

HB0297S01 compared with HB0297

{Omitted text} shows text that was in HB0297 but was omitted in HB0297S01

inserted text shows text that was not in HB0297 but was inserted into HB0297S01

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

1
.
.
.
.
.
2
3
4
5
6
7
8
9
11
12
14
17
18

Expungement Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor:

LONG TITLE

General Description:

This bill addresses expungement.

Highlighted Provisions:

This bill:

- ▶ defines terms for expungement;
- ▶ allows the Department of Public Safety to make rules regarding the procedure for notifying the Bureau of Criminal Identification of an order of expungement;
- ▶ modifies the list of offenses that are not eligible for automatic expungement;
- ▶ allows the Bureau of Criminal Identification to request the vacation of an order for automatic expungement in certain circumstances;
- ▶ modifies the requirements for a certificate of eligibility to address registration as a sex offender, kidnap offender, or child abuse offender or a protective order or criminal stalking injunction in effect against the individual;
- ▶ modifies venue for a petition seeking expungement of criminal records;
- ▶

HB0297 compared with HB0297S01

clarifies that a certificate of eligibility has to be valid at the time that the petition for expungement was filed for a court to grant expungement;

- 20 ▶ addresses the effect of an expungement on a civil protective order;
- 21 ▶ modifies venue for a petition seeking expungement of juvenile records; { and }
- 22 ▶ **includes a coordination clause to address a technical conflict if this bill and S.B. 41, Sex, Kidnap, and Child Abuse Offender Registry Amendments, both pass and become law; and**
- 22 ▶ makes technical and conforming changes.

26 Money Appropriated in this Bill:

27 None

28 This bill provides a coordination clause.

31 AMENDS:

32 **77-40a-101** , as last amended by Laws of Utah 2024, Chapter 180 , as last amended by Laws of Utah 2024, Chapter 180

33 **77-40a-104** , as last amended by Laws of Utah 2024, Chapter 180 , as last amended by Laws of Utah 2024, Chapter 180

34 **77-40a-205** , as enacted by Laws of Utah 2024, Chapter 180 , as enacted by Laws of Utah 2024, Chapter 180

35 **77-40a-207** , as enacted by Laws of Utah 2024, Chapter 180 , as enacted by Laws of Utah 2024, Chapter 180

36 **77-40a-303** , as last amended by Laws of Utah 2024, Chapter 180 , as last amended by Laws of Utah 2024, Chapter 180

37 **77-40a-305** , as last amended by Laws of Utah 2024, Chapter 180 , as last amended by Laws of Utah 2024, Chapter 180

38 **77-40a-306** , as last amended by Laws of Utah 2024, Chapter 180 , as last amended by Laws of Utah 2024, Chapter 180

39 **78B-7-109** , as last amended by Laws of Utah 2020, Chapter 142 , as last amended by Laws of Utah 2020, Chapter 142

40 **80-6-1001.2** , as enacted by Laws of Utah 2024, Chapter 194 , as enacted by Laws of Utah 2024, Chapter 194

41 Utah Code Sections affected by Coordination Clause:

42

HB0297 compared with HB0297S01

77-40a-303 , as last amended by Laws of Utah 2024, Chapter 180 , as last amended by Laws of Utah 2024, Chapter 180

- 43
-
- 44 *Be it enacted by the Legislature of the state of Utah:*
- 45 Section 1. Section **77-40a-101** is amended to read:
- 46 **77-40a-101. Definitions.**
- As used in this chapter:
- 43 (1) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.
- 46 (2) "Automatic expungement" means the expungement of records of an investigation, arrest, detention, or conviction of an offense without the filing of a petition.
- 48 (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.
- 50 (4) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.
- 53 (5) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.
- 55 (6) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.
- 57 (7) "Civil protective order" means the same as that term is defined in Section 78B-7-102.
- 58 [(7)] (8) "Clean slate eligible case" means a case that is eligible for automatic expungement under Section 77-40a-205.
- 60 [(8)] (9) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.
- 62 [(9)] (10) "Court" means a district court or a justice court.
- 63 [(10)] (11) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.
- 65 [(11)] (12) "Criminal protective order" means the same as that term is defined in Section 78B-7-102.
- 67 [(12)] (13) "Criminal stalking injunction" means the same as that term is defined in Section 78B-7-102.
- 69 [(13)] (14) "Department" means the Department of Public Safety established in Section 53-1-103.
- 71 [(14)] (15) "Drug possession offense" means:

