Senator Kirk A. Cullimore proposes the following substitute bill:

1	AMENDMENTS TO EXPUNGEMENT
2	2024 GENERAL SESSION
3	STATE OF UTAH
4	Chief Sponsor: Karianne Lisonbee
5	Senate Sponsor: Michael S. Kennedy
6 7	LONG TITLE
8	General Description:
9	This bill addresses the expungement of records.
0	Highlighted Provisions:
1	This bill:
2	 repeals sunset dates regarding issuance and filing fees for expungement;
3	 repeals language relating to the suspension of issuance fees for certificates of
4	eligibility for expungement and filing fees for petitions for expungement;
5	 creates a sunset date for an expungement working group;
6	 creates an expungement working group to study issues related to automatic
7	expungement;
8	allows a court to issue an order of expungement for a plea in abeyance when the
9	defendant has completed a problem solving court program and the court dismisses
0	the case against the defendant;
1	 defines terms related to expungement;
2	 clarifies automatic deletion of a traffic offense;
3	 amends provisions related to the automatic expungement of a case, including:
4	• requiring an individual to submit a form to receive an automatic expungement
5	on and after October 1, 2024, but before January 1, 2026;

26	• providing that a court automatically expunge cases that are eligible for
27	expungement on and after January 1, 2026;
28	• for an individual seeking an automatic expungement on and after January 1,
29	2025, prohibiting an automatic expungement if the individual is incarcerated in
30	the state prison or on probation or parole that is supervised by the Department of
31	Corrections; and
32	• prohibiting an automatic expungement if there is a criminal proceeding pending
33	in this state against the individual for a misdemeanor or felony offense, unless
34	the proceeding is for a traffic offense;
35	 provides that the court and Bureau of Criminal Identification are the only agencies
36	that expunge records affected by an automatic expungement order;
37	 clarifies the certificate of eligibility process;
38	 allows for the waiver of an issuance fee for a certificate of eligibility or a special
39	certificate if a court finds that the individual filing the petition for expungement is
40	indigent;
41	 requires a court to consider the total number of cases for which an individual has
42	received a certificate of expungement when determining whether the individual is
43	indigent;
44	 requires a subsequent court to waive a filing fee for a petition for expungement if a
45	prior court found the individual to be indigent within 180 days before the filing of
46	the petition for expungement;
47	 clarifies the distribution of an expungement order based on a petition and the
48	expungement of records affected by an expungement order based on a petition;
49	 establishes the priority of expungement orders that are processed by a court and the
50	Bureau of Criminal Identification;
51	 requires an agency to develop and implement a process to identify expunged records
52	and keep, index, and maintain all expunged records of arrest;
53	 clarifies the effect of an expungement;
54	addresses the waiver of a fee for a petition for expungement when the individual has
55	previously received a waiver for a petition for expungement from a prior court;
56	► requires the Administrative Office of the Courts to include a warning on an affidavit

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57	of indigency;
58	 clarifies the expungement of records regarding protective orders, stalking
59	injunctions, and juvenile records;
60	 repeals a statute regarding the time periods for expungement or deletion and
61	identifying and processing clean slate eligible cases; and
62	 makes technical and conforming changes.
63	Money Appropriated in this Bill:
64	None
65	Other Special Clauses:
66	This bill provides a special effective date.
67	This bill provides a coordination clause.
68	Utah Code Sections Affected:
69	AMENDS:
70	63I-1-277, as last amended by Laws of Utah 2022, Chapter 384 and last amended by
71	Coordination Clause, Laws of Utah 2022, Chapter 384
72	63I-1-278, as last amended by Laws of Utah 2022, Chapters 188, 318, 384, and 423
73	63I-2-263 , as last amended by Laws of Utah 2023, Chapters 33, 139, 212, 354, and 530
74	77-2a-3, as last amended by Laws of Utah 2023, Chapters 113, 415
75	77-40a-101, as last amended by Laws of Utah 2023, Chapter 265
76	77-40a-104, as last amended by Laws of Utah 2023, Chapter 265
77	77-40a-201, as renumbered and amended by Laws of Utah 2022, Chapter 250
78	77-40a-202, as renumbered and amended by Laws of Utah 2022, Chapter 250
79	77-40a-301, as enacted by Laws of Utah 2022, Chapter 250
80	77-40a-302, as last amended by Laws of Utah 2023, Chapter 265
81	77-40a-303, as last amended by Laws of Utah 2023, Chapter 265
82	77-40a-304, as last amended by Laws of Utah 2023, Chapter 265
83	77-40a-305, as last amended by Laws of Utah 2023, Chapters 265, 330
84	77-40a-306, as last amended by Laws of Utah 2023, Chapter 330
85	77-40a-401, as last amended by Laws of Utah 2023, Chapter 265
86	77-40a-402, as last amended by Laws of Utah 2023, Chapter 265
87	77-40a-403, as last amended by Laws of Utah 2023, Chapter 265

88	77-40a-404, as last amended by Laws of Utah 2023, Chapter 265
89	78A-2-302, as last amended by Laws of Utah 2023, Chapter 184
90	78A-7-209.5, as enacted by Laws of Utah 2022, Chapter 276
91	78B-7-1001, as enacted by Laws of Utah 2022, Chapter 270
92	78B-7-1004, as enacted by Laws of Utah 2022, Chapter 270
93	80-6-1001, as last amended by Laws of Utah 2023, Chapter 115
94	80-6-1006.1, as enacted by Laws of Utah 2023, Chapter 115
95	ENACTS:
96	63M-7-221, Utah Code Annotated 1953
97	77-40a-204, Utah Code Annotated 1953
98	77-40a-205, Utah Code Annotated 1953
99	77-40a-206, Utah Code Annotated 1953
100	77-40a-207, Utah Code Annotated 1953
101	77-40a-307, Utah Code Annotated 1953
102	REPEALS:
103	77-40a-203, as renumbered and amended by Laws of Utah 2022, Chapter 250
104	Utah Code Sections Affected By Coordination Clause:
105	77-40a-301, as enacted by Laws of Utah 2022, Chapter 250
106	77-40a-304, as last amended by Laws of Utah 2023, Chapter 265
107	77-40a-306, as last amended by Laws of Utah 2023, Chapter 330
108	77-40a-403, as last amended by Laws of Utah 2023, Chapter 265
109	78A-2-302, as last amended by Laws of Utah 2023, Chapter 184
110	
111	Be it enacted by the Legislature of the state of Utah:
112	Section 1. Section 63I-1-277 is amended to read:
113	63I-1-277. Repeal dates: Title 77.
114	[Subsection 77-40a-304(5), regarding the suspension of issuance fees for certificates of
115	eligibility, is repealed on July 1, 2023.] Reserved.
116	Section 2. Section 63I-1-278 is amended to read:
117	63I-1-278. Repeal dates: Title 78A and Title 78B.
118	[(1) Subsections 78A-2-301(4) and 78A-2-301.5(12), regarding the suspension of filing

119	fees for petitions for expungement, are repealed on July 1, 2023.]
120	[(2)] (1) Section 78B-3-421, regarding medical malpractice arbitration agreements, is
121	repealed July 1, 2029.
122	[(3)] (2) Subsection 78A-7-106(6), regarding the transfer of a criminal action involving
123	a domestic violence offense from the justice court to the district court, is repealed on July 1,
124	2024.
125	[(4)] (3) Section 78B-4-518, regarding the limitation on employer liability for an
126	employee convicted of an offense, is repealed on July 1, 2025.
127	[(5)] (4) Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, is repealed
128	July 1, 2026.
129	[(6)] (5) Title 78B, Chapter 12, Part 4, Advisory Committee, which creates the Child
130	Support Guidelines Advisory Committee, is repealed July 1, 2026.
131	[(7)] (6) Section 78B-22-805, regarding the Interdisciplinary Parental Representation
132	Pilot Program, is repealed December 31, 2024.
133	Section 3. Section 631-2-263 is amended to read:
134	63I-2-263. Repeal dates: Title 63A to Title 63N.
135	(1) Title 63A, Chapter 2, Part 5, Educational Interpretation and Translation Services
136	Procurement Advisory Council is repealed July 1, 2025.
137	(2) Section 63A-17-303 is repealed July 1, 2023.
138	(3) Section 63A-17-806 is repealed June 30, 2026.
139	(4) Title 63C, Chapter 22, Digital Wellness, Citizenship, and Safe Technology
140	Commission is repealed July 1, 2023.
141	(5) Section 63H-7a-303 is repealed July 1, 2024.
142	(6) Subsection $63H-7a-403(2)(b)$, regarding the charge to maintain the public safety
143	communications network, is repealed July 1, 2033.
144	(7) Subsection 63J-1-602.2(45), which lists appropriations to the State Tax
145	Commission for property tax deferral reimbursements, is repealed July 1, 2027.
146	(8) Section <u>63M-7-221</u> , establishing an expungement working group, is repealed on
147	<u>April 30, 2025.</u>
148	[(8)] (9) Subsection 63N-2-213(12)(a), relating to claiming a tax credit in the same
149	taxable year as the targeted business income tax credit, is repealed December 31, 2024.

150	[(9)] (10) Title 63N, Chapter 2, Part 3, Targeted Business Income Tax Credit in an
151	Enterprise Zone, is repealed December 31, 2024.
152	Section 4. Section 63M-7-221 is enacted to read:
153	<u>63M-7-221.</u> Expungement working group.
154	(1) As used in this section:
155	(a) "Agency" means the same as that term is defined in Section 77-40a-101.
156	(b) "Automatic expungement" means the same as that term is defined in Section
157	<u>77-40a-101.</u>
158	(2) The commission shall establish a working group to:
159	(a) study the challenges of implementing automatic expungement under Title 77,
160	Chapter 40a, Part 2, Automatic Expungement and Deletion;
161	(b) determine the time and resources that an agency would need to implement
162	automatic expungement under Title 77, Chapter 40a, Automatic Expungement and Deletion;
163	(c) determine whether an investment in technology is needed or could be helpful in
164	implementing automatic expungement under Chapter 40a, Automatic Expungement and
165	Deletion; and
166	(d) consider possible statutory changes to improve the implementation of automatic
167	expungement under Chapter 40a, Automatic Expungement and Deletion.
168	(3) The working group described in Subsection (2) shall consist of:
169	(a) at least one representative of:
170	(i) the Bureau of Criminal Identification established in Section 53-10-201;
171	(ii) the Administrative Office of the Courts;
172	(iii) a local law enforcement agency; and
173	(iv) an advocacy group that represents or assists individuals with expungement; and
174	(b) any other individual or organization recommended by the executive director of the
175	commission.
176	(4) On or before November 1, 2024, the commission shall provide a written report to
177	the Judiciary Interim Committee describing:
178	(a) the information gathered by the working group under Subsection (2); and
179	(b) any recommendations for statutory changes with respect to the information
180	gathered by the working group under Subsection (2).

