

Karianne Lisonbee proposes the following substitute bill:

Expungement Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tiara Auxier

Senate Sponsor: Brady Brammer

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;
 - 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;
 - addresses the effect of an expungement on a civil protective order;
 - modifies venue for a petition seeking expungement of juvenile records;
 - 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
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

29 This bill provides a coordination clause.

30 **Utah Code Sections Affected:**

31 AMENDS:

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

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

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

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

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

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

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

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

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

41 **Utah Code Sections affected by Coordination Clause:**

42 **77-40a-303**, as last amended by Laws of Utah 2024, Chapter 180



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.**

47 As used in this chapter:

- 48 (1) "Agency" means a state, county, or local government entity that generates or maintains
- 49 records relating to an investigation, arrest, detention, or conviction for an offense for
- 50 which expungement may be ordered.
- 51 (2) "Automatic expungement" means the expungement of records of an investigation,
- 52 arrest, detention, or conviction of an offense without the filing of a petition.
- 53 (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public
- 54 Safety established in Section 53-10-201.
- 55 (4) "Certificate of eligibility" means a document issued by the bureau stating that the
- 56 criminal record and all records of arrest, investigation, and detention associated with a
- 57 case that is the subject of a petition for expungement is eligible for expungement.
- 58 (5) "Civil accounts receivable" means the same as that term is defined in Section
- 59 77-32b-102.
- 60 (6) "Civil judgment of restitution" means the same as that term is defined in Section
- 61 77-32b-102.
- 62 (7) "Civil protective order" means the same as that term is defined in Section 78B-7-102.

63 [~~(7)~~] (8) "Clean slate eligible case" means a case that is eligible for automatic expungement
64 under Section 77-40a-205.

65 [~~(8)~~] (9) "Conviction" means judgment by a criminal court on a verdict or finding of guilty
66 after trial, a plea of guilty, or a plea of nolo contendere.

67 [~~(9)~~] (10) "Court" means a district court or a justice court.

68 [~~(10)~~] (11) "Criminal accounts receivable" means the same as that term is defined in Section
69 77-32b-102.

70 [~~(11)~~] (12) "Criminal protective order" means the same as that term is defined in Section
71 78B-7-102.

72 [~~(12)~~] (13) "Criminal stalking injunction" means the same as that term is defined in Section
73 78B-7-102.

74 [~~(13)~~] (14) "Department" means the Department of Public Safety established in Section
75 53-1-103.

76 [~~(14)~~] (15) "Drug possession offense" means:

77 (a) an offense described in Subsection 58-37-8(2), except for:

78 (i) an offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more
79 of marijuana;

80 (ii) an offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional
81 facility; or

82 (iii) an offense for driving with a controlled substance illegally in the person's body
83 and negligently causing serious bodily injury or death of another, as codified
84 before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection
85 58-37-8(2)(g);

86 (b) an offense described in Subsection 58-37a-5(1), use or possession of drug
87 paraphernalia;

88 (c) an offense described in Section 58-37b-6, possession or use of an imitation
89 controlled substance; or

90 (d) any local ordinance which is substantially similar to any of the offenses described in
91 this Subsection [~~(14)~~] (15).

92 [~~(15)~~] (16)(a) "Expunge" means to remove a record from public inspection by:

93 (i) sealing the record; or

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

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

96 [~~(16)~~] (17) "Indigent" means a financial status that results from a court finding that a

97 petitioner is financially unable to pay the fee to file a petition for expungement under
98 Section 78A-2-302.

99 ~~[(17)]~~ (18) "Jurisdiction" means a state, district, province, political subdivision, territory, or
100 possession of the United States or any foreign country.

101 ~~[(18)]~~ (19)(a) "Minor regulatory offense" means~~[-except as provided in Subsection~~
102 ~~(18)(e);]~~ a class B or C misdemeanor offense or a local ordinance.

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

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

105 (i) any drug possession offense;

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

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

109 (iv) except as provided in Subsection ~~[(18)(b)]~~ (19)(b), an offense under Title 76,
110 Utah Criminal Code; or

111 (v) any local ordinance that is substantially similar to an offense listed in Subsections [
112 ~~(18)(e)(i)]~~ (19)(c)(i) through (iv).

