

SB0293S01 compared with SB0293

~~deleted text~~ shows text that was in SB0293 but was deleted in SB0293S01.

inserted text shows text that was not in SB0293 but was inserted into SB0293S01.

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Representative Marsha Judkins proposes the following substitute bill:

EXPUNGEMENT REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: ~~_____~~ Marsha Judkins

LONG TITLE

General Description:

This bill amends provisions related to expungement.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the rulemaking authority of the Department of Public Safety;
- ▶ amends the requirements for a certificate of eligibility to expunge records of arrest, investigation, and detention;
- ▶ amends the requirements for a certificate of eligibility to expunge records of a conviction;
- ▶ amends the requirements for a petition for expungement for a traffic offense case;
- ▶ addresses a victim's response to a petition for expungement;

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- ▶ requires an agency to provide written confirmation of expungement if the individual who received the expungement requests confirmation;
- ▶ allows the Bureau of Criminal Identification to charge a fee for providing a written confirmation of an expungement;
- ▶ amends the list of agencies that can access an expunged record;
- ▶ allows an individual who receives an expungement to request confirmation of an expungement from an agency;
- ▶ clarifies a statutory provision regarding a hearing for the expungement of a protective order; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

77-40a-104, as renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-302, as renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-303, as last amended by Laws of Utah 2022, Chapter 116 and renumbered and amended by Laws of Utah 2022, Chapter 250

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

77-40a-305, as last amended by Laws of Utah 2022, Chapter 384 and renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-401, as renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-402, as renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-403, as renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-404, as renumbered and amended by Laws of Utah 2022, Chapter 250

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78B-7-1003, as enacted by Laws of Utah 2022, Chapter 270

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

Section 1. Section **77-40a-101** is amended to read:

77-40a-101. Definitions.

As used in this chapter:

(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.

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

(3) "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.

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

(i) where each conviction within the case is:

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

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

(C) an infraction conviction;

(ii) that involves an individual:

(A) whose total number of convictions in Utah state courts, not including infractions, traffic offenses, or minor regulatory offenses, does not exceed the limits described in Subsections [~~77-40a-303(5) and (6)~~] 77-40a-303(4) and (5) without taking into consideration the exception in Subsection [~~77-40a-303(8)~~] 77-40a-303(7); and

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

(iii) for which the following time periods have elapsed from the day on which the case is adjudicated:

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

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

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(C) at least seven years for a class A conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).

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

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

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

(B) the individual involved meets the requirements of Subsection (4)(a)(ii); and

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

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

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

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

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

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

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

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

(A) any of the offenses listed in Subsection [~~77-40a-303(1)(a)~~] 77-40a-303(2)(a);

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

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

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

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

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

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and Reckless Driving;

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

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

(I) 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).

(5) "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.

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

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

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

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

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

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

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

(iii) 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);

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

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

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection (9).

(10) "Expunge" means to seal or otherwise restrict access to the individual's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.

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

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

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

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

(i) any drug possession offense;

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

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

(iv) except as provided in Subsection (12)(b), an offense under Title 76, Utah Criminal Code; or

(v) any local ordinance that is substantially similar to an offense listed in Subsections (12)(c)(i) through (iv).

(13) "Petitioner" means an individual applying for expungement under this chapter.

(14) "Plea in abeyance" means the same as that term is defined in Section 77-2a-1.

~~[(14)]~~ (15) (a) "Traffic offense" means, except as provided in Subsection ~~(14)~~ (15)(b):

(i) [~~all infractions, class B misdemeanors, and class C misdemeanors in~~] an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 41, Chapter 6a, Traffic Code;

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

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

(iv) all local ordinances that are substantially similar to an offense listed in Subsections ~~(14)(a)(i)~~ (15)(a)(i) through (iii).

(b) "Traffic offense" does not mean:

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

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

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

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

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

77-40a-104. ~~{Rulemaking}~~ Department rulemaking authority.

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

(1) implement procedures for processing an automatic expungement;

(2) implement procedures for applying for certificates of eligibility;

(3) specify procedures for receiving a certificate of eligibility; ~~and~~

(4) create forms and determine information necessary to be provided to the bureau ~~;~~

~~Section 2}[:]; and~~

(5) implement procedures for the confirmation of an expungement under Subsection 77-40a-403(2).