181	Section 5. Section 77-2a-3 is amended to read:
182	77-2a-3. Manner of entry of plea Powers of court Expungement.
183	(1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be
184	done in full compliance with the Utah Rules of Criminal Procedure, Rule 11.
185	(b) In cases charging offenses for which bail may be forfeited, a plea in abeyance
186	agreement may be entered into without a personal appearance before a magistrate.
187	(2) A plea in abeyance agreement may provide that the court may, upon finding that the
188	defendant has successfully completed the terms of the agreement:
189	(a) reduce the degree of the offense [and enter judgment of conviction and impose
190	sentence for a lower degree of offense; or], enter a judgment of conviction for the lower degree
191	of the offense, and impose a sentence for the lower degree of the offense;
192	(b) allow withdrawal of the defendant's plea and order the dismissal of the case[-]; or
193	(c) issue an order of expungement for all records of the offense if:
194	(i) the defendant successfully completes a problem solving court program that is
195	certified by the Judicial Council; and
196	(ii) the court allows the withdrawal of the defendant's plea and orders the dismissal of
197	the case.
198	(3) (a) Upon finding that a defendant has successfully completed the terms of a plea in
199	abeyance agreement and only as provided in the plea in abeyance agreement or as agreed to by
200	all parties, the court may [reduce the degree of the offense or dismiss the case only as provided
201	in the plea in abeyance agreement or as agreed to by all parties.]:
202	(i) reduce the degree of the offense, enter a judgment of conviction for the lower degree
203	of the offense, and impose a sentence for the lower degree of the offense;
204	(ii) allow withdrawal of the defendant's plea and order the dismissal of the case; or
205	(iii) issue an order of expungement for all records of the offense if:
206	(A) the defendant successfully completes a problem solving court program that is
207	certified by the Judicial Council; and
208	(B) the court allows the withdrawal of the defendant's plea and orders the dismissal of
209	the case.
210	(b) Upon sentencing a defendant for any lesser offense in accordance with a plea in
211	abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of

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the offense.

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

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

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

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

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

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

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

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(ii) a certification from the prosecuting attorney that:

(A) the prosecuting attorney has consulted with all victims, including the Utah Officefor Victims of Crime; and

(B) all victims, including the Utah Office for Victims of Crime, are not seekingrestitution; or

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

(b) At a subsequent hearing described in Subsection (6)(a)(iii), the court shall order the
defendant, as a modified term of the plea in abeyance, to pay restitution to all victims for the
entire amount of pecuniary damages that are proximately caused by the criminal conduct of the
defendant.

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

243	(d) If the defendant does not successfully complete the terms of the plea in abeyance,
244	the court shall enter an order for restitution, in accordance with Chapter 38b, Crime Victims
245	Restitution Act, upon entering a sentence for the defendant.
246	(7) (a) A court may not hold a plea in abeyance without the consent of both the
247	prosecuting attorney and the defendant.
248	(b) A decision by a prosecuting attorney not to agree to a plea in abeyance is final.
249	(8) No plea may be held in abeyance in any case involving:
250	(a) a sexual offense against an individual who is under 14 years old; or
251	(b) a driving under the influence violation under Section 41-6a-502, 41-6a-502.5,
252	41-6a-517, 41-6a-520, 41-6a-520.1, 41-6a-521.1, 76-5-102.1, or 76-5-207.
253	(9) (a) If the terms of a plea in abeyance agreement allow a court to issue an order of
254	expungement as described in Subsection (2)(c), the prosecuting attorney shall make a
255	reasonable effort to provide notice to any victim of the offense of the terms of the plea in
256	abeyance agreement.
257	(b) The notice under Subsection (9)(a) shall:
258	(i) state that the victim has a right to object to the expungement; and
259	(ii) provide instructions for registering an objection with the court.
260	(c) If there is a victim of the offense, the victim may file an objection with the court
261	before the court makes a finding as to whether the defendant successfully completed the terms
262	of the plea in abeyance agreement as described in Subsection (3).
263	(d) The defendant may respond, in writing, to any objection filed by the victim within
264	14 days after the day on which the objection is received by the court.
265	(10) If the court issues an order of expungement under Subsection (3)(a)(iii), the court
266	<u>shall:</u>
267	(a) expunge all records of the case as described in Section 77-40a-401; and
268	(b) notify the Bureau of Criminal Identification of the order of expungement.
269	(11) (a) Upon receiving notice from the court of an expungement order as described in
270	Subsection (10), the Bureau of Criminal Identification shall notify any agency, as defined in
271	Section 77-40a-101, affected by the expungement order.
272	(b) For purposes of Subsection (11)(a), the Bureau of Criminal Identification may not
273	notify the Board of Pardons and Parole of an expungement order if the individual has never

274	been:
275	(i) sentenced to prison in this state; or
276	(ii) under the jurisdiction of the Board of Pardons and Parole.
277	(c) The Bureau of Criminal Identification shall forward a copy of the expungement
278	order to the Federal Bureau of Investigation.
279	(12) The defendant may deliver copies of the expungement to any agency, as defined in
280	Section 77-40a-101, affected by the order of expungement.
281	(13) If an agency receives an expungement order under this part, the agency shall
282	expunge all records for the case in accordance with Section 77-40a-401.
283	Section 6. Section 77-40a-101 is amended to read:
284	77-40a-101. Definitions.
285	As used in this chapter:
286	(1) "Agency" means a state, county, or local government entity that generates or
287	maintains records relating to an investigation, arrest, detention, or conviction for an offense for
288	which expungement may be ordered.
289	(2) "Automatic expungement" means the expungement of records of an investigation,
290	arrest, detention, or conviction of an offense without the filing of a petition.
291	[(2)] (3) "Bureau" means the Bureau of Criminal Identification of the Department of
292	Public Safety established in Section 53-10-201.
293	[(3)] (4) "Certificate of eligibility" means a document issued by the bureau stating that
294	the criminal record and all records of arrest, investigation, and detention associated with a case
295	that is the subject of a petition for expungement is eligible for expungement.
296	(5) "Civil accounts receivable" means the same as that term is defined in Section
297	<u>77-32b-102.</u>
298	(6) "Civil judgment of restitution" means the same as that term is defined in Section
299	<u>77-32b-102.</u>
300	[(4) (a) "Clean slate eligible case" means, except as provided in Subsection (4)(c), a
301	case:]
302	[(i) where each conviction within the case is:]
303	[(A) a misdemeanor conviction for possession of a controlled substance in violation of
304	Subsection 58-37-8(2)(a)(i);]

305	[(B) a class B or class C misdemeanor conviction; or]
306	[(C) an infraction conviction;]
307	[(ii) that involves an individual:]
308	[(A) whose total number of convictions in Utah state courts, not including infractions,
309	traffic offenses, or minor regulatory offenses, does not exceed the limits described in
310	Subsections 77-40a-303(4) and (5) without taking into consideration the exception in
311	Subsection 77-40a-303(7); and]
312	[(B) against whom no criminal proceedings are pending in the state; and]
313	[(iii) for which the following time periods have elapsed from the day on which the case
314	is adjudicated:]
315	[(A) at least five years for a class C misdemeanor or an infraction;]
316	[(B) at least six years for a class B misdemeanor; and]
317	[(C) at least seven years for a class A conviction for possession of a controlled
318	substance in violation of Subsection 58-37-8(2)(a)(i).]
319	[(b) "Clean slate eligible case" includes a case:]
320	[(i) that is dismissed as a result of a successful completion of a plea in abeyance
321	agreement governed by Subsection 77-2a-3(2)(b) if:]
322	[(A) except as provided in Subsection (4)(c), each charge within the case is a
323	misdemeanor for possession of a controlled substance in violation of Subsection
324	58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;]
325	[(B) the individual involved meets the requirements of Subsection (4)(a)(ii); and]
326	[(C) the time periods described in Subsections (4)(a)(iii)(A) through (C) have elapsed
327	from the day on which the case is dismissed; or]
328	[(ii) where charges are dismissed without prejudice if each conviction, or charge that
329	was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or
330	(b)(i).]
331	[(c) "Clean slate eligible case" does not include a case:]
332	[(i) where the individual is found not guilty by reason of insanity;]
333	[(ii) where the case establishes a criminal accounts receivable, as defined in Section
334	77-32b-102, that:]
335	[(A) has been entered as a civil accounts receivable or a civil judgment of restitution,

336	as those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt
337	Collection under Section 77-18-114; or]
338	[(B) has not been satisfied according to court records; or]
339	[(iii) that resulted in one or more pleas held in abeyance or convictions for the
340	following offenses:]
341	[(A) any of the offenses listed in Subsection 77-40a-303(2)(a);]
342	[(B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against
343	the Individual;]
344	[(C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;]
345	[(D) sexual battery in violation of Section 76-9-702.1;]
346	[(E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;]
347	[(F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence
348	and Reckless Driving;]
349	[(G) damage to or interruption of a communication device in violation of Section
350	76-6-108;]
351	[(II) a domestic violence offense as defined in Section 77-36-1; or]
352	[(I) any other offense classified in the Utah Code as a felony or a class A misdemeanor
353	other than a class A misdemeanor conviction for possession of a controlled substance in
354	violation of Subsection 58-37-8(2)(a)(i).]
355	(7) "Clean slate eligible case" means a case that is eligible for automatic expungement
356	under Section 77-40a-205.
357	[(5)] (8) "Conviction" means judgment by a criminal court on a verdict or finding of
358	guilty after trial, a plea of guilty, or a plea of nolo contendere.
359	(9) "Court" means a district court or a justice court.
360	(10) "Criminal accounts receivable" means the same as that term is defined in Section
361	<u>77-32b-102.</u>
362	[(6)] (11) "Criminal protective order" means the same as that term is defined in Section
363	78B-7-102.
364	[(7)] (12) "Criminal stalking injunction" means the same as that term is defined in
365	Section 78B-7-102.
366	[(8)] (13) "Department" means the Department of Public Safety established in Section

367	53-1-103.
368	[(9)] (14) "Drug possession offense" means [an offense under]:
369	(a) <u>an offense described in</u> Subsection 58-37-8(2), except <u>for</u> :
370	(i) [any] an offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or
371	more of marijuana;
372	(ii) [any] an offense enhanced under Subsection 58-37-8(2)(e), violation in a
373	correctional facility; or
374	(iii) an offense for driving with a controlled substance illegally in the person's body and
375	negligently causing serious bodily injury or death of another, as codified before May 4, 2022,
376	Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);
377	(b) <u>an offense described in</u> Subsection $58-37a-5(1)$, use or possession of drug
378	paraphernalia;
379	(c) <u>an offense described in</u> Section 58-37b-6, possession or use of an imitation
380	controlled substance; or
381	(d) any local ordinance which is substantially similar to any of the offenses described
382	in this Subsection $[(9)]$ (14).
383	[(10)] (15) (a) "Expunge" means to [seal or otherwise restrict access to the individual's
384	record held by an agency when the record includes a criminal investigation, detention, arrest, or
385	conviction.] remove a record from public inspection by:
386	(i) sealing the record; or
387	(ii) restricting or denying access to the record.
388	(b) "Expunge" does not include the destruction of a record.
389	(16) "Indigent" means a financial status that results from a court finding that a
390	petitioner is financially unable to pay the fee to file a petition for expungement under Section
391	<u>78A-2-302.</u>
392	[(11)] (17) "Jurisdiction" means a state, district, province, political subdivision,
393	territory, or possession of the United States or any foreign country.
394	[(12)] (18) (a) "Minor regulatory offense" means, except as provided in Subsection
395	[(12)(c)] <u>(18)(c)</u> , a class B or C misdemeanor offense or a local ordinance.
396	(b) "Minor regulatory offense" includes an offense under Section 76-9-701 or
397	76-10-105.