113 ~~[(19)]~~ (20) "Petitioner" means an individual applying for expungement under this chapter.

114 ~~[(20)]~~ (21) "Plea in abeyance" means the same as that term is defined in Section 77-2a-1.

115 ~~[(21)]~~ (22) "Record" means a book, letter, document, paper, map, plan, photograph, film,
116 card, tape, recording, electronic data, or other documentary material, regardless of
117 physical form or characteristics, that:

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

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

121 ~~[(22)]~~ (23) "Special certificate" means a document issued as described in Subsection
122 77-40a-304(1)(c) by the bureau stating that the criminal record and all records of arrest,
123 investigation, and detention associated with the case ~~[that is the subject of a petition for~~
124 ~~expungement is eligible for expungement]~~ do not clearly demonstrate whether the case is
125 eligible for expungement.

126 ~~[(23)]~~ (24)(a) "Traffic offense" means~~[-except as provided in Subsection (23)(b)]:~~

127 (i) an infraction or a class C misdemeanor offense under Title 41, Chapter 1a, Motor
128 Vehicle Act;

129 ~~[(i)]~~ (ii) an infraction, a class B misdemeanor offense, or a class C misdemeanor
130 offense under Title 41, Chapter 6a, Traffic Code;

- 131 (iii) an infraction or a class C misdemeanor offense under Title 41, Chapter 12a,
 132 Financial Responsibility of Motor Vehicle Owners and Operators Act;
 133 [~~(ii)~~] (iv) an infraction, a class B misdemeanor offense, or a class C misdemeanor
 134 offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;
 135 [~~(iii)~~] (v) an infraction, a class B misdemeanor offense, or a class C misdemeanor
 136 offense under Title 73, Chapter 18, State Boating Act; and
 137 [~~(iv)~~] (vi) all local ordinances that are substantially similar to an offense listed in
 138 Subsections [~~(23)(a)(i)~~] (24)(a)(i) through (iii).
- 139 (b) "Traffic offense" does not ~~mean~~ include:
- 140 (i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
 141 Reckless Driving;
- 142 (ii) an offense under Section 41-12a-302 for operating a motor vehicle without
 143 owner's or operator's security;
- 144 (iii) an offense under Section 41-12a-303.3 for providing false evidence of owner's or
 145 operator's security;
- 146 [~~(ii)~~] (iv) an offense under Sections 73-18-13 through 73-18-13.6; or
 147 [~~(iii)~~] (v) any local ordinance that is substantially similar to an offense listed in
 148 Subsection [~~(23)(b)(i)~~] (24)(b)(i) or (ii).

149 [~~(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.**

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

- 154 (1) implement procedures for processing an automatic expungement;
 155 (2) implement procedures for applying for certificates of eligibility;
 156 (3) specify procedures for receiving a certificate of eligibility;
 157 (4) specify the procedure for notification of an order of expungement under Subsection
 158 77-40a-306(5)(b);
 159 [~~(4)~~] (5) create forms and determine information necessary to be provided to the bureau; and
 160 [~~(5)~~] (6) implement procedures for the confirmation of an expungement under Subsection
 161 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.**

- 164 (1) A court shall issue an order of expungement, without the filing of a petition, for all