HB0297 compared with HB0297S01

- 72 (a) an offense described in Subsection 58-37-8(2), except for:
- 73 (i) an offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana;
- 75 (ii) an offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility; or
- 77 (iii) an offense for driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);
- 81 (b) an offense described in Subsection 58-37a-5(1), use or possession of drug paraphernalia;
- 83 (c) an offense described in Section 58-37b-6, possession or use of an imitation controlled substance; or
- 85 (d) any local ordinance which is substantially similar to any of the offenses described in this Subsection [(14)] (15).
- 87 [(15)] (16)
- . (a) "Expunge" means to remove a record from public inspection by:
- 88 (i) sealing the record; or
- 89 (ii) restricting or denying access to the record.
- 90 (b) "Expunge" does not include the destruction of a record.
- 91 [(16)] (17) "Indigent" means a financial status that results from a court finding that a petitioner is financially unable to pay the fee to file a petition for expungement under Section 78A-2-302.
- 94 [(17)] (18) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.
- 96 [(18)] (19)
- . (a) "Minor regulatory offense" means~~[-except as provided in Subsection (18)(e);]~~ a class B or C misdemeanor offense or a local ordinance.
- 98 (b) "Minor regulatory offense" includes an offense under Section 76-9-701 or 76-10-105.
- 99 (c) "Minor regulatory offense" does not include:
- 100 (i) any drug possession offense;
- 101 (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 103 (iii) an offense under Sections 73-18-13 through 73-18-13.6;
- 104 (iv) except as provided in Subsection [(18)(b)] (19)(b), an offense under Title 76, Utah Criminal Code; or
- 106 (v) any local ordinance that is substantially similar to an offense listed in Subsections [(18)(e)(i)] (19)(c)(i) through (iv).

HB0297 compared with HB0297S01

- 108 ~~[(19)]~~ (20) "Petitioner" means an individual applying for expungement under this chapter.
- 109 ~~[(20)]~~ (21) "Plea in abeyance" means the same as that term is defined in Section 77-2a-1.
- 110 ~~[(21)]~~ (22) "Record" means a book, letter, document, paper, map, plan, photograph, film, card,
tape, recording, electronic data, or other documentary material, regardless of physical form or
characteristics, that:
- 113 (a) is contained in the agency's file regarding the arrest, detention, investigation, conviction, sentence,
incarceration, probation, or parole of an individual; and
- 115 (b) is prepared, owned, received, or retained by an agency, including a court.
- 116 ~~[(22)]~~ (23) "Special certificate" means a document issued as described in Subsection 77-40a-304(1)
(c) by the bureau stating that the criminal record and all records of arrest, investigation, and
detention associated with the case ~~[that is the subject of a petition for expungement is eligible for
expungement]~~ do not clearly demonstrate whether the case is eligible for expungement.
- 121 ~~[(23)]~~ (24)
- . (a) "Traffic offense" means~~[-except as provided in Subsection (23)(b)]~~:
- 122 (i) an infraction or a class C misdemeanor offense under Title 41, Chapter 1a, Motor Vehicle Act;
- 124 ~~[(i)]~~ (ii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title
41, Chapter 6a, Traffic Code;
- 126 (iii) an infraction or a class C misdemeanor offense under Title 41, Chapter 12a, Financial
Responsibility of Motor Vehicle Owners and Operators Act;
- 128 ~~[(ii)]~~ (iv) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under
Title 53, Chapter 3, Part 2, Driver Licensing Act;
- 130 ~~[(iii)]~~ (v) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under
Title 73, Chapter 18, State Boating Act; and
- 132 ~~[(iv)]~~ (vi) all local ordinances that are substantially similar to an offense listed in Subsections ~~[(23)~~
~~(a)(i)]~~ (24)(a)(i) through (iii).
- 134 (b) "Traffic offense" does not ~~[mean]~~ include:
- 135 (i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 137 (ii) an offense under Section 41-12a-302 for operating a motor vehicle without owner's or operator's
security;
- 139 (iii) an offense under Section 41-12a-303.3 for providing false evidence of owner's or operator's
security;

