a-101](#), affected by the order of expungement.

223 (13) If an agency receives an expungement order under this part, the agency shall
224 expunge all records for the case in accordance with Section [77-40a-401](#).

225 Section 4. Section **77-40a-101** is amended to read:

226 **77-40a-101. Definitions.**

227 As used in this chapter:

228 ~~[(1)]~~ "Agency" means a state, county, or local government entity that generates or
229 maintains records relating to an investigation, arrest, detention, or conviction for an offense for
230 which expungement may be ordered.

231 (1) "Automatic expungement" means the expungement of records of an investigation,
232 arrest, detention, or conviction of an offense without the filing of a petition.

233 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public
234 Safety established in Section [53-10-201](#).

235 (3) "Civil accounts receivable" means the same as that term is defined in Section
236 [77-32b-102](#).

237 (4) "Civil judgment of restitution" means the same as that term is defined in Section
238 [77-32b-102](#).

239 ~~[(3)]~~ (5) "Certificate of eligibility" means a document issued by the bureau stating that
240 the criminal record and all records of arrest, investigation, and detention associated with a case
241 that is the subject of a petition for expungement is eligible for expungement.

242 ~~[(4)(a)]~~ "Clean slate eligible case" means, except as provided in Subsection (4)(c), a

243 case:]

244 [~~(i) where each conviction within the case is:~~

245 [~~(A) a misdemeanor conviction for possession of a controlled substance in violation of~~

246 ~~Subsection 58-37-8(2)(a)(i);]~~

247 [~~(B) a class B or class C misdemeanor conviction; or]~~

248 [~~(C) an infraction conviction;]~~

249 [~~(ii) that involves an individual:]~~

250 [~~(A) whose total number of convictions in Utah state courts, not including infractions,~~

251 ~~traffic offenses, or minor regulatory offenses, does not exceed the limits described in~~

252 ~~Subsections 77-40a-303(4) and (5) without taking into consideration the exception in~~

253 ~~Subsection 77-40a-303(7); and]~~

254 [~~(B) against whom no criminal proceedings are pending in the state; and]~~

255 [~~(iii) for which the following time periods have elapsed from the day on which the case~~

256 ~~is adjudicated:]~~

257 [~~(A) at least five years for a class C misdemeanor or an infraction;]~~

258 [~~(B) at least six years for a class B misdemeanor; and]~~

259 [~~(C) at least seven years for a class A conviction for possession of a controlled~~

260 ~~substance in violation of Subsection 58-37-8(2)(a)(i).]~~

261 [~~(b) "Clean slate eligible case" includes a case:]~~

262 [~~(i) that is dismissed as a result of a successful completion of a plea in abeyance~~

263 ~~agreement governed by Subsection 77-2a-3(2)(b) if:]~~

264 [~~(A) except as provided in Subsection (4)(c), each charge within the case is a~~

265 ~~misdemeanor for possession of a controlled substance in violation of Subsection~~

266 ~~58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;]~~

267 [~~(B) the individual involved meets the requirements of Subsection (4)(a)(ii); and]~~

268 [~~(C) the time periods described in Subsections (4)(a)(iii)(A) through (C) have elapsed~~

269 ~~from the day on which the case is dismissed; or]~~

270 [~~(ii) where charges are dismissed without prejudice if each conviction, or charge that~~

271 ~~was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or~~

272 ~~(b)(i).]~~

273 [~~(c) "Clean slate eligible case" does not include a case:]~~

274 ~~[(i) where the individual is found not guilty by reason of insanity;]~~
275 ~~[(ii) where the case establishes a criminal accounts receivable, as defined in Section~~
276 ~~77-32b-102, that:]~~
277 ~~[(A) has been entered as a civil accounts receivable or a civil judgment of restitution,~~
278 ~~as those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt~~
279 ~~Collection under Section 77-18-114; or]~~
280 ~~[(B) has not been satisfied according to court records; or]~~
281 ~~[(iii) that resulted in one or more pleas held in abeyance or convictions for the~~
282 ~~following offenses:]~~
283 ~~[(A) any of the offenses listed in Subsection 77-40a-303(2)(a);]~~
284 ~~[(B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against~~
285 ~~the Individual;]~~
286 ~~[(C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;]~~
287 ~~[(D) sexual battery in violation of Section 76-9-702.1;]~~
288 ~~[(E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;]~~
289 ~~[(F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence~~
290 ~~and Reckless Driving;]~~
291 ~~[(G) damage to or interruption of a communication device in violation of Section~~
292 ~~76-6-108;]~~
293 ~~[(H) a domestic violence offense as defined in Section 77-36-1; or]~~
294 ~~[(I) any other offense classified in the Utah Code as a felony or a class A misdemeanor~~
295 ~~other than a class A misdemeanor conviction for possession of a controlled substance in~~
296 ~~violation of Subsection 58-37-8(2)(a)(i).]~~
297 (6) "Clean slate eligible case" means a case that is eligible for automatic expungement
298 under Section 77-40a-205.
299 ~~[(5)]~~ (7) "Conviction" means judgment by a criminal court on a verdict or finding of
300 guilty after trial, a plea of guilty, or a plea of nolo contendere.
301 (8) "Court" means a district court or a justice court.
302 (9) "Criminal accounts receivable" means the same as that term is defined in Section
303 77-32b-102.
304 ~~[(6)]~~ (10) "Criminal protective order" means the same as that term is defined in Section

305 [78B-7-102](#).

306 ~~[(7)]~~ (11) "Criminal stalking injunction" means the same as that term is defined in
307 Section [78B-7-102](#).

308 ~~[(8)]~~ (12) "Department" means the Department of Public Safety established in Section
309 [53-1-103](#).

310 ~~[(9)]~~ (13) "Drug possession offense" means ~~[an offense under]~~:

311 (a) an offense described in Subsection [58-37-8\(2\)](#), except for:

312 (i) ~~[any]~~ an offense under Subsection [58-37-8\(2\)\(b\)\(i\)](#), possession of 100 pounds or
313 more of marijuana;

314 (ii) ~~[any]~~ an offense enhanced under Subsection [58-37-8\(2\)\(e\)](#), violation in a
315 correctional facility; or

316 (iii) an offense for driving with a controlled substance illegally in the person's body and
317 negligently causing serious bodily injury or death of another, as codified before May 4, 2022,
318 Laws of Utah 2021, Chapter 236, Section 1, Subsection [58-37-8\(2\)\(g\)](#);

319 (b) an offense described in Subsection [58-37a-5\(1\)](#), use or possession of drug
320 paraphernalia;

321 (c) an offense described in Section [58-37b-6](#), possession or use of an imitation
322 controlled substance; or

323 (d) any local ordinance which is substantially similar to any of the offenses described
324 in this Subsection ~~[(9)]~~ (13).

325 ~~[(10)]~~ (14) (a) "Expunge" means to ~~[seal or otherwise restrict access to the individual's~~
326 ~~record held by an agency when the record includes a criminal investigation, detention, arrest, or~~
327 ~~conviction.]~~ remove a record from public inspection by:

328 (i) sealing the record; or

329 (ii) restricting or denying access to the record.

330 (b) "Expunge" does not include the destruction of a record.

331 (15) "Indigent" means a financial status that results from a court finding that a
332 petitioner is financially unable to pay the fee to file a petition for expungement under Section
333 [78A-2-302](#).

334 ~~[(11)]~~ (16) "Jurisdiction" means a state, district, province, political subdivision,
335 territory, or possession of the United States or any foreign country.

336 ~~[(12)]~~ (17) (a) "Minor regulatory offense" means, except as provided in Subsection
337 ~~[(12)(c)]~~ (17)(c), a class B or C misdemeanor offense or a local ordinance.

338 (b) "Minor regulatory offense" includes an offense under Section 76-9-701 or
339 76-10-105.

340 (c) "Minor regulatory offense" does not include:

341 (i) any drug possession offense;

342 (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
343 Reckless Driving;

344 (iii) an offense under Sections 73-18-13 through 73-18-13.6;

345 (iv) except as provided in Subsection ~~[(12)(b)]~~ (17)(b), an offense under Title 76, Utah
346 Criminal Code; or

347 (v) any local ordinance that is substantially similar to an offense listed in Subsections
348 ~~[(12)(c)(i)]~~ (17)(c)(i) through (iv).

349 ~~[(13)]~~ (18) "Petitioner" means an individual applying for expungement under this
350 chapter.

351 ~~[(14)]~~ (19) "Plea in abeyance" means the same as that term is defined in Section
352 77-2a-1.

353 (20) "Record" means a book, letter, document, paper, map, plan, photograph, film,
354 card, tape, recording, electronic data, or other documentary material, regardless of physical
355 form or characteristics, that:

356 (a) is contained in the agency's file regarding the arrest, detention, investigation,
357 conviction, sentence, incarceration, probation, or parole of an individual; and

358 (b) is prepared, owned, received, or retained by an agency, including a court.

359 ~~[(15)]~~ (21) (a) "Traffic offense" means, except as provided in Subsection ~~[(15)(b)]~~
360 (21)(b):

361 (i) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense
362 under Title 41, Chapter 6a, Traffic Code;

363 (ii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense
364 under Title 53, Chapter 3, Part 2, Driver Licensing Act;

365 (iii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense
366 under Title 73, Chapter 18, State Boating Act; and

367 (iv) all local ordinances that are substantially similar to an offense listed in Subsections
368 ~~[(15)(a)(i)]~~ (21)(a)(i) through (iii).

369 (b) "Traffic offense" does not mean:

370 (i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
371 Reckless Driving;

372 (ii) an offense under Sections 73-18-13 through 73-18-13.6; or

373 (iii) any local ordinance that is substantially similar to an offense listed in Subsection
374 ~~[(15)(b)(i)]~~ (21)(b)(i) or (ii).