Section 3. Section 77-40a-302 is amended to read:

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

~~[An individual who is arrested or formally charged with an offense is eligible to receive a certificate of eligibility from the bureau to expunge the records of arrest, investigation, and detention that may have been made in the case if:]~~

~~[(1) at least 30 days have passed since the day of the arrest for which a certificate of eligibility is sought;]~~

~~[(2) there are no criminal proceedings or pleas in abeyance pending against the individual;]~~

~~[(3) the individual is not currently on probation or parole;]~~

~~[(4) there is not a criminal protective order or a criminal stalking injunction in effect for the case;]~~

~~[(5) there are no convictions in the case for a traffic offense; and]~~

~~[(6) one of the following occurs:]~~

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~~[(a) charges are screened by the investigating law enforcement agency and the prosecuting attorney makes a final determination that no charges will be filed in the case;]~~

~~[(b) (i) all charges contained in the case are dismissed; and]~~

~~[(ii) if any charge contained in the case is dismissed without prejudice or without condition:]~~

~~[(A) the prosecuting attorney consents in writing to the issuance of a certificate of eligibility; or]~~

~~[(B) at least 180 days have passed since the day on which the charge is dismissed;]~~

~~[(c) the individual is acquitted at trial on all of the charges contained in the case; or]~~

~~[(d) the statute of limitations expires on all of the charges contained in the case.]~~

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

(a) ~~{except as provided in Subsection (1)(c), }~~at least 30 days have passed ~~{from}~~after the day on which the individual is arrested or charged for the offense;

(b) one of the following occurs:

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

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

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

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

(B) at least 180 days have passed ~~{from}~~after the day on which the charge is dismissed;

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

(v) the statute of limitations expires on all of the charges in the case; and

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

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

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offense.

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

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

(b) 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;

(c) 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; or

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

Section ~~3~~4. Section 77-40a-303 is amended to read:

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

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

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

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

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

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

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

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

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

(v) five years for the conviction of a class A misdemeanor ~~or a felony~~;

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

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

~~[(1) Except as provided in Subsections (2) and (4), an individual]~~

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

(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);

(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

(vi) a registerable child abuse offense as defined in Subsection 77-43-102(2);

(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;

(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;

(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;

~~[(b) a criminal proceeding or a plea in abeyance is pending against the petitioner;]~~

~~[(c) the petitioner is on probation or parole;]~~

~~[(d)]~~ (e) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility; ~~[or]~~

~~[(e)]~~ (f) there is a criminal protective order or a criminal stalking injunction ~~[is]~~ in effect for the case~~[-:];~~ or

(g) the bureau determines that the petitioner's criminal history makes the petitioner ineligible for a certificate of eligibility under Subsection (4) or (5).

(3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as

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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.

~~[(2) The eligibility limitation described in Subsection (1) does not apply in relation to a conviction for a qualifying sexual offense, as defined in Subsection 76-3-209(1), if, at the time of the offense, the individual who committed the offense was at least 14 years old, but under 18 years old, unless the conviction occurred in district court after the individual was:]~~

~~[(a) charged by criminal information under Section 80-6-502 or 80-6-503; and]~~

~~[(b) bound over to district court under Section 80-6-504.]~~

~~[(3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:]~~

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

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

~~[(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:]~~

~~[(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);]~~

~~[(ii) seven years in the case of a felony;]~~

~~[(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;]~~

~~[(iv) four years in the case of a class B misdemeanor; or]~~

~~[(v) three years in the case of any other misdemeanor or infraction.]~~

~~[(4) When determining whether to issue a certificate of eligibility for a conviction, the bureau may not consider:]~~

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~~[(a) a petitioner's pending or previous:]~~

~~[(i) infraction;]~~

~~[(ii) traffic offense;]~~

~~[(iii) minor regulatory offense; or]~~

~~[(iv) clean slate eligible case that was automatically expunged in accordance with Section 77-40a-201; or]~~

~~[(b) a fine or fee related to an offense described in Subsection (4)(a).]~~

~~[(5) Except as provided in Subsection (8), the bureau may not issue a certificate of eligibility for a conviction if, at the time the petitioner seeks a certificate of eligibility,]~~

(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:

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

(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;

(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

(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.

~~[(6) Except as provided in Subsection (8), the bureau may not issue a certificate of eligibility for a conviction if, at the time the petitioner seeks a certificate of eligibility,]~~

(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:

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

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

~~[(7)]~~ (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, ~~[that criminal episode shall be counted as provided in Subsection (5)]~~ the bureau shall count that criminal episode as a conviction under Subsection (4) if any non-drug possession offense in that episode:

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

(b) has the same or a longer waiting period under Subsection ~~[(3)]~~ (1)(c) than any drug possession offense in that episode.

~~[(8) If at least 10 years have elapsed from the date]~~ ~~{}~~

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

(a) each numerical eligibility limit ~~[defined in Subsections (5)(a) and (b)]~~ under Subsections (4)(a) and (b) shall be increased by one; and

(b) each numerical eligibility limit ~~[defined in Subsections (5)(c), (5)(d), and (6) are not applicable and the bureau may issue a certificate of eligibility if:]~~ under Subsections (4)(c) and (d) is not applicable if the highest level of convicted offense in the criminal episode is:

~~[(i) the individual is otherwise eligible; and]~~

~~[(ii) the highest convicted offense in the criminal episode for each conviction is:]~~

~~[(A)]~~ (i) a class B misdemeanor;

~~[(B)]~~ (ii) a class C misdemeanor;

~~[(C)]~~ (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

~~[(D)]~~ (iv) an infraction.

