

**Representative Karianne Lisonbee** proposes the following substitute bill:

**MODIFICATIONS TO EXPUNGEMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karianne Lisonbee**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses the waiver of fees, and eligibility, for expungement of a criminal record.

**Highlighted Provisions:**

This bill:

- ▶ modifies expungement eligibility requirements;
- ▶ defines the term "indigent" for purposes of a petition for expungement;
- ▶ repeals the suspension of the fee for a certificate of eligibility to qualify for expungement;
- ▶ modifies the date of the suspension of the fee to file a petition for expungement;
- ▶ requires the Bureau of Criminal Identification to waive the fee for a certificate of eligibility if a court finds that the individual filing the petition for expungement is indigent; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **63I-1-277**, as last amended by Laws of Utah 2022, Chapter 384 and last amended by  
29 Coordination Clause, Laws of Utah 2022, Chapter 384

30 **63I-1-278**, as last amended by Laws of Utah 2022, Chapters 188, 318, 384, and 423

31 **77-40a-101**, as last amended by Laws of Utah 2022, Chapters 116, 430 and renumbered  
32 and amended by Laws of Utah 2022, Chapter 250

33 **77-40a-301**, as enacted by Laws of Utah 2022, Chapter 250

34 **77-40a-304**, as last amended by Laws of Utah 2022, Chapter 384 and renumbered and  
35 amended by Laws of Utah 2022, Chapter 250 and last amended by Coordination  
36 Clause, Laws of Utah 2022, Chapter 384



37  
38 *Be it enacted by the Legislature of the state of Utah:*

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

40 **63I-1-277. Repeal dates: Title 77.**

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42 ~~eligibility, is repealed on July 1, 2023.~~]

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

44 **63I-1-278. Repeal dates: Title 78A and Title 78B.**

45 (1) Subsections **78A-2-301**(4) and **78A-2-301.5**(12), regarding the suspension of filing  
46 fees for petitions for expungement, are repealed on [~~July 1, 2023~~] May 3, 2023.

47 (2) Section **78B-3-421**, regarding medical malpractice arbitration agreements, is  
48 repealed July 1, 2029.

49 (3) Subsection **78A-7-106**(6), regarding the transfer of a criminal action involving a  
50 domestic violence offense from the justice court to the district court, is repealed on July 1,  
51 2024.

52 (4) Section **78B-4-518**, regarding the limitation on employer liability for an employee  
53 convicted of an offense, is repealed on July 1, 2025.

54 (5) Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, is repealed July 1,  
55 2026.

56 (6) Title 78B, Chapter 12, Part 4, Advisory Committee, which creates the Child

57 Support Guidelines Advisory Committee, is repealed July 1, 2026.

58 (7) Section 78B-22-805, regarding the Interdisciplinary Parental Representation Pilot  
59 Program, is repealed December 31, 2024.

60 Section 3. Section 77-40a-101 is amended to read:

61 **77-40a-101. Definitions.**

62 As used in this chapter:

63 (1) "Agency" means a state, county, or local government entity that generates or  
64 maintains records relating to an investigation, arrest, detention, or conviction for an offense for  
65 which expungement may be ordered.

66 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
67 Safety established in Section 53-10-201.

68 (3) "Certificate of eligibility" means a document issued by the bureau stating that the  
69 criminal record and all records of arrest, investigation, and detention associated with a case that  
70 is the subject of a petition for expungement is eligible for expungement.

71 (4) (a) Except as provided in Subsection (4)(c), "clean slate eligible case" means a  
72 case:

73 (i) where each conviction within the case is:

74 (A) a misdemeanor conviction for possession of a controlled substance in violation of  
75 Subsection 58-37-8(2)(a)(i);

76 (B) a class B or class C misdemeanor conviction; or

77 (C) an infraction conviction;

78 (ii) before July 1, 2025, that involves an individual:

79 (A) whose total number of convictions in Utah state courts, not including infractions,  
80 traffic offenses, or minor regulatory offenses, does not exceed the limits described in  
81 Subsections 77-40a-303(5) and (6) without taking into consideration the exception in  
82 Subsection 77-40a-303(8); and

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

84 (iii) beginning on July 1, 2025, that involves an individual:

85 (A) whose total number of convictions in Utah state courts, not including infractions,  
86 traffic offenses, or minor regulatory offenses, does not exceed the limits described in  
87 Subsections 77-40a-303(5) and (6) without taking into consideration the exception in

88 Subsection 77-40a-303(8);

89 (B) against whom no criminal proceedings are pending in the state; and

90 (C) who is not currently incarcerated, on probation, or on parole; and

91 [(iii)] (iv) for which the following time periods have elapsed from the day on which the  
92 case is adjudicated:

93 (A) at least five years for a class C misdemeanor or an infraction;

94 (B) at least six years for a class B misdemeanor; and

95 (C) at least seven years for a class A conviction for possession of a controlled

96 substance in violation of Subsection 58-37-8(2)(a)(i).