375 ~~[(16)]~~ (22) "Traffic offense case" means that each offense in the case is a traffic
376 offense.

377 Section 5. Section **77-40a-104** is amended to read:

378 **77-40a-104. Department rulemaking authority.**

379 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
380 department may make rules to:

- 381 (1) implement procedures for processing an automatic expungement;
- 382 (2) implement procedures for applying for certificates of eligibility;
- 383 (3) specify procedures for receiving a certificate of eligibility;
- 384 (4) create forms and determine information necessary to be provided to the bureau; and
- 385 (5) implement procedures for the confirmation of an expungement under Subsection
386 ~~[77-40a-403(2)]~~ 77-40a-401(4).

387 Section 6. Section **77-40a-201** is amended to read:

388 **Part 2. Automatic Expungement and Deletion**

389 **77-40a-201. General provisions for automatic expungement and deletion.**

390 ~~[(1)(a) Except as provided in Subsection (1)(b) and subject to Section 77-40a-203, this
391 section governs the process for the automatic expungement of all records in:]~~

392 ~~[(i) except as provided in Subsection (2)(e), a case that resulted in an acquittal on all
393 charges;]~~

394 ~~[(ii) except as provided in Subsection (3)(e), a case that is dismissed with prejudice; or]~~

395 ~~[(iii) a case that is a clean slate eligible case.]~~

396 ~~[(b) This section does not govern automatic expungement of a traffic offense.]~~

397 ~~[(2)(a) Except as provided in Subsection (2)(e), the process for automatic~~

398 expungement of records for a case that resulted in an acquittal on all charges is as described in
399 Subsections (2)(b) through (d).]

400 [~~(b) If a court determines that the requirements for automatic expungement have been
401 met, a district court or justice court shall:]~~

402 [~~(i) issue, without a petition, an expungement order; and]~~

403 [~~(ii) based on information available, notify the bureau and the prosecuting agency
404 identified in the case of the order of expungement.]~~

405 [~~(c) The bureau, upon receiving notice from the court, shall notify the law enforcement
406 agencies identified in the case of the order of expungement.]~~

407 [~~(d) For a case resulting in an acquittal on all charges on or before May 1, 2020, that is
408 automatically expunged under this Subsection (2), a law enforcement agency shall expunge
409 records for the case within one year after the day on which the law enforcement agency
410 receives notice from the bureau.]~~

411 [~~(e) For purposes of this section, a case that resulted in acquittal on all charges does not
412 include a case that resulted in an acquittal because the individual is found not guilty by reason
413 of insanity.]~~

414 [~~(3) (a) The process for an automatic expungement of a case that is dismissed with
415 prejudice is as described in Subsections (3)(b) through (d).]~~

416 [~~(b) If a court determines that the requirements for automatic expungement have been
417 met, a district court or justice court shall:]~~

418 [~~(i) issue, without a petition, an expungement order; and]~~

419 [~~(ii) based on information available, notify the bureau and the prosecuting agency
420 identified in the case of the order of expungement.]~~

421 [~~(c) The bureau, upon receiving notice from the court, shall notify the law enforcement
422 agencies identified in the case of the order of expungement.]~~

423 [~~(d) For a case dismissed on or before May 1, 2020, that is automatically expunged
424 under this Subsection (3), a law enforcement agency shall expunge records for the case within
425 one year after the day on which the law enforcement agency receives notice from the bureau.]~~

426 [~~(e) For purposes of this Subsection (3), a case that is dismissed with prejudice does
427 not include a case that is dismissed with prejudice as a result of successful completion of a plea
428 in abeyance agreement governed by Subsection 77-2a-3(2)(b).]~~

429 ~~[(4) (a) The process for the automatic expungement of a clean slate eligible case is as~~
430 ~~described in Subsections (4)(b) through (g) and in accordance with any rules made by the~~
431 ~~Judicial Council or the Supreme Court.]~~

432 ~~[(b) A prosecuting agency, that has complied with Rule 42 of the Utah Rules of~~
433 ~~Criminal Procedure, shall receive notice on a monthly basis for any case prosecuted by that~~
434 ~~agency that appears to be a clean slate eligible case.]~~

435 ~~[(c) Within 35 days of the day on which the notice described in Subsection (4)(b) is~~
436 ~~sent, the prosecuting agency shall provide written notice in accordance with any rules made by~~
437 ~~the Judicial Council or the Supreme Court if the prosecuting agency objects to an automatic~~
438 ~~expungement for any of the following reasons:]~~

439 ~~[(i) after reviewing the agency record, the prosecuting agency believes that the case~~
440 ~~does not meet the definition of a clean slate eligible case;]~~

441 ~~[(ii) the individual has not paid court-ordered restitution to the victim; or]~~

442 ~~[(iii) the prosecuting agency has a reasonable belief, grounded in supporting facts, that~~
443 ~~an individual with a clean slate eligible case is continuing to engage in criminal activity within~~
444 ~~or outside of the state.]~~

445 ~~[(d) (i) If a prosecuting agency provides written notice of an objection for a reason~~
446 ~~described in Subsection (4)(c) within 35 days of the day on which the notice described in~~
447 ~~Subsection (4)(b) is sent, the court may not proceed with automatic expungement.]~~

448 ~~[(ii) If 35 days pass from the day on which the notice described in Subsection (4)(b) is~~
449 ~~sent without the prosecuting agency providing written notice of an objection for a reason~~
450 ~~described in Subsection (4)(c), the court may proceed with automatic expungement.]~~

451 ~~[(e) If a court determines that the requirements for automatic expungement have been~~
452 ~~met, a district court or justice court shall:]~~

453 ~~[(i) issue, without a petition, an expungement order; and]~~

454 ~~[(ii) based on information available, notify the bureau and the prosecuting agency~~
455 ~~identified in the case of the order of expungement.]~~

456 ~~[(f) The bureau, upon receiving notice from the court, shall notify the law enforcement~~
457 ~~agencies identified in the case of the order of expungement.]~~

458 ~~[(g) For a clean slate case adjudicated or dismissed on or before May 1, 2020, that is~~
459 ~~automatically expunged under this Subsection (4), a law enforcement agency shall expunge~~

460 records for the case within one year after the day on which the law enforcement agency
461 receives notice from the bureau.]

462 [(5)] (1) Nothing in this section precludes an individual from filing a petition for
463 expungement of records that are eligible for automatic expungement or deletion under this
464 section if an automatic expungement or deletion has not occurred pursuant to this section.

465 [(6)] (2) An automatic expungement performed under this [section] part does not
466 preclude a person from requesting access to expunged records in accordance with Section
467 77-40a-403 or 77-40a-404.

468 [(7)] (3) (a) The Judicial Council and the Supreme Court shall make rules to govern the
469 process for automatic expungement.

470 (b) The rules under Subsection [(7)(a)] (3)(a) may authorize:

471 (i) a presiding judge of a district court to issue an expungement order for any case
472 when the requirements for automatic expungement are met; and

473 (ii) a presiding judge of a justice court to issue an expungement order for any justice
474 court case within the presiding judge's judicial district when the requirements for automatic
475 expungement are met.

476 (4) An individual does not have a cause of action for damages as a result of the failure
477 to:

478 (a) identify an individual's case as eligible for automatic expungement or deletion
479 under this part; or

480 (b) automatically expunge or delete the records of a case that is eligible under this part.

481 Section 7. Section 77-40a-202 is amended to read:

482 **77-40a-202. Automatic deletion for traffic offense by a court.**

483 (1) [~~Subject to Section 77-40a-203;~~] A court shall delete all records for the following
484 traffic offenses [~~shall be deleted~~] without a court order or notice to the prosecuting agency:

485 (a) a traffic offense case that resulted in an acquittal on all charges;

486 (b) a traffic offense case that is dismissed with prejudice, except for a case that is
487 dismissed with prejudice as a result of successful completion of a plea in abeyance agreement
488 governed by Subsection 77-2a-3(2)(b); or

489 (c) a traffic offense case for which the following time periods have elapsed from the
490 day on which the case is adjudicated:

491 (i) at least five years for a class C misdemeanor or an infraction; or

492 (ii) at least six years for a class B misdemeanor.

493 (2) For a traffic offense case that results in an acquittal, is dismissed, or is adjudicated
494 on or after May 1, 2020, the court shall delete all records for the traffic offense upon
495 identification.

496 (3) For a traffic offense case that results in an acquittal, is dismissed, or is adjudicated
497 before May 1, 2020, the court shall delete all records for the traffic offense within one year of
498 the day on which the case is identified as eligible for deletion.

499 ~~[(2) The Judicial Council shall make rules to provide an ongoing process for~~
500 ~~identifying and deleting records on all traffic offenses described in Subsection (1).]~~

501 Section 8. Section **77-40a-204** is enacted to read:

502 **77-40a-204. Request for automatic expungement of a case -- Automatic**
503 **expungement before October 1, 2024, and on and after October 1, 2027.**

504 (1) (a) On and after October 1, 2024, but before October 1, 2027, an individual must
505 submit the necessary form to the court to receive an expungement of a case that is eligible
506 under this part.

507 (b) If a form is submitted as described in Subsection (1), the court shall determine
508 whether the individual has a case that qualifies for expungement in accordance with Sections
509 [77-40a-205](#) and [77-40a-206](#).

510 (2) A court shall automatically expunge a case in accordance with this part if the court
511 identified the case as being eligible for automatic expungement before October 1, 2024, and the
512 requirements for automatic expungement were met under this part.