- 165 records of the case that are held by the court and the bureau if:
- 166 (a) on and after October 1, 2024, but before January 1, 2026, the individual submitted a
167 form requesting expungement of a case as described in Section 77-40a-204;
- 168 (b) the case is eligible for expungement under this section; and
- 169 (c) the prosecuting agency does not object to the expungement of the case as described
170 in Subsection (6).
- 171 (2) Except as otherwise provided in Subsection (3), a case is eligible for expungement
172 under this section if:
- 173 (a)(i) each conviction within the case is a conviction for:
- 174 (A) a misdemeanor offense for possession of a controlled substance in violation of
175 Subsection 58-37-8(2)(a)(i);
- 176 (B) a class B misdemeanor offense;
- 177 (C) a class C misdemeanor offense; or
- 178 (D) an infraction; and
- 179 (ii) the following time periods have passed after the day on which the individual is
180 adjudicated:
- 181 (A) at least five years for the conviction of a class C misdemeanor offense or an
182 infraction;
- 183 (B) at least six years for the conviction of a class B misdemeanor offense; or
- 184 (C) at least seven years for the conviction of a class A misdemeanor offense for
185 possession of a controlled substance in violation of Subsection 58-37-8
186 (2)(a)(i); or
- 187 (b)(i) the case is dismissed as a result of a successful completion of a plea in
188 abeyance agreement governed by Subsection 77-2a-3(2)(b) or the case is
189 dismissed without prejudice;
- 190 (ii) each charge within the case is:
- 191 (A) a misdemeanor offense for possession of a controlled substance in violation of
192 Subsection 58-37-8(2)(a)(i);
- 193 (B) a class B misdemeanor offense;
- 194 (C) a class C misdemeanor offense; or
- 195 (D) an infraction; and
- 196 (iii) the following time periods have passed after the day on which the case is
197 dismissed:
- 198 (A) at least five years for a charge in the case for a class C misdemeanor offense

- 199 or an infraction;
- 200 (B) at least six years for a charge in the case for a class B misdemeanor offense; or
- 201 (C) at least seven years for a charge in the case for a class A misdemeanor offense
- 202 for possession of a controlled substance in violation of Subsection 58-37-8
- 203 (2)(a)(i).
- 204 (3) A case is not eligible for expungement under this section if:
- 205 (a) the individual has a total number of convictions in courts of this state that exceed the
- 206 limits under Subsection 77-40a-303(4) or (5) without taking into consideration:
- 207 (i) the exception in Subsection 77-40a-303(7); or
- 208 (ii) any infraction, traffic offense, or minor regulatory offense;
- 209 (b) there is a criminal proceeding for a misdemeanor or felony offense pending in a
- 210 court of this state against the individual, unless the proceeding is for a traffic offense;
- 211 (c) for an individual seeking an automatic expungement on and after January 1, 2025,
- 212 the individual is incarcerated in the state prison or on probation or parole that is
- 213 supervised by the Department of Corrections;
- 214 (d) the case resulted in the individual being found not guilty by reason of insanity;
- 215 (e) the case establishes a criminal accounts receivable that:
- 216 (i) has been entered as a civil accounts receivable or a civil judgment of restitution
- 217 and transferred to the Office of State Debt Collection under Section 77-18-114; or
- 218 (ii) has not been satisfied according to court records; or
- 219 (f) the case resulted in a plea held in abeyance or a conviction for the following offenses:
- 220 (i) any of the offenses listed in Subsection 77-40a-303(2)(a);
- 221 (ii) an offense against the person in violation of Title 76, Chapter 5, Offenses Against
- 222 the Individual;
- 223 (iii) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
- 224 (iv) sexual battery in violation of Section 76-9-702.1;
- 225 (v) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
- 226 (vi) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the
- 227 Influence and Reckless Driving;
- 228 (vii) damage to or interruption of a communication device in violation of Section
- 229 76-6-108;
- 230 (viii) a domestic violence offense as defined in Section 77-36-1; [or]
- 231 (ix) driving under the influence of alcohol, drugs, or a combination of both, or with
- 232 specified or unsafe blood alcohol concentration, as codified before February 2,