HB0297 compared with HB0297S01

141 [(ii)] (iv) an offense under Sections 73-18-13 through 73-18-13.6; or
142 [(iii)] (v) any local ordinance that is substantially similar to an offense listed in Subsection [(23)(b)]
(†) (24)(b)(i) or (ii).

144 [(24)] (25) "Traffic offense case" means that each offense in the case is a traffic offense.

150 Section 2. Section **77-40a-104** is amended to read:

151 **77-40a-104. Department rulemaking authority.**

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

- 149 (1) implement procedures for processing an automatic expungement;
150 (2) implement procedures for applying for certificates of eligibility;
151 (3) specify procedures for receiving a certificate of eligibility;
152 (4) specify the procedure for notification of an order of expungement under Subsection 77-40a-306(5)
(b);
154 [(4)] (5) create forms and determine information necessary to be provided to the bureau; and
155 [(5)] (6) implement procedures for the confirmation of an expungement under Subsection
77-40a-401(4).

162 Section 3. Section **77-40a-205** is amended to read:

163 **77-40a-205. Automatic expungement of state records for a clean slate case.**

- 159 (1) A court shall issue an order of expungement, without the filing of a petition, for all records of the
case that are held by the court and the bureau if:
161 (a) on and after October 1, 2024, but before January 1, 2026, the individual submitted a form requesting
expungement of a case as described in Section 77-40a-204;
163 (b) the case is eligible for expungement under this section; and
164 (c) the prosecuting agency does not object to the expungement of the case as described in Subsection
(6).
166 (2) Except as otherwise provided in Subsection (3), a case is eligible for expungement under this section
if:
168 (a)
. (i) each conviction within the case is a conviction for:
169 (A) a misdemeanor offense for possession of a controlled substance in violation of Subsection
58-37-8(2)(a)(i);

HB0297 compared with HB0297S01

- 171 (B) a class B misdemeanor offense;
- 172 (C) a class C misdemeanor offense; or
- 173 (D) an infraction; and
- 174 (ii) the following time periods have passed after the day on which the individual is adjudicated:
- 176 (A) at least five years for the conviction of a class C misdemeanor offense or an infraction;
- 178 (B) at least six years for the conviction of a class B misdemeanor offense; or
- 179 (C) at least seven years for the conviction of a class A misdemeanor offense for possession of a
controlled substance in violation of Subsection 58-37-8(2)(a)(i); or
- 182 (b)
- . (i) the case is dismissed as a result of a successful completion of a plea in abeyance agreement governed
by Subsection 77-2a-3(2)(b) or the case is dismissed without prejudice;
- 185 (ii) each charge within the case is:
- 186 (A) a misdemeanor offense for possession of a controlled substance in violation of Subsection
58-37-8(2)(a)(i);
- 188 (B) a class B misdemeanor offense;
- 189 (C) a class C misdemeanor offense; or
- 190 (D) an infraction; and
- 191 (iii) the following time periods have passed after the day on which the case is dismissed:
- 193 (A) at least five years for a charge in the case for a class C misdemeanor offense or an infraction;
- 195 (B) at least six years for a charge in the case for a class B misdemeanor offense; or
- 196 (C) at least seven years for a charge in the case for a class A misdemeanor offense for possession of a
controlled substance in violation of Subsection 58-37-8(2)(a)(i).
- 199 (3) A case is not eligible for expungement under this section if:
- 200 (a) the individual has a total number of convictions in courts of this state that exceed the limits under
Subsection 77-40a-303(4) or (5) without taking into consideration:
- 202 (i) the exception in Subsection 77-40a-303(7); or
- 203 (ii) any infraction, traffic offense, or minor regulatory offense;
- 204 (b) there is a criminal proceeding for a misdemeanor or felony offense pending in a court of this state
against the individual, unless the proceeding is for a traffic offense;
- 206