513 (3) On and after October 1, 2027, a court shall automatically expunge a case in
514 accordance with this part if the court identifies the case as being eligible for automatic
515 expungement.

516 (4) A court shall make reasonable efforts, within available funding, to expunge a case
517 under Subsection (3) as quickly as practicable with the goal of:

518 (a) expunging a case that resulted in an acquittal on all charges on or after May 1,
519 2020, 60 days after acquittal;

520 (b) expunging a case that resulted in a dismissal with prejudice, other than a case that is
521 dismissed with prejudice as a result of successful completion of a plea in abeyance agreement

522 governed by Subsection 77-2a-3(2)(b), on or after May 1, 2020, 180 days after:

523 (i) for a case in which no appeal was filed, the day on which the entire case against the
524 individual is dismissed with prejudice; or

525 (ii) for a case in which an appeal was filed, the day on which a court issues a final
526 nonappealable order;

527 (c) expunging a clean slate eligible case that is adjudicated or dismissed on or after
528 May 1, 2020, and is not a traffic offense within 30 days of the court determining that the
529 requirements for expungement have been satisfied under Section 77-40a-206; and

530 (d) expunging a case adjudicated or dismissed before May 1, 2020, within one year of
531 the day on which the case is identified as eligible for automatic expungement.

532 Section 9. Section 77-40a-205 is enacted to read:

533 **77-40a-205. Automatic expungement of state records for a clean slate case.**

534 (1) A court shall issue an order of expungement, without the filing of a petition, for all
535 records of the case that are held by the court and the bureau if:

536 (a) on and after October 1, 2024, but before October 1, 2027, the individual submitted
537 a form requesting expungement of a case as described in Section 77-40a-204;

538 (b) the case is eligible for expungement under this section; and

539 (c) the prosecuting agency does not object to the expungement of the case as described
540 in Subsection (6).

541 (2) Except as otherwise provided in Subsection (3), a case is eligible for expungement
542 under this section if:

543 (a) (i) each conviction within the case is a conviction for:

544 (A) a misdemeanor offense for possession of a controlled substance in violation of
545 Subsection 58-37-8(2)(a)(i);

546 (B) a class B misdemeanor offense;

547 (C) a class C misdemeanor offense; or

548 (D) an infraction; and

549 (ii) the following time periods have passed after the day on which the individual is
550 adjudicated:

551 (A) at least five years for the conviction of a class C misdemeanor offense or an
552 infraction;

553 (B) at least six years for the conviction of a class B misdemeanor offense; or
554 (C) at least seven years for the conviction of a class A misdemeanor offense for
555 possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i); or
556 (b) (i) the case is dismissed as a result of a successful completion of a plea in abeyance
557 agreement governed by Subsection 77-2a-3(2)(b) or the case is dismissed without prejudice;
558 (ii) each charge within the case is:
559 (A) a misdemeanor offense for possession of a controlled substance in violation of
560 Subsection 58-37-8(2)(a)(i);
561 (B) a class B misdemeanor offense;
562 (C) a class C misdemeanor offense; or
563 (D) an infraction; and
564 (iii) the following time periods have passed after the day on which the case is
565 dismissed:
566 (A) at least five years for a charge in the case for a class C misdemeanor offense or an
567 infraction;
568 (B) at least six years for a charge in the case for a class B misdemeanor offense; or
569 (C) at least seven years for a charge in the case for a class A misdemeanor offense for
570 possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).
571 (3) A case is not eligible for expungement under this section if:
572 (a) the individual has a total number of convictions in courts of this state that exceed
573 the limits under Subsection 77-40a-303(4) or (5) without taking into consideration:
574 (i) the exception in Subsection 77-40a-303(7); or
575 (ii) any infraction, traffic offense, or minor regulatory offense;
576 (b) there is a criminal proceeding for a misdemeanor or felony offense pending in a
577 court of this state against the individual, unless the proceeding is for a traffic offense;
578 (c) for an individual seeking an automatic expungement on and after January 1, 2025,
579 the individual is incarcerated in the state prison or on probation or parole that is supervised by
580 the Department of Corrections;
581 (d) the case resulted in the individual being found not guilty by reason of insanity;
582 (e) the case establishes a criminal accounts receivable that:
583 (i) has been entered as a civil accounts receivable or a civil judgment of restitution and

584 transferred to the Office of State Debt Collection under Section 77-18-114; or
585 (ii) has not been satisfied according to court records; or
586 (f) the case resulted in a plea held in abeyance or a conviction for the following
587 offenses:
588 (i) any of the offenses listed in Subsection 77-40a-303(2)(a);
589 (ii) an offense against the person in violation of Title 76, Chapter 5, Offenses Against
590 the Individual;
591 (iii) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
592 (iv) sexual battery in violation of Section 76-9-702.1;
593 (v) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
594 (vi) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence
595 and Reckless Driving;
596 (vii) damage to or interruption of a communication device in violation of Section
597 76-6-108;
598 (viii) a domestic violence offense as defined in Section 77-36-1; or
599 (ix) any other offense classified in the Utah Code as a felony or a class A misdemeanor
600 other than a class A misdemeanor conviction for possession of a controlled substance in
601 violation of Subsection 58-37-8(2)(a)(i).
602 (4) A prosecuting agency that has complied with Rule 42 of the Utah Rules of Criminal
603 Procedure shall receive notice on a monthly basis for any case prosecuted by that agency that
604 appears to be eligible for automatic expungement under this section.
605 (5) Within 35 days after the day on which the notice described in Subsection (4) is
606 sent, the prosecuting agency shall provide written notice in accordance with Rule 42 of the
607 Utah Rules of Criminal Procedure if the prosecuting agency objects to an automatic
608 expungement for any of the following reasons:
609 (a) the prosecuting agency believes that the case is not eligible for expungement under
610 this section after reviewing the agency record;
611 (b) the individual has not paid restitution to the victim as ordered by the court; or
612 (c) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an
613 individual involved in the case is continuing to engage in criminal activity within or outside of
614 the state.

615 (6) If a prosecuting agency provides written notice of an objection for a reason
616 described in Subsection (5) within 35 days after the day on which the notice under Subsection
617 (4) is sent, the court may not proceed with automatic expungement of the case.

618 (7) If 35 days pass after the day on which the notice described in Subsection (4) is sent
619 without the prosecuting agency providing written notice of an objection under Subsection (5),
620 the court shall proceed with automatic expungement of the case.

621 (8) If a court issues an order of expungement under Subsection (1), the court shall:

622 (a) expunge all records of the case held by the court in accordance with Section
623 77-40a-401; and

624 (b) notify the bureau and the prosecuting agency identified in the case, based on
625 information available to the court, of the order of expungement.

626 Section 10. Section **77-40a-206** is enacted to read:

627 **77-40a-206. Automatic expungement of state records for a case resulting in an**
628 **acquittal or dismissal with prejudice.**

629 (1) A court shall issue an order of expungement, without the filing of a petition, for all
630 records of the case that are held by the court and the bureau if:

631 (a) on and after October 1, 2024, but before October 1, 2027, the individual submitted
632 a form requesting expungement of a case as described in Section 77-40a-204; and

633 (b) the case is eligible for expungement under this section.

634 (2) Except as provided in Subsection (3), a case is eligible for expungement under this
635 section if:

636 (a) (i) the case resulted in an acquittal on all charges; and

637 (ii) at least 60 days have passed after the day on which the case resulted in an acquittal;

638 or

639 (b) (i) the case is dismissed with prejudice; and

640 (ii) at least 180 days have passed after the day on which:

641 (A) for a case in which no appeal was filed, the entire case against the individual is
642 dismissed with prejudice; or

643 (B) for a case in which an appeal was filed, a court issues a final nonappealable order.

644 (3) A case is not eligible for expungement under Subsection (2) if:

645 (a) the case resulted in an acquittal because the individual is found not guilty by reason

646 of insanity; or

647 (b) the case is dismissed with prejudice as a result of successful completion of a plea in
648 abeyance agreement governed by Subsection 77-2a-3(2)(b).

649 (4) If a court issues an order of expungement under Subsection (1), the court shall:

650 (a) expunge all records of the case held by the court as described in Section
651 77-40a-401; and

652 (b) notify the bureau and the prosecuting agency identified in the case, based on
653 information available to the court, of the order of expungement.

654 Section 11. Section **77-40a-207** is enacted to read:

655 **77-40a-207. Automatic expungement by the bureau.**

656 (1) Upon receiving notice from a court of an expungement order under this part, the
657 bureau shall expunge all records of the case in accordance with Section 77-40a-401.

658 (2) The bureau shall forward a copy of the expungement order to the Federal Bureau of
659 Investigation.

660 (3) Except for the court and the bureau, an agency is not required to expunge all
661 records of a case that is automatically expunged under this part.

662 Section 12. Section **77-40a-301** is amended to read:

663 **77-40a-301. Application for certificate of eligibility for expungement -- Penalty**
664 **for false or misleading information on application.**

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

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

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

672 (b) except as provided in Subsections 77-40a-304(3) and (7), pay the issuance fee for
673 the certificate of eligibility as described in Section 77-40a-304; and

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

675 (2) (a) An individual who intentionally or knowingly provides any false or misleading
676 information to the bureau when applying for a certificate of eligibility is guilty of a class B

677 misdemeanor and subject to prosecution under Section [76-8-504.6](#).