- 233 2005, Laws of Utah 2005, Chapter 2; or
- 234 [~~(ix)~~] (x) any other offense classified in the Utah Code as a felony or a class A
- 235 misdemeanor other than a class A misdemeanor conviction for possession of a
- 236 controlled substance in violation of Subsection 58-37-8(2)(a)(i).
- 237 (4) A prosecuting agency that has complied with Rule 42 of the Utah Rules of Criminal
- 238 Procedure shall receive notice on a monthly basis for any case prosecuted by that agency
- 239 that appears to be eligible for automatic expungement under this section.
- 240 (5) Within 35 days after the day on which the notice described in Subsection (4) is sent, the
- 241 prosecuting agency shall provide written notice in accordance with Rule 42 of the Utah
- 242 Rules of Criminal Procedure if the prosecuting agency objects to an automatic
- 243 expungement for any of the following reasons:
- 244 (a) the prosecuting agency believes that the case is not eligible for expungement under
- 245 this section after reviewing the agency record;
- 246 (b) the individual has not paid restitution to the victim as ordered by the court; or
- 247 (c) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an
- 248 individual involved in the case is continuing to engage in criminal activity within or
- 249 outside of the state.
- 250 (6) If a prosecuting agency provides written notice of an objection for a reason described in
- 251 Subsection (5) within 35 days after the day on which the notice under Subsection (4) is
- 252 sent, the court may not proceed with automatic expungement of the case.
- 253 (7) If 35 days pass after the day on which the notice described in Subsection (4) is sent
- 254 without the prosecuting agency providing written notice of an objection under
- 255 Subsection (5), the court shall proceed with automatic expungement of the case.
- 256 (8) If a court issues an order of expungement under Subsection (1), the court shall:
- 257 (a) expunge all records of the case held by the court in accordance with Section
- 258 77-40a-401; and
- 259 (b) notify the bureau and the prosecuting agency identified in the case, based on
- 260 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.**
- 263 (1) Upon receiving notice from a court of an expungement order under this part, the bureau
- 264 shall expunge all records of the case in accordance with Section 77-40a-401.
- 265 (2)(a) Notwithstanding Subsection (1) or Section 77-40a-205, the bureau may request
- 266 that a court vacate an expungement order issued under this part if the bureau

267 determines that:

268 (i) the order is expunging:

269 (A) a case that was dismissed as a result of a plea held in abeyance; or

270 (B) a conviction of an offense; and

271 (ii) the offense was not eligible for expungement under this part at the time that the
272 court issued the order.

273 (b) The court shall vacate an expungement order issued under this part if the court
274 determines that the offense was not eligible for expungement under this part at the
275 time the court issued the order.

276 [~~2~~] (3) The bureau shall forward a copy of the expungement order to the Federal Bureau of
277 Investigation.

278 [~~3~~] (4) Except for the court and the bureau, an agency is not required to expunge all
279 records of a case that is automatically expunged under this part.

280 *The following section is affected by a coordination clause at the end of this bill.*

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**
283 **conviction.**

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

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

288 (b) the petitioner has paid in full all restitution ordered by the court under Section
289 77-38b-205; and

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

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

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

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

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

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

- 301 (vi) four years for the conviction of a class B misdemeanor; or
302 (vii) three years for the conviction of a class C misdemeanor or infraction.
- 303 (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau to
304 expunge the records of a conviction under Subsection (1) if:
- 305 (a) except as provided in Subsection (3), the conviction for which expungement is
306 sought is:
- 307 (i) a capital felony;
308 (ii) a first degree felony;
309 (iii) a felony conviction of a violent felony as defined in Subsection 76-3-203.5
310 (1)(c)(i);
311 (iv) a felony conviction described in Subsection 41-6a-501(2); ~~or~~
312 (v) an offense, or a combination of offenses, ~~[that would require the individual to~~
313 ~~register as a sex offender, as defined in Section 77-41-102]~~ that require registration
314 as a sex offender, kidnap offender, or child abuse offender under Chapter 41, Sex,
315 Kidnap, and Child Abuse Offender Registry, at the time of the application for the
316 certificate of eligibility; [or]
317 ~~[(vi) a registerable child abuse offense as defined in Subsection 77-41-102(1);]~~
- 318 (b) there is a criminal proceeding for a misdemeanor or felony offense pending against
319 the petitioner, unless the criminal proceeding is for a traffic offense;
- 320 (c) there is a plea in abeyance for a misdemeanor or felony offense pending against the
321 petitioner, unless the plea in abeyance is for a traffic offense;
- 322 (d) the petitioner is currently incarcerated, on parole, or on probation, unless the
323 petitioner is on probation or parole for an infraction, a traffic offense, or a minor
324 regulatory offense;
- 325 (e) the petitioner intentionally or knowingly provides false or misleading information on
326 the application for a certificate of eligibility;
- 327 (f) there is a civil protective order, a criminal protective order, or a criminal stalking
328 injunction against the petitioner that is in effect~~[for the case];~~ or
- 329 (g) the bureau determines that the petitioner's criminal history makes the petitioner
330 ineligible for a certificate of eligibility under Subsection (4) or (5).
- 331 (3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as
332 defined in Section 76-3-209, if, at the time of the offense, a petitioner who committed
333 the offense was at least 14 years old but under 18 years old, unless the petitioner was
334 convicted by a district court as an adult in accordance with Title 80, Chapter 6, Part 5, [

