

HB0352S06 compared with HB0352S05

~~{deleted text}~~ shows text that was in HB0352S05 but was deleted in HB0352S06.

inserted text shows text that was not in HB0352S05 but was inserted into HB0352S06.

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~~{Representative Karianne Lisonbee}~~Senator Kirk A. Cullimore proposes the following substitute bill:

AMENDMENTS TO EXPUNGEMENT

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill addresses the expungement of records.

Highlighted Provisions:

This bill:

- ▶ repeals sunset dates regarding issuance and filing fees for expungement;
- ▶ repeals language relating to the suspension of issuance fees for certificates of eligibility for expungement and filing fees for petitions for expungement;
- ▶ creates a sunset date for an expungement working group;
- ▶ creates an expungement working group to study issues related to automatic expungement;
- ▶ allows a court to issue an order of expungement for a plea in abeyance when the

HB0352S06 compared with HB0352S05

defendant has completed a problem solving court program and the court dismisses the case against the defendant;

- ▶ defines terms related to expungement;
- ▶ clarifies automatic deletion of a traffic offense;
- ▶ amends provisions related to the automatic expungement of a case, including:
 - requiring an individual to submit a form to receive an automatic expungement on and after October 1, 2024, ~~and~~ but before ~~October~~ January 1, ~~2027~~ 2026;
 - providing that a court automatically expunge cases that are eligible for expungement on and after ~~October~~ January 1, ~~2027~~ 2026;
 - for an individual seeking an automatic expungement on and after January 1, 2025, prohibiting an automatic expungement if the individual is incarcerated in the state prison or on probation or parole that is supervised by the Department of Corrections; and
 - prohibiting an automatic expungement if there is a criminal proceeding pending in this state against the individual for a misdemeanor or felony offense, unless the proceeding is for a traffic offense;
- ▶ provides that the court and Bureau of Criminal Identification are the only agencies that expunge records affected by an automatic expungement order;
- ▶ clarifies the certificate of eligibility process;
- ▶ allows for the waiver of an issuance fee for a certificate of eligibility or a special certificate if a court finds that the individual filing the petition for expungement is indigent;
- ▶ requires a court to consider the total number of cases for which an individual has received a certificate of expungement when determining whether the individual is indigent;
- ▶ requires a subsequent court to waive a filing fee for a petition for expungement if a prior court found the individual to be indigent within 180 days before the filing of the petition for expungement;
- ▶ clarifies the distribution of an expungement order based on a petition and the expungement of records affected by an expungement order based on a petition;

HB0352S06 compared with HB0352S05

- ▶ establishes the priority of expungement orders that are processed by a court and the Bureau of Criminal Identification;
- ▶ requires an agency to develop and implement a process to identify expunged records and keep, index, and maintain all expunged records of arrest;
- ▶ clarifies the effect of an expungement;
- ▶ addresses the waiver of a fee for a petition for expungement when the individual has previously received a waiver for a petition for expungement from a prior court;
- ~~▶ requires a court to find an individual indigent if the individual submits an affidavit of indigency demonstrating that the individual has an income at or below 175% of the United States poverty level;~~
- ‡ ▶ requires the Administrative Office of the Courts to include a warning on an affidavit of indigency;
- ▶ clarifies the expungement of records regarding protective orders, stalking injunctions, and juvenile records;
- ▶ repeals a statute regarding the time periods for expungement or deletion and identifying and processing clean slate eligible cases; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

[This bill provides a coordination clause.](#)

Utah Code Sections Affected:

AMENDS:

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

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

63I-2-263, as last amended by Laws of Utah 2023, Chapters 33, 139, 212, 354, and 530

77-2a-3, as last amended by Laws of Utah 2023, Chapters 113, 415

77-40a-101, as last amended by Laws of Utah 2023, Chapter 265

77-40a-104, as last amended by Laws of Utah 2023, Chapter 265

HB0352S06 compared with HB0352S05

77-40a-201, as renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-202, as renumbered and amended by Laws of Utah 2022, Chapter 250

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

77-40a-302, as last amended by Laws of Utah 2023, Chapter 265

77-40a-303, as last amended by Laws of Utah 2023, Chapter 265

77-40a-304, as last amended by Laws of Utah 2023, Chapter 265

77-40a-305, as last amended by Laws of Utah 2023, Chapters 265, 330

77-40a-306, as last amended by Laws of Utah 2023, Chapter 330

77-40a-401, as last amended by Laws of Utah 2023, Chapter 265

77-40a-402, as last amended by Laws of Utah 2023, Chapter 265

77-40a-403, as last amended by Laws of Utah 2023, Chapter 265

77-40a-404, as last amended by Laws of Utah 2023, Chapter 265

78A-2-302, as last amended by Laws of Utah 2023, Chapter 184

78A-7-209.5, as enacted by Laws of Utah 2022, Chapter 276

78B-7-1001, as enacted by Laws of Utah 2022, Chapter 270

78B-7-1004, as enacted by Laws of Utah 2022, Chapter 270

80-6-1001, as last amended by Laws of Utah 2023, Chapter 115

80-6-1006.1, as enacted by Laws of Utah 2023, Chapter 115

ENACTS:

63M-7-221, Utah Code Annotated 1953

77-40a-204, Utah Code Annotated 1953

77-40a-205, Utah Code Annotated 1953

77-40a-206, Utah Code Annotated 1953

77-40a-207, Utah Code Annotated 1953

77-40a-307, Utah Code Annotated 1953

REPEALS:

77-40a-203, as renumbered and amended by Laws of Utah 2022, Chapter 250

Utah Code Sections Affected By Coordination Clause:

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

77-40a-304, as last amended by Laws of Utah 2023, Chapter 265

77-40a-306, as last amended by Laws of Utah 2023, Chapter 330

HB0352S06 compared with HB0352S05

[77-40a-403](#), as last amended by Laws of Utah 2023, Chapter 265

[78A-2-302](#), as last amended by Laws of Utah 2023, Chapter 184

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

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

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

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

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

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

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

~~[(2)]~~ (1) Section 78B-3-421, regarding medical malpractice arbitration agreements, is repealed July 1, 2029.

~~[(3)]~~ (2) Subsection 78A-7-106(6), regarding the transfer of a criminal action involving a domestic violence offense from the justice court to the district court, is repealed on July 1, 2024.

~~[(4)]~~ (3) Section 78B-4-518, regarding the limitation on employer liability for an employee convicted of an offense, is repealed on July 1, 2025.

~~[(5)]~~ (4) Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, is repealed July 1, 2026.

~~[(6)]~~ (5) Title 78B, Chapter 12, Part 4, Advisory Committee, which creates the Child Support Guidelines Advisory Committee, is repealed July 1, 2026.

~~[(7)]~~ (6) Section 78B-22-805, regarding the Interdisciplinary Parental Representation Pilot Program, is repealed December 31, 2024.

Section 3. Section **63I-2-263** is amended to read:

63I-2-263. Repeal dates: Title 63A to Title 63N.

(1) Title 63A, Chapter 2, Part 5, Educational Interpretation and Translation Services Procurement Advisory Council is repealed July 1, 2025.

(2) Section 63A-17-303 is repealed July 1, 2023.

(3) Section 63A-17-806 is repealed June 30, 2026.

HB0352S06 compared with HB0352S05

(4) Title 63C, Chapter 22, Digital Wellness, Citizenship, and Safe Technology Commission is repealed July 1, 2023.

(5) Section 63H-7a-303 is repealed July 1, 2024.

(6) Subsection 63H-7a-403(2)(b), regarding the charge to maintain the public safety communications network, is repealed July 1, 2033.