HB0297 compared with HB0297S01

- (c) for an individual seeking an automatic expungement on and after January 1, 2025, the individual is incarcerated in the state prison or on probation or parole that is supervised by the Department of Corrections;
- 209 (d) the case resulted in the individual being found not guilty by reason of insanity;
- 210 (e) the case establishes a criminal accounts receivable that:
- 211 (i) has been entered as a civil accounts receivable or a civil judgment of restitution and transferred to the Office of State Debt Collection under Section 77-18-114; or
- 213 (ii) has not been satisfied according to court records; or
- 214 (f) the case resulted in a plea held in abeyance or a conviction for the following offenses:
- 215 (i) any of the offenses listed in Subsection 77-40a-303(2)(a);
- 216 (ii) an offense against the person in violation of Title 76, Chapter 5, Offenses Against the Individual;
- 218 (iii) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
- 219 (iv) sexual battery in violation of Section 76-9-702.1;
- 220 (v) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
- 221 (vi) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 223 (vii) damage to or interruption of a communication device in violation of Section 76-6-108;
- 225 (viii) a domestic violence offense as defined in Section 77-36-1; [~~or~~]
- 226 (ix) driving under the influence of alcohol, drugs, or a combination of both, or with specified or unsafe blood alcohol concentration, as codified before February 2, 2005, Laws of Utah 2005, Chapter 2; or
- 229 [~~(ix)~~] (x) any other offense classified in the Utah Code as a felony or a class A misdemeanor other than a class A misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).
- 232 (4) A prosecuting agency that has complied with Rule 42 of the Utah Rules of Criminal Procedure shall receive notice on a monthly basis for any case prosecuted by that agency that appears to be eligible for automatic expungement under this section.
- 235 (5) Within 35 days after the day on which the notice described in Subsection (4) is sent, the prosecuting agency shall provide written notice in accordance with Rule 42 of the Utah Rules of Criminal Procedure if the prosecuting agency objects to an automatic expungement for any of the following reasons:
- 239

HB0297 compared with HB0297S01

- (a) the prosecuting agency believes that the case is not eligible for expungement under this section after reviewing the agency record;
- 241 (b) the individual has not paid restitution to the victim as ordered by the court; or
- 242 (c) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an individual involved in the case is continuing to engage in criminal activity within or outside of the state.
- 245 (6) If a prosecuting agency provides written notice of an objection for a reason described in Subsection (5) within 35 days after the day on which the notice under Subsection (4) is sent, the court may not proceed with automatic expungement of the case.
- 248 (7) If 35 days pass after the day on which the notice described in Subsection (4) is sent without the prosecuting agency providing written notice of an objection under Subsection (5), the court shall proceed with automatic expungement of the case.
- 251 (8) If a court issues an order of expungement under Subsection (1), the court shall:
- 252 (a) expunge all records of the case held by the court in accordance with Section 77-40a-401; and
- 254 (b) notify the bureau and the prosecuting agency identified in the case, based on information available to the court, of the order of expungement.
- 261 Section 4. Section **77-40a-207** is amended to read:
- 262 **77-40a-207. Automatic expungement by the bureau.**
- 258 (1) Upon receiving notice from a court of an expungement order under this part, the bureau shall expunge all records of the case in accordance with Section 77-40a-401.
- 260 (2)
- . (a) Notwithstanding Subsection (1) or Section 77-40a-205, the bureau may request that a court vacate an expungement order issued under this part if the bureau determines that:
- 263 (i) the order is expunging:
- 264 (A) a case that was dismissed as a result of a plea held in abeyance; or
- 265 (B) a conviction of an offense; and
- 266 (ii) the offense was not eligible for expungement under this part at the time that the court issued the order.
- 268 (b) The court shall vacate an expungement order issued under this part if the court determines that the offense was not eligible for expungement under this part at the time the court issued the order.
- 271 [~~2~~] (3) The bureau shall forward a copy of the expungement order to the Federal Bureau of Investigation.