(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:

(a) an infraction;

(b) a traffic offense;

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(c) a minor regulatory offense; or

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

(9) [~~If, prior to May 14, 2013, the petitioner has received a pardon~~] 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.

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

77-40a-304. ~~§~~Certificate of eligibility process -- Issuance of certificate -- Fees.

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

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

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

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

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

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

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

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

~~[(i) there are no criminal proceedings or pleas in abeyance pending against the petitioner; and]~~

~~[(ii) the petitioner is not currently on probation or parole.]~~

(i) there is a criminal proceeding for a misdemeanor or felony offense pending against

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the petitioner, unless the criminal proceeding is for a traffic offense;

(ii) 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; or

(iii) 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.

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

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

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

(d) An issuance fee may not be assessed against a petitioner who qualifies for a certificate of eligibility under Section 77-40a-302 unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

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

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

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

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

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

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

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

Section ~~(4)~~6. Section **77-40a-305** is amended to read:

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

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

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

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

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

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

(a) (i) for a traffic offense case with a class C misdemeanor or infraction, at least three years have ~~[elapsed from]~~ passed after ~~{ from }~~ the day on which the petitioner was convicted;
or

(ii) for a traffic offense case with a class B misdemeanor, at least four years have ~~[elapsed from]~~ passed after ~~{ from }~~ the day on which the petitioner was convicted ~~[, and]~~;

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

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

and

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

~~[(b) all convictions in the case for the traffic conviction are for traffic offenses.]~~

(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:

(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 26-61a-102; and

(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).

(5) (a) The court shall provide notice of a filing of a petition and certificate of eligibility to the prosecutorial office that handled the court proceedings within three days after

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the day on which the petitioner's filing fee is paid or waived.

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

(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.

(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.

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

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

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

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

(7) (a) The prosecuting attorney [~~and the victim, if applicable,~~] 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.

(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.

(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.

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

(i) the reasons probation was terminated; and

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

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

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(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.

(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.

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

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

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

(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.

Section 7. Section 77-40a-401 is amended to read:

77-40a-401. Distribution of order -- Redaction -- Receipt of order -- Bureau requirements -- Administrative proceedings.

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

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

(i) sentenced to prison in this state; or

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

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

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

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

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

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

(5) Unless ordered by a court to do so, or in accordance with [Subsection 77-40a-403(2)] Section 77-40a-403, a government agency or official may not divulge information or records that have been expunged.

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

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

(7) An expungement order may not:

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

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

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

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

Section 8. Section 77-40a-402 is amended to read:

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

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

(2) To complete delivery of the order for vacatur to the bureau, the individual shall complete and attach to the order for vacatur an application for a certificate of eligibility for

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expungement, including identifying information and fingerprints, in accordance with Section 77-40a-301.

(3) Except as otherwise provided in this section, the bureau shall treat the order for vacatur and attached certificate of eligibility for expungement the same as a valid order for expungement under Section 77-40a-401.

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

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

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

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

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

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

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

Section 9. Section 77-40a-403 is amended to read:

77-40a-403. Retention and release of expunged records -- Agencies.

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

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

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

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

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

~~[(2)] (3) [(a) (i)] (a) An employee of the bureau, or any agency with an expunged record, may not divulge any information contained in the expunged record to any person or agency without a court order unless:~~

~~[(A)] (i) specifically authorized by statute; or~~

~~[(B)] (ii) subject to Subsection [(2)(a)(ii)] (3)(b), the information in an expunged record is being shared with another agency through a records management system that both agencies use for the purpose of record management.~~

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

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

~~[(i)] (a) the Board of Pardons and Parole;~~

~~[(ii)] (b) Peace Officer Standards and Training;~~

~~[(iii)] (c) federal authorities if required by federal law;~~

~~[(iv)] the Department of Commerce;~~

~~[(v)] the Department of Insurance;~~

~~[(vi)] (d) the State Board of Education;~~

~~[(vii)] (e) the Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office; and~~

~~[(viii)] (f) a research institution or an agency engaged in research regarding the criminal justice system if:~~

~~[(A)] (i) the research institution or agency provides a legitimate research purpose for gathering information from the expunged records;~~

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

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

~~[(D)] (iv) any product resulting from research using expunged records includes a~~

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disclosure that expunged records were used for research purposes.