(7) Subsection 63J-1-602.2(45), which lists appropriations to the State Tax Commission for property tax deferral reimbursements, is repealed July 1, 2027.

(8) Section 63M-7-221, establishing an expungement working group, is repealed on April 30, 2025.

~~[(8)]~~ (9) Subsection 63N-2-213(12)(a), relating to claiming a tax credit in the same taxable year as the targeted business income tax credit, is repealed December 31, 2024.

~~[(9)]~~ (10) Title 63N, Chapter 2, Part 3, Targeted Business Income Tax Credit in an Enterprise Zone, is repealed December 31, 2024.

Section 4. Section **63M-7-221** is enacted to read:

63M-7-221. Expungement working group.

(1) As used in this section:

(a) "Agency" means the same as that term is defined in Section 77-40a-101.

(b) "Automatic expungement" means the same as that term is defined in Section 77-40a-101.

(2) The commission shall establish a working group to:

(a) study the challenges of implementing automatic expungement under Title 77, Chapter 40a, Part 2, Automatic Expungement and Deletion;

(b) determine the time and resources that an agency would need to implement automatic expungement under Title 77, Chapter 40a, Automatic Expungement and Deletion;

(c) determine whether an investment in technology is needed or could be helpful in implementing automatic expungement under Chapter 40a, Automatic Expungement and Deletion; and

(d) consider possible statutory changes to improve the implementation of automatic expungement under Chapter 40a, Automatic Expungement and Deletion.

(3) The working group described in Subsection (2) shall consist of:

(a) at least one representative of:

HB0352S06 compared with HB0352S05

- (i) the Bureau of Criminal Identification established in Section 53-10-201;
- (ii) the Administrative Office of the Courts;
- (iii) a local law enforcement agency; and
- (iv) an advocacy group that represents or assists individuals with expungement; and
- (b) any other individual or organization recommended by the executive director of the commission.

(4) On or before November 1, 2024, the commission shall provide a written report to the Judiciary Interim Committee describing:

- (a) the information gathered by the working group under Subsection (2); and
- (b) any recommendations for statutory changes with respect to the information gathered by the working group under Subsection (2).

Section 5. Section 77-2a-3 is amended to read:

77-2a-3. Manner of entry of plea -- Powers of court -- Expungement.

(1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with the Utah Rules of Criminal Procedure, Rule 11.

(b) In cases charging offenses for which bail may be forfeited, a plea in abeyance agreement may be entered into without a personal appearance before a magistrate.

(2) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:

(a) reduce the degree of the offense [~~and enter judgment of conviction and impose sentence for a lower degree of offense; or~~], enter a judgment of conviction for the lower degree of the offense, and impose a sentence for the lower degree of the offense;

(b) allow withdrawal of the defendant's plea and order the dismissal of the case[~~;~~]; or

(c) issue an order of expungement for all records of the offense if:

(i) the defendant successfully completes a problem solving court program that is certified by the Judicial Council; and

(ii) the court allows the withdrawal of the defendant's plea and orders the dismissal of the case.

(3) (a) Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement and only as provided in the plea in abeyance agreement or as agreed to by all parties, the court may [~~reduce the degree of the offense or dismiss the case only as provided~~

HB0352S06 compared with HB0352S05

~~in the plea in abeyance agreement or as agreed to by all parties.]:~~

(i) reduce the degree of the offense, enter a judgment of conviction for the lower degree of the offense, and impose a sentence for the lower degree of the offense;

(ii) allow withdrawal of the defendant's plea and order the dismissal of the case; or

(iii) issue an order of expungement for all records of the offense if:

(A) the defendant successfully completes a problem solving court program that is certified by the Judicial Council; and

(B) the court allows the withdrawal of the defendant's plea and orders the dismissal of the case.

(b) Upon sentencing a defendant for any lesser offense in accordance with a plea in abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of 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.

(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 program required by the terms of the agreement; and

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

(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 the defendant and the prosecuting attorney;

(ii) a certification from the prosecuting attorney that:

(A) the prosecuting attorney has consulted with all victims, including the Utah Office

HB0352S06 compared with HB0352S05

for Victims of Crime; and

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

(iii) an agreement between the parties that restitution will be determined by the court at a 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 to the victim, unless otherwise provided by law or by the plea in abeyance agreement.

(d) If the defendant does not successfully complete the terms of the plea in abeyance, the court shall enter an order for restitution, in accordance with Chapter 38b, Crime Victims Restitution Act, upon entering a sentence for the defendant.

(7) (a) A court may not hold a plea in abeyance without the consent of both the prosecuting attorney and the defendant.

(b) A decision by a prosecuting attorney not to agree to a plea in abeyance is final.

(8) No plea may be held in abeyance in any case involving:

(a) a sexual offense against an individual who is under 14 years old; or

(b) a driving under the influence violation under Section 41-6a-502, 41-6a-502.5, 41-6a-517, 41-6a-520, 41-6a-520.1, 41-6a-521.1, 76-5-102.1, or 76-5-207.

(9) (a) If the terms of a plea in abeyance agreement allow a court to issue an order of expungement as described in Subsection (2)(c), the prosecuting attorney shall make a reasonable effort to provide notice to any victim of the offense of the terms of the plea in abeyance agreement.

(b) The notice under Subsection (9)(a) shall:

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

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

(c) If there is a victim of the offense, the victim may file an objection with the court before the court makes a finding as to whether the defendant successfully completed the terms of the plea in abeyance agreement as described in Subsection (3).

HB0352S06 compared with HB0352S05

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

(10) If the court issues an order of expungement under Subsection (3)(a)(iii), the court shall:

(a) expunge all records of the case as described in Section 77-40a-401; and

(b) notify the Bureau of Criminal Identification of the order of expungement.

(11) (a) Upon receiving notice from the court of an expungement order as described in Subsection (10), the Bureau of Criminal Identification shall notify any agency, as defined in Section 77-40a-101, affected by the expungement order.

(b) For purposes of Subsection (11)(a), the Bureau of Criminal Identification may not notify the Board of Pardons and Parole of an expungement order if the individual has never been:

(i) sentenced to prison in this state; or

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

(c) The Bureau of Criminal Identification shall forward a copy of the expungement order to the Federal Bureau of Investigation.

(12) The defendant may deliver copies of the expungement to any agency, as defined in Section 77-40a-101, affected by the order of expungement.

(13) If an agency receives an expungement order under this part, the agency shall expunge all records for the case in accordance with Section 77-40a-401.

Section 6. Section **77-40a-101** is amended to read:

77-40a-101. Definitions.

As used in this chapter:

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

(2) "Automatic expungement" means the expungement of records of an investigation, arrest, detention, or conviction of an offense without the filing of a petition.

~~[(2)]~~ (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.

~~{ (4) "Civil accounts receivable" means the same as that term is defined in Section~~

HB0352S06 compared with HB0352S05

~~77-32b-102.~~

~~(5) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.~~

‡ [(3)] ~~(6;4)~~ "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.

~~(5) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.~~

~~(6) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.~~

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

~~[(i) where each conviction within the case is:]~~

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

~~[(B) a class B or class C misdemeanor conviction; or]~~

~~[(C) an infraction conviction;]~~

~~[(ii) that involves an individual:]~~

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

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

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

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

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

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

~~[(b) "Clean slate eligible case" includes a case:]~~

~~[(i) that is dismissed as a result of a successful completion of a plea in abeyance]~~

HB0352S06 compared with HB0352S05

agreement governed by ~~Subsection 77-2a-3(2)(b) if:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0352S06 compared with HB0352S05

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

(7) "Clean slate eligible case" means a case that is eligible for automatic expungement under Section 77-40a-205.

~~[(5)]~~ (8) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

(9) "Court" means a district court or a justice court.