- 335 ~~Transfer to District Court]~~ Minor Tried as an Adult.
- 336 (4) Subject to Subsections (6), (7), and (8), a petitioner is not eligible to receive a certificate
337 of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau
338 determines that the petitioner's criminal history, including previously expunged
339 convictions, contains any of the following:
- 340 (a) two or more felony convictions other than for drug possession offenses, each of
341 which is contained in a separate criminal episode;
- 342 (b) any combination of three or more convictions other than for drug possession offenses
343 that include two class A misdemeanor convictions, each of which is contained in a
344 separate criminal episode;
- 345 (c) any combination of four or more convictions other than for drug possession offenses
346 that include three class B misdemeanor convictions, each of which is contained in a
347 separate criminal episode; or
- 348 (d) five or more convictions other than for drug possession offenses of any degree
349 whether misdemeanor or felony, each of which is contained in a separate criminal
350 episode.
- 351 (5) Subject to Subsections (7) and (8), a petitioner is not eligible to receive a certificate of
352 eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau
353 determines that the petitioner's criminal history, including previously expunged
354 convictions, contains any of the following:
- 355 (a) three or more felony convictions for drug possession offenses, each of which is
356 contained in a separate criminal episode; or
- 357 (b) any combination of five or more convictions for drug possession offenses, each of
358 which is contained in a separate criminal episode.
- 359 (6) If the petitioner's criminal history contains convictions for both a drug possession
360 offense and a non-drug possession offense arising from the same criminal episode, the
361 bureau shall count that criminal episode as a conviction under Subsection (4) if any
362 non-drug possession offense in that episode:
- 363 (a) is a felony or class A misdemeanor; or
- 364 (b) has the same or a longer waiting period under Subsection (1)(c) than any drug
365 possession offense in that episode.
- 366 (7) Except as provided in Subsection (8), if at least 10 years have passed after the day on
367 which the petitioner was convicted or released from incarceration, parole, or probation,
368 whichever occurred last, for all convictions:

- 369 (a) each numerical eligibility limit under Subsections (4)(a) and (b) shall be increased by
 370 one; and
- 371 (b) each numerical eligibility limit under Subsections (4)(c) and (d) is not applicable if
 372 the highest level of convicted offense in the criminal episode is:
- 373 (i) a class B misdemeanor;
- 374 (ii) a class C misdemeanor;
- 375 (iii) a drug possession offense if none of the non-drug possession offenses in the
 376 criminal episode are a felony or a class A misdemeanor; or
- 377 (iv) an infraction.
- 378 (8) When determining whether a petitioner is eligible for a certificate of eligibility under
 379 Subsection (4), (5), or (7), the bureau may not consider a petitioner's pending case or
 380 prior conviction for:
- 381 (a) an infraction;
- 382 (b) a traffic offense;
- 383 (c) a minor regulatory offense; or
- 384 (d) a clean slate eligible case that was automatically expunged.
- 385 (9) If the petitioner received a pardon before May 14, 2013, from the [Utah] Board of
 386 Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned
 387 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.**
- 390 (1)(a) The petitioner shall file a petition for expungement in accordance with Rule 42 of
 391 the Utah Rules of Criminal Procedure.
- 392 (b) A petitioner shall include the identification number for the certificate of eligibility or
 393 special certificate described in Subsection 77-40a-304(2)(b)(ii) in the petition for
 394 expungement, unless the petitioner is not required to obtain a certificate of eligibility
 395 under Subsection (3) or (4).
- 396 (c) Information on a certificate of eligibility is incorporated into a petition by reference
 397 to the identification number for the certificate of eligibility.
- 398 (d) A petitioner shall bring a petition for expungement, including a petition for
 399 expungement for which the petitioner obtained a special certificate:
- 400 (i) in the court where the criminal case was filed; [or]
- 401 (ii) if the court in which the criminal case was filed no longer exists, in the court that
 402 would have jurisdiction over the criminal case if the criminal case were filed on