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

680 Section 13. Section **77-40a-302** is amended to read:

681 **77-40a-302. Requirements for certificate of eligibility to expunge records of**
682 **arrest, investigation, and detention.**

683 (1) Except as provided in Subsection (2), if a petitioner is arrested or charged with an
684 offense, the petitioner is eligible to receive a certificate of eligibility from the bureau to
685 expunge records of the arrest, investigation, and detention in the case for the offense if:

686 (a) the following time periods have passed:

687 (i) at least 30 days have passed after the day on which the individual is arrested or
688 charged for the offense;

689 (ii) at least three years have passed after the day on which the petitioner was convicted
690 of the traffic offense if there is a conviction in the case for a traffic offense that is a class C
691 misdemeanor or an infraction; and

692 (iii) at least four years have passed after the day on which the petitioner was convicted
693 of the traffic offense if there is a conviction in the case for a traffic offense that is a class B
694 misdemeanor; and

695 (b) one of the following occurs:

696 (i) an investigating law enforcement agency and the prosecuting attorney have screened
697 the case and determined that no charges will be filed against the petitioner;

698 (ii) all charges in the case are dismissed with prejudice;

699 (iii) if a charge in the case is dismissed without prejudice or without condition:

700 (A) the prosecuting attorney consents in writing to the issuance of a certificate of
701 eligibility; or

702 (B) at least 180 days have passed after the day on which the charge is dismissed;

703 (iv) the petitioner is acquitted at trial on all of the charges in the case; or

704 (v) the statute of limitations expires on all of the charges in the case~~[-and]~~.

705 ~~[(c) (i) there is a conviction in the case for a traffic offense that is a class C~~
706 ~~misdemeanor or an infraction, at least three years have passed after the day on which the~~
707 ~~petitioner was convicted of the traffic offense; or]~~

708 ~~[(ii) there is a conviction in the case for a traffic offense that is a class B misdemeanor,~~
709 ~~at least four years have passed after the day on which the petitioner was convicted of the traffic~~
710 ~~offense.]~~

711 (2) A petitioner is not eligible for a certificate of eligibility under Subsection (1) if:

712 (a) there is a criminal proceeding for a misdemeanor or felony offense pending against
713 the petitioner, unless the criminal proceeding is for a traffic offense;

714 (b) there is a plea in abeyance for a misdemeanor or felony offense pending against the
715 petitioner, unless the plea in abeyance is for a traffic offense;

716 (c) the petitioner is currently incarcerated, on parole, or on probation, unless the
717 petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory
718 offense; or

719 (d) there is a criminal protective order or a criminal stalking injunction in effect for the
720 case.

721 Section 14. Section **77-40a-303** is amended to read:

722 **77-40a-303. Requirements for a certificate of eligibility to expunge records of a**
723 **conviction.**

724 (1) Except as otherwise provided by this section, a petitioner is eligible to receive a
725 certificate of eligibility from the bureau to expunge the records of a conviction if:

726 (a) the petitioner has paid in full all fines and interest ordered by the court related to the
727 conviction for which expungement is sought;

728 (b) the petitioner has paid in full all restitution ordered by the court under Section
729 [77-38b-205](#); and

730 (c) the following time periods have passed after the day on which the petitioner was
731 convicted or released from incarceration, parole, or probation, whichever occurred last, for the
732 conviction that the petitioner seeks to expunge:

733 (i) 10 years for the conviction of a misdemeanor under Subsection [41-6a-501\(2\)](#);

734 (ii) 10 years for the conviction of a felony for operating a motor vehicle with any
735 amount of a controlled substance in an individual's body and causing serious bodily injury or
736 death, as codified before May 4, 2022, Laws of Utah 2021,
737 Chapter 236, Section 1, Subsection [58-37-8\(2\)\(g\)](#);

738 (iii) seven years for the conviction of a felony;

- 739 (iv) five years for the conviction of a drug possession offense that is a felony;
- 740 (v) five years for the conviction of a class A misdemeanor;
- 741 (vi) four years for the conviction of a class B misdemeanor; or
- 742 (vii) three years for the conviction of a class C misdemeanor or infraction.
- 743 (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau to
- 744 expunge the records of a conviction under Subsection (1) if:
- 745 (a) except as provided in Subsection (3), the conviction for which expungement is
- 746 sought is:
- 747 (i) a capital felony;
- 748 (ii) a first degree felony;
- 749 (iii) a felony conviction of a violent felony as defined in Subsection
- 750 [76-3-203.5\(1\)\(c\)\(i\)](#);
- 751 (iv) a felony conviction described in Subsection [41-6a-501\(2\)](#);
- 752 (v) an offense, or a combination of offenses, that would require the individual to
- 753 register as a sex offender, as defined in Section [77-41-102](#); or
- 754 (vi) a registerable child abuse offense as defined in Subsection [77-43-102\(2\)](#);
- 755 (b) there is a criminal proceeding for a misdemeanor or felony offense pending against
- 756 the petitioner, unless the criminal proceeding is for a traffic offense;
- 757 (c) there is a plea in abeyance for a misdemeanor or felony offense pending against the
- 758 petitioner, unless the plea in abeyance is for a traffic offense;
- 759 (d) the petitioner is currently incarcerated, on parole, or on probation, unless the
- 760 petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory
- 761 offense;
- 762 (e) the petitioner intentionally or knowingly provides false or misleading information
- 763 on the application for a certificate of eligibility;
- 764 (f) there is a criminal protective order or a criminal stalking injunction in effect for the
- 765 case; or
- 766 (g) the bureau determines that the petitioner's criminal history makes the petitioner
- 767 ineligible for a certificate of eligibility under Subsection (4) or (5).
- 768 (3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as
- 769 defined in Section [76-3-209](#), if, at the time of the offense, a petitioner who committed the

770 offense was at least 14 years old but under 18 years old, unless the petitioner was convicted by
771 a district court as an adult in accordance with Title 80, Chapter 6, Part 5, Transfer to District
772 Court.

773 (4) Subject to Subsections (6), (7), and (8), a petitioner is not eligible to receive a
774 certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the
775 bureau determines that the petitioner's criminal history, including previously expunged
776 convictions, contains any of the following:

777 (a) two or more felony convictions other than for drug possession offenses, each of
778 which is contained in a separate criminal episode;

779 (b) any combination of three or more convictions other than for drug possession
780 offenses that include two class A misdemeanor convictions, each of which is contained in a
781 separate criminal episode;

782 (c) any combination of four or more convictions other than for drug possession
783 offenses that include three class B misdemeanor convictions, each of which is contained in a
784 separate criminal episode; or

785 (d) five or more convictions other than for drug possession offenses of any degree
786 whether misdemeanor or felony, each of which is contained in a separate criminal episode.

787 (5) Subject to Subsections (7) and (8), a petitioner is not eligible to receive a certificate
788 of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau
789 determines that the petitioner's criminal history, including previously expunged convictions,
790 contains any of the following:

791 (a) three or more felony convictions for drug possession offenses, each of which is
792 contained in a separate criminal episode; or

793 (b) any combination of five or more convictions for drug possession offenses, each of
794 which is contained in a separate criminal episode.

795 (6) If the petitioner's criminal history contains convictions for both a drug possession
796 offense and a non-drug possession offense arising from the same criminal episode, the bureau
797 shall count that criminal episode as a conviction under Subsection (4) if any non-drug
798 possession offense in that episode:

799 (a) is a felony or class A misdemeanor; or

800 (b) has the same or a longer waiting period under Subsection (1)(c) than any drug

801 possession offense in that episode.

802 (7) Except as provided in Subsection (8), if at least 10 years have passed after the day
803 on which the petitioner was convicted or released from incarceration, parole, or probation,
804 whichever occurred last, for all convictions:

805 (a) each numerical eligibility limit under Subsections (4)(a) and (b) shall be increased
806 by one; and

807 (b) each numerical eligibility limit under Subsections (4)(c) and (d) is not applicable if
808 the highest level of convicted offense in the criminal episode is:

809 (i) a class B misdemeanor;

810 (ii) a class C misdemeanor;

811 (iii) a drug possession offense if none of the non-drug possession offenses in the
812 criminal episode are a felony or a class A misdemeanor; or

813 (iv) an infraction.

814 (8) When determining whether a petitioner is eligible for a certificate of eligibility
815 under Subsection (4), (5), or (7), the bureau may not consider a petitioner's pending case or
816 prior conviction for:

817 (a) an infraction;

818 (b) a traffic offense;

819 (c) a minor regulatory offense; or

820 (d) a clean slate eligible case that was automatically expunged [~~in accordance with~~
821 ~~Section 77-40a-201~~].

822 (9) If the petitioner received a pardon before May 14, 2013, from the Utah Board of
823 Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes
824 in accordance with Section 77-27-5.1.

825 Section 15. Section **77-40a-304** is amended to read:

826 **77-40a-304. Certificate of eligibility process -- Issuance of certificate -- Fees.**

827 (1) (a) When a petitioner applies for a certificate of eligibility as described in
828 Subsection 77-40a-301(1)[;]:

829 (i) the bureau shall perform a check of records of governmental agencies, including
830 national criminal data bases, to determine whether the petitioner is eligible to receive a
831 certificate of eligibility under this chapter[;]; and

832 (ii) the petitioner shall pay an application fee at the time the petitioner submits an
833 application for a certificate of eligibility to the bureau.

834 (b) For purposes of determining eligibility under this chapter, the bureau may review
835 records of arrest, investigation, detention, and conviction that have been previously expunged,
836 regardless of the jurisdiction in which the expungement occurred.