(10) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.

~~[(6)]~~ (11) "Criminal protective order" means the same as that term is defined in Section 78B-7-102.

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

~~[(8)]~~ (13) "Department" means the Department of Public Safety established in Section 53-1-103.

~~[(9)]~~ (14) "Drug possession offense" means ~~[an offense under]~~:

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

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

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

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

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

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

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection ~~[(9)]~~ ~~(~~13~~)~~ 14.

HB0352S06 compared with HB0352S05

~~[(10)]~~ (15) (a) "Expunge" means to ~~[seal or otherwise restrict access to the individual's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.]~~ remove a record from public inspection by:

(i) sealing the record; or

(ii) restricting or denying access to the record.

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

(16) "Indigent" means a financial status that results from a court finding that a petitioner is financially unable to pay the fee to file a petition for expungement under Section 78A-2-302.

~~[(11)]~~ (17) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

~~[(12)]~~ (18) (a) "Minor regulatory offense" means, except as provided in Subsection ~~[(12)(c)]~~ ~~(~~17~~; 18)(c)~~, a class B or C misdemeanor offense or a local ordinance.

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

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

(i) any drug possession offense;

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

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

(iv) except as provided in Subsection ~~[(12)(b)]~~ ~~(~~17~~; 18)(b)~~, an offense under Title 76, Utah Criminal Code; or

(v) any local ordinance that is substantially similar to an offense listed in Subsections ~~[(12)(c)(i)]~~ ~~(~~17~~; 18)(c)(i)~~ through (iv).

~~[(13)]~~ (19) "Petitioner" means an individual applying for expungement under this chapter.

~~[(14)]~~ (20) "Plea in abeyance" means the same as that term is defined in Section 77-2a-1.

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

HB0352S06 compared with HB0352S05

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

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

~~[(15)]~~ (22) (a) "Traffic offense" means, except as provided in Subsection ~~[(15)(b)]~~ (21)(22)(b):

(i) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 41, Chapter 6a, Traffic Code;

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

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

(iv) all local ordinances that are substantially similar to an offense listed in Subsections ~~[(15)(a)(i)]~~ (21)(22)(a)(i) through (iii).

(b) "Traffic offense" does not mean:

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

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

(iii) any local ordinance that is substantially similar to an offense listed in Subsection ~~[(15)(b)(i)]~~ (21)(22)(b)(i) or (ii).

~~[(16)]~~ (23) "Traffic offense case" means that each offense in the case is a traffic offense.

Section 7. Section **77-40a-104** is amended to read:

77-40a-104. Department rulemaking authority.

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

(1) implement procedures for processing an automatic expungement;

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

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

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

(5) implement procedures for the confirmation of an expungement under Subsection

~~[77-40a-403(2)]~~ 77-40a-401(4).

HB0352S06 compared with HB0352S05

Section 8. Section 77-40a-201 is amended to read:

Part 2. Automatic Expungement and Deletion

77-40a-201. General provisions for automatic expungement and deletion.

~~[(1)(a) Except as provided in Subsection (1)(b) and subject to Section 77-40a-203, this section governs the process for the automatic expungement of all records in:]~~

~~[(i) except as provided in Subsection (2)(e), a case that resulted in an acquittal on all charges;]~~

~~[(ii) except as provided in Subsection (3)(e), a case that is dismissed with prejudice; or]~~

~~[(iii) a case that is a clean slate eligible case.]~~

~~[(b) This section does not govern automatic expungement of a traffic offense.]~~

~~[(2)(a) Except as provided in Subsection (2)(e), the process for automatic expungement of records for a case that resulted in an acquittal on all charges is as described in Subsections (2)(b) through (d).]~~

~~[(b) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:]~~

~~[(i) issue, without a petition, an expungement order; and]~~

~~[(ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.]~~

~~[(c) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.]~~

~~[(d) For a case resulting in an acquittal on all charges on or before May 1, 2020, that is automatically expunged under this Subsection (2), a law enforcement agency shall expunge records for the case within one year after the day on which the law enforcement agency receives notice from the bureau.]~~

~~[(e) For purposes of this section, a case that resulted in acquittal on all charges does not include a case that resulted in an acquittal because the individual is found not guilty by reason of insanity.]~~

~~[(3)(a) The process for an automatic expungement of a case that is dismissed with prejudice is as described in Subsections (3)(b) through (d).]~~

~~[(b) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:]~~

HB0352S06 compared with HB0352S05

~~[(i) issue, without a petition, an expungement order, and]~~

~~[(ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.]~~

~~[(c) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.]~~

~~[(d) For a case dismissed on or before May 1, 2020, that is automatically expunged under this Subsection (3), a law enforcement agency shall expunge records for the case within one year after the day on which the law enforcement agency receives notice from the bureau.]~~

~~[(e) For purposes of this Subsection (3), a case that is dismissed with prejudice does not include a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b).]~~

~~[(4) (a) The process for the automatic expungement of a clean slate eligible case is as described in Subsections (4)(b) through (g) and in accordance with any rules made by the Judicial Council or the Supreme Court.]~~

~~[(b) A prosecuting agency, that has complied with Rule 42 of the Utah Rules of Criminal Procedure, shall receive notice on a monthly basis for any case prosecuted by that agency that appears to be a clean slate eligible case.]~~

~~[(c) Within 35 days of the day on which the notice described in Subsection (4)(b) is sent, the prosecuting agency shall provide written notice in accordance with any rules made by the Judicial Council or the Supreme Court if the prosecuting agency objects to an automatic expungement for any of the following reasons:]~~

~~[(i) after reviewing the agency record, the prosecuting agency believes that the case does not meet the definition of a clean slate eligible case;]~~

~~[(ii) the individual has not paid court-ordered restitution to the victim; or]~~

~~[(iii) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an individual with a clean slate eligible case is continuing to engage in criminal activity within or outside of the state.]~~

~~[(d) (i) If a prosecuting agency provides written notice of an objection for a reason described in Subsection (4)(c) within 35 days of the day on which the notice described in Subsection (4)(b) is sent, the court may not proceed with automatic expungement.]~~

~~[(ii) If 35 days pass from the day on which the notice described in Subsection (4)(b) is~~

HB0352S06 compared with HB0352S05

~~sent without the prosecuting agency providing written notice of an objection for a reason described in Subsection (4)(c), the court may proceed with automatic expungement.]~~

~~[(e) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:]~~

~~[(i) issue, without a petition, an expungement order; and]~~

~~[(ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.]~~

~~[(f) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.]~~

~~[(g) For a clean slate case adjudicated or dismissed on or before May 1, 2020, that is automatically expunged under this Subsection (4), a law enforcement agency shall expunge records for the case within one year after the day on which the law enforcement agency receives notice from the bureau.]~~

~~[(5)] (1) Nothing in this section precludes an individual from filing a petition for expungement of records that are eligible for automatic expungement or deletion under this section if an automatic expungement or deletion has not occurred pursuant to this section.~~

~~[(6)] (2) An automatic expungement performed under this ~~[section]~~ part does not preclude a person from requesting access to expunged records in accordance with Section 77-40a-403 or 77-40a-404.~~

~~[(7)] (3) (a) The Judicial Council and the Supreme Court shall make rules to govern the process for automatic expungement.~~

~~(b) The rules under Subsection ~~[(7)(a)]~~ (3)(a) may authorize:~~

~~(i) a presiding judge of a district court to issue an expungement order for any case when the requirements for automatic expungement are met; and~~

~~(ii) a presiding judge of a justice court to issue an expungement order for any justice court case within the presiding judge's judicial district when the requirements for automatic expungement are met.~~

~~(4) An individual does not have a cause of action for damages as a result of the failure to:~~

~~(a) identify an individual's case as eligible for automatic expungement or deletion under this part; or~~

HB0352S06 compared with HB0352S05

(b) automatically expunge or delete the records of a case that is eligible under this part.