398	(c) "Minor regulatory offense" does not include:
399	(i) any drug possession offense;
400	(ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
401	Reckless Driving;
402	(iii) an offense under Sections 73-18-13 through 73-18-13.6;
403	(iv) except as provided in Subsection $\left[\frac{(12)(b)}{(12)(b)}\right]$ (18)(b), an offense under Title 76, Utah
404	Criminal Code; or
405	(v) any local ordinance that is substantially similar to an offense listed in Subsections
406	$[\frac{(12)(c)(i)}{(18)(c)(i)}$ through (iv).
407	[(13)] (19) "Petitioner" means an individual applying for expungement under this
408	chapter.
409	[(14)] (20) "Plea in abeyance" means the same as that term is defined in Section
410	77-2a-1.
411	(21) "Record" means a book, letter, document, paper, map, plan, photograph, film,
412	card, tape, recording, electronic data, or other documentary material, regardless of physical
413	form or characteristics, that:
414	(a) is contained in the agency's file regarding the arrest, detention, investigation,
415	conviction, sentence, incarceration, probation, or parole of an individual; and
416	(b) is prepared, owned, received, or retained by an agency, including a court.
417	[(15)] (22) (a) "Traffic offense" means, except as provided in Subsection $[(15)(b)]$
418	<u>(22)(b)</u> :
419	(i) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense
420	under Title 41, Chapter 6a, Traffic Code;
421	(ii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense
422	under Title 53, Chapter 3, Part 2, Driver Licensing Act;
423	(iii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense
424	under Title 73, Chapter 18, State Boating Act; and
425	(iv) all local ordinances that are substantially similar to an offense listed in Subsections
426	$[\frac{(15)(a)(i)}{(22)(a)(i)}$ through (iii).
427	(b) "Traffic offense" does not mean:
428	(i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and

429	Reckless Driving;
430	(ii) an offense under Sections 73-18-13 through 73-18-13.6; or
431	(iii) any local ordinance that is substantially similar to an offense listed in Subsection
432	[(15)(b)(i)] (22)(b)(i) or (ii).
433	[(16)] (23) "Traffic offense case" means that each offense in the case is a traffic
434	offense.
435	Section 7. Section 77-40a-104 is amended to read:
436	77-40a-104. Department rulemaking authority.
437	In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
438	department may make rules to:
439	(1) implement procedures for processing an automatic expungement;
440	(2) implement procedures for applying for certificates of eligibility;
441	(3) specify procedures for receiving a certificate of eligibility;
442	(4) create forms and determine information necessary to be provided to the bureau; and
443	(5) implement procedures for the confirmation of an expungement under Subsection
444	$[\frac{77-40a-403(2)}{2}] \frac{77-40a-401(4)}{2}.$
445	Section 8. Section 77-40a-201 is amended to read:
446	Part 2. Automatic Expungement and Deletion
447	77-40a-201. General provisions for automatic expungement and deletion.
448	[(1) (a) Except as provided in Subsection (1)(b) and subject to Section 77-40a-203, this
449	section governs the process for the automatic expungement of all records in:]
450	[(i) except as provided in Subsection (2)(e), a case that resulted in an acquittal on all
451	charges;]
452	[(ii) except as provided in Subsection (3)(e), a case that is dismissed with prejudice; or]
453	[(iii) a case that is a clean slate eligible case.]
454	[(b) This section does not govern automatic expungement of a traffic offense.]
455	[(2) (a) Except as provided in Subsection (2)(e), the process for automatic
456	expungement of records for a case that resulted in an acquittal on all charges is as described in
457	Subsections (2)(b) through (d).]
458	[(b) If a court determines that the requirements for automatic expungement have been
459	met, a district court or justice court shall:

460	[(i) issue, without a petition, an expungement order; and]
461	[(ii) based on information available, notify the bureau and the prosecuting agency
462	identified in the case of the order of expungement.]
463	[(c) The bureau, upon receiving notice from the court, shall notify the law enforcement
464	agencies identified in the case of the order of expungement.]
465	[(d) For a case resulting in an acquittal on all charges on or before May 1, 2020, that is
466	automatically expunged under this Subsection (2), a law enforcement agency shall expunge
467	records for the case within one year after the day on which the law enforcement agency
468	receives notice from the bureau.]
469	[(e) For purposes of this section, a case that resulted in acquittal on all charges does not
470	include a case that resulted in an acquittal because the individual is found not guilty by reason
471	of insanity.]
472	[(3) (a) The process for an automatic expungement of a case that is dismissed with
473	prejudice is as described in Subsections (3)(b) through (d).]
474	[(b) If a court determines that the requirements for automatic expungement have been
475	met, a district court or justice court shall:]
476	[(i) issue, without a petition, an expungement order; and]
477	[(ii) based on information available, notify the bureau and the prosecuting agency
478	identified in the case of the order of expungement.]
479	[(c) The bureau, upon receiving notice from the court, shall notify the law enforcement
480	agencies identified in the case of the order of expungement.]
481	[(d) For a case dismissed on or before May 1, 2020, that is automatically expunged
482	under this Subsection (3), a law enforcement agency shall expunge records for the case within
483	one year after the day on which the law enforcement agency receives notice from the bureau.]
484	[(e) For purposes of this Subsection (3), a case that is dismissed with prejudice does
485	not include a case that is dismissed with prejudice as a result of successful completion of a plea
486	in abeyance agreement governed by Subsection 77-2a-3(2)(b).]
487	[(4) (a) The process for the automatic expungement of a clean slate eligible case is as
488	described in Subsections (4)(b) through (g) and in accordance with any rules made by the
489	Judicial Council or the Supreme Court.]
490	[(b) A prosecuting agency, that has complied with Rule 42 of the Utah Rules of

491	Criminal Procedure, shall receive notice on a monthly basis for any case prosecuted by that
492	agency that appears to be a clean slate eligible case.]
493	[(c) Within 35 days of the day on which the notice described in Subsection (4)(b) is
494	sent, the prosecuting agency shall provide written notice in accordance with any rules made by
495	the Judicial Council or the Supreme Court if the prosecuting agency objects to an automatic
496	expungement for any of the following reasons:]
497	[(i) after reviewing the agency record, the prosecuting agency believes that the case
498	does not meet the definition of a clean slate eligible case;]
499	[(ii) the individual has not paid court-ordered restitution to the victim; or]
500	[(iii) the prosecuting agency has a reasonable belief, grounded in supporting facts, that
501	an individual with a clean slate eligible case is continuing to engage in criminal activity within
502	or outside of the state.]
503	[(d) (i) If a prosecuting agency provides written notice of an objection for a reason
504	described in Subsection (4)(c) within 35 days of the day on which the notice described in
505	Subsection (4)(b) is sent, the court may not proceed with automatic expungement.]
506	[(ii) If 35 days pass from the day on which the notice described in Subsection (4)(b) is
507	sent without the prosecuting agency providing written notice of an objection for a reason
508	described in Subsection (4)(c), the court may proceed with automatic expungement.]
509	[(e) If a court determines that the requirements for automatic expungement have been
510	met, a district court or justice court shall:]
511	[(i) issue, without a petition, an expungement order; and]
512	[(ii) based on information available, notify the bureau and the prosecuting agency
513	identified in the case of the order of expungement.]
514	[(f) The bureau, upon receiving notice from the court, shall notify the law enforcement
515	agencies identified in the case of the order of expungement.]
516	[(g) For a clean slate case adjudicated or dismissed on or before May 1, 2020, that is
517	automatically expunged under this Subsection (4), a law enforcement agency shall expunge
518	records for the case within one year after the day on which the law enforcement agency
519	receives notice from the bureau.]
520	$\left[\frac{(5)}{(1)}\right]$ Nothing in this section precludes an individual from filing a petition for
521	expungement of records that are eligible for automatic expungement or deletion under this

522	section if an automatic expungement or deletion has not occurred pursuant to this section.
523	[(6)] (2) An automatic expungement performed under this [section] part does not
524	preclude a person from requesting access to expunged records in accordance with Section
525	77-40a-403 or 77-40a-404.
526	[(7)] (3) (a) The Judicial Council and the Supreme Court shall make rules to govern the
527	process for automatic expungement.
528	(b) The rules under Subsection $\left[\frac{(7)(a)}{(3)(a)}\right]$ may authorize:
529	(i) a presiding judge of a district court to issue an expungement order for any case
530	when the requirements for automatic expungement are met; and
531	(ii) a presiding judge of a justice court to issue an expungement order for any justice
532	court case within the presiding judge's judicial district when the requirements for automatic
533	expungement are met.
534	(4) An individual does not have a cause of action for damages as a result of the failure
535	<u>to:</u>
536	(a) identify an individual's case as eligible for automatic expungement or deletion
537	under this part; or
538	(b) automatically expunge or delete the records of a case that is eligible under this part.
539	Section 9. Section 77-40a-202 is amended to read:
540	77-40a-202. Automatic deletion for traffic offense by a court.
541	(1) [Subject to Section 77-40a-203,] A court shall delete all records for the following
542	traffic offenses [shall be deleted] without a court order or notice to the prosecuting agency:
543	(a) a traffic offense case that resulted in an acquittal on all charges;
544	(b) a traffic offense case that is dismissed with prejudice, except for a case that is
545	dismissed with prejudice as a result of successful completion of a plea in abeyance agreement
546	governed by Subsection 77-2a-3(2)(b); or
547	(c) a traffic offense case for which the following time periods have elapsed from the
548	day on which the case is adjudicated:
549	(i) at least five years for a class C misdemeanor or an infraction; or
550	(ii) at least six years for a class B misdemeanor.
551	(2) For a traffic offense case that results in an acquittal, is dismissed, or is adjudicated
552	on or after May 1, 2020, the court shall delete all records for the traffic offense upon

553	identification.
554	(3) For a traffic offense case that results in an acquittal, is dismissed, or is adjudicated
555	before May 1, 2020, the court shall delete all records for the traffic offense within one year of
556	the day on which the case is identified as eligible for deletion.
557	[(2) The Judicial Council shall make rules to provide an ongoing process for
558	identifying and deleting records on all traffic offenses described in Subsection (1).]
559	Section 10. Section 77-40a-204 is enacted to read:
560	77-40a-204. Request for automatic expungement of a case Automatic
561	expungement before October 1, 2024, and on and after January 1, 2026.
562	(1) (a) On and after October 1, 2024, but before January 1, 2026, an individual must
563	submit the necessary form to the court to receive an expungement of a case that is eligible
564	under this part.
565	(b) If a form is submitted as described in Subsection (1), the court shall determine
566	whether the individual has a case that qualifies for expungement in accordance with Sections
567	<u>77-40a-205 and 77-40a-206.</u>
568	(2) A court shall automatically expunge a case in accordance with this part if the court
569	identified the case as being eligible for automatic expungement before October 1, 2024, and the
570	requirements for automatic expungement were met under this part.
571	(3) On and after January 1, 2026, a court shall automatically expunge a case in
572	accordance with this part if the court identifies the case as being eligible for automatic
573	expungement.
574	(4) A court shall make reasonable efforts, within available funding, to expunge a case
575	under Subsection (3) as quickly as practicable with the goal of:
576	(a) expunging a case that resulted in an acquittal on all charges on or after May 1,
577	2020, 60 days after acquittal;
578	(b) expunging a case that resulted in a dismissal with prejudice, other than a case that is
579	dismissed with prejudice as a result of successful completion of a plea in abeyance agreement
580	governed by Subsection 77-2a-3(2)(b), on or after May 1, 2020, 180 days after:
581	(i) for a case in which no appeal was filed, the day on which the entire case against the
582	individual is dismissed with prejudice; or
583	(ii) for a case in which an appeal was filed, the day on which a court issues a final

584	nonappealable order;
585	(c) expunging a clean slate eligible case that is adjudicated or dismissed on or after
586	May 1, 2020, and is not a traffic offense within 30 days of the court determining that the
587	requirements for expungement have been satisfied under Section 77-40a-205; and
588	(d) expunging a case adjudicated or dismissed before May 1, 2020, within one year of
589	the day on which the case is identified as eligible for automatic expungement.
590	Section 11. Section 77-40a-205 is enacted to read:
591	77-40a-205. Automatic expungement of state records for a clean slate case.
592	(1) A court shall issue an order of expungement, without the filing of a petition, for all
593	records of the case that are held by the court and the bureau if:
594	(a) on and after October 1, 2024, but before January 1, 2026, the individual submitted a
595	form requesting expungement of a case as described in Section 77-40a-204;
596	(b) the case is eligible for expungement under this section; and
597	(c) the prosecuting agency does not object to the expungement of the case as described
598	in Subsection (6).
599	(2) Except as otherwise provided in Subsection (3), a case is eligible for expungement
600	under this section if:
601	(a) (i) each conviction within the case is a conviction for:
602	(A) a misdemeanor offense for possession of a controlled substance in violation of
603	<u>Subsection 58-37-8(2)(a)(i);</u>
604	(B) a class B misdemeanor offense;
605	(C) a class C misdemeanor offense; or
606	(D) an infraction; and
607	(ii) the following time periods have passed after the day on which the individual is
608	adjudicated:
609	(A) at least five years for the conviction of a class C misdemeanor offense or an
610	infraction;
611	(B) at least six years for the conviction of a class B misdemeanor offense; or
612	(C) at least seven years for the conviction of a class A misdemeanor offense for
613	possession of a controlled substance in violation of Subsection <u>58-37-8(2)(a)(i); or</u>
614	(b) (i) the case is dismissed as a result of a successful completion of a plea in abeyance