837 [~~(c) Once the eligibility process is complete, the bureau shall notify the petitioner.~~]

838 [~~(d) If the petitioner meets all of the criteria under Section [77-40a-302](#) or [77-40a-303](#).~~]

839 [~~(i) the bureau shall issue a certificate of eligibility that is valid for a period of 180 days~~
840 ~~from the day on which the certificate is issued;~~]

841 [~~(ii) the bureau shall provide a petitioner with an identification number for the~~
842 ~~certificate of eligibility; and]~~

843 [~~(iii) the petitioner shall pay the issuance fee established by the department as~~
844 ~~described in Subsection (2).]~~

845 [~~(e)~~] (c) If ~~[, after reasonable research,]~~ a disposition for an arrest on the criminal
846 history file is unobtainable after reasonable research, the bureau may issue a special certificate
847 giving determination of eligibility to the court, except that the bureau may not issue the special
848 certificate if:

849 (i) there is a criminal proceeding for a misdemeanor or felony offense pending against
850 the petitioner, unless the criminal proceeding is for a traffic offense;

851 (ii) there is a plea in abeyance for a misdemeanor or felony offense pending against the
852 petitioner, unless the plea in abeyance is for a traffic offense; or

853 (iii) the petitioner is currently incarcerated, on parole, or on probation, unless the
854 petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory
855 offense.

856 (2) (a) Once the eligibility process is complete, the bureau shall notify the petitioner.

857 (b) If the petitioner meets all of the criteria under Section [77-40a-302](#) or [77-40a-303](#)
858 and the bureau determines that the issuance of a certificate of eligibility or special certificate is
859 appropriate:

860 (i) the bureau shall issue a certificate of eligibility or special certificate that is valid for
861 a period of 180 days from the day on which the certificate is issued;

862 (ii) the bureau shall provide a petitioner with an identification number for the

863 certificate of eligibility or special certificate; and

864 (iii) except as provided in Subsection (3), the petitioner shall pay an additional fee for
865 the issuance of a certificate of eligibility or special certificate.

866 ~~[(2) (a) The bureau shall charge application and issuance fees for a certificate of~~
867 ~~eligibility or special certificate in accordance with the process in Section 63J-1-504.]~~

868 ~~[(b) The application fee shall be paid at the time the petitioner submits an application~~
869 ~~for a certificate of eligibility to the bureau.]~~

870 ~~[(c) If the bureau determines that the issuance of a certificate of eligibility or special~~
871 ~~certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a~~
872 ~~certificate of eligibility or special certificate unless Subsection (2)(d) applies.]~~

873 ~~[(d) An issuance fee may not be assessed against a petitioner who]~~

874 (3) The bureau shall issue a certificate of eligibility or special certificate without
875 requiring the payment of the issuance fee if the petitioner:

876 (a) qualifies for a certificate of eligibility under Section 77-40a-302 unless the charges
877 were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in
878 Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and
879 Diversion[-]; or

880 (b) indicates on the application for a certificate of eligibility that the petitioner
881 reasonably believes, as of the date of the application, that the fee to file a petition for
882 expungement is likely to be waived by a court because the petitioner is indigent.

883 ~~[(e) Funds generated under this Subsection (2) shall be deposited in the General Fund~~
884 ~~as a dedicated credit by the department to cover the costs incurred in determining eligibility.]~~

885 ~~[(3)]~~ (4) The bureau shall include on the certificate of eligibility all information that is
886 needed for the court to issue a valid expungement order.

887 ~~[(4)]~~ (5) The bureau shall provide clear written instructions to the petitioner that
888 explain:

889 (a) the process for a petition for expungement; and

890 (b) what is required of the petitioner to complete the process for a petition for
891 expungement.

892 (6) If a petitioner indicates on the application for a certificate of eligibility that a court
893 is likely to waive the fee for a petition for expungement as described in Subsection (3)(b), the

894 bureau shall:

895 (a) inform the petitioner that the petitioner will be required to pay an issuance fee
896 before an agency will expunge the offense if a court does not waive the fee for a petition for
897 expungement; and

898 (b) provide the petitioner with the form for waiving a court fee for a petition for
899 expungement.

900 (7) If the bureau issues a certificate of eligibility or a special certificate without
901 requiring payment of the issuance fee as described in Subsection (3)(b), the bureau shall charge
902 the petitioner the issuance fee upon the bureau's receipt of an order deciding a petition for
903 expungement unless the court communicates to the bureau that the fee to file the petition for
904 expungement was waived because the petitioner is indigent.

905 (8) (a) If the petitioner qualifies for a waiver of the issuance fee under Subsection (7)
906 and the expungement order grants the petition for expungement, the bureau shall process the
907 expungement order in accordance with Section [77-40a-401](#) as if the petitioner paid the issuance
908 fee.

909 (b) If the petitioner does not qualify for a waiver of the issuance fee under Subsection
910 (7) and the expungement order grants the petition for expungement, the bureau may not process
911 the expungement order as described in Section [77-40a-401](#), or notify other agencies affected by
912 the expungement order as described in Section [77-40a-307](#), until the petitioner pays the
913 issuance fee.

914 (c) If the bureau issues a certificate of eligibility or special certificate without requiring
915 payment of the issuance fee under Subsection (3)(b), the bureau may not charge the petitioner
916 an issuance fee on the grounds that the validity of the certificate described in (2)(b)(i) has
917 expired.

918 (9) The bureau shall charge application and issuance fees for a certificate of eligibility
919 or special certificate in accordance with the process in Section [63J-1-504](#).

920 (10) The department shall deposit funds generated by application and issuance fees
921 under this section into the General Fund as a dedicated credit by the department to cover the
922 costs incurred in determining eligibility for expungement.

923 Section 16. Section **77-40a-305** is amended to read:

924 **77-40a-305. Petition for expungement -- Prosecutorial responsibility -- Hearing.**

925 (1) (a) The petitioner shall file a petition for expungement, in accordance with the Utah
926 Rules of Criminal Procedure, that includes the identification number for the certificate of
927 eligibility described in Subsection [~~77-40a-304(1)(d)(ii)~~] 77-40a-304(2)(b)(ii).

928 (b) Information on a certificate of eligibility is incorporated into a petition by reference
929 to the identification number for the certificate of eligibility.

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

932 (b) A court may not accept a petition for expungement if the certificate of eligibility is
933 no longer valid as described in Subsection [~~77-40a-304(1)(d)(i)~~] 77-40a-304(2)(b)(i).

934 (3) Notwithstanding Subsection (2), the petitioner may file a petition for expungement
935 of a traffic offense case without obtaining a certificate of eligibility if:

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

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

940 (b) there is no traffic offense case pending against the petitioner;

941 (c) there is no plea in abeyance for a traffic offense case pending against the petitioner;
942 and

943 (d) the petitioner is not currently on probation for a traffic offense case.

944 (4) Notwithstanding Subsection (2), a petitioner may file a petition for expungement of
945 a record for a conviction related to cannabis possession without a certificate of eligibility if the
946 petition demonstrates that:

947 (a) the petitioner had, at the time of the relevant arrest or citation leading to the
948 conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and

949 (b) the possession of cannabis in question was in a form and an amount to medicinally
950 treat the qualifying condition described in Subsection (4)(a).

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

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

956 arrest occurred.

957 (c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention,
958 or conviction, was a city attorney's office, the county attorney's office in the jurisdiction where
959 the arrest occurred shall immediately notify the city attorney's office that the county attorney's
960 office has received a notice of a filing of a petition for expungement.

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

964 (b) The notice under Subsection (6)(a) shall:

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

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

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

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

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

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

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

979 (i) the reasons probation was terminated; and

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

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

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

987 (10) (a) If the court receives an objection concerning the petition from any party, the
988 court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the
989 date set for the hearing.

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

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

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

995 (11) If no objection is received within 60 days from the day on which the petition for
996 expungement is filed with the court, the expungement may be granted without a hearing.

997 (12) (a) If the petitioner seeks a waiver of the fee required for a petition for
998 expungement in accordance with Section 78A-2-302, the court shall consider the total number
999 of cases for which the petitioner has received a certificate of eligibility and is seeking
1000 expungement in determining whether the petitioner is indigent under Subsection
1001 78A-2-302(3)(e) even if the court does not have jurisdiction over a case for which the
1002 petitioner is seeking expungement.

1003 (b) If a court grants a waiver of the fee required for a petition for expungement in
1004 accordance with Section 78A-2-302, and only upon a request from the petitioner, a subsequent
1005 court shall grant a waiver of a fee for a petition for expungement if the prior court waived the
1006 fee for a petition for expungement within 180 days before the day on which the petitioner filed
1007 the petition for expungement with the subsequent court.

1008 Section 17. Section 77-40a-306 is amended to read:

1009 **77-40a-306. Order of expungement.**

1010 (1) If a petition is filed in accordance with Section 77-40a-305, the court shall issue an
1011 order of expungement if the court finds, by clear and convincing evidence, that:

1012 (a) except as provided in Subsection 77-40a-305(3) or (4), the petition and certificate
1013 of eligibility are sufficient;

1014 (b) the statutory requirements have been met;

1015 (c) if the petitioner seeks expungement after a case is dismissed without prejudice or
1016 without condition, the prosecuting attorney provided written consent and has not filed and does
1017 not intend to refile related charges;

1018 (d) if the petitioner seeks expungement without a certificate of eligibility for
1019 expungement under Subsection 77-40a-305(4) for a record of conviction related to cannabis
1020 possession:

1021 (i) the petitioner had, at the time of the relevant arrest or citation leading to the
1022 conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and

1023 (ii) the possession of cannabis in question was in a form and an amount to medicinally
1024 treat the qualifying condition described in Subsection (1)(d)(i);

1025 (e) if an objection is received, the petition for expungement is for a charge dismissed in
1026 accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used
1027 for enhancement, there is good cause for the court to grant the expungement; and

1028 (f) the interests of the public would not be harmed by granting the expungement.