Section 9. Section **77-40a-202** is amended to read:

77-40a-202. Automatic deletion for traffic offense by a court.

(1) [~~Subject to Section 77-40a-203;~~] A court shall delete all records for the following traffic offenses [~~shall be deleted~~] without a court order or notice to the prosecuting agency:

(a) a traffic offense case that resulted in an acquittal on all charges;

(b) a traffic offense case that is dismissed with prejudice, except for a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b); or

(c) a traffic offense case for which the following time periods have elapsed from the day on which the case is adjudicated:

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

(ii) at least six years for a class B misdemeanor.

(2) For a traffic offense case that results in an acquittal, is dismissed, or is adjudicated on or after May 1, 2020, the court shall delete all records for the traffic offense upon identification.

(3) For a traffic offense case that results in an acquittal, is dismissed, or is adjudicated before May 1, 2020, the court shall delete all records for the traffic offense within one year of the day on which the case is identified as eligible for deletion.

~~[(2) The Judicial Council shall make rules to provide an ongoing process for identifying and deleting records on all traffic offenses described in Subsection (1).]~~

Section 10. Section **77-40a-204** is enacted to read:

77-40a-204. Request for automatic expungement of a case -- Automatic expungement before October 1, 2024, and on and after ~~{October}~~January 1, ~~{2027}~~2026.

(1) (a) On and after October 1, 2024, but before ~~{October}~~January 1, ~~{2027}~~2026, an individual must submit the necessary form to the court to receive an expungement of a case that is eligible under this part.

(b) If a form is submitted as described in Subsection (1), the court shall determine whether the individual has a case that qualifies for expungement in accordance with Sections 77-40a-205 and 77-40a-206.

(2) A court shall automatically expunge a case in accordance with this part if the court

HB0352S06 compared with HB0352S05

identified the case as being eligible for automatic expungement before October 1, 2024, and the requirements for automatic expungement were met under this part.

(3) On and after ~~October~~ January 1, ~~2027~~ 2026, a court shall automatically expunge a case in accordance with this part if the court identifies the case as being eligible for automatic expungement.

(4) A court shall make reasonable efforts, within available funding, to expunge a case under Subsection (3) as quickly as practicable with the goal of:

(a) expunging a case that resulted in an acquittal on all charges on or after May 1, 2020, 60 days after acquittal;

(b) expunging a case that resulted in a dismissal with prejudice, other than a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b), on or after May 1, 2020, 180 days after:

(i) for a case in which no appeal was filed, the day on which the entire case against the individual is dismissed with prejudice; or

(ii) for a case in which an appeal was filed, the day on which a court issues a final nonappealable order;

(c) expunging a clean slate eligible case that is adjudicated or dismissed on or after May 1, 2020, and is not a traffic offense within 30 days of the court determining that the requirements for expungement have been satisfied under Section 77-40a-205; and

(d) expunging a case adjudicated or dismissed before May 1, 2020, within one year of the day on which the case is identified as eligible for automatic expungement.

Section 11. Section **77-40a-205** is enacted to read:

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

(1) A court shall issue an order of expungement, without the filing of a petition, for all records of the case that are held by the court and the bureau if:

(a) on and after October 1, 2024, but before ~~October~~ January 1, ~~2027~~ 2026, the individual submitted a form requesting expungement of a case as described in Section 77-40a-204;

(b) the case is eligible for expungement under this section; and

(c) the prosecuting agency does not object to the expungement of the case as described in Subsection (6).

HB0352S06 compared with HB0352S05

(2) Except as otherwise provided in Subsection (3), a case is eligible for expungement under this section if:

(a) (i) each conviction within the case is a conviction for:

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

(B) a class B misdemeanor offense;

(C) a class C misdemeanor offense; or

(D) an infraction; and

(ii) the following time periods have passed after the day on which the individual is adjudicated:

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

(B) at least six years for the conviction of a class B misdemeanor offense; or

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

(b) (i) the case is dismissed as a result of a successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b) or the case is dismissed without prejudice;

(ii) each charge within the case is:

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

(B) a class B misdemeanor offense;

(C) a class C misdemeanor offense; or

(D) an infraction; and

(iii) the following time periods have passed after the day on which the case is dismissed:

(A) at least five years for a charge in the case for a class C misdemeanor offense or an infraction;

(B) at least six years for a charge in the case for a class B misdemeanor offense; or

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

(3) A case is not eligible for expungement under this section if:

HB0352S06 compared with HB0352S05

(a) the individual has a total number of convictions in courts of this state that exceed the limits under Subsection 77-40a-303(4) or (5) without taking into consideration:

(i) the exception in Subsection 77-40a-303(7); or

(ii) any infraction, traffic offense, or minor regulatory offense;

(b) there is a criminal proceeding for a misdemeanor or felony offense pending in a court of this state against the individual, unless the proceeding is for a traffic offense;

(c) for an individual seeking an automatic expungement on and after January 1, 2025, the individual is incarcerated in the state prison or on probation or parole that is supervised by the Department of Corrections;

(d) the case resulted in the individual being found not guilty by reason of insanity;

(e) the case establishes a criminal accounts receivable that:

(i) has been entered as a civil accounts receivable or a civil judgment of restitution and transferred to the Office of State Debt Collection under Section 77-18-114; or

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

(f) the case resulted in a plea held in abeyance or a conviction for the following offenses:

(i) any of the offenses listed in Subsection 77-40a-303(2)(a);

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

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

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

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

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

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

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

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

(4) A prosecuting agency that has complied with Rule 42 of the Utah Rules of Criminal

HB0352S06 compared with HB0352S05

Procedure shall receive notice on a monthly basis for any case prosecuted by that agency that appears to be eligible for automatic expungement under this section.

(5) Within 35 days after the day on which the notice described in Subsection (4) is sent, the prosecuting agency shall provide written notice in accordance with Rule 42 of the Utah Rules of Criminal Procedure if the prosecuting agency objects to an automatic expungement for any of the following reasons:

(a) the prosecuting agency believes that the case is not eligible for expungement under this section after reviewing the agency record;

(b) the individual has not paid restitution to the victim as ordered by the court; or

(c) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an individual involved in the case is continuing to engage in criminal activity within or outside of the state.

(6) If a prosecuting agency provides written notice of an objection for a reason described in Subsection (5) within 35 days after the day on which the notice under Subsection (4) is sent, the court may not proceed with automatic expungement of the case.

(7) If 35 days pass after the day on which the notice described in Subsection (4) is sent without the prosecuting agency providing written notice of an objection under Subsection (5), the court shall proceed with automatic expungement of the case.

(8) If a court issues an order of expungement under Subsection (1), the court shall:

(a) expunge all records of the case held by the court in accordance with Section 77-40a-401; and

(b) notify the bureau and the prosecuting agency identified in the case, based on information available to the court, of the order of expungement.

Section 12. Section **77-40a-206** is enacted to read:

77-40a-206. Automatic expungement of state records for a case resulting in an acquittal or dismissal with prejudice.

(1) A court shall issue an order of expungement, without the filing of a petition, for all records of the case that are held by the court and the bureau if:

(a) on and after October 1, 2024, but before ~~October~~ January 1, ~~2027~~ 2026, the individual submitted a form requesting expungement of a case as described in Section 77-40a-204; and

HB0352S06 compared with HB0352S05

(b) the case is eligible for expungement under this section.