615	agreement governed by Subsection 77-2a-3(2)(b) or the case is dismissed without prejudice;
616	(ii) each charge within the case is:
617	(A) a misdemeanor offense for possession of a controlled substance in violation of
618	<u>Subsection 58-37-8(2)(a)(i);</u>
619	(B) a class B misdemeanor offense;
620	(C) a class C misdemeanor offense; or
621	(D) an infraction; and
622	(iii) the following time periods have passed after the day on which the case is
623	dismissed:
624	(A) at least five years for a charge in the case for a class C misdemeanor offense or an
625	infraction;
626	(B) at least six years for a charge in the case for a class B misdemeanor offense; or
627	(C) at least seven years for a charge in the case for a class A misdemeanor offense for
628	possession of a controlled substance in violation of Subsection <u>58-37-8(2)(a)(i)</u> .
629	(3) A case is not eligible for expungement under this section if:
630	(a) the individual has a total number of convictions in courts of this state that exceed
631	the limits under Subsection 77-40a-303(4) or (5) without taking into consideration:
632	(i) the exception in Subsection 77-40a-303(7); or
633	(ii) any infraction, traffic offense, or minor regulatory offense;
634	(b) there is a criminal proceeding for a misdemeanor or felony offense pending in a
635	court of this state against the individual, unless the proceeding is for a traffic offense;
636	(c) for an individual seeking an automatic expungement on and after January 1, 2025,
637	the individual is incarcerated in the state prison or on probation or parole that is supervised by
638	the Department of Corrections;
639	(d) the case resulted in the individual being found not guilty by reason of insanity;
640	(e) the case establishes a criminal accounts receivable that:
641	(i) has been entered as a civil accounts receivable or a civil judgment of restitution and
642	transferred to the Office of State Debt Collection under Section 77-18-114; or
643	(ii) has not been satisfied according to court records; or
644	(f) the case resulted in a plea held in abeyance or a conviction for the following
645	offenses:

646	(i) any of the offenses listed in Subsection 77-40a-303(2)(a);
647	(ii) an offense against the person in violation of Title 76, Chapter 5, Offenses Against
648	the Individual;
649	(iii) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
650	(iv) sexual battery in violation of Section 76-9-702.1;
651	(v) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
652	(vi) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence
653	and Reckless Driving;
654	(vii) damage to or interruption of a communication device in violation of Section
655	<u>76-6-108;</u>
656	(viii) a domestic violence offense as defined in Section 77-36-1; or
657	(ix) any other offense classified in the Utah Code as a felony or a class A misdemeanor
658	other than a class A misdemeanor conviction for possession of a controlled substance in
659	violation of Subsection 58-37-8(2)(a)(i).
660	(4) A prosecuting agency that has complied with Rule 42 of the Utah Rules of Criminal
661	Procedure shall receive notice on a monthly basis for any case prosecuted by that agency that
662	appears to be eligible for automatic expungement under this section.
663	(5) Within 35 days after the day on which the notice described in Subsection (4) is
664	sent, the prosecuting agency shall provide written notice in accordance with Rule 42 of the
665	Utah Rules of Criminal Procedure if the prosecuting agency objects to an automatic
666	expungement for any of the following reasons:
667	(a) the prosecuting agency believes that the case is not eligible for expungement under
668	this section after reviewing the agency record;
669	(b) the individual has not paid restitution to the victim as ordered by the court; or
670	(c) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an
671	individual involved in the case is continuing to engage in criminal activity within or outside of
672	the state.
673	(6) If a prosecuting agency provides written notice of an objection for a reason
674	described in Subsection (5) within 35 days after the day on which the notice under Subsection
675	(4) is sent, the court may not proceed with automatic expungement of the case.
676	(7) If 35 days pass after the day on which the notice described in Subsection (4) is sent

677	without the prosecuting agency providing written notice of an objection under Subsection (5),
678	the court shall proceed with automatic expungement of the case.
679	(8) If a court issues an order of expungement under Subsection (1), the court shall:
680	(a) expunge all records of the case held by the court in accordance with Section
681	<u>77-40a-401; and</u>
682	(b) notify the bureau and the prosecuting agency identified in the case, based on
683	information available to the court, of the order of expungement.
684	Section 12. Section 77-40a-206 is enacted to read:
685	<u>77-40a-206.</u> Automatic expungement of state records for a case resulting in an
686	acquittal or dismissal with prejudice.
687	(1) A court shall issue an order of expungement, without the filing of a petition, for all
688	records of the case that are held by the court and the bureau if:
689	(a) on and after October 1, 2024, but before January 1, 2026, the individual submitted a
690	form requesting expungement of a case as described in Section 77-40a-204; and
691	(b) the case is eligible for expungement under this section.
692	(2) Except as provided in Subsection (3), a case is eligible for expungement under this
693	section if:
694	(a) (i) the case resulted in an acquittal on all charges; and
695	(ii) at least 60 days have passed after the day on which the case resulted in an acquittal;
696	<u>or</u>
697	(b) (i) the case is dismissed with prejudice; and
698	(ii) at least 180 days have passed after the day on which:
699	(A) for a case in which no appeal was filed, the entire case against the individual is
700	dismissed with prejudice; or
701	(B) for a case in which an appeal was filed, a court issues a final nonappealable order.
702	(3) A case is not eligible for expungement under Subsection (2) if:
703	(a) the case resulted in an acquittal because the individual is found not guilty by reason
704	of insanity; or
705	(b) the case is dismissed with prejudice as a result of successful completion of a plea in
706	abeyance agreement governed by Subsection 77-2a-3(2)(b).
707	(4) If a court issues an order of expungement under Subsection (1), the court shall:

708	(a) expunge all records of the case held by the court as described in Section
709	<u>77-40a-401; and</u>
710	(b) notify the bureau and the prosecuting agency identified in the case, based on
711	information available to the court, of the order of expungement.
712	Section 13. Section 77-40a-207 is enacted to read:
713	77-40a-207. Automatic expungement by the bureau.
714	(1) Upon receiving notice from a court of an expungement order under this part, the
715	bureau shall expunge all records of the case in accordance with Section 77-40a-401.
716	(2) The bureau shall forward a copy of the expungement order to the Federal Bureau of
717	Investigation.
718	(3) Except for the court and the bureau, an agency is not required to expunge all
719	records of a case that is automatically expunged under this part.
720	The following section is affected by a coordination clause at the end of this bill.
721	Section 14. Section 77-40a-301 is amended to read:
722	77-40a-301. Application for certificate of eligibility for expungement Penalty
723	for false or misleading information on application.
724	(1) If an individual seeks to expunge the individual's criminal record in regard to an
725	arrest, investigation, detention, or conviction, the individual shall:
726	(a) except as provided in Subsection 77-40a-305(3) or (4), apply to the bureau for a
727	certificate of eligibility for expungement of the criminal record and pay the application fee as
728	described in Section 77-40a-304;
729	[(b) if the individual is qualified to receive a certificate of eligibility, pay the issuance
730	fee for the certificate of eligibility as described in Section 77-40a-304; and]
731	(b) except as provided in Subsections 77-40a-304(3) and (7), pay the issuance fee for
732	the certificate of eligibility as described in Section 77-40a-304; and
733	(c) file a petition for expungement in accordance with Section 77-40a-305.
734	(2) (a) An individual who intentionally or knowingly provides any false or misleading
735	information to the bureau when applying for a certificate of eligibility is guilty of a class B
736	misdemeanor and subject to prosecution under Section 76-8-504.6.
737	(b) Regardless of whether the individual is prosecuted, the bureau may deny a
738	certificate of eligibility to anyone who knowingly provides false information on an application.

739	Section 15. Section 77-40a-302 is amended to read:
740	77-40a-302. Requirements for certificate of eligibility to expunge records of
741	arrest, investigation, and detention.
742	(1) Except as provided in Subsection (2), if a petitioner is arrested or charged with an
743	offense, the petitioner is eligible to receive a certificate of eligibility from the bureau to
744	expunge records of the arrest, investigation, and detention in the case for the offense if:
745	(a) the following time periods have passed:
746	(i) at least 30 days have passed after the day on which the [individual] petitioner is
747	arrested or charged for the offense;
748	(ii) at least three years have passed after the day on which the petitioner was convicted
749	of the traffic offense if there is a conviction in the case for a traffic offense that is a class C
750	misdemeanor or an infraction; and
751	(iii) at least four years have passed after the day on which the petitioner was convicted
752	of the traffic offense if there is a conviction in the case for a traffic offense that is a class B
753	misdemeanor; and
754	(b) one of the following occurs:
755	(i) an investigating law enforcement agency and the prosecuting attorney have screened
756	the case and determined that no charges will be filed against the petitioner;
757	(ii) all charges in the case are dismissed with prejudice;
758	(iii) if a charge in the case is dismissed without prejudice or without condition:
759	(A) the prosecuting attorney consents in writing to the issuance of a certificate of
760	eligibility; or
761	(B) at least 180 days have passed after the day on which the charge is dismissed;
762	(iv) the petitioner is acquitted at trial on all of the charges in the case; or
763	(v) the statute of limitations expires on all of the charges in the case $[; and]$.
764	[(c) (i) there is a conviction in the case for a traffic offense that is a class C
765	misdemeanor or an infraction, at least three years have passed after the day on which the
766	petitioner was convicted of the traffic offense; or]
767	[(ii) there is a conviction in the case for a traffic offense that is a class B misdemeanor,
768	at least four years have passed after the day on which the petitioner was convicted of the traffic
769	offense.]