1029 (2) (a) If the court denies a petition described in Subsection (1)(c) because the
1030 prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of
1031 eligibility if charges are not refiled within 180 days after the day on which the court denies the
1032 petition.

1033 (b) A prosecuting attorney who opposes an expungement of a case dismissed without
1034 prejudice, or without condition, shall have a good faith basis for the intention to refile the case.

1035 (c) A court shall consider the number of times that good faith basis of intention to
1036 refile by the prosecuting attorney is presented to the court in making the court's determination
1037 to grant the petition for expungement described in Subsection (1)(c).

1038 (3) If the court grants a petition described in Subsection (1)(e), the court shall make the
1039 court's findings in a written order.

1040 (4) A court may not expunge a conviction of an offense for which a certificate of
1041 eligibility may not be, or should not have been, issued under Section 77-40a-302 or
1042 77-40a-303.

1043 (5) If a court grants a petition for expungement, the court shall:

1044 (a) expunge all records of the case as described in Section 77-40a-401; and

1045 (b) notify the bureau of the order of expungement.

1046 Section 18. Section 77-40a-307 is enacted to read:

1047 **77-40a-307. Distribution of expungement order based on a petition to all agencies.**

1048 (1) (a) Upon receiving notice from the court of an expungement order as described in

1049 Subsection 77-40a-306(5), the bureau shall notify all agencies affected by the expungement
 1050 order.

1051 (b) For purposes of Subsection (1)(a), the bureau may not notify the Board of Pardons
 1052 and Parole of an expungement order if the individual has never been:

1053 (i) sentenced to prison in this state; or

1054 (ii) under the jurisdiction of the Board of Pardons and Parole.

1055 (c) The bureau shall forward a copy of the expungement order to the Federal Bureau of
 1056 Investigation.

1057 (2) A petitioner may deliver copies of the expungement to all agencies affected by the
 1058 order of expungement.

1059 (3) If an agency receives an expungement order under this part, the agency shall
 1060 expunge all records for the case in accordance with Section 77-40a-401.

1061 Section 19. Section **77-40a-401** is amended to read:

1062 **Part 4. Expungement of Criminal Records**

1063 **77-40a-401. Processing of expungement order -- Written confirmation of**
 1064 **expungement -- Effect of an expungement.**

1065 ~~[(1) (a) The bureau, upon receiving notice from the court, shall notify all criminal~~
 1066 ~~justice agencies affected by the expungement order.]~~

1067 ~~[(b) For purposes of Subsection (1)(a), the bureau may not notify the Board of Pardons~~
 1068 ~~and Parole of an expungement order if the individual has never been:]~~

1069 ~~[(i) sentenced to prison in this state; or]~~

1070 ~~[(ii) under the jurisdiction of the Board of Pardons and Parole:]~~

1071 ~~[(c) A petitioner may deliver copies of the expungement to all criminal justice agencies~~
 1072 ~~affected by the order of expungement.]~~

1073 ~~[(d) An individual, who receives an expungement order under Section 77-27-5.1, shall~~
 1074 ~~pay a processing fee to the bureau, established in accordance with the process in Section~~
 1075 ~~63J-1-504, before the bureau's record may be expunged.]~~

1076 ~~[(2) Unless otherwise provided by law or ordered by a court to respond differently, an~~
 1077 ~~individual or agency who has received an expungement of an arrest or conviction under this~~
 1078 ~~chapter or Section 77-27-5.1 may respond to any inquiry as though the arrest or conviction did~~
 1079 ~~not occur.]~~

1080 ~~[(3) The bureau shall forward a copy of the expungement order to the Federal Bureau~~
1081 ~~of Investigation.]~~

1082 ~~[(4) An agency receiving an expungement order shall expunge the individual's~~
1083 ~~identifying information contained in records in the agency's possession relating to the incident~~
1084 ~~for which expungement is ordered.]~~

1085 ~~[(5) Unless ordered by a court to do so, or in accordance with Section [77-40a-403](#), a~~
1086 ~~government agency or official may not divulge information or records that have been~~
1087 ~~expunged.]~~

1088 (1) In processing an expungement order, a court and the bureau shall give priority to:

1089 (a) first, an expungement order granting a petition for expungement under Part 3,

1090 Petition for Expungement;

1091 (b) second, an expungement order upon a pardon by the Board of Pardons and Parole
1092 as described in Section [77-27-5.1](#);

1093 (c) third, an expungement order upon a plea in abeyance as described in Section
1094 [77-2a-3](#);

1095 (d) fourth, an expungement order where an individual submitted a form requesting
1096 automatic expungement under Part 2, Automatic Expungement and Deletion; and

1097 (e) fifth, an expungement order where the court identified the case as being eligible for
1098 automatic expungement under Part 2, Automatic Expungement and Deletion.

1099 (2) An individual, who receives an expungement order under Section [77-27-5.1](#), shall
1100 pay a processing fee to the bureau, established in accordance with the process in Section
1101 [63J-1-504](#), before the bureau's record may be expunged.

1102 (3) An agency shall:

1103 (a) develop and implement a process to identify an expunged record; and

1104 (b) keep, index, and maintain all expunged records of arrests and convictions.

1105 (4) (a) If an individual who receives an expungement requests confirmation from an
1106 agency, the agency shall provide the individual with written confirmation that:

1107 (i) the agency has identified all records subject to expungement; and

1108 (ii) except as otherwise provided by Sections [77-40a-402](#) and [77-40a-403](#), the agency
1109 will restrict or deny access to all of the expunged records.

1110 (b) The bureau may charge a fee for providing a written confirmation under Subsection

1111 (4)(a) in accordance with the process in Section 63J-1-504.

1112 (5) Upon entry of an expungement order, an individual, who received the
1113 expungement, may respond to any inquiry as though the conviction did not occur unless
1114 otherwise provided by law or ordered by a court to respond differently.

1115 (6) (a) An expungement order may not restrict an agency's use or dissemination of
1116 records in the agency's ordinary course of business until the agency has received a copy of the
1117 order.

1118 (b) Any action taken by an agency after issuance of the order but prior to the agency's
1119 receipt of a copy of the order may not be invalidated by the order.

1120 (7) An expungement order may not:

1121 (a) terminate or invalidate any pending administrative proceedings or actions of which
1122 the individual had notice according to the records of the administrative body prior to issuance
1123 of the expungement order;

1124 (b) affect the enforcement of any order or findings issued by an administrative body
1125 pursuant to the administrative body's lawful authority prior to issuance of the expungement
1126 order;

1127 (c) remove any evidence relating to the individual including records of arrest, which
1128 the administrative body has used or may use in these proceedings; or

1129 (d) prevent an agency from maintaining, sharing, or distributing any record required by
1130 law.

1131 Section 20. Section **77-40a-402** is amended to read:

1132 **77-40a-402. Distribution for order for vacatur.**

1133 (1) An individual who receives an order for vacatur under Subsection **78B-9-108(2)**
1134 shall be responsible for delivering a copy of the order for vacatur to all affected [~~criminal~~
1135 ~~justice agencies and officials~~] agencies.

1136 (2) To complete delivery of the order for vacatur to the bureau, the individual shall
1137 complete and attach to the order for vacatur an application for a certificate of eligibility for
1138 expungement, including identifying information and fingerprints, in accordance with Section
1139 **77-40a-301**.

1140 (3) Except as otherwise provided in this section, the bureau shall treat the order for
1141 vacatur and attached certificate of eligibility for expungement the same as a valid order for

1142 expungement under Section [77-40a-401](#).

1143 (4) Unless otherwise provided by law or ordered by a court to respond differently, an
1144 individual who has received a vacatur of conviction under Subsection [78B-9-108\(2\)](#) may
1145 respond to any inquiry as though the conviction did not occur.

1146 (5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of
1147 Investigation.

1148 (6) An agency receiving an order for vacatur shall expunge the individual's identifying
1149 information contained in records in the agency's possession relating to the incident for which
1150 vacatur is ordered.

1151 (7) ~~[A government]~~ An agency or official may not divulge information contained in a
1152 record of arrest, investigation, detention, or conviction after receiving an order for vacatur to
1153 any person or agency, except for:

1154 (a) the individual for whom vacatur was ordered; or

1155 (b) Peace Officer Standards and Training, in accordance with Section [53-6-203](#) and
1156 Subsection ~~[[77-40a-403\(4\)\(b\)](#)]~~ [77-40a-403\(2\)\(b\)](#).

1157 (8) The bureau may not count vacated convictions against any future expungement
1158 eligibility.

1159 Section 21. Section **77-40a-403** is amended to read:

1160 **77-40a-403. Release and use of expunged records.**

1161 ~~[(1) (a) The bureau, after receiving an expungement order, shall keep, index, and
1162 maintain all expunged records of arrests and convictions.]~~

1163 ~~[(b) Any agency, other than the bureau, receiving an expungement order shall develop
1164 and implement a process to identify and maintain an expunged record.]~~

1165 ~~[(2) (a) An agency shall provide an individual who receives an expungement with
1166 written confirmation that the agency has expunged all records of the offense for which the
1167 individual received the expungement if the individual requests confirmation from the agency.]~~

1168 ~~[(b) The bureau may charge a fee for providing a written confirmation under
1169 Subsection (2)(a) in accordance with the process in Section [63J-1-504](#).]~~

1170 ~~[(3)]~~ (1) (a) ~~[An employee of the bureau, or any agency with an expunged record, may
1171 not] An agency with an expunged record, or any employee of an agency with an expunged
1172 record, may not knowingly or intentionally divulge any information contained in the expunged~~

1173 record to any person, or another agency, without a court order unless:

1174 (i) specifically authorized by statute; or

1175 (ii) subject to Subsection [~~(3)~~](b) (1)(b), the information in an expunged record is
1176 being shared with another agency through a records management system that both agencies use
1177 for the purpose of record management.