(2) Except as provided in Subsection (3), a case is eligible for expungement under this section if:

(a) (i) the case resulted in an acquittal on all charges; and

(ii) at least 60 days have passed after the day on which the case resulted in an acquittal;

or

(b) (i) the case is dismissed with prejudice; and

(ii) at least 180 days have passed after the day on which:

(A) for a case in which no appeal was filed, the entire case against the individual is dismissed with prejudice; or

(B) for a case in which an appeal was filed, a court issues a final nonappealable order.

(3) A case is not eligible for expungement under Subsection (2) if:

(a) the case resulted in an acquittal because the individual is found not guilty by reason of insanity; or

(b) the case is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b).

(4) If a court issues an order of expungement under Subsection (1), the court shall:

(a) expunge all records of the case held by the court as described in Section 77-40a-401; and

(b) notify the bureau and the prosecuting agency identified in the case, based on information available to the court, of the order of expungement.

Section 13. Section **77-40a-207** is enacted to read:

77-40a-207. Automatic expungement by the bureau.

(1) Upon receiving notice from a court of an expungement order under this part, the bureau shall expunge all records of the case in accordance with Section 77-40a-401.

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

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

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

Section 14. Section **77-40a-301** is amended to read:

HB0352S06 compared with HB0352S05

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

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

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

~~[(b) if the individual is qualified to receive a certificate of eligibility, pay the issuance fee for the certificate of eligibility as described in Section 77-40a-304; and]~~

(b) except as provided in Subsections 77-40a-304(3) and (7), pay the issuance fee for the certificate of eligibility as described in Section 77-40a-304; and

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

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

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

Section 15. Section ~~77-40a-302~~ is amended to read:

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

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

(a) the following time periods have passed:

(i) at least 30 days have passed after the day on which the [individual] petitioner is arrested or charged for the offense;

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

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

HB0352S06 compared with HB0352S05

misdemeanor; and

(b) one of the following occurs:

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

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

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

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

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

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

(v) the statute of limitations expires on all of the charges in the case[~~;~~and].

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

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

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

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

(b) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense;

(c) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense; or

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

Section 16. Section **77-40a-303** is amended to read:

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

(1) Except as otherwise provided by this section, a petitioner is eligible to receive a

HB0352S06 compared with HB0352S05

certificate of eligibility from the bureau to expunge the records of a conviction if:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a capital felony;

(ii) a first degree felony;

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

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

(v) an offense, or a combination of offenses, that would require the individual to register as a sex offender, as defined in Section 77-41-102; or

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

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

HB0352S06 compared with HB0352S05

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

(c) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense;

(d) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense;

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

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

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

(3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as defined in Section 76-3-209, if, at the time of the offense, a petitioner who committed the offense was at least 14 years old but under 18 years old, unless the petitioner was convicted by a district court as an adult in accordance with Title 80, Chapter 6, Part 5, Transfer to District Court.

(4) Subject to Subsections (6), (7), and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

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

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.

HB0352S06 compared with HB0352S05

(5) Subject to Subsections (7) and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

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

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

(6) If the petitioner's criminal history contains convictions for both a drug possession offense and a non-drug possession offense arising from the same criminal episode, the bureau shall count that criminal episode as a conviction under Subsection (4) if any non-drug possession offense in that episode:

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

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

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

(a) each numerical eligibility limit under Subsections (4)(a) and (b) shall be increased by one; and

(b) each numerical eligibility limit under Subsections (4)(c) and (d) is not applicable if the highest level of convicted offense in the criminal episode is:

(i) a class B misdemeanor;

(ii) a class C misdemeanor;

(iii) a drug possession offense if none of the non-drug possession offenses in the criminal episode are a felony or a class A misdemeanor; or

(iv) an infraction.

(8) When determining whether a petitioner is eligible for a certificate of eligibility under Subsection (4), (5), or (7), the bureau may not consider a petitioner's pending case or prior conviction for:

(a) an infraction;

HB0352S06 compared with HB0352S05

- (b) a traffic offense;
- (c) a minor regulatory offense; or
- (d) a clean slate eligible case that was automatically expunged [~~in accordance with~~

~~Section 77-40a-201~~].

(9) If the petitioner received a pardon before May 14, 2013, from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes in accordance with Section 77-27-5.1.

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

Section 17. Section ~~77-40a-304~~ is amended to read:

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

(1) (a) When a petitioner applies for a certificate of eligibility as described in Subsection ~~77-40a-301(1)~~]:

(i) the petitioner shall pay an application fee at the time the petitioner submits an application for a certificate of eligibility to the bureau; and

(ii) the bureau shall perform a check of records of governmental agencies, including national criminal data bases, to determine whether the petitioner is eligible to receive a certificate of eligibility under this chapter~~{}~~; and

~~—— (ii) the petitioner shall pay an application fee at the time the petitioner submits an application for a certificate of eligibility to the bureau. }~~

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

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

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

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

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

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

~~[(e)] (c) If~~(c) ~~if~~ after reasonable research, a disposition for an arrest on the criminal

HB0352S06 compared with HB0352S05

history file is unobtainable after reasonable research, the bureau may issue a special certificate giving determination of eligibility to the court, except that the bureau may not issue the special certificate if:

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

(ii) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense; or

(iii) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense.

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

(b) If the petitioner meets all of the criteria under Section 77-40a-302 or 77-40a-303 and the bureau determines that the issuance of a certificate of eligibility or special certificate is appropriate:

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

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

(iii) except as provided in Subsection (3), the petitioner shall pay an additional fee for the issuance of a certificate of eligibility or special certificate.

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

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

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

~~[(d) An issuance fee may not be assessed against a petitioner who]~~

(3) The bureau shall issue a certificate of eligibility or special certificate without requiring the payment of the issuance fee if the petitioner:

(a) qualifies for a certificate of eligibility under Section 77-40a-302 unless the charges

HB0352S06 compared with HB0352S05

were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion~~[-]; or~~

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

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

~~[(3)] (4)~~ The bureau shall include on [the]a certificate of eligibility all information that is needed for the court to issue a valid expungement order.

~~[(4)] (5)~~ The bureau shall provide clear written instructions to the petitioner that explain:

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

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

(6) If a petitioner indicates on the application for a certificate of eligibility that a court is likely to waive the fee for a petition for expungement as described in Subsection (3)(b), the bureau shall:

(a) inform the petitioner that the petitioner will be required to pay an issuance fee before an agency will expunge the offense if a court does not waive the fee for a petition for expungement; and

(b) provide the petitioner with the form for waiving a court fee for a petition for expungement.

(7) If the bureau issues a certificate of eligibility or a special certificate without requiring payment of the issuance fee as described in Subsection (3)(b), the bureau shall charge the petitioner the issuance fee upon the bureau's receipt of an order deciding a petition for expungement unless the court communicates to the bureau that the fee to file the petition for expungement was waived because the petitioner is indigent.

(8) (a) If the petitioner qualifies for a waiver of the issuance fee under Subsection (7) and the expungement order grants the petition for expungement, the bureau shall process the expungement order in accordance with Section 77-40a-401 as if the petitioner paid the issuance

HB0352S06 compared with HB0352S05

fee.

(b) If the petitioner does not qualify for a waiver of the issuance fee under Subsection (7) and the expungement order grants the petition for expungement, the bureau may not process the expungement order as described in Section 77-40a-401, or notify other agencies affected by the expungement order as described in Section 77-40a-307, until the petitioner pays the issuance fee.

(c) If the bureau issues a certificate of eligibility or special certificate without requiring payment of the issuance fee under Subsection (3)(b), the bureau may not charge the petitioner an issuance fee on the grounds that the validity of the certificate described in (2)(b)(i) has expired.