~~[(c)]~~ (5) Except as otherwise provided by this ~~[Subsection (2)]~~ section or by court order, a person, an agency, or an entity authorized by this ~~[Subsection (2)]~~ section to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the specific request, including distribution on a public website.

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

~~[(i)]~~ (a) stalking as described in Section 76-5-106.5;

~~[(ii)]~~ (b) a domestic violence offense as defined in Section 77-36-1;

~~[(iii)]~~ (c) an offense that would require the individual to register as a sex offender, as defined in Section 77-41-102; or

~~[(iv)]~~ (d) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.

~~[(e)]~~ (7) Except as provided in Subsection ~~[(4)]~~ (9), a prosecuting attorney may not use an expunged record for the purpose of a sentencing enhancement or as a basis for charging an individual with an offense that requires a prior conviction.

~~[(3)]~~ (8) The bureau may also use the information in the bureau's index as provided in Section 53-5-704.

~~[(4)]~~ (9) If, after obtaining an expungement, an individual is charged with a felony or an offense eligible for enhancement based on a prior conviction, the state may petition the court to open the expunged records upon a showing of good cause.

~~[(5)]~~ (10) (a) For judicial sentencing, a court may order any records expunged under this chapter or Section 77-27-5.1 to be opened and admitted into evidence.

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

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

(d) Any person authorized by this Subsection ~~[(5)]~~ (10) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the

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court.

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

Section 10. Section 77-40a-404 is amended to read:

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

[A record expunged under this chapter or Section 77-27-5.1 may be released to or viewed by:]

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

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

[(1)] (a) the petitioner or an individual who receives an automatic expungement under Section 77-40a-201;

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

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

Section 11. Section 78B-7-1003 is amended to read:

78B-7-1003. Requirements for expungement of protective order or stalking injunction.

(1) (a) An individual against whom a civil order is sought may petition the court to expunge records of the civil order.

(b) A petition under Subsection (1)(a) shall be filed in accordance with the Utah Rules of Civil Procedure.

(2) (a) The petitioner shall provide notice to the individual whom filed the civil order against the petitioner in accordance with Rule 4 of the Utah Rules of Civil Procedure.

(b) The individual who filed the civil order against the petitioner:

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(i) may file a written objection with the court within 30 days after the day on which the petition is received by the individual; and

(ii) if the individual files a written objection, provide a copy of the written objection to the petitioner.

(c) If the court receives a written objection to the petition for expungement of a civil order, the court shall:

(i) set a date for a hearing on the petition;

(ii) provide notice at least 30 days before the day on which the hearing is held to:

(A) all parties of the civil order; and

(B) any other person or agency that the court has reason to believe may have relevant information related to the expungement of the civil order.

(d) The petitioner may respond, in writing, to any written objection within 14 days after the day on which the written objection is received by the court.

(3) If no written objection is received within 60 days from the day on which the petition for expungement is filed under Subsection (1), the court may grant the expungement in accordance with Subsection (4) or (5) without a hearing.

(4) A court may expunge an ex parte civil protective order or an ex parte civil stalking injunction if:

(a) the ex parte civil protective order or the ex parte civil stalking injunction was issued but:

(i) the ex parte civil protective order or the ex parte civil stalking injunction is dismissed, dissolved, or expired upon a hearing by the court;

(ii) the court did not issue a civil protective order or a civil stalking injunction on the same circumstances for which the ex parte civil protective order or the ex parte civil stalking injunction was issued;

(iii) at least 30 days have passed from the day on which the ex parte civil protective order or the ex parte civil stalking injunction was issued;

(iv) the petitioner has not been arrested, charged, or convicted for violating the ex parte civil protective order or ex parte civil stalking injunction; and

(v) there are no criminal proceedings pending against the petitioner in the state; or

(b) (i) the individual who filed the ex parte civil protective order or the ex parte civil

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stalking injunction failed to appear for the hearing on the ex parte civil protective order or ex parte civil stalking injunction;

(ii) at least 30 days have passed from the day on which the hearing on the ex parte civil protective order or the ex parte civil stalking injunction was set to occur, including any continuance, postponement, or rescheduling of the hearing;

(iii) the petitioner has not been arrested, charged, or convicted for violating the ex parte civil protective order or ex parte civil stalking injunction; and

(iv) there are no criminal proceedings pending against the petitioner in the state.

(5) A court may expunge a civil protective order or a civil stalking injunction if:

(a) the civil protective order or the civil stalking injunction has been dismissed, dissolved, vacated, or expired;

(b) three years have passed from the day on which the civil protective order or the civil stalking injunction is dismissed, dissolved, vacated, or expired;

(c) the petitioner has not been arrested, charged, or convicted for violating the civil protective order or the civil stalking injunction; and

(d) there are no criminal proceedings pending against the petitioner in the state.