1178 (b) An agency with a records management system may not disclose any information in
1179 an expunged record with another agency or person that does not use the records management
1180 system for the purpose of record management.

1181 [~~(4)~~] (2) The following entities or agencies may receive information contained in
1182 expunged records upon specific request:

1183 (a) the Board of Pardons and Parole;

1184 (b) Peace Officer Standards and Training;

1185 (c) federal authorities if required by federal law;

1186 (d) the State Board of Education;

1187 (e) the Commission on Criminal and Juvenile Justice, for purposes of investigating
1188 applicants for judicial office; and

1189 (f) a research institution or an agency engaged in research regarding the criminal justice
1190 system if:

1191 (i) the research institution or agency provides a legitimate research purpose for
1192 gathering information from the expunged records;

1193 (ii) the research institution or agency enters into a data sharing agreement with the
1194 court or agency with custody of the expunged records that protects the confidentiality of any
1195 identifying information in the expunged records;

1196 (iii) any research using expunged records does not include any individual's name or
1197 identifying information in any product of that research; and

1198 (iv) any product resulting from research using expunged records includes a disclosure
1199 that expunged records were used for research purposes.

1200 [~~(5)~~] (3) Except as otherwise provided by this section or by court order, a person, an
1201 agency, or an entity authorized by this section to view expunged records may not reveal or
1202 release any information obtained from the expunged records to anyone outside the specific
1203 request, including distribution on a public website.

1204 [(6)] (4) A prosecuting attorney may communicate with another prosecuting attorney,
1205 or another prosecutorial agency, regarding information in an expunged record that includes a
1206 conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance
1207 agreement, for:

1208 (a) stalking as described in Section 76-5-106.5;
1209 (b) a domestic violence offense as defined in Section 77-36-1;
1210 (c) an offense that would require the individual to register as a sex offender, as defined
1211 in Section 77-41-102; or

1212 (d) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.

1213 [(7)] (5) Except as provided in Subsection [(9)] (7), a prosecuting attorney may not use
1214 an expunged record for the purpose of a sentencing enhancement or as a basis for charging an
1215 individual with an offense that requires a prior conviction.

1216 [(8)] (6) The bureau may also use the information in the bureau's index as provided in
1217 Section 53-5-704.

1218 [(9)] (7) If ~~[, after obtaining an expungement,]~~ an individual is charged with a felony or
1219 an offense eligible for enhancement based on a prior conviction ~~[, the state]~~ after obtaining an
1220 expungement, the prosecuting attorney may petition the court to open the expunged records
1221 upon a showing of good cause.

1222 [(10)] (8) (a) For judicial sentencing, a court may order any records expunged under
1223 this chapter or Section 77-27-5.1 to be opened and admitted into evidence.

1224 (b) The records are confidential and are available for inspection only by the court,
1225 parties, counsel for the parties, and any other person who is authorized by the court to inspect
1226 them.

1227 (c) At the end of the action or proceeding, the court shall order the records expunged
1228 again.

1229 (d) Any person authorized by this Subsection [(10)] (8) to view expunged records may
1230 not reveal or release any information obtained from the expunged records to anyone outside the
1231 court.

1232 [(11)] (9) Records released under this chapter are classified as protected under Section
1233 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to
1234 Records, and Subsection 53-10-108(2)(k) for records held by the bureau.

1235 Section 22. Section 77-40a-404 is amended to read:

1236 77-40a-404. Confirmation of expungement -- Access to expunged records by
1237 individuals.

1238 (1) An individual who receives an expungement may request a written confirmation
1239 from an agency under Subsection [~~77-40a-403(2)~~] 77-40a-401(4) to confirm that the agency
1240 has expunged all records of the offense for which the individual received the expungement.

1241 (2) The following individuals may view or obtain an expunged record under this
1242 chapter or Section 77-27-5.1:

1243 (a) the petitioner or an individual who receives an automatic expungement under
1244 [~~Section 77-40a-201~~] Part 2, Automatic Expungement and Deletion;

1245 (b) a law enforcement officer, who was involved in the case, for use solely in the
1246 officer's defense of a civil action arising out of the officer's involvement with the petitioner in
1247 that particular case; and

1248 (c) a party to a civil action arising out of the expunged incident if the information is
1249 kept confidential and utilized only in the action.

1250 Section 23. Section 78A-2-302 is amended to read:

1251 78A-2-302. Waiver of fees, costs, and security -- Indigent litigants -- Affidavit.

1252 (1) As used in Sections 78A-2-302 through 78A-2-309:

1253 (a) "Convicted" means:

1254 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental
1255 condition, no contest; and

1256 (ii) a conviction of any crime or offense.

1257 (b) "Indigent" means [~~an individual who is financially unable to pay fees and costs or~~
1258 ~~give security~~] a financial status that results from a court finding that a petitioner is financially
1259 unable to pay the fee, a cost, or give security.

1260 (c) "Prisoner" means an individual who has been convicted of a crime and is
1261 incarcerated for that crime or is being held in custody for trial or sentencing.

1262 (2) An individual may institute, prosecute, defend, or appeal any cause in a court in this
1263 state without prepayment of fees and costs or security if:

1264 (a) the individual submits an affidavit demonstrating that the individual is indigent[-];
1265 or

1266 (b) the individual is seeking a waiver of the fee for a petition for expungement and the
1267 individual provides the court with proof that another court granted a waiver for a petition for
1268 expungement as described in Subsection 77-40a-305(12)(b).

1269 (3) A court shall find an individual indigent if the individual's affidavit under
1270 Subsection (2) demonstrates:

1271 (a) if the cause is not a petition for expungement, the individual has an income level at
1272 or below 150% of the United States poverty level as defined by the most recent poverty income
1273 guidelines published by the United States Department of Health and Human Services;

1274 (b) if the cause is a petition for expungement, the individual has an income level at or
1275 below 175% of the United States poverty level as defined by the most recent poverty income
1276 guidelines published by the United States Department of Health and Human Services;

1277 ~~[(b)]~~ (c) the individual receives benefits from a means-tested government program,
1278 including Temporary Assistance to Needy Families, Supplemental Security Income, the
1279 Supplemental Nutrition Assistance Program, or Medicaid;

1280 ~~[(c)]~~ (d) the individual receives legal services from a nonprofit provider or a pro bono
1281 attorney through the Utah State Bar; or

1282 ~~[(d)]~~ (e) the individual has insufficient income or other means to pay the necessary fees
1283 and costs or security without depriving the individual, or the individual's family, of food,
1284 shelter, clothing, or other necessities.

1285 (4) An affidavit demonstrating that an individual is indigent under Subsection ~~[(3)(d)]~~
1286 (3)(e) shall contain complete information on the individual's:

1287 (a) identity and residence;

1288 (b) amount of income, including any government financial support, alimony, or child
1289 support;

1290 (c) assets owned, including real and personal property;

1291 (d) business interests;

1292 (e) accounts receivable;

1293 (f) securities, checking and savings account balances;

1294 (g) debts; and

1295 (h) monthly expenses.

1296 (5) If the individual under Subsection (3) is a prisoner, the prisoner shall disclose the

1297 amount of money held in the prisoner's trust account at the time the affidavit under Subsection
1298 (2) is executed in accordance with Section [78A-2-305](#).

1299 (6) An affidavit of indigency under this section shall state the following:

1300 I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear
1301 the expenses of the action or legal proceedings which I am about to commence or the appeal
1302 which I am about to take, and that I believe I am entitled to the relief sought by the action, legal
1303 proceedings, or appeal.

1304 (7) The Administrative Office of the Courts shall include on a form for an affidavit of
1305 indigency the following warning: "It is a crime for anyone to intentionally or knowingly
1306 provide false or misleading information to the court when seeking a waiver of a court fee."

1307 Section 24. Section [78A-7-209.5](#) is amended to read:

1308 **78A-7-209.5. Presiding judge -- Associate presiding judge -- Election -- Powers --**
1309 **Duties.**

1310 (1) (a) In judicial districts having more than one justice court judge, the justice court
1311 judges shall elect one judge of the district to the office of presiding judge.

1312 (b) The presiding judge shall receive an additional \$2,000 per annum as compensation
1313 from the Justice Court Technology, Security, and Training Account described in Section
1314 [78A-7-301](#) for the period served as presiding judge.

1315 (2) (a) In judicial districts having more than two justice court judges, the justice court
1316 judges may elect one judge of the district to the office of associate presiding judge.

1317 (b) The associate presiding judge shall receive an additional \$1,000 per annum as
1318 compensation from the Justice Court Technology, Security, and Training Account described in
1319 Section [78A-7-301](#) for the period served as associate presiding judge.

1320 (3) The presiding judge has the following authority and responsibilities, consistent with
1321 the policies of the Judicial Council:

1322 (a) working with each justice court judge in the district to implement policies and rules
1323 of the Judicial Council;

1324 (b) exercising powers and performing administrative duties as authorized by the
1325 Judicial Council;

1326 (c) if there is no other appointed justice court judge in that court available, assigning a
1327 justice court judge to hear a case in which a judge has been disqualified in accordance with

1328 rules of the Supreme Court;

1329 (d) if a justice court judge of the district cannot perform the justice court judge's duties
1330 in a case or cases due to illness, death, or other incapacity, and the governing body has not
1331 appointed a temporary justice court judge in accordance with Section 78A-7-208:

1332 (i) assigning, on an emergency basis, a justice court judge to hear a case or cases; and

1333 (ii) facilitating judicial coverage with the appointing municipal or county authority
1334 until a temporary justice court judge can be appointed, in accordance with Section 78A-7-208,
1335 or a new justice court judge is formally appointed and takes office, in accordance with Section
1336 78A-7-202; and

1337 (e) entering orders of expungement in cases expunged in accordance with [Section
1338 ~~77-40a-201~~] Title 77, Chapter 40a, Part 2, Automatic Expungement and Deletion.