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

(10) The department shall deposit funds generated by application and issuance fees under this section into the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility for expungement.

Section 18. Section **77-40a-305** is amended to read:

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

(1) (a) The petitioner shall file a petition for expungement, in accordance with the Utah Rules of Criminal Procedure, that includes the identification number for the certificate of eligibility described in Subsection [~~77-40a-304(1)(d)(ii)~~] 77-40a-304(2)(b)(ii).

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

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

(b) A court may not accept a petition for expungement if the certificate of eligibility is no longer valid as described in Subsection [~~77-40a-304(1)(d)(i)~~] 77-40a-304(2)(b)(i).

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

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

(ii) for a traffic offense case with a class B misdemeanor, at least four years have

HB0352S06 compared with HB0352S05

passed after the day on which the petitioner was convicted;

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

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

and

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

(4) Notwithstanding Subsection (2), a petitioner may file a petition for expungement of a record for a conviction related to cannabis possession without a certificate of eligibility if the petition demonstrates that:

(a) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and

(b) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (4)(a).

(5) (a) The court shall provide notice of a filing of a petition and certificate of eligibility to the prosecutorial office that handled the court proceedings within three days after the day on which the petitioner's filing fee is paid or waived.

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

(c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention, or conviction, was a city attorney's office, the county attorney's office in the jurisdiction where the arrest occurred shall immediately notify the city attorney's office that the county attorney's office has received a notice of a filing of a petition for expungement.

(6) (a) Upon receipt of a notice of a filing of a petition for expungement of a conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney shall make a reasonable effort to provide notice to any victim of the conviction or charge.

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

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

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

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

(7) (a) The prosecuting attorney may respond to the petition by filing a

HB0352S06 compared with HB0352S05

recommendation or objection with the court within 35 days after the day on which the notice of the filing of the petition is sent by the court to the prosecuting attorney.

(b) If there is a victim of the offense for which expungement is sought, the victim may respond to the petition by filing a recommendation or objection with the court within 60 days after the day on which the petition for expungement was filed with the court.

(8) (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.

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

(i) the reasons probation was terminated; and

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

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

(9) The petitioner may respond in writing to any objections filed by the prosecuting attorney or the victim and the response prepared by the Division of Adult Probation and Parole within 14 days after the day on which the objection or response is received.

(10) (a) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing.

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

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

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

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

(12) (a) If the petitioner seeks a waiver of the fee required for a petition for expungement in accordance with Section 78A-2-302, the court shall consider the total number of cases for which the petitioner has received a certificate of eligibility and is seeking expungement in determining whether the petitioner is indigent under Subsection

HB0352S06 compared with HB0352S05

78A-2-302(3)(e) even if the court does not have jurisdiction over a case for which the petitioner is seeking expungement.

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

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:

77-40a-306. Order of expungement.

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

(a) except as provided in Subsection 77-40a-305(3) or (4), the petition and certificate of eligibility are sufficient;

(b) the statutory requirements have been met;

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

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

(i) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and

(ii) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (1)(d)(i);

(e) if an objection is received, the petition for expungement is for a charge dismissed in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used for enhancement, there is good cause for the court to grant the expungement; and

(f) the interests of the public would not be harmed by granting the expungement.

(2) (a) If the court denies a petition described in Subsection (1)(c) because the prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of

HB0352S06 compared with HB0352S05

eligibility if charges are not refiled within 180 days after the day on which the court denies the petition.

(b) A prosecuting attorney who opposes an expungement of a case dismissed without prejudice, or without condition, shall have a good faith basis for the intention to refile the case.

(c) A court shall consider the number of times that good faith basis of intention to refile by the prosecuting attorney is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (1)(c).

(3) If the court grants a petition described in Subsection (1)(e), the court shall make the court's findings in a written order.

(4) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be, or should not have been, issued under Section 77-40a-302 or 77-40a-303.

(5) If a court ~~grants a petition for~~ issues an order of expungement under this section, the court shall:

(a) expunge all records of the case as described in Section 77-40a-401; and

(b) notify the bureau of the order of expungement.

Section 20. Section **77-40a-307** is enacted to read:

77-40a-307. Distribution of expungement order based on a petition to all agencies.

(1) (a) Upon receiving notice from the court of an expungement order as described in Subsection 77-40a-306(5), the bureau shall notify all agencies affected by the expungement order.

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

(i) sentenced to prison in this state; or

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

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

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

(3) If an agency receives an expungement order under this part, the agency shall expunge all records for the case in accordance with Section 77-40a-401.

HB0352S06 compared with HB0352S05

Section 21. Section 77-40a-401 is amended to read:

Part 4. Expungement of Criminal Records

77-40a-401. Processing of expungement order -- Written confirmation of expungement -- Effect of an expungement.

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

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

~~[(i) sentenced to prison in this state; or]~~

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

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

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

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

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

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

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

(1) In processing an expungement order, a court and the bureau shall give priority to:

(a) first, an expungement order granting a petition for expungement under Part 3,

Petition for Expungement;

(b) second, an expungement order upon a pardon by the Board of Pardons and Parole

HB0352S06 compared with HB0352S05

as described in Section 77-27-5.1;

(c) third, an expungement order upon a plea in abeyance as described in Section 77-2a-3;

(d) fourth, an expungement order where an individual submitted a form requesting automatic expungement under Part 2, Automatic Expungement and Deletion; and

(e) fifth, an expungement order where the court identified the case as being eligible for automatic expungement under Part 2, Automatic Expungement and Deletion.

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

(3) An agency shall:

(a) develop and implement a process to identify an expunged record; and

(b) keep, index, and maintain all expunged records of arrests and convictions.

(4) (a) If an individual who receives an expungement requests confirmation from an agency, the agency shall provide the individual with written confirmation that:

(i) the agency has identified all records subject to expungement; and

(ii) except as otherwise provided by Sections 77-40a-402 and 77-40a-403, the agency will restrict or deny access to all of the expunged records.

(b) The bureau may charge a fee for providing a written confirmation under Subsection (4)(a) in accordance with the process in Section 63J-1-504.

(5) Upon entry of an expungement order, an individual, who received the expungement, may respond to any inquiry as though the arrest, investigation, detention, prosecution, or conviction did not occur unless otherwise provided by law or ordered by a court to respond differently.

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

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

(7) An expungement order may not:

(a) terminate or invalidate any pending administrative proceedings or actions of which

HB0352S06 compared with HB0352S05

the individual had notice according to the records of the administrative body prior to issuance of the expungement order;

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

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

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

Section 22. Section ~~77-40a-402~~ is amended to read:

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

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

(2) To complete delivery of the order for vacatur to the bureau, the individual shall complete and attach to the order for vacatur an application for a certificate of eligibility for expungement, including identifying information and fingerprints, in accordance with Section 77-40a-301.

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

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

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

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

(7) [~~A government~~] An agency or official may not divulge information contained in a record of arrest, investigation, detention, or conviction after receiving an order for vacatur to

HB0352S06 compared with HB0352S05

any person or agency, except for:

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

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

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

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

Section 23. Section ~~77-40a-403~~ is amended to read:

77-40a-403. Release and use of expunged records.

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

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

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

~~[(b) The bureau may charge a fee for providing a written confirmation under Subsection (2)(a) in accordance with the process in Section 63J-1-504.]~~

~~[(3)]~~ (1) (a) ~~[An employee of the bureau, or any agency with an expunged record, may 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 record to any person, or another ~~{ }~~ agency, without a court order unless:

(i) specifically authorized by statute; or

(ii) subject to Subsection ~~[(3)(b)]~~ (1)(b), the information in an expunged record is being shared with another agency through a records management system that both agencies use for the purpose of record management.