- 403 the day on which the petition is brought; or
404 [(ii)] (iii) if charges were never filed, in the district court in the county in which the
405 arrest occurred or the citation is issued.
- 406 (2)(a) If a petition for expungement is filed under Subsection (1)(a), the court shall
407 obtain a certificate of eligibility or special certificate from the bureau.
- 408 (b) A court may not accept a petition for expungement if the certificate of eligibility or
409 special certificate is no longer valid as described in Subsection 77-40a-304(2)(b)(i).
- 410 (3) Notwithstanding Subsection (2), the petitioner may file a petition for expungement of a
411 traffic offense case without obtaining a certificate of eligibility if:
- 412 (a)(i) for a traffic offense case with a class C misdemeanor or infraction, at least three
413 years have passed after the day on which the case was adjudicated or dismissed; or
414 (ii) for a traffic offense case with a class B misdemeanor, at least four years have
415 passed after the day on which the case was adjudicated or dismissed;
- 416 (b) there is no traffic offense case pending against the petitioner;
- 417 (c) there is no plea in abeyance for a traffic offense case pending against the petitioner;
- 418 and
- 419 (d) the petitioner is not currently on probation for a traffic offense case.
- 420 (4) Notwithstanding Subsection (2), a petitioner may file a petition for expungement of a
421 record for a conviction related to cannabis possession without a certificate of eligibility
422 if the petition demonstrates that:
- 423 (a) the petitioner had, at the time of the relevant arrest or citation leading to the
424 conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and
- 425 (b) the possession of cannabis in question was in a form and an amount to medicinally
426 treat the qualifying condition described in Subsection (4)(a).
- 427 (5)(a) The court shall provide notice of a filing of a petition and certificate of eligibility
428 or special certificate to the prosecutorial office that handled the court proceedings
429 within three days after the day on which the petitioner's filing fee is paid or waived.
- 430 (b) If there were no court proceedings, the court shall provide notice of a filing of a
431 petition and certificate of eligibility or special certificate to the county attorney's
432 office in the jurisdiction where the arrest occurred.
- 433 (c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention, or
434 conviction, was a city attorney's office, the county attorney's office in the jurisdiction
435 where the arrest occurred shall immediately notify the city attorney's office that the
436 county attorney's office has received a notice of a filing of a petition for expungement.

- 437 (6)(a) Upon receipt of a notice of a filing of a petition for expungement of a conviction
438 or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney
439 shall make a reasonable effort to provide notice to any victim of the conviction or
440 charge.
- 441 (b) The notice under Subsection (6)(a) shall:
- 442 (i) include a copy of the petition, certificate of eligibility or special certificate,
443 statutes, and rules applicable to the petition;
- 444 (ii) state that the victim has a right to object to the expungement; and
- 445 (iii) provide instructions for registering an objection with the court.
- 446 (7)(a) The prosecuting attorney may respond to the petition by filing a recommendation
447 or objection with the court within 35 days after the day on which the notice of the
448 filing of the petition is sent by the court to the prosecuting attorney.
- 449 (b) If there is a victim of the offense for which expungement is sought, the victim may
450 respond to the petition by filing a recommendation or objection with the court within
451 60 days after the day on which the petition for expungement was filed with the court.
- 452 (8)(a) The court may request a written response to the petition from the Division of
453 Adult Probation and Parole within the Department of Corrections.
- 454 (b) If requested, the response prepared by the Division of Adult Probation and Parole
455 shall include:
- 456 (i) the reasons probation was terminated; and
- 457 (ii) certification that the petitioner has completed all requirements of sentencing and
458 probation or parole.
- 459 (c) The Division of Adult Probation and Parole shall provide a copy of the response to
460 the petitioner and the prosecuting attorney.
- 461 (9) The petitioner may respond in writing to any objections filed by the prosecuting
462 attorney or the victim and the response prepared by the Division of Adult Probation and
463 Parole within 14 days after the day on which the objection or response is received.
- 464 (10)(a) If the court receives an objection concerning the petition from any party, the
465 court shall set a date for a hearing and notify the petitioner and the prosecuting
466 attorney of the date set for the hearing.
- 467 (b) The prosecuting attorney shall notify the victim of the date set for the hearing.
- 468 (c) The petitioner, the prosecuting attorney, the victim, and any other person who has
469 relevant information about the petitioner may testify at the hearing.
- 470 (d) The court shall review the petition, the certificate of eligibility or special certificate,