HB0297 compared with HB0297S01

273 [(3)] (4) Except for the court and the bureau, an agency is not required to expunge all records of a case
274 that is automatically expunged under this part.

281 Section 5. Section **77-40a-303** is amended to read:

282 **77-40a-303. Requirements for a certificate of eligibility to expunge records of a conviction.**

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

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

282 (b) the petitioner has paid in full all restitution ordered by the court under Section 77-38b-205; and

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

287 (i) 10 years for the conviction of a misdemeanor under Subsection 41-6a-501(2);

288 (ii) 10 years for the conviction of a felony for operating a motor vehicle with any amount of a controlled
289 substance in an individual's body and causing serious bodily injury or death, as codified before May
290 4, 2022, Laws of Utah 2021,

291 Chapter 236, Section 1, Subsection 58-37-8(2)(g);

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

293 (iv) five years for the conviction of a drug possession offense that is a felony;

294 (v) five years for the conviction of a class A misdemeanor;

295 (vi) four years for the conviction of a class B misdemeanor; or

296 (vii) three years for the conviction of a class C misdemeanor or infraction.

297 (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau to expunge the
298 records of a conviction under Subsection (1) if:

299 (a) except as provided in Subsection (3), the conviction for which expungement is sought is:

301 (i) a capital felony;

302 (ii) a first degree felony;

303 (iii) a felony conviction of a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

305 (iv) a felony conviction described in Subsection 41-6a-501(2); or

306 (v) an offense, or a combination of offenses, [~~that would require the individual to register as a sex
307 offender, as defined in Section 77-41-102]~~ that require registration as a sex offender, kidnap

HB0297 compared with HB0297S01

offender, or child abuse offender under Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, at the time of the application for the certificate of eligibility; [or]

- 311 [~~(vi) a registerable child abuse offense as defined in Subsection 77-41-102(1);]~~
- 312 (b) there is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner,
unless the criminal proceeding is for a traffic offense;
- 314 (c) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner,
unless the plea in abeyance is for a traffic offense;
- 316 (d) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on
probation or parole for an infraction, a traffic offense, or a minor regulatory offense;
- 319 (e) the petitioner intentionally or knowingly provides false or misleading information on the application
for a certificate of eligibility;
- 321 (f) there is a civil protective order, a criminal protective order, or a criminal stalking injunction against
the petitioner that is in effect~~[for the case];~~ or
- 323 (g) the bureau determines that the petitioner's criminal history makes the petitioner ineligible for a
certificate of eligibility under Subsection (4) or (5).
- 325 (3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as defined in
Section 76-3-209, if, at the time of the offense, a petitioner who committed the offense was at least
14 years old but under 18 years old, unless the petitioner was convicted by a district court as an
adult in accordance with Title 80, Chapter 6, Part 5, ~~[Transfer to District Court]~~ Minor Tried as an
Adult.
- 330 (4) Subject to Subsections (6), (7), and (8), a petitioner is not eligible to receive a certificate of
eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that
the petitioner's criminal history, including previously expunged convictions, contains any of the
following:
- 334 (a) two or more felony convictions other than for drug possession offenses, each of which is contained
in a separate criminal episode;
- 336 (b) any combination of three or more convictions other than for drug possession offenses that include
two class A misdemeanor convictions, each of which is contained in a separate criminal episode;
- 339 (c) any combination of four or more convictions other than for drug possession offenses that include
three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or
- 342