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

~~[(4)]~~ (2) The following entities or agencies may receive information contained in expunged records upon specific request:

HB0352S06 compared with HB0352S05

- (a) the Board of Pardons and Parole;
- (b) Peace Officer Standards and Training;
- (c) federal authorities if required by federal law;
- (d) the State Board of Education;
- (e) the Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office; and
- (f) a research institution or an agency engaged in research regarding the criminal justice system if:
 - (i) the research institution or agency provides a legitimate research purpose for gathering information from the expunged records;
 - (ii) the research institution or agency enters into a data sharing agreement with the court or agency with custody of the expunged records that protects the confidentiality of any identifying information in the expunged records;
 - (iii) any research using expunged records does not include any individual's name or identifying information in any product of that research; and
 - (iv) any product resulting from research using expunged records includes a disclosure that expunged records were used for research purposes.

~~[(5)]~~ (3) Except as otherwise provided by this section or by court order, a person, an agency, or an entity authorized by this section to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the specific request, including distribution on a public website.

~~[(6)]~~ (4) A prosecuting attorney may communicate with another prosecuting attorney, or another prosecutorial agency, regarding information in an expunged record that includes a conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance agreement, for:

- (a) stalking as described in Section 76-5-106.5;
- (b) a domestic violence offense as defined in Section 77-36-1;
- (c) an offense that would require the individual to register as a sex offender, as defined in Section 77-41-102; or
- (d) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.

~~[(7)]~~ (5) Except as provided in Subsection ~~[(9)]~~ (7), a prosecuting attorney may not use

HB0352S06 compared with HB0352S05

an expunged record for the purpose of a sentencing enhancement or as a basis for charging an individual with an offense that requires a prior conviction.

~~[(8)]~~ (6) The bureau may also use the information in the bureau's index as provided in Section 53-5-704.

~~[(9)]~~ (7) If ~~[, after obtaining an expungement,]~~ an individual is charged with a felony or an offense eligible for enhancement based on a prior conviction ~~[, the state]~~ after obtaining an expungement, the prosecuting attorney may petition the court to open the expunged records upon a showing of good cause.

~~[(10)]~~ (8) (a) For judicial sentencing, a court may order any records expunged under this chapter or Section 77-27-5.1 to be opened and admitted into evidence.

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

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

(d) Any person authorized by this Subsection ~~[(10)]~~ (8) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court.

~~[(11)]~~ (9) Records released under this chapter are classified as protected under Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to Records, and Subsection 53-10-108(2)(k) for records held by the bureau.

Section 24. Section ~~77-40a-404~~ is amended to read:

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

(1) An individual who receives an expungement may request a written confirmation from an agency under Subsection ~~[77-40a-403(2)]~~ 77-40a-401(4) to confirm that the agency has expunged all records of the offense for which the individual received the expungement.

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

(a) the petitioner or an individual who receives an automatic expungement under ~~[Section 77-40a-201]~~ Part 2, Automatic Expungement and Deletion;

HB0352S06 compared with HB0352S05

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

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

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

Section 25. Section **78A-2-302** is amended to read:

78A-2-302. Waiver of fees, costs, and security -- Indigent litigants -- Affidavit.

(1) As used in Sections 78A-2-302 through 78A-2-309:

(a) "Convicted" means:

(i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental condition, no contest; and

(ii) a conviction of any crime or offense.

(b) "Indigent" means [an individual who is financially unable to pay fees and costs or give security] a financial status that results from a court finding that a petitioner is financially unable to pay the fee, a cost, or give security.

(c) "Prisoner" means an individual who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) An individual may institute, prosecute, defend, or appeal any cause in a court in this state without prepayment of fees and costs or security if:

(a) the individual submits an affidavit demonstrating that the individual is indigent[-];

or

(b) the ~~{individual} cause~~ is ~~{seeking a waiver of the fee for}~~ a petition for expungement and the individual provides the court with proof that another court granted a waiver ~~of the fee~~ for a petition for expungement as described in Subsection 77-40a-305(12)(b).

(3) A court shall find an individual indigent if the individual's affidavit under Subsection (2) demonstrates:

(a) ~~{if the cause is not a petition for expungement, }~~ the individual has an income level at or below 150% of the United States poverty level as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services;

~~{ (b) if the cause is a petition for expungement, the individual has an income level at or~~

HB0352S06 compared with HB0352S05

below 175% of the United States poverty level as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services;

~~†~~ ~~††(b)††(c)†~~ the individual receives benefits from a means-tested government program, including Temporary Assistance to Needy Families, Supplemental Security Income, the Supplemental Nutrition Assistance Program, or Medicaid;

~~††(c)††(d)†~~ the individual receives legal services from a nonprofit provider or a pro bono attorney through the Utah State Bar; or

~~††(d)††(e)†~~ the individual has insufficient income or other means to pay the necessary fees and costs or security without depriving the individual, or the individual's family, of food, shelter, clothing, or other necessities.

(4) An affidavit demonstrating that an individual is indigent under Subsection ~~††(3)(d)††(3)(e)†~~ shall contain complete information on the individual's:

- (a) identity and residence;
- (b) amount of income, including any government financial support, alimony, or child support;
- (c) assets owned, including real and personal property;
- (d) business interests;
- (e) accounts receivable;
- (f) securities, checking and savings account balances;
- (g) debts; and
- (h) monthly expenses.

(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 (2) is executed in accordance with Section 78A-2-305.

(6) An affidavit of indigency under this section shall state the following:

I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence or the appeal which I am about to take, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.

(7) The Administrative Office of the Courts shall include on a form for an affidavit of indigency the following warning: "It is a crime for anyone to intentionally or knowingly

HB0352S06 compared with HB0352S05

provide false or misleading information to the court when seeking a waiver of a court fee."

Section 26. Section **78A-7-209.5** is amended to read:

78A-7-209.5. Presiding judge -- Associate presiding judge -- Election -- Powers --

Duties.

(1) (a) In judicial districts having more than one justice court judge, the justice court judges shall elect one judge of the district to the office of presiding judge.

(b) The presiding judge shall receive an additional \$2,000 per annum as compensation from the Justice Court Technology, Security, and Training Account described in Section 78A-7-301 for the period served as presiding judge.

(2) (a) In judicial districts having more than two justice court judges, the justice court judges may elect one judge of the district to the office of associate presiding judge.

(b) The associate presiding judge shall receive an additional \$1,000 per annum as compensation from the Justice Court Technology, Security, and Training Account described in Section 78A-7-301 for the period served as associate presiding judge.

(3) The presiding judge has the following authority and responsibilities, consistent with the policies of the Judicial Council:

(a) working with each justice court judge in the district to implement policies and rules of the Judicial Council;

(b) exercising powers and performing administrative duties as authorized by the Judicial Council;

(c) if there is no other appointed justice court judge in that court available, assigning a justice court judge to hear a case in which a judge has been disqualified in accordance with rules of the Supreme Court;

(d) if a justice court judge of the district cannot perform the justice court judge's duties in a case or cases due to illness, death, or other incapacity, and the governing body has not appointed a temporary justice court judge in accordance with Section 78A-7-208:

(i) assigning, on an emergency basis, a justice court judge to hear a case or cases; and

(ii) facilitating judicial coverage with the appointing municipal or county authority until a temporary justice court judge can be appointed, in accordance with Section 78A-7-208, or a new justice court judge is formally appointed and takes office, in accordance with Section 78A-7-202; and

HB0352S06 compared with HB0352S05

(e) entering orders of expungement in cases expunged in accordance with [~~Section 77-40a-201~~] Title 77, Chapter 40a, Part 2, Automatic Expungement and Deletion.