97 (b) "Clean slate eligible case" includes a case:

98 (i) that is dismissed as a result of a successful completion of a plea in abeyance  
99 agreement governed by Subsection 77-2a-3(2)(b) if:

100 (A) except as provided in Subsection (4)(c), each charge within the case is a  
101 misdemeanor for possession of a controlled substance in violation of Subsection  
102 58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;

103 (B) the individual involved meets the requirements of Subsection (4)(a)(ii) or  
104 (4)(a)(iii), as applicable; and

105 (C) the time periods described in Subsections ~~[(4)(a)(iii)(A)]~~ (4)(a)(iv)(A) through (C)  
106 have elapsed from the day on which the case is dismissed; or

107 (ii) where charges are dismissed without prejudice if each conviction, or charge that  
108 was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or  
109 (b)(i).

110 (c) "Clean slate eligible case" does not include a case:

111 (i) where the individual is found not guilty by reason of insanity;

112 (ii) where the case establishes a criminal accounts receivable, as defined in Section  
113 77-32b-102, that:

114 (A) has been entered as a civil accounts receivable or a civil judgment of restitution, as  
115 those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt  
116 Collection under Section 77-18-114; or

117 (B) has not been satisfied according to court records; or

118 (iii) that resulted in one or more pleas held in abeyance or convictions for the following

119 offenses:

120 (A) any of the offenses listed in Subsection 77-40a-303(1)(a);

121 (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against  
122 the Individual;

123 (C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;

124 (D) sexual battery in violation of Section 76-9-702.1;

125 (E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;

126 (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence  
127 and Reckless Driving;

128 (G) damage to or interruption of a communication device in violation of Section  
129 76-6-108;

130 (H) a domestic violence offense as defined in Section 77-36-1; or

131 (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor  
132 other than a class A misdemeanor conviction for possession of a controlled substance in  
133 violation of Subsection 58-37-8(2)(a)(i).

134 (5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty  
135 after trial, a plea of guilty, or a plea of nolo contendere.

136 (6) "Criminal protective order" means the same as that term is defined in Section  
137 78B-7-102.

138 (7) "Criminal stalking injunction" means the same as that term is defined in Section  
139 78B-7-102.

140 (8) "Department" means the Department of Public Safety established in Section  
141 53-1-103.

142 (9) "Drug possession offense" means an offense under:

143 (a) Subsection 58-37-8(2), except:

144 (i) any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of  
145 marijuana;

146 (ii) any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional  
147 facility; or

148 (iii) driving with a controlled substance illegally in the person's body and negligently  
149 causing serious bodily injury or death of another, as codified before May 4, 2022, Laws of Utah

150 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

151 (b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

152 (c) Section 58-37b-6, possession or use of an imitation controlled substance; or

153 (d) any local ordinance which is substantially similar to any of the offenses described

154 in this Subsection (9).

155 (10) "Expunge" means to seal or otherwise restrict access to the individual's record

156 held by an agency when the record includes a criminal investigation, detention, arrest, or

157 conviction.

158 (11) "Indigent" means a court found a petitioner financially unable to pay the fee to file

159 a petition for expungement under Section 78A-2-302.

160 [(H)] (12) "Jurisdiction" means a state, district, province, political subdivision,

161 territory, or possession of the United States or any foreign country.

162 [(12)] (13) (a) Except as provided in Subsection [(12)(c)] (13)(c), "minor regulatory

163 offense" means a class B or C misdemeanor or a local ordinance.

164 (b) "Minor regulatory offense" includes an offense under Section 76-9-701 or

165 76-10-105.

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

167 (i) any drug possession offense;

168 (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and

169 Reckless Driving;

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

171 (iv) except as provided in Subsection [(12)(b)] (13)(b), an offense under Title 76, Utah

172 Criminal Code; or

173 (v) any local ordinance that is substantially similar to an offense listed in Subsections

174 [(12)(c)(i)] (13)(c)(i) through (iv).

175 [(13)] (14) "Petitioner" means an individual applying for expungement under this

176 chapter.

177 [(14)] (15) (a) "Traffic offense" means:

178 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,

179 Chapter 6a, Traffic Code;

180 (ii) an offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;

181 (iii) an offense under Title 73, Chapter 18, State Boating Act; and  
 182 (iv) all local ordinances that are substantially similar to an offense listed in Subsections  
 183 ~~[(14)(a)(i)]~~ (15)(a)(i) through (iii).