HB0297 compared with HB0297S01

- (d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.
- 345 (5) Subject to Subsections (7) and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:
- 349 (a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or
- 351 (b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.
- 353 (6) If the petitioner's criminal history contains convictions for both a drug possession offense and a non-drug possession offense arising from the same criminal episode, the bureau shall count that criminal episode as a conviction under Subsection (4) if any non-drug possession offense in that episode:
- 357 (a) is a felony or class A misdemeanor; or
- 358 (b) has the same or a longer waiting period under Subsection (1)(c) than any drug possession offense in that episode.
- 360 (7) Except as provided in Subsection (8), if at least 10 years have passed after the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions:
- 363 (a) each numerical eligibility limit under Subsections (4)(a) and (b) shall be increased by one; and
- 365 (b) each numerical eligibility limit under Subsections (4)(c) and (d) is not applicable if the highest level of convicted offense in the criminal episode is:
- 367 (i) a class B misdemeanor;
- 368 (ii) a class C misdemeanor;
- 369 (iii) a drug possession offense if none of the non-drug possession offenses in the criminal episode are a felony or a class A misdemeanor; or
- 371 (iv) an infraction.
- 372 (8) When determining whether a petitioner is eligible for a certificate of eligibility under Subsection (4), (5), or (7), the bureau may not consider a petitioner's pending case or prior conviction for:
- 375 (a) an infraction;
- 376 (b) a traffic offense;

HB0297 compared with HB0297S01

- 377 (c) a minor regulatory offense; or
378 (d) a clean slate eligible case that was automatically expunged.
379 (9) If the petitioner received a pardon before May 14, 2013, from the [~~Utah~~]Board of Pardons and
Parole, the petitioner is entitled to an expungement order for all pardoned crimes in accordance with
Section 77-27-5.1.
- 388 Section 6. Section **77-40a-305** is amended to read:
389 **77-40a-305. Petition for expungement -- Prosecutorial responsibility -- Hearing.**
- 384 (1)
. (a) The petitioner shall file a petition for expungement in accordance with Rule 42 of the Utah Rules of
Criminal Procedure.
- 386 (b) A petitioner shall include the identification number for the certificate of eligibility or special
certificate described in Subsection 77-40a-304(2)(b)(ii) in the petition for expungement, unless the
petitioner is not required to obtain a certificate of eligibility under Subsection (3) or (4).
- 390 (c) Information on a certificate of eligibility is incorporated into a petition by reference to the
identification number for the certificate of eligibility.
- 392 (d) A petitioner shall bring a petition for expungement, including a petition for expungement for which
the petitioner obtained a special certificate:
- 394 (i) in the court where the criminal case was filed; [~~or~~]
395 (ii) if the court in which the criminal case was filed no longer exists, in the court that would have
jurisdiction over the criminal case if the criminal case were filed on the day on which the petition is
brought; or
- 398 [~~(ii)~~] (iii) if charges were never filed, in the district court in the county in which the arrest occurred or
the citation is issued.
- 400 (2)
. (a) If a petition for expungement is filed under Subsection (1)(a), the court shall obtain a certificate of
eligibility or special certificate from the bureau.
- 402 (b) A court may not accept a petition for expungement if the certificate of eligibility or special
certificate is no longer valid as described in Subsection 77-40a-304(2)(b)(i).
- 404 (3) Notwithstanding Subsection (2), the petitioner may file a petition for expungement of a traffic
offense case without obtaining a certificate of eligibility if:
- 406 (a)