770	(2) A petitioner is not eligible for a certificate of eligibility under Subsection (1) if:
771	(a) there is a criminal proceeding for a misdemeanor or felony offense pending against
772	the petitioner, unless the criminal proceeding is for a traffic offense;
773	(b) there is a plea in abeyance for a misdemeanor or felony offense pending against the
774	petitioner, unless the plea in abeyance is for a traffic offense;
775	(c) the petitioner is currently incarcerated, on parole, or on probation, unless the
776	petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory
777	offense; or
778	(d) there is a criminal protective order or a criminal stalking injunction in effect for the
779	case.
780	Section 16. Section 77-40a-303 is amended to read:
781	77-40a-303. Requirements for a certificate of eligibility to expunge records of a
782	conviction.
783	(1) Except as otherwise provided by this section, a petitioner is eligible to receive a
784	certificate of eligibility from the bureau to expunge the records of a conviction if:
785	(a) the petitioner has paid in full all fines and interest ordered by the court related to the
786	conviction for which expungement is sought;
787	(b) the petitioner has paid in full all restitution ordered by the court under Section
788	77-38b-205; and
789	(c) the following time periods have passed after the day on which the petitioner was
790	convicted or released from incarceration, parole, or probation, whichever occurred last, for the
791	conviction that the petitioner seeks to expunge:
792	(i) 10 years for the conviction of a misdemeanor under Subsection 41-6a-501(2);
793	(ii) 10 years for the conviction of a felony for operating a motor vehicle with any
794	amount of a controlled substance in an individual's body and causing serious bodily injury or
795	death, as codified before May 4, 2022, Laws of Utah 2021,
796	Chapter 236, Section 1, Subsection 58-37-8(2)(g);
797	(iii) seven years for the conviction of a felony;
798	(iv) five years for the conviction of a drug possession offense that is a felony;
799	(v) five years for the conviction of a class A misdemeanor;
800	(vi) four years for the conviction of a class B misdemeanor; or

801	(vii) three years for the conviction of a class C misdemeanor or infraction.
802	(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau to
803	expunge the records of a conviction under Subsection (1) if:
804	(a) except as provided in Subsection (3), the conviction for which expungement is
805	sought is:
806	(i) a capital felony;
807	(ii) a first degree felony;
808	(iii) a felony conviction of a violent felony as defined in Subsection
809	76-3-203.5(1)(c)(i);
810	(iv) a felony conviction described in Subsection 41-6a-501(2);
811	(v) an offense, or a combination of offenses, that would require the individual to
812	register as a sex offender, as defined in Section 77-41-102; or
813	(vi) a registerable child abuse offense as defined in Subsection 77-43-102(2);
814	(b) there is a criminal proceeding for a misdemeanor or felony offense pending against
815	the petitioner, unless the criminal proceeding is for a traffic offense;
816	(c) there is a plea in abeyance for a misdemeanor or felony offense pending against the
817	petitioner, unless the plea in abeyance is for a traffic offense;
818	(d) the petitioner is currently incarcerated, on parole, or on probation, unless the
819	petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory
820	offense;
821	(e) the petitioner intentionally or knowingly provides false or misleading information
822	on the application for a certificate of eligibility;
823	(f) there is a criminal protective order or a criminal stalking injunction in effect for the
824	case; or
825	(g) the bureau determines that the petitioner's criminal history makes the petitioner
826	ineligible for a certificate of eligibility under Subsection (4) or (5).
827	(3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as
828	defined in Section 76-3-209, if, at the time of the offense, a petitioner who committed the
829	offense was at least 14 years old but under 18 years old, unless the petitioner was convicted by
830	a district court as an adult in accordance with Title 80, Chapter 6, Part 5, Transfer to District
831	Court.

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832 (4) Subject to Subsections (6), (7), and (8), a petitioner is not eligible to receive a 833 certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the 834 bureau determines that the petitioner's criminal history, including previously expunged 835 convictions, contains any of the following: 836 (a) two or more felony convictions other than for drug possession offenses, each of 837 which is contained in a separate criminal episode; 838 (b) any combination of three or more convictions other than for drug possession 839 offenses that include two class A misdemeanor convictions, each of which is contained in a 840 separate criminal episode; 841 (c) any combination of four or more convictions other than for drug possession 842 offenses that include three class B misdemeanor convictions, each of which is contained in a 843 separate criminal episode; or 844 (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. 845 (5) Subject to Subsections (7) and (8), a petitioner is not eligible to receive a certificate 846 847 of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau 848 determines that the petitioner's criminal history, including previously expunded convictions, 849 contains any of the following: 850 (a) three or more felony convictions for drug possession offenses, each of which is 851 contained in a separate criminal episode; or 852 (b) any combination of five or more convictions for drug possession offenses, each of 853 which is contained in a separate criminal episode. 854 (6) If the petitioner's criminal history contains convictions for both a drug possession 855 offense and a non-drug possession offense arising from the same criminal episode, the bureau 856 shall count that criminal episode as a conviction under Subsection (4) if any non-drug 857 possession offense in that episode: 858 (a) is a felony or class A misdemeanor; or 859 (b) has the same or a longer waiting period under Subsection (1)(c) than any drug 860 possession offense in that episode. 861 (7) Except as provided in Subsection (8), if at least 10 years have passed after the day 862 on which the petitioner was convicted or released from incarceration, parole, or probation,

863	whichever occurred last, for all convictions:
864	(a) each numerical eligibility limit under Subsections (4)(a) and (b) shall be increased
865	by one; and
866	(b) each numerical eligibility limit under Subsections (4)(c) and (d) is not applicable if
867	the highest level of convicted offense in the criminal episode is:
868	(i) a class B misdemeanor;
869	(ii) a class C misdemeanor;
870	(iii) a drug possession offense if none of the non-drug possession offenses in the
871	criminal episode are a felony or a class A misdemeanor; or
872	(iv) an infraction.
873	(8) When determining whether a petitioner is eligible for a certificate of eligibility
874	under Subsection (4), (5), or (7), the bureau may not consider a petitioner's pending case or
875	prior conviction for:
876	(a) an infraction;
877	(b) a traffic offense;
878	(c) a minor regulatory offense; or
879	(d) a clean slate eligible case that was automatically expunged [in accordance with
880	Section 77-40a-201].
881	(9) If the petitioner received a pardon before May 14, 2013, from the Utah Board of
882	Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes
883	in accordance with Section 77-27-5.1.
884	The following section is affected by a coordination clause at the end of this bill.
885	Section 17. Section 77-40a-304 is amended to read:
886	77-40a-304. Certificate of eligibility process Issuance of certificate Fees.
887	(1) (a) When a petitioner applies for a certificate of eligibility as described in
888	Subsection 77-40a-301(1)[,]:
889	(i) the petitioner shall pay an application fee at the time the petitioner submits an
890	application for a certificate of eligibility to the bureau; and
891	(ii) the bureau shall perform a check of records of governmental agencies, including
892	national criminal data bases, to determine whether the petitioner is eligible to receive a
893	certificate of eligibility under this chapter.

894	(b) For purposes of determining eligibility under this chapter, the bureau may review
895	records of arrest, investigation, detention, and conviction that have been previously expunged,
896	regardless of the jurisdiction in which the expungement occurred.
897	[(c) Once the eligibility process is complete, the bureau shall notify the petitioner.]
898	[(d) If the petitioner meets all of the criteria under Section 77-40a-302 or 77-40a-303:]
899	[(i) the bureau shall issue a certificate of eligibility that is valid for a period of 180 days
900	from the day on which the certificate is issued;]
901	[(ii) the bureau shall provide a petitioner with an identification number for the
902	certificate of eligibility; and]
903	[(iii) the petitioner shall pay the issuance fee established by the department as
904	described in Subsection (2).]
905	[(e)] (c) If[, after reasonable research,] a disposition for an arrest on the criminal
906	history file is unobtainable after reasonable research, the bureau may issue a special certificate
907	giving determination of eligibility to the court, except that the bureau may not issue the special
908	certificate if:
909	(i) there is a criminal proceeding for a misdemeanor or felony offense pending against
910	the petitioner, unless the criminal proceeding is for a traffic offense;
911	(ii) there is a plea in abeyance for a misdemeanor or felony offense pending against the
912	petitioner, unless the plea in abeyance is for a traffic offense; or
913	(iii) the petitioner is currently incarcerated, on parole, or on probation, unless the
914	petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory
915	offense.
916	(2) (a) Once the eligibility process is complete, the bureau shall notify the petitioner.
917	(b) If the petitioner meets all of the criteria under Section 77-40a-302 or 77-40a-303
918	and the bureau determines that the issuance of a certificate of eligibility or special certificate is
919	appropriate:
920	(i) the bureau shall issue a certificate of eligibility or special certificate that is valid for
921	a period of 180 days from the day on which the certificate is issued;
922	(ii) the bureau shall provide a petitioner with an identification number for the
923	certificate of eligibility or special certificate; and
924	(iii) except as provided in Subsection (3), the petitioner shall pay an additional fee for

925	the issuance of a certificate of eligibility or special certificate.
926	[(2) (a) The bureau shall charge application and issuance fees for a certificate of
927	eligibility or special certificate in accordance with the process in Section 63J-1-504.]
928	[(b) The application fee shall be paid at the time the petitioner submits an application
929	for a certificate of eligibility to the bureau.]
930	[(c) If the bureau determines that the issuance of a certificate of eligibility or special
931	certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a
932	certificate of eligibility or special certificate unless Subsection (2)(d) applies.]
933	[(d) An issuance fee may not be assessed against a petitioner who]
934	(3) The bureau shall issue a certificate of eligibility or special certificate without
935	requiring the payment of the issuance fee if the petitioner:
936	(a) qualifies for a certificate of eligibility under Section $77-40a-302$ unless the charges
937	were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in
938	Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and
939	Diversion[-]; or
940	(b) indicates on the application for a certificate of eligibility that the petitioner
941	reasonably believes, as of the date of the application, that the fee to file a petition for
942	expungement is likely to be waived by a court because the petitioner is indigent.
943	[(e) Funds generated under this Subsection (2) shall be deposited in the General Fund
944	as a dedicated credit by the department to cover the costs incurred in determining eligibility.]
945	[(3)] (4) The bureau shall include on $[the]$ a certificate of eligibility all information that
946	is needed for the court to issue a valid expungement order.
947	[(4)] (5) The bureau shall provide clear written instructions to the petitioner that
948	explain:
949	(a) the process for a petition for expungement; and
950	(b) what is required of the petitioner to complete the process for a petition for
951	expungement.
952	(6) If a petitioner indicates on the application for a certificate of eligibility that a court
953	is likely to waive the fee for a petition for expungement as described in Subsection (3)(b), the
954	bureau shall:
955	(a) inform the petitioner that the petitioner will be required to pay an issuance fee

956	before an agency will expunge the offense if a court does not waive the fee for a petition for
957	expungement; and
958	(b) provide the petitioner with the form for waiving a court fee for a petition for
959	expungement.
960	(7) If the bureau issues a certificate of eligibility or a special certificate without
961	requiring payment of the issuance fee as described in Subsection (3)(b), the bureau shall charge
962	the petitioner the issuance fee upon the bureau's receipt of an order deciding a petition for
963	expungement unless the court communicates to the bureau that the fee to file the petition for
964	expungement was waived because the petitioner is indigent.
965	(8) (a) If the petitioner qualifies for a waiver of the issuance fee under Subsection (7)
966	and the expungement order grants the petition for expungement, the bureau shall process the
967	expungement order in accordance with Section 77-40a-401 as if the petitioner paid the issuance
968	fee.
969	(b) If the petitioner does not qualify for a waiver of the issuance fee under Subsection
970	(7) and the expungement order grants the petition for expungement, the bureau may not process
971	the expungement order as described in Section 77-40a-401, or notify other agencies affected by
972	the expungement order as described in Section 77-40a-307, until the petitioner pays the
973	issuance fee.
974	(c) If the bureau issues a certificate of eligibility or special certificate without requiring
975	payment of the issuance fee under Subsection (3)(b), the bureau may not charge the petitioner
976	an issuance fee on the grounds that the validity of the certificate described in (2)(b)(i) has
977	expired.
978	(9) The bureau shall charge application and issuance fees for a certificate of eligibility
979	or special certificate in accordance with the process in Section 63J-1-504.
980	(10) The department shall deposit funds generated by application and issuance fees
981	under this section into the General Fund as a dedicated credit by the department to cover the
982	costs incurred in determining eligibility for expungement.
983	Section 18. Section 77-40a-305 is amended to read:
984	77-40a-305. Petition for expungement Prosecutorial responsibility Hearing.
985	(1) (a) The petitioner shall file a petition for expungement, in accordance with the Utah
986	Rules of Criminal Procedure, that includes the identification number for the certificate of