1339 (4) (a) When the presiding judge is unavailable, the associate presiding judge shall
1340 assume the responsibilities of the presiding judge.

1341 (b) The associate presiding judge shall perform other duties assigned by the presiding
1342 judge.

1343 Section 25. Section 78B-7-1001 is amended to read:

1344 **78B-7-1001. Definitions.**

1345 As used in this part:

1346 (1) (a) [~~Except as provided in Subsection (1)(b), "agency"~~] "Agency" means, except as
1347 provided in Subsection (1)(b), a state, county, or local government entity that generates or
1348 maintains records relating to a civil order for which expungement may be ordered.

1349 (b) "Agency" does not include the Division of Child and Family Services created in
1350 Section 80-2-201.

1351 (2) "Civil order" means:

1352 (a) an ex parte civil protective order;

1353 (b) an ex parte civil stalking injunction;

1354 (c) a civil protective order; or

1355 (d) a civil stalking injunction.

1356 [~~(3) "Expunge" means to seal or otherwise restrict access to an individual's record held~~
1357 ~~by an agency when the record includes a civil order.]~~

1358 (3) (a) "Expunge" means to remove a record from public inspection by:

1359 (i) sealing the record; or

1360 (ii) restricting or denying access to the record.

1361 (b) "Expunge" does not include the destruction of a record.

1362 (4) "Petitioner" means an individual petitioning for expungement of a civil order under
1363 this part.

1364 Section 26. Section **78B-7-1004** is amended to read:

1365 **78B-7-1004. Distribution and effect of order of expungement -- Penalty.**

1366 (1) An individual who receives an order of expungement under Section **78B-7-1003**
1367 shall be responsible for delivering a copy of the order of expungement to any affected agency.

1368 [~~(2) Upon receipt of an order of expungement as described in Subsection (1), an agency~~
1369 ~~shall expunge all records described in the expungement order that are under the control of the~~
1370 ~~agency.]~~

1371 (2) If an agency receives an expungement order as described in Subsection (1), the
1372 agency shall expunge all records affected by the expungement order.

1373 (3) Upon entry of an expungement order by a court under Section **78B-7-1003**:

1374 (a) the civil order is considered to never have occurred; and

1375 (b) the petitioner may reply to an inquiry on the matter as though there was never a
1376 civil order.

1377 (4) (a) Unless ordered by a court to do so, an agency or official may not divulge
1378 information or records that have been expunged under this part.

1379 (b) An expungement order may not restrict an agency's use or dissemination of records
1380 in the agency's ordinary course of business until the agency has received a copy of the
1381 expungement order.

1382 (c) Any action taken by an agency after issuance of the expungement order but before
1383 the agency's receipt of a copy of the expungement order may not be invalidated by the order.

1384 (5) An expungement order under this part may not:

1385 (a) terminate or invalidate any pending administrative proceedings or actions of which
1386 the individual had notice according to the records of the administrative body before issuance of
1387 the expungement order;

1388 (b) affect the enforcement of any order or findings issued by an administrative body
1389 pursuant to the administrative body's lawful authority prior to issuance of the expungement

1390 order; or

1391 (c) prevent an agency from maintaining, sharing, or distributing any record required by
1392 law.

1393 (6) An employee or agent of an agency that is prohibited from disseminating
1394 information from an expunged record under this section who knowingly or intentionally
1395 discloses identifying information from the expunged record, unless allowed by law, is guilty of
1396 a class A misdemeanor.

1397 (7) Records expunged under this part may be released to, or viewed by, the following
1398 individuals:

1399 (a) the petitioner; or

1400 (b) parties to a civil action arising out of the expunged civil order, providing the
1401 information is kept confidential and utilized only in the action.

1402 (8) This part does not preclude a court from considering the same circumstances or
1403 evidence for which an expunged civil order was issued in any proceeding that occurs after the
1404 civil order is expunged.

1405 Section 27. Section **80-6-1001** is amended to read:

1406 **80-6-1001. Definitions.**

1407 As used in this part:

1408 (1) "Abstract" means a copy or summary of a court's disposition.

1409 (2) (a) "Agency" means a state, county, or local government entity that generates or
1410 maintains records for which expungement may be ordered under this part.

1411 (b) "Agency" includes a local education agency, as defined in Section [53E-1-102](#), for
1412 purposes of this part.

1413 (3) (a) "Expunge" means [~~to seal or otherwise restrict access to a record that is part of~~
1414 ~~an individual's juvenile record and in the custody of the juvenile court or an agency]~~ to remove
1415 a juvenile record from public inspection by:

1416 (i) sealing the juvenile record; or

1417 (ii) restricting or denying access to the juvenile record.

1418 (b) "Expunge" does not include the destruction of a juvenile record.

1419 (4) (a) "Juvenile record" means all records for all incidents of delinquency involving an
1420 individual that are in the custody of the juvenile court or an agency.

1421 (b) "Juvenile record" does not include a record of an adjudication under Chapter 3,
1422 Abuse, Neglect, and Dependency Proceedings, or Chapter 4, Termination and Restoration of
1423 Parental Rights.

1424 (5) "Petitioner" means an individual requesting an expungement or vacatur under this
1425 part.

1426 Section 28. Section **80-6-1006.1** is amended to read:

1427 **80-6-1006.1. Exceptions to expungement order -- Distribution of expungement**
1428 **order -- Agency duties -- Effect of expungement -- Access to expunged record.**

1429 (1) This section applies to an expungement order under Section [80-6-1004.1](#),
1430 [80-6-1004.2](#), [80-6-1004.3](#), [80-6-1004.4](#), or [80-6-1004.5](#).

1431 (2) The juvenile court may not order:

1432 (a) the Board of Pardons and Parole and the Department of Corrections to seal a record
1433 in the possession of the Board of Pardons and Parole or the Department of Corrections, except
1434 that the juvenile court may order the Board of Pardons and Parole and the Department of
1435 Corrections to restrict access to a record if the record is specifically identified in the
1436 expungement order as a record in the possession of the Board of Pardons and Parole or the
1437 Department of Corrections; or

1438 (b) the Division of Child and Family Services to expunge a record in an individual's
1439 juvenile record that is contained in the Management Information System or the Licensing
1440 Information System unless:

1441 (i) the record is unsupported; or

1442 (ii) after notice and an opportunity to be heard, the Division of Child and Family
1443 Services stipulates in writing to expunging the record.

1444 (3) (a) If the juvenile court issues an expungement order, the juvenile court shall send a
1445 copy of the expungement order to any affected agency or official identified in the juvenile
1446 record.

1447 (b) An individual who is the subject of an expungement order may deliver copies of the
1448 expungement order to all agencies and officials affected by the expungement order.

1449 (4) (a) Upon receipt of an expungement order, an agency shall:

1450 (i) ~~[to avoid destruction or expungement of records in whole or in part, expunge only~~
1451 ~~the references to the individual's name in the records relating to the individual's adjudication,~~

1452 ~~nonjudicial adjustment, petition, arrest, investigation, or detention for which expungement is~~
1453 ~~ordered]~~ expunge all records affected by the expungement order; and

1454 (ii) destroy all photographs and records created under Section 80-6-608, except that a
1455 record of a minor's fingerprints may not be destroyed by an agency.

1456 (b) An agency that receives a copy of an expungement order shall mail an affidavit to
1457 the individual who is the subject of the expungement order, or the individual's attorney, that the
1458 agency has complied with the expungement order.

1459 (5) Notwithstanding Subsection (4), the Board of Pardons and Parole and the
1460 Department of Corrections:

1461 (a) may not disclose records expunged in an expungement order unless required by
1462 law;

1463 (b) are not required to destroy any photograph or record created under Section
1464 80-6-608;

1465 (c) may use an expunged record for purposes related to incarceration and supervision
1466 of an individual under the jurisdiction of the Board of Pardons and Parole, including for the
1467 purpose of making decisions about:

1468 (i) the treatment and programming of the individual;

1469 (ii) housing of the individual;

1470 (iii) applicable guidelines regarding the individual; or

1471 (iv) supervision conditions for the individual;

1472 (d) are not prohibited from disclosing or sharing any information in an expunged
1473 record with another agency that uses the same record management system as the Board of
1474 Pardons and Parole or the Department of Corrections; and

1475 (e) are not required to mail an affidavit under Subsection (4)(b).

1476 (6) Upon entry of an expungement order:

1477 (a) an adjudication, a nonjudicial adjustment, a petition, an arrest, an investigation, or a
1478 detention for which the record is expunged is considered to have never occurred; and

1479 (b) the individual, who is the subject of the expungement order, may reply to an inquiry
1480 on the matter as though there never was an adjudication, a nonjudicial adjustment, a petition,
1481 an arrest, an investigation, or a detention.

1482 (7) A record expunged under Section 80-6-1004.1, 80-6-1004.2, 80-6-1004.3,

1483 80-6-1004.4, or 80-6-1004.5 may be released to, or viewed by, the individual who is the subject
1484 of the record.

1485 Section 29. **Repealer.**

1486 This bill repeals:

1487 Section 77-40a-203, **Time periods for expungement or deletion -- Identification and**
1488 **processing of clean slate eligible cases.**

1489 Section 30. **Effective date.**

1490 This bill takes effect on October 1, 2024.