HB0297 compared with HB0297S01

- . (i) for a traffic offense case with a class C misdemeanor or infraction, at least three years have passed after the day on which the case was adjudicated or dismissed; or
- 408 (ii) for a traffic offense case with a class B misdemeanor, at least four years have passed after the day on which the case was adjudicated or dismissed;
- 410 (b) there is no traffic offense case pending against the petitioner;
- 411 (c) there is no plea in abeyance for a traffic offense case pending against the petitioner; and
- 413 (d) the petitioner is not currently on probation for a traffic offense case.
- 414 (4) Notwithstanding Subsection (2), a petitioner may file a petition for expungement of a record for a conviction related to cannabis possession without a certificate of eligibility if the petition demonstrates that:
- 417 (a) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and
- 419 (b) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (4)(a).
- 421 (5)
- . (a) The court shall provide notice of a filing of a petition and certificate of eligibility or special certificate to the prosecutorial office that handled the court proceedings within three days after the day on which the petitioner's filing fee is paid or waived.
- 424 (b) If there were no court proceedings, the court shall provide notice of a filing of a petition and certificate of eligibility or special certificate to the county attorney's office in the jurisdiction where the arrest occurred.
- 427 (c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention, or conviction, was a city attorney's office, the county attorney's office in the jurisdiction where the arrest occurred shall immediately notify the city attorney's office that the county attorney's office has received a notice of a filing of a petition for expungement.
- 431 (6)
- . (a) Upon receipt of a notice of a filing of a petition for expungement of a conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney shall make a reasonable effort to provide notice to any victim of the conviction or charge.
- 435 (b) The notice under Subsection (6)(a) shall:
- 436

HB0297 compared with HB0297S01

- (i) include a copy of the petition, certificate of eligibility or special certificate, statutes, and rules applicable to the petition;
- 438 (ii) state that the victim has a right to object to the expungement; and
- 439 (iii) provide instructions for registering an objection with the court.
- 440 (7)
- . (a) The prosecuting attorney may respond to the petition by filing a recommendation or objection with the court within 35 days after the day on which the notice of the filing of the petition is sent by the court to the prosecuting attorney.
- 443 (b) If there is a victim of the offense for which expungement is sought, the victim may respond to the petition by filing a recommendation or objection with the court within 60 days after the day on which the petition for expungement was filed with the court.
- 446 (8)
- . (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.
- 448 (b) If requested, the response prepared by the Division of Adult Probation and Parole shall include:
- 450 (i) the reasons probation was terminated; and
- 451 (ii) certification that the petitioner has completed all requirements of sentencing and probation or parole.
- 453 (c) The Division of Adult Probation and Parole shall provide a copy of the response to the petitioner and the prosecuting attorney.
- 455 (9) The petitioner may respond in writing to any objections filed by the prosecuting attorney or the victim and the response prepared by the Division of Adult Probation and Parole within 14 days after the day on which the objection or response is received.
- 458 (10)
- . (a) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing.
- 461 (b) The prosecuting attorney shall notify the victim of the date set for the hearing.
- 462 (c) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.
- 464 (d) The court shall review the petition, the certificate of eligibility or special certificate, and any written responses submitted regarding the petition.

HB0297 compared with HB0297S01

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

468 (12)

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

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

486 Section 7. Section **77-40a-306** is amended to read:

487 **77-40a-306. Order of expungement.**

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

485 (a) except as provided in Subsection (1)(b) and Subsection 77-40a-305(3) or (4):

486 (i) the certificate of eligibility is valid at the time the petition for expungement was filed with the court
and contains the information needed for the court to issue an order for expungement; and

489 (ii) the statutory requirements for expungement have been met;

490 (b) if the petitioner obtained a special certificate from the bureau:

491 (i) the special certificate is valid at the time the petition for expungement was filed with the court; and

493 (ii) there is sufficient information in the petition for the court to determine that the statutory
requirements for expungement have been met;