987	eligibility described in Subsection [77-40a-304(1)(d)(ii)] 77-40a-304(2)(b)(ii).
988	(b) Information on a certificate of eligibility is incorporated into a petition by reference
989	to the identification number for the certificate of eligibility.
990	(2) (a) If a petition for expungement is filed under Subsection (1)(a), the court shall
991	obtain a certificate of eligibility from the bureau.
992	(b) A court may not accept a petition for expungement if the certificate of eligibility is
993	no longer valid as described in Subsection $\left[\frac{77-40a-304(1)(d)(i)}{77-40a-304(2)(b)(i)}\right]$
994	(3) Notwithstanding Subsection (2), the petitioner may file a petition for expungement
995	of a traffic offense case without obtaining a certificate of eligibility if:
996	(a) (i) for a traffic offense case with a class C misdemeanor or infraction, at least three
997	years have passed after the day on which the petitioner was convicted; or
998	(ii) for a traffic offense case with a class B misdemeanor, at least four years have
999	passed after the day on which the petitioner was convicted;
1000	(b) there is no traffic offense case pending against the petitioner;
1001	(c) there is no plea in abeyance for a traffic offense case pending against the petitioner;
1002	and
1003	(d) the petitioner is not currently on probation for a traffic offense case.
1004	(4) Notwithstanding Subsection (2), a petitioner may file a petition for expungement of
1005	a record for a conviction related to cannabis possession without a certificate of eligibility if the
1006	petition demonstrates that:
1007	(a) the petitioner had, at the time of the relevant arrest or citation leading to the
1008	conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and
1009	(b) the possession of cannabis in question was in a form and an amount to medicinally
1010	treat the qualifying condition described in Subsection (4)(a).
1011	(5) (a) The court shall provide notice of a filing of a petition and certificate of
1012	eligibility to the prosecutorial office that handled the court proceedings within three days after
1013	the day on which the petitioner's filing fee is paid or waived.
1014	(b) If there were no court proceedings, the court shall provide notice of a filing of a
1015	petition and certificate of eligibility to the county attorney's office in the jurisdiction where the
1016	arrest occurred.
1017	(c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention,

1018	or conviction, was a city attorney's office, the county attorney's office in the jurisdiction where
1019	the arrest occurred shall immediately notify the city attorney's office that the county attorney's
1020	office has received a notice of a filing of a petition for expungement.
1021	(6) (a) Upon receipt of a notice of a filing of a petition for expungement of a conviction
1022	or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney shall
1023	make a reasonable effort to provide notice to any victim of the conviction or charge.
1024	(b) The notice under Subsection (6)(a) shall:
1025	(i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable
1026	to the petition;
1027	(ii) state that the victim has a right to object to the expungement; and
1028	(iii) provide instructions for registering an objection with the court.
1029	(7) (a) The prosecuting attorney may respond to the petition by filing a
1030	recommendation or objection with the court within 35 days after the day on which the notice of
1031	the filing of the petition is sent by the court to the prosecuting attorney.
1032	(b) If there is a victim of the offense for which expungement is sought, the victim may
1033	respond to the petition by filing a recommendation or objection with the court within 60 days
1034	after the day on which the petition for expungement was filed with the court.
1035	(8) (a) The court may request a written response to the petition from the Division of
1036	Adult Probation and Parole within the Department of Corrections.
1037	(b) If requested, the response prepared by the Division of Adult Probation and Parole
1038	shall include:
1039	(i) the reasons probation was terminated; and
1040	(ii) certification that the petitioner has completed all requirements of sentencing and
1041	probation or parole.
1042	(c) The Division of Adult Probation and Parole shall provide a copy of the response to
1043	the petitioner and the prosecuting attorney.
1044	(9) The petitioner may respond in writing to any objections filed by the prosecuting
1045	attorney or the victim and the response prepared by the Division of Adult Probation and Parole
1046	within 14 days after the day on which the objection or response is received.
1047	(10) (a) If the court receives an objection concerning the petition from any party, the
1048	court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the

1049 date set for the hearing. 1050 (b) The prosecuting attorney shall notify the victim of the date set for the hearing. 1051 (c) The petitioner, the prosecuting attorney, the victim, and any other person who has 1052 relevant information about the petitioner may testify at the hearing. 1053 (d) The court shall review the petition, the certificate of eligibility, and any written 1054 responses submitted regarding the petition. 1055 (11) If no objection is received within 60 days from the day on which the petition for 1056 expungement is filed with the court, the expungement may be granted without a hearing. 1057 (12) (a) If the petitioner seeks a waiver of the fee required for a petition for expungement in accordance with Section 78A-2-302, the court shall consider the total number 1058 1059 of cases for which the petitioner has received a certificate of eligibility and is seeking 1060 expungement in determining whether the petitioner is indigent under Subsection 1061 78A-2-302(3)(e) even if the court does not have jurisdiction over a case for which the 1062 petitioner is seeking expungement. 1063 (b) If a court grants a waiver of the fee required for a petition for expungement in accordance with Section 78A-2-302, and only upon a request from the petitioner, a subsequent 1064 1065 court shall grant a waiver of a fee for a petition for expungement if the prior court waived the 1066 fee for a petition for expungement within 180 days before the day on which the petitioner filed 1067 the petition for expungement with the subsequent court. 1068 The following section is affected by a coordination clause at the end of this bill. Section 19. Section 77-40a-306 is amended to read: 1069 1070 77-40a-306. Order of expungement. 1071 (1) If a petition is filed in accordance with Section 77-40a-305, the court shall issue an 1072 order of expungement if the court finds, by clear and convincing evidence, that: 1073 (a) except as provided in Subsection 77-40a-305(3) or (4), the petition and certificate 1074 of eligibility are sufficient: 1075 (b) the statutory requirements have been met: 1076 (c) if the petitioner seeks expungement after a case is dismissed without prejudice or 1077 without condition, the prosecuting attorney provided written consent and has not filed and does 1078 not intend to refile related charges: 1079 (d) if the petitioner seeks expungement without a certificate of eligibility for

1080	expungement under Subsection 77-40a-305(4) for a record of conviction related to cannabis
1081	possession:
1082	(i) the petitioner had, at the time of the relevant arrest or citation leading to the
1083	conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and
1084	(ii) the possession of cannabis in question was in a form and an amount to medicinally
1085	treat the qualifying condition described in Subsection (1)(d)(i);
1086	(e) if an objection is received, the petition for expungement is for a charge dismissed in
1087	accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used
1088	for enhancement, there is good cause for the court to grant the expungement; and
1089	(f) the interests of the public would not be harmed by granting the expungement.
1090	(2) (a) If the court denies a petition described in Subsection (1)(c) because the
1091	prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of
1092	eligibility if charges are not refiled within 180 days after the day on which the court denies the
1093	petition.
1094	(b) A prosecuting attorney who opposes an expungement of a case dismissed without
1095	prejudice, or without condition, shall have a good faith basis for the intention to refile the case.
1096	(c) A court shall consider the number of times that good faith basis of intention to
1097	refile by the prosecuting attorney is presented to the court in making the court's determination
1098	to grant the petition for expungement described in Subsection (1)(c).
1099	(3) If the court grants a petition described in Subsection (1)(e), the court shall make the
1100	court's findings in a written order.
1101	(4) A court may not expunge a conviction of an offense for which a certificate of
1102	eligibility may not be, or should not have been, issued under Section 77-40a-302 or
1103	77-40a-303.
1104	(5) If a court issues an order of expungement under this section, the court shall:
1105	(a) expunge all records of the case as described in Section 77-40a-401; and
1106	(b) notify the bureau of the order of expungement.
1107	Section 20. Section 77-40a-307 is enacted to read:
1108	<u>77-40a-307.</u> Distribution of expungement order based on a petition to all agencies.
1109	(1) (a) Upon receiving notice from the court of an expungement order as described in
1110	Subsection 77-40a-306(5), the bureau shall notify all agencies affected by the expungement

1111	order.
1112	(b) For purposes of Subsection (1)(a), the bureau may not notify the Board of Pardons
1113	and Parole of an expungement order if the individual has never been:
1114	(i) sentenced to prison in this state; or
1115	(ii) under the jurisdiction of the Board of Pardons and Parole.
1116	(c) The bureau shall forward a copy of the expungement order to the Federal Bureau of
1117	Investigation.
1118	(2) A petitioner may deliver copies of the expungement to all agencies affected by the
1119	order of expungement.
1120	(3) If an agency receives an expungement order under this part, the agency shall
1121	expunge all records for the case in accordance with Section 77-40a-401.
1122	Section 21. Section 77-40a-401 is amended to read:
1123	Part 4. Expungement of Criminal Records
1124	77-40a-401. Processing of expungement order Written confirmation of
1125	expungement Effect of an expungement.
1126	[(1) (a) The bureau, upon receiving notice from the court, shall notify all criminal
1127	justice agencies affected by the expungement order.]
1128	[(b) For purposes of Subsection (1)(a), the bureau may not notify the Board of Pardons
1129	and Parole of an expungement order if the individual has never been:]
1130	[(i) sentenced to prison in this state; or]
1131	[(ii) under the jurisdiction of the Board of Pardons and Parole.]
1132	[(c) A petitioner may deliver copies of the expungement to all criminal justice agencies
1133	affected by the order of expungement.]
1134	[(d) An individual, who receives an expungement order under Section 77-27-5.1, shall
1135	pay a processing fee to the bureau, established in accordance with the process in Section
1136	63J-1-504, before the bureau's record may be expunged.]
1137	[(2) Unless otherwise provided by law or ordered by a court to respond differently, an
1138	individual or agency who has received an expungement of an arrest or conviction under this
1139	chapter or Section 77-27-5.1 may respond to any inquiry as though the arrest or conviction did
1140	not occur.]
1141	[(3) The bureau shall forward a copy of the expungement order to the Federal Bureau

1142	of Investigation.]
1143	(4) An agency receiving an expungement order shall expunge the individual's
1144	identifying information contained in records in the agency's possession relating to the incident
1145	for which expungement is ordered.
1146	[(5) Unless ordered by a court to do so, or in accordance with Section 77-40a-403, a
1147	government agency or official may not divulge information or records that have been
1148	expunged.]
1149	(1) In processing an expungement order, a court and the bureau shall give priority to:
1150	(a) first, an expungement order granting a petition for expungement under Part 3,
1151	Petition for Expungement;
1152	(b) second, an expungement order upon a pardon by the Board of Pardons and Parole
1153	as described in Section 77-27-5.1;
1154	(c) third, an expungement order upon a plea in abeyance as described in Section
1155	<u>77-2a-3;</u>
1156	(d) fourth, an expungement order where an individual submitted a form requesting
1157	automatic expungement under Part 2, Automatic Expungement and Deletion; and
1158	(e) fifth, an expungement order where the court identified the case as being eligible for
1159	automatic expungement under Part 2, Automatic Expungement and Deletion.
1160	(2) An individual, who receives an expungement order under Section 77-27-5.1, shall
1161	pay a processing fee to the bureau, established in accordance with the process in Section
1162	63J-1-504, before the bureau's record may be expunged.
1163	(3) An agency shall:
1164	(a) develop and implement a process to identify an expunged record; and
1165	(b) keep, index, and maintain all expunged records of arrests and convictions.
1166	(4) (a) If an individual who receives an expungement requests confirmation from an
1167	agency, the agency shall provide the individual with written confirmation that:
1168	(i) the agency has identified all records subject to expungement; and
1169	(ii) except as otherwise provided by Sections 77-40a-402 and 77-40a-403, the agency
1170	will restrict or deny access to all of the expunged records.
1171	(b) The bureau may charge a fee for providing a written confirmation under Subsection
1172	(4)(a) in accordance with the process in Section 63J-1-504.