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

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

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

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

190 ~~[(15)]~~ (16) "Traffic offense case" means that each offense in the case is a traffic  
 191 offense.

192 Section 4. Section **77-40a-301** is amended to read:

193 **77-40a-301. Application for certificate of eligibility for expungement -- Penalty**  
 194 **for false or misleading information on application.**

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

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

200 (b) if the individual is qualified to receive a certificate of eligibility, except as provided  
 201 in Subsection 77-40a-304(2)(d) or (5), pay the issuance fee for the certificate of eligibility as  
 202 described in Section 77-40a-304; and

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

204 (2) (a) An individual who intentionally or knowingly provides any false or misleading  
 205 information to the bureau when applying for a certificate of eligibility is guilty of a class B  
 206 misdemeanor and subject to prosecution under Section 76-8-504.6.

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

209 Section 5. Section **77-40a-304** is amended to read:

210 **77-40a-304. Certificate of eligibility process -- Issuance of certificate -- Fees --**  
 211 **Waiver of issuance fee.**

212 (1) (a) When a petitioner applies for a certificate of eligibility as described in  
213 Subsection 77-40a-301(1), the bureau shall perform a check of records of governmental  
214 agencies, including national criminal data bases, to determine whether the petitioner is eligible  
215 to receive a certificate of eligibility under this chapter.

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

219 (c) Once the eligibility process is complete, the bureau shall notify the petitioner.

220 (d) If the petitioner meets all of the criteria under Section 77-40a-302 or 77-40a-303:

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

223 (ii) the bureau shall provide a petitioner with an identification number for the  
224 certificate of eligibility; and

225 (iii) the petitioner shall pay the issuance fee established by the department as described  
226 in Subsection (2).

227 (e) If, after reasonable research, a disposition for an arrest on the criminal history file is  
228 unobtainable, the bureau may issue a special certificate giving determination of eligibility to  
229 the court if:

230 (i) there are no criminal proceedings or pleas in abeyance pending against the  
231 petitioner; and

232 (ii) the petitioner is not currently on probation or parole.

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

235 (b) The application fee shall be paid at the time the petitioner submits an application  
236 for a certificate of eligibility to the bureau.

237 (c) ~~[H]~~ Except as provided in Subsection (2)(d), if the bureau determines that the  
238 issuance of a certificate of eligibility or special certificate is appropriate, the petitioner ~~[will be~~  
239 ~~charged]~~ shall pay an additional fee for the issuance of a certificate of eligibility or special  
240 certificate ~~[unless Subsection (2)(d) applies].~~

241 (d) ~~[An issuance fee may not be assessed against a petitioner who]~~ The bureau shall  
242 issue a certificate of eligibility or special certificate without requiring payment of the issuance



243 fee if the petitioner:

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

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

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

254 (3) The bureau shall include on the certificate of eligibility all information that is  
255 needed for the court to issue a valid expungement order.

256 (4) The bureau shall provide clear written instructions to the petitioner that explain:

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

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

260 (5) If the bureau issues a certificate of eligibility or a special certificate without  
261 requiring payment of the issuance fee under Subsection (2)(d)(ii), the bureau shall charge the  
262 petitioner the issuance fee upon the bureau's receipt of an order deciding a petition for  
263 expungement unless the court communicates to the bureau that the fee to file the petition for  
264 expungement was waived because the petitioner is indigent.

265 (6) (a) If the petitioner qualifies for a waiver of the issuance fee under Subsection (5)  
266 and the order grants the petition for expungement, the bureau shall process the order in  
267 accordance with Section 77-40a-401 as if the petitioner paid the issuance fee.

268 (b) If the petitioner does not qualify for a waiver of the issuance fee under Subsection  
269 (5) and the order grants the petition for expungement, the bureau may not process the order in  
270 accordance with Section 77-40a-401 until the petitioner pays the issuance fee.

271 (7) If, under Subsection (2)(d)(ii), the bureau issues a certificate of eligibility or special  
272 certificate without requiring payment of the issuance fee, the bureau may not charge the  
273 petitioner an issuance fee on the grounds that the validity of the certificate described in

274 Subsection (1)(d)(i) has expired.

275 [~~(5) (a) The requirement for a petitioner to pay an issuance fee for a certificate of~~  
276 ~~eligibility or a special certificate of eligibility under Subsection (2) is suspended from May 4,~~  
277 ~~2022, to June 30, 2023.]~~

278 [~~(b) The bureau may not charge a fee for the issuance of a certificate of eligibility or a~~  
279 ~~special certificate of eligibility during the time period described in Subsection (5)(a).]~~