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

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

501

HB0297 compared with HB0297S01

- (i) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and
- 504 (ii) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (1)(d)(i);
- 506 (e) if an objection is received, the petition for expungement is for a charge dismissed in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used for enhancement, there is good cause for the court to grant the expungement; and
- 510 (f) the interests of the public would not be harmed by granting the expungement.
- 511 (2)
- . (a) If the court denies a petition described in Subsection (1)(c) because the prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of eligibility if charges are not refiled within 180 days after the day on which the court denies the petition.
- 515 (b) A prosecuting attorney who opposes an expungement of a case dismissed without prejudice, or without condition, shall have a good faith basis for the intention to refile the case.
- 518 (c) A court shall consider the number of times that good faith basis of intention to refile by the prosecuting attorney is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (1)(c).
- 521 (3) If the court grants a petition described in Subsection (1)(e), the court shall make the court's findings in a written order.
- 523 (4) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be, or should not have been, issued under Section 77-40a-302 or 77-40a-303.
- 525 (5) If the court issues an order of expungement under this section, the court shall:
- 526 (a) expunge all records of the case as described in Section 77-40a-401;
- 527 (b) notify the bureau of the order of expungement in a manner specified by the department; and
- 529 (c) provide the bureau with the order of expungement and all relevant information available to the court that the bureau will need to identify an expunged record.
- 531 (6)
- . (a) The petitioner may request certified copies of an order of expungement within 28 days after the day on which the court issues an order of expungement.
- 533 (b) If a petitioner makes a request under Subsection (6)(a), the court shall provide the petitioner with certified copies of the order of expungement.

HB0297 compared with HB0297S01

541 Section 8. Section **78B-7-109** is amended to read:

542 **78B-7-109. Continuing duty to inform court of other proceedings -- Effect of other**
543 **proceedings.**

538 (1) Each party has a continuing duty to inform the court of each proceeding for a civil protective order
or a criminal protective order, any civil litigation, each proceeding in juvenile court, and each
criminal case involving either party, including the case name, the file number, and the county and
state of the proceeding, if that information is known by the party.

543 (2)

(a) A civil protective order issued under this chapter is in addition to and not in lieu of any other
available civil or criminal proceeding.

545 (b) A petitioner is not barred from seeking a civil protective order because of other pending
proceedings.

547 (c) A court may not delay granting a civil protective order under this chapter because of the existence of
a pending civil action between the parties.

549 (d) If a petitioner seeks a civil protective order based upon facts related to an arrest, investigation,
detention, charging, or conviction of the respondent, the court may consider the facts when
determining whether to issue a civil protective order even if the records of the arrest, investigation,
detention, charging, or conviction are expunged.

554 (3) A petitioner may omit the petitioner's address from all documents filed with the court under this
chapter, but shall separately provide the court with a mailing address that is not to be made part of
the public record, but that may be provided to a peace officer or entity for service of process.

564 Section 9. Section **80-6-1001.2** is amended to read:

565 **80-6-1001.2. Venue for petition seeking expungement.**

Notwithstanding Section 78A-6-350 and Title 78B, Chapter 3a, Venue for Civil Actions,
a petitioner shall bring a petition for expungement under this part:

562 (1) in the court [~~where the~~] that presided over the final proceedings in a case if a petition for
delinquency was filed; or

564 (2) if a petition for delinquency was never filed, in the juvenile court in the [~~county~~] judicial district in
which the last arrest occurred or the citation was [~~issued~~] resolved.

572 Section 10. **Effective date.**

This bill takes effect on May 7, 2025.

HB0297 compared with HB0297S01

574

Section 11. Coordinating H.B. 297 with S.B. 41.

If H.B. 297, Expungement Amendments, and S.B. 41, Sex, Kidnap, and Child Abuse Offender Registry Amendments, both pass and become law, the Legislature intends that, on May 7, 2025, Subsection 77-40a-303(2)(a) be amended to read:

"(a) except as provided in Subsection (3), the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

(iii) a felony conviction of a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) a felony conviction described in Subsection 41-6a-501(2); or

(v) an offense, or a combination of offenses, [~~that would require the individual to register as a sex offender, as defined in Section 77-41-102; or~~]that require registration as a sex offender, kidnap offender, or child abuse offender under Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Registry, at the time of the application for the certificate of eligibility;

[~~(vi) a registerable child abuse offense as defined in Subsection 77-41-102(1);~~] ".

2-6-25 11:06 AM