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1173	(5) Upon entry of an expungement order, an individual, who received the
1174	expungement, may respond to any inquiry as though the arrest, investigation, detention,
1175	prosecution, or conviction did not occur unless otherwise provided by law or ordered by a court
1176	to respond differently.
1177	(6) (a) An expungement order may not restrict an agency's use or dissemination of
1178	records in the agency's ordinary course of business until the agency has received a copy of the
1179	order.
1180	(b) Any action taken by an agency after issuance of the order but prior to the agency's
1181	receipt of a copy of the order may not be invalidated by the order.
1182	(7) An expungement order may not:
1183	(a) terminate or invalidate any pending administrative proceedings or actions of which
1184	the individual had notice according to the records of the administrative body prior to issuance
1185	of the expungement order;
1186	(b) affect the enforcement of any order or findings issued by an administrative body
1187	pursuant to the administrative body's lawful authority prior to issuance of the expungement
1188	order;
1189	(c) remove any evidence relating to the individual including records of arrest, which
1190	the administrative body has used or may use in these proceedings; or
1191	(d) prevent an agency from maintaining, sharing, or distributing any record required by
1192	law.
1193	Section 22. Section 77-40a-402 is amended to read:
1194	77-40a-402. Distribution for order for vacatur.
1195	(1) An individual who receives an order for vacatur under Subsection 78B-9-108(2)
1196	shall be responsible for delivering a copy of the order for vacatur to all affected [criminal
1197	justice agencies and officials] agencies.
1198	(2) To complete delivery of the order for vacatur to the bureau, the individual shall
1199	complete and attach to the order for vacatur an application for a certificate of eligibility for
1200	expungement, including identifying information and fingerprints, in accordance with Section
1201	77-40a-301.
1202	(3) Except as otherwise provided in this section, the bureau shall treat the order for
1203	vacatur and attached certificate of eligibility for expungement the same as a valid order for

1204	expungement under Section 77-40a-401.
1205	(4) Unless otherwise provided by law or ordered by a court to respond differently, an
1206	individual who has received a vacatur of conviction under Subsection 78B-9-108(2) may
1207	respond to any inquiry as though the conviction did not occur.
1208	(5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of
1209	Investigation.
1210	(6) An agency receiving an order for vacatur shall expunge the individual's identifying
1211	information contained in records in the agency's possession relating to the incident for which
1212	vacatur is ordered.
1213	(7) [A government] An agency or official may not divulge information contained in a
1214	record of arrest, investigation, detention, or conviction after receiving an order for vacatur to
1215	any person or agency, except for:
1216	(a) the individual for whom vacatur was ordered; or
1217	(b) Peace Officer Standards and Training, in accordance with Section 53-6-203 and
1218	Subsection [77-40a-403(4)(b)] <u>77-40a-403(2)(b)</u> .
1219	(8) The bureau may not count vacated convictions against any future expungement
1220	eligibility.
1221	The following section is affected by a coordination clause at the end of this bill.
1222	Section 23. Section 77-40a-403 is amended to read:
1223	77-40a-403. Release and use of expunged records.
1224	[(1) (a) The bureau, after receiving an expungement order, shall keep, index, and
1225	maintain all expunged records of arrests and convictions.]
1226	[(b) Any agency, other than the bureau, receiving an expungement order shall develop
1227	and implement a process to identify and maintain an expunged record.]
1228	[(2) (a) An agency shall provide an individual who receives an expungement with
1229	written confirmation that the agency has expunged all records of the offense for which the
1230	individual received the expungement if the individual requests confirmation from the agency.]
1231	[(b) The bureau may charge a fee for providing a written confirmation under
1232	Subsection (2)(a) in accordance with the process in Section 63J-1-504.]
1233	$\left[\frac{(3)}{(1)}\right]$ (a) [An employee of the bureau, or any agency with an expunged record, may
1234	not] An agency with an expunged record, or any employee of an agency with an expunged

record, may not knowingly or intentionally divulge any information contained in the expunged 1235 1236 record to any person, or another agency, without a court order unless: 1237 (i) specifically authorized by statute; or 1238 (ii) subject to Subsection $\left[\frac{(3)(b)}{(1)}\right]$ (1)(b), the information in an expunged record is 1239 being shared with another agency through a records management system that both agencies use 1240 for the purpose of record management. (b) An agency with a records management system may not disclose any information in 1241 1242 an expunged record with another agency or person that does not use the records management 1243 system for the purpose of record management. 1244 $\left[\frac{4}{2}\right]$ (2) The following entities or agencies may receive information contained in 1245 expunged records upon specific request: 1246 (a) the Board of Pardons and Parole; 1247 (b) Peace Officer Standards and Training; 1248 (c) federal authorities if required by federal law; 1249 (d) the State Board of Education; 1250 (e) the Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office; and 1251 (f) a research institution or an agency engaged in research regarding the criminal justice 1252 1253 system if: 1254 (i) the research institution or agency provides a legitimate research purpose for 1255 gathering information from the expunged records; 1256 (ii) the research institution or agency enters into a data sharing agreement with the 1257 court or agency with custody of the expunged records that protects the confidentiality of any 1258 identifying information in the expunged records; 1259 (iii) any research using expunged records does not include any individual's name or 1260 identifying information in any product of that research; and 1261 (iv) any product resulting from research using expunged records includes a disclosure 1262 that expunged records were used for research purposes. 1263 [(5)] (3) Except as otherwise provided by this section or by court order, a person, an 1264 agency, or an entity authorized by this section to view expunged records may not reveal or 1265 release any information obtained from the expunged records to anyone outside the specific

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1266	request, including distribution on a public website.
1267	[(6)] (4) A prosecuting attorney may communicate with another prosecuting attorney,
1268	or another prosecutorial agency, regarding information in an expunged record that includes a
1269	conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance
1270	agreement, for:
1271	(a) stalking as described in Section 76-5-106.5;
1272	(b) a domestic violence offense as defined in Section 77-36-1;
1273	(c) an offense that would require the individual to register as a sex offender, as defined
1274	in Section 77-41-102; or
1275	(d) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.
1276	[(7)] (5) Except as provided in Subsection [(9)] (7), a prosecuting attorney may not use
1277	an expunged record for the purpose of a sentencing enhancement or as a basis for charging an
1278	individual with an offense that requires a prior conviction.
1279	[(8)] (6) The bureau may also use the information in the bureau's index as provided in
1280	Section 53-5-704.
1281	[(9)] (7) If[, after obtaining an expungement,] an individual is charged with a felony or
1282	an offense eligible for enhancement based on a prior conviction[, the state] after obtaining an
1283	expungement, the prosecuting attorney may petition the court to open the expunged records
1284	upon a showing of good cause.
1285	[(10)] (a) For judicial sentencing, a court may order any records expunged under
1286	this chapter or Section 77-27-5.1 to be opened and admitted into evidence.
1287	(b) The records are confidential and are available for inspection only by the court,
1288	parties, counsel for the parties, and any other person who is authorized by the court to inspect
1289	them.
1290	(c) At the end of the action or proceeding, the court shall order the records expunged
1291	again.
1292	(d) Any person authorized by this Subsection $[(10)]$ (8) to view expunged records may
1293	not reveal or release any information obtained from the expunged records to anyone outside the
1294	court.
1295	[(11)] (9) Records released under this chapter are classified as protected under Section
1296	63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to

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1297	Records, and Subsection $53-10-108(2)(k)$ for records held by the bureau.
1298	Section 24. Section 77-40a-404 is amended to read:
1299	77-40a-404. Confirmation of expungement Access to expunged records by
1300	individuals.
1301	(1) An individual who receives an expungement may request a written confirmation
1302	from an agency under Subsection $\left[\frac{77-40a-403(2)}{27-40a-401(4)}\right]$ to confirm that the agency
1303	has expunged all records of the offense for which the individual received the expungement.
1304	(2) The following individuals may view or obtain an expunged record under this
1305	chapter or Section 77-27-5.1:
1306	(a) the petitioner or an individual who receives an automatic expungement under
1307	[Section 77-40a-201] Part 2, Automatic Expungement and Deletion;
1308	(b) a law enforcement officer, who was involved in the case, for use solely in the
1309	officer's defense of a civil action arising out of the officer's involvement with the petitioner in
1310	that particular case; and
1311	(c) a party to a civil action arising out of the expunged incident if the information is
1312	kept confidential and utilized only in the action.
1313	The following section is affected by a coordination clause at the end of this bill.
1314	Section 25. Section 78A-2-302 is amended to read:
1315	78A-2-302. Waiver of fees, costs, and security Indigent litigants Affidavit.
1316	(1) As used in Sections 78A-2-302 through 78A-2-309:
1317	(a) "Convicted" means:
1318	(i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental
1319	condition, no contest; and
1320	(ii) a conviction of any crime or offense.
1321	(b) "Indigent" means [an individual who is financially unable to pay fees and costs or
1322	give security] a financial status that results from a court finding that a petitioner is financially
1323	unable to pay the fee, a cost, or give security.
1324	(c) "Prisoner" means an individual who has been convicted of a crime and is
1325	incarcerated for that crime or is being held in custody for trial or sentencing.
1326	(2) An individual may institute, prosecute, defend, or appeal any cause in a court in this
1327	state without prepayment of fees and costs or security if:

1328	(a) the individual submits an affidavit demonstrating that the individual is indigent[-];
1329	<u>or</u>
1330	(b) the cause is a petition for expungement and the individual provides the court with
1331	proof that another court granted a waiver of the fee for a petition for expungement as described
1332	<u>in Subsection 77-40a-305(12)(b).</u>
1333	(3) A court shall find an individual indigent if the individual's affidavit under
1334	Subsection (2) demonstrates:
1335	(a) the individual has an income level at or below 150% of the United States poverty
1336	level as defined by the most recent poverty income guidelines published by the United States
1337	Department of Health and Human Services;
1338	(b) the individual receives benefits from a means-tested government program,
1339	including Temporary Assistance to Needy Families, Supplemental Security Income, the
1340	Supplemental Nutrition Assistance Program, or Medicaid;
1341	(c) the individual receives legal services from a nonprofit provider or a pro bono
1342	attorney through the Utah State Bar; or
1343	(d) the individual has insufficient income or other means to pay the necessary fees and
1344	costs or security without depriving the individual, or the individual's family, of food, shelter,
1345	clothing, or other necessities.
1346	(4) An affidavit demonstrating that an individual is indigent under Subsection (3)(d)
1347	shall contain complete information on the individual's:
1348	(a) identity and residence;
1349	(b) amount of income, including any government financial support, alimony, or child
1350	support;
1351	(c) assets owned, including real and personal property;
1352	(d) business interests;
1353	(e) accounts receivable;
1354	(f) securities, checking and savings account balances;
1355	(g) debts; and
1356	(h) monthly expenses.
1357	(5) If the individual under Subsection (3) is a prisoner, the prisoner shall disclose the

amount of money held in the prisoner's trust account at the time the affidavit under Subsection

1359	(2) is executed in accordance with Section 78A-2-305.
1360	(6) An affidavit of indigency under this section shall state the following:
1361	I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear
1362	the expenses of the action or legal proceedings which I am about to commence or the appeal
1363	which I am about to take, and that I believe I am entitled to the relief sought by the action, legal
1364	proceedings, or appeal.
1365	(7) The Administrative Office of the Courts shall include on a form for an affidavit of
1366	indigency the following warning: "It is a crime for anyone to intentionally or knowingly
1367	provide false or misleading information to the court when seeking a waiver of a court fee."
1368	Section 26. Section 78A-7-209.5 is amended to read:
1369	78A-7-209.5. Presiding judge Associate presiding judge Election Powers
1370	Duties.
1371	(1) (a) In judicial districts having more than one justice court judge, the justice court
1372	judges shall elect one judge of the district to the office of presiding judge.
1373	(b) The presiding judge shall receive an additional \$2,000 per annum as compensation
1374	from the Justice Court Technology, Security, and Training Account described in Section
1375	78A-7-301 for the period served as presiding judge.
1376	(2) (a) In judicial districts having more than two justice court judges, the justice court
1377	judges may elect one judge of the district to the office of associate presiding judge.
1378	(b) The associate presiding judge shall receive an additional \$1,000 per annum as
1379	compensation from the Justice Court Technology, Security, and Training Account described in
1380	Section 78A-7-301 for the period served as associate presiding judge.
1381	(3) The presiding judge has the following authority and responsibilities, consistent with
1382	the policies of the Judicial Council:
1383	(a) working with each justice court judge in the district to implement policies and rules
1384	of the Judicial Council;
1385	(b) exercising powers and performing administrative duties as authorized by the
1386	Judicial Council;
1387	(c) if there is no other appointed justice court judge in that court available, assigning a
1388	justice court judge to hear a case in which a judge has been disqualified in accordance with
1389	rules of the Supreme Court;