471 and any written responses submitted regarding the petition.

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

474 (12)(a) If the petitioner seeks a waiver of the fee required for a petition for expungement
475 in accordance with Section 78A-2-302, the court shall consider the total number of
476 cases for which the petitioner has received a certificate of eligibility and is seeking
477 expungement in determining whether the petitioner is indigent under Subsection
478 78A-2-302(3)(e) even if the court does not have jurisdiction over a case for which the
479 petitioner is seeking expungement.

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

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

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

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

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

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

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

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

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

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

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

504 (d) if the petitioner seeks expungement without a certificate of eligibility for

- 505 expungement under Subsection 77-40a-305(4) for a record of conviction related to
506 cannabis possession:
- 507 (i) the petitioner had, at the time of the relevant arrest or citation leading to the
508 conviction, a qualifying condition, as that term is defined in Section 26B-4-201;
509 and
- 510 (ii) the possession of cannabis in question was in a form and an amount to
511 medicinally treat the qualifying condition described in Subsection (1)(d)(i);
- 512 (e) if an objection is received, the petition for expungement is for a charge dismissed in
513 accordance with a plea in abeyance agreement, and the charge is an offense eligible
514 to be used for enhancement, there is good cause for the court to grant the
515 expungement; and
- 516 (f) the interests of the public would not be harmed by granting the expungement.
- 517 (2)(a) If the court denies a petition described in Subsection (1)(c) because the
518 prosecuting attorney intends to refile charges, the petitioner may apply again for a
519 certificate of eligibility if charges are not refiled within 180 days after the day on
520 which the court denies the petition.
- 521 (b) A prosecuting attorney who opposes an expungement of a case dismissed without
522 prejudice, or without condition, shall have a good faith basis for the intention to refile
523 the case.
- 524 (c) A court shall consider the number of times that good faith basis of intention to refile
525 by the prosecuting attorney is presented to the court in making the court's
526 determination to grant the petition for expungement described in Subsection (1)(c).
- 527 (3) If the court grants a petition described in Subsection (1)(e), the court shall make the
528 court's findings in a written order.
- 529 (4) A court may not expunge a conviction of an offense for which a certificate of eligibility
530 may not be, or should not have been, issued under Section 77-40a-302 or 77-40a-303.
- 531 (5) If the court issues an order of expungement under this section, the court shall:
- 532 (a) expunge all records of the case as described in Section 77-40a-401;
- 533 (b) notify the bureau of the order of expungement in a manner specified by the
534 department; and
- 535 (c) provide the bureau with the order of expungement and all relevant information
536 available to the court that the bureau will need to identify an expunged record.
- 537 (6)(a) The petitioner may request certified copies of an order of expungement within 28
538 days after the day on which the court issues an order of expungement.

539 (b) If a petitioner makes a request under Subsection (6)(a), the court shall provide the
540 petitioner with certified copies of the order of expungement.

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**
543 **other proceedings.**

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

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

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

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

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

560 (3) A petitioner may omit the petitioner's address from all documents filed with the court
561 under this chapter, but shall separately provide the court with a mailing address that is
562 not to be made part of the public record, but that may be provided to a peace officer or
563 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.**

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

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

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

572 Section 10. **Effective Date.**

573 This bill takes effect on May 7, 2025.

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

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

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

580 (i) a capital felony;

581 (ii) a first degree felony;

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

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

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

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