1390	(d) if a justice court judge of the district cannot perform the justice court judge's duties
1391	in a case or cases due to illness, death, or other incapacity, and the governing body has not
1392	appointed a temporary justice court judge in accordance with Section 78A-7-208:
1393	(i) assigning, on an emergency basis, a justice court judge to hear a case or cases; and
1394	(ii) facilitating judicial coverage with the appointing municipal or county authority
1395	until a temporary justice court judge can be appointed, in accordance with Section 78A-7-208,
1396	or a new justice court judge is formally appointed and takes office, in accordance with Section
1397	78A-7-202; and
1398	(e) entering orders of expungement in cases expunged in accordance with [Section
1399	77-40a-201] Title 77, Chapter 40a, Part 2, Automatic Expungement and Deletion.
1400	(4) (a) When the presiding judge is unavailable, the associate presiding judge shall
1401	assume the responsibilities of the presiding judge.
1402	(b) The associate presiding judge shall perform other duties assigned by the presiding
1403	judge.
1404	Section 27. Section 78B-7-1001 is amended to read:
1405	78B-7-1001. Definitions.
1406	As used in this part:
1407	(1) (a) [Except as provided in Subsection (1)(b), "agency"] "Agency" means, except as
1408	provided in Subsection (1)(b), a state, county, or local government entity that generates or
1409	maintains records relating to a civil order for which expungement may be ordered.
1410	(b) "Agency" does not include the Division of Child and Family Services created in
1411	Section 80-2-201.
1412	(2) "Civil order" means:
1413	(a) an ex parte civil protective order;
1414	(b) an ex parte civil stalking injunction;
1415	(c) a civil protective order; or
1416	(d) a civil stalking injunction.
1417	[(3) "Expunge" means to seal or otherwise restrict access to an individual's record held
1418	by an agency when the record includes a civil order.]
1419	(3) (a) "Expunge" means to remove a record from public inspection by:
1420	(i) sealing the record; or

shall be responsible for delivering a copy of the order of expungement to any affected agency.

(ii) restricting or denying access to the record.

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

Section 28. Section 78B-7-1004 is amended to read:

1429 [(2) Upon receipt of an order of expungement as described in Subsection (1), an agency
 1430 shall expunge all records described in the expungement order that are under the control of the
 1431 agency.]

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

(1) An individual who receives an order of expungement under Section 78B-7-1003

(4) "Petitioner" means an individual petitioning for expungement of a civil order under

1432 (2) If an agency receives an expungement order as described in Subsection (1), the
1433 agency shall expunge all records affected by the expungement order.

1434 (3) Upon entry of an expungement order by a court under Section 78B-7-1003:

1435 (a) the civil order is considered to never have occurred; and

(b) the petitioner may reply to an inquiry on the matter as though there was never acivil order.

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

(b) 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
expungement order.

1443 (c) Any action taken by an agency after issuance of the expungement order but before 1444 the agency's receipt of a copy of the expungement order may not be invalidated by the order.

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(5) An expungement order under this part 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 before 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; or

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this part.

1452	(c) prevent an agency from maintaining, sharing, or distributing any record required by
1453	law.
1454	(6) An employee or agent of an agency that is prohibited from disseminating
1455	information from an expunged record under this section who knowingly or intentionally
1456	discloses identifying information from the expunged record, unless allowed by law, is guilty of
1457	a class A misdemeanor.
1458	(7) Records expunged under this part may be released to, or viewed by, the following
1459	individuals:
1460	(a) the petitioner; or
1461	(b) parties to a civil action arising out of the expunged civil order, providing the
1462	information is kept confidential and utilized only in the action.
1463	(8) This part does not preclude a court from considering the same circumstances or
1464	evidence for which an expunged civil order was issued in any proceeding that occurs after the
1465	civil order is expunged.
1466	Section 29. Section 80-6-1001 is amended to read:
1467	80-6-1001. Definitions.
1468	As used in this part:
1469	(1) "Abstract" means a copy or summary of a court's disposition.
1470	(2) (a) "Agency" means a state, county, or local government entity that generates or
1471	maintains records for which expungement may be ordered under this part.
1472	(b) "Agency" includes a local education agency, as defined in Section 53E-1-102, for
1473	purposes of this part.
1474	(3) (a) "Expunge" means [to seal or otherwise restrict access to a record that is part of
1475	an individual's juvenile record and in the custody of the juvenile court or an agency] to remove
1476	a juvenile record from public inspection by:
1477	(i) sealing the juvenile record; or
1478	(ii) restricting or denying access to the juvenile record.
1479	(b) "Expunge" does not include the destruction of a juvenile record.
1480	(4) (a) "Juvenile record" means all records for all incidents of delinquency involving an
1481	individual that are in the custody of the juvenile court or an agency.
1482	(b) "Juvenile record" does not include a record of an adjudication under Chapter 3,

1483	Abuse, Neglect, and Dependency Proceedings, or Chapter 4, Termination and Restoration of
1484	Parental Rights.
1485	(5) "Petitioner" means an individual requesting an expungement or vacatur under this
1486	part.
1487	Section 30. Section 80-6-1006.1 is amended to read:
1488	80-6-1006.1. Exceptions to expungement order Distribution of expungement
1489	order Agency duties Effect of expungement Access to expunged record.
1490	(1) This section applies to an expungement order under Section 80-6-1004.1,
1491	80-6-1004.2, 80-6-1004.3, 80-6-1004.4, or 80-6-1004.5.
1492	(2) The juvenile court may not order:
1493	(a) the Board of Pardons and Parole and the Department of Corrections to seal a record
1494	in the possession of the Board of Pardons and Parole or the Department of Corrections, except
1495	that the juvenile court may order the Board of Pardons and Parole and the Department of
1496	Corrections to restrict access to a record if the record is specifically identified in the
1497	expungement order as a record in the possession of the Board of Pardons and Parole or the
1498	Department of Corrections; or
1499	(b) the Division of Child and Family Services to expunge a record in an individual's
1500	juvenile record that is contained in the Management Information System or the Licensing
1501	Information System unless:
1502	(i) the record is unsupported; or
1503	(ii) after notice and an opportunity to be heard, the Division of Child and Family
1504	Services stipulates in writing to expunging the record.
1505	(3) (a) If the juvenile court issues an expungement order, the juvenile court shall send a
1506	copy of the expungement order to any affected agency or official identified in the juvenile
1507	record.
1508	(b) An individual who is the subject of an expungement order may deliver copies of the
1509	expungement order to all agencies and officials affected by the expungement order.
1510	(4) (a) Upon receipt of an expungement order, an agency shall:
1511	(i) [to avoid destruction or expungement of records in whole or in part, expunge only
1512	the references to the individual's name in the records relating to the individual's adjudication,
1513	nonjudicial adjustment, petition, arrest, investigation, or detention for which expungement is

1514	ordered] expunge all records affected by the expungement order; and
1515	(ii) destroy all photographs and records created under Section 80-6-608, except that a
1516	record of a minor's fingerprints may not be destroyed by an agency.
1517	(b) An agency that receives a copy of an expungement order shall mail an affidavit to
1518	the individual who is the subject of the expungement order, or the individual's attorney, that the
1519	agency has complied with the expungement order.
1520	(5) Notwithstanding Subsection (4), the Board of Pardons and Parole and the
1521	Department of Corrections:
1522	(a) may not disclose records expunged in an expungement order unless required by
1523	law;
1524	(b) are not required to destroy any photograph or record created under Section
1525	80-6-608;
1526	(c) may use an expunged record for purposes related to incarceration and supervision
1527	of an individual under the jurisdiction of the Board of Pardons and Parole, including for the
1528	purpose of making decisions about:
1529	(i) the treatment and programming of the individual;
1530	(ii) housing of the individual;
1531	(iii) applicable guidelines regarding the individual; or
1532	(iv) supervision conditions for the individual;
1533	(d) are not prohibited from disclosing or sharing any information in an expunged
1534	record with another agency that uses the same record management system as the Board of
1535	Pardons and Parole or the Department of Corrections; and
1536	(e) are not required to mail an affidavit under Subsection (4)(b).
1537	(6) Upon entry of an expungement order:
1538	(a) an adjudication, a nonjudicial adjustment, a petition, an arrest, an investigation, or a
1539	detention for which the record is expunged is considered to have never occurred; and
1540	(b) the individual, who is the subject of the expungement order, may reply to an inquiry
1541	on the matter as though there never was an adjudication, a nonjudicial adjustment, a petition,
1542	an arrest, an investigation, or a detention.
1543	(7) A record expunged under Section 80-6-1004.1, 80-6-1004.2, 80-6-1004.3,
1544	80-6-1004.4, or 80-6-1004.5 may be released to, or viewed by, the individual who is the subject

1545	of the record.
1546	Section 31. Repealer.
1547	This bill repeals:
1548	Section 77-40a-203, Time periods for expungement or deletion Identification and
1549	processing of clean slate eligible cases.
1550	Section 32. Effective date.
1551	(1) Except as provided in Subsection (2), this bill takes effect on October 1, 2024.
1552	(2) Section <u>63M-7-221</u> takes effect on May 1, 2024.
1553	Section 33. Coordinating H.B. 352 with S.B. 163.
1554	If H.B. 352, Amendments to Expungement, and S.B. 163, Expungement Revisions,
1555	both pass and become law, the Legislature intends that, on October 1, 2024:
1556	(1) the following language replace Subsection 77-40a-301(1)(b) enacted in H.B. 352
1557	and S.B. 163:
1558	"(b) except as provided in Subsections 77-40a-304(3) and (7), pay the issuance fee for
1559	the certificate of eligibility or special certificate as described in Section 77-40a-304 if the
1560	individual is eligible to receive a certificate of eligibility or special certificate; and";
1561	(2) Subsection 77-40a-306(5) enacted in H.B. 352 not be enacted;
1562	(3) Subsection 77-40a-401(3) enacted in H.B. 352 be amended to read:
1563	"(3) (a) An agency shall:
1564	(i) develop and implement a process to identify an expunged record; and
1565	(ii) keep, index, and maintain all expunged records of arrests and convictions.
1566	(b) Subsection (3)(a) does not prevent an agency from maintaining or destroying a
1567	record in accordance with a retention schedule when the record is an expunged record.
1568	(c) An agency is not required to redact an expunged record, or a record referencing an
1569	expunged record, that pertains to more than one individual until the agency is required to
1570	release the record."; and
1571	(4) Subsection 78A-2-302(2) be amended to read:
1572	"(2) An individual may institute, prosecute, defend, or appeal any cause in a court in
1573	this state without prepayment of fees and costs or security if:
1574	(a) the individual submits an affidavit demonstrating that the individual is indigent[$-$];
1575	<u>or</u>

- 1576 (b) the cause is a petition for expungement and: (i) the individual provides the court
- 1577 with proof that another court granted a waiver of the fee for a petition for expungement as
- 1578 described in Subsection 77-40a-305(12)(b); or
- 1579 (ii) the individual is receiving services for the expungement from a nonprofit
- 1580 organization, or a public benefit corporation, that provides services to low-income individuals
- 1581 <u>seeking expungement.".</u>