(4) (a) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge.

(b) The associate presiding judge shall perform other duties assigned by the presiding judge.

Section 27. Section **78B-7-1001** is amended to read:

78B-7-1001. Definitions.

As used in this part:

(1) (a) [~~Except as provided in Subsection (1)(b), "agency"~~] "Agency" means, except as provided in Subsection (1)(b), a state, county, or local government entity that generates or maintains records relating to a civil order for which expungement may be ordered.

(b) "Agency" does not include the Division of Child and Family Services created in Section 80-2-201.

(2) "Civil order" means:

- (a) an ex parte civil protective order;
- (b) an ex parte civil stalking injunction;
- (c) a civil protective order; or
- (d) a civil stalking injunction.

~~[(3) "Expunge" means to seal or otherwise restrict access to an individual's record held by an agency when the record includes a civil order.]~~

(3) (a) "Expunge" means to remove a record from public inspection by:

- (i) sealing the record; or
- (ii) restricting or denying access to the record.

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

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

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

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

HB0352S06 compared with HB0352S05

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

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

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

(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 a civil order.

(4) (a) Unless ordered by a court to do so, an agency or official may not divulge information 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.

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

(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

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

(6) An employee or agent of an agency that is prohibited from disseminating information from an expunged record under this section who knowingly or intentionally discloses identifying information from the expunged record, unless allowed by law, is guilty of a class A misdemeanor.

(7) Records expunged under this part may be released to, or viewed by, the following individuals:

HB0352S06 compared with HB0352S05

(a) the petitioner; or

(b) parties to a civil action arising out of the expunged civil order, providing the information is kept confidential and utilized only in the action.

(8) This part does not preclude a court from considering the same circumstances or evidence for which an expunged civil order was issued in any proceeding that occurs after the civil order is expunged.

Section 29. Section **80-6-1001** is amended to read:

80-6-1001. Definitions.

As used in this part:

(1) "Abstract" means a copy or summary of a court's disposition.

(2) (a) "Agency" means a state, county, or local government entity that generates or maintains records for which expungement may be ordered under this part.

(b) "Agency" includes a local education agency, as defined in Section 53E-1-102, for purposes of this part.

(3) (a) "Expunge" means ~~[to seal or otherwise restrict access to a record that is part of an individual's juvenile record and in the custody of the juvenile court or an agency]~~ to remove a juvenile record from public inspection by:

(i) sealing the juvenile record; or

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

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

(4) (a) "Juvenile record" means all records for all incidents of delinquency involving an individual that are in the custody of the juvenile court or an agency.

(b) "Juvenile record" does not include a record of an adjudication under Chapter 3, Abuse, Neglect, and Dependency Proceedings, or Chapter 4, Termination and Restoration of Parental Rights.

(5) "Petitioner" means an individual requesting an expungement or vacatur under this part.

Section 30. Section **80-6-1006.1** is amended to read:

80-6-1006.1. Exceptions to expungement order -- Distribution of expungement order -- Agency duties -- Effect of expungement -- Access to expunged record.

(1) This section applies to an expungement order under Section 80-6-1004.1,

HB0352S06 compared with HB0352S05

80-6-1004.2, 80-6-1004.3, 80-6-1004.4, or 80-6-1004.5.

(2) The juvenile court may not order:

(a) the Board of Pardons and Parole and the Department of Corrections to seal a record in the possession of the Board of Pardons and Parole or the Department of Corrections, except that the juvenile court may order the Board of Pardons and Parole and the Department of Corrections to restrict access to a record if the record is specifically identified in the expungement order as a record in the possession of the Board of Pardons and Parole or the Department of Corrections; or

(b) the Division of Child and Family Services to expunge a record in an individual's juvenile record that is contained in the Management Information System or the Licensing Information System unless:

(i) the record is unsupported; or

(ii) after notice and an opportunity to be heard, the Division of Child and Family Services stipulates in writing to expunging the record.

(3) (a) If the juvenile court issues an expungement order, the juvenile court shall send a copy of the expungement order to any affected agency or official identified in the juvenile record.

(b) An individual who is the subject of an expungement order may deliver copies of the expungement order to all agencies and officials affected by the expungement order.

(4) (a) Upon receipt of an expungement order, an agency shall:

(i) ~~[to avoid destruction or expungement of records in whole or in part, expunge only the references to the individual's name in the records relating to the individual's adjudication, nonjudicial adjustment, petition, arrest, investigation, or detention for which expungement is ordered]~~ expunge all records affected by the expungement order; and

(ii) destroy all photographs and records created under Section 80-6-608, except that a record of a minor's fingerprints may not be destroyed by an agency.

(b) An agency that receives a copy of an expungement order shall mail an affidavit to the individual who is the subject of the expungement order, or the individual's attorney, that the agency has complied with the expungement order.

(5) Notwithstanding Subsection (4), the Board of Pardons and Parole and the Department of Corrections:

HB0352S06 compared with HB0352S05

(a) may not disclose records expunged in an expungement order unless required by law;

(b) are not required to destroy any photograph or record created under Section 80-6-608;

(c) may use an expunged record for purposes related to incarceration and supervision of an individual under the jurisdiction of the Board of Pardons and Parole, including for the purpose of making decisions about:

(i) the treatment and programming of the individual;

(ii) housing of the individual;

(iii) applicable guidelines regarding the individual; or

(iv) supervision conditions for the individual;

(d) are not prohibited from disclosing or sharing any information in an expunged record with another agency that uses the same record management system as the Board of Pardons and Parole or the Department of Corrections; and

(e) are not required to mail an affidavit under Subsection (4)(b).

(6) Upon entry of an expungement order:

(a) an adjudication, a nonjudicial adjustment, a petition, an arrest, an investigation, or a detention for which the record is expunged is considered to have never occurred; and

(b) the individual, who is the subject of the expungement order, may reply to an inquiry on the matter as though there never was an adjudication, a nonjudicial adjustment, a petition, an arrest, an investigation, or a detention.

(7) A record expunged under Section 80-6-1004.1, 80-6-1004.2, 80-6-1004.3, 80-6-1004.4, or 80-6-1004.5 may be released to, or viewed by, the individual who is the subject of the record.

Section 31. **Repealer.**

This bill repeals:

Section 77-40a-203, Time periods for expungement or deletion -- Identification and processing of clean slate eligible cases.

Section 32. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on October 1, 2024.

(2) Section 63M-7-221 takes effect on May 1, 2024.

HB0352S06 compared with HB0352S05

Section 33. Coordinating H.B. 352 with S.B. 163.

If H.B. 352, Amendments to Expungement, and S.B. 163, Expungement Revisions, both pass and become law, the Legislature intends that, on October 1, 2024:

(1) the following language replace Subsection 77-40a-301(1)(b) enacted in H.B. 352 and S.B. 163:

"(b) except as provided in Subsections 77-40a-304(3) and (7), pay the issuance fee for the certificate of eligibility or special certificate as described in Section 77-40a-304 if the individual is eligible to receive a certificate of eligibility or special certificate; and";

(2) Subsection 77-40a-306(5) enacted in H.B. 352 not be enacted;

(3) Subsection 77-40a-401(3) enacted in H.B. 352 be amended to read:

"(3) (a) An agency shall:

(i) develop and implement a process to identify an expunged record; and

(ii) keep, index, and maintain all expunged records of arrests and convictions.

(b) Subsection (3)(a) does not prevent an agency from maintaining or destroying a record in accordance with a retention schedule when the record is an expunged record.

(c) An agency is not required to redact an expunged record, or a record referencing an expunged record, that pertains to more than one individual until the agency is required to release the record."; and

(4) Subsection 78A-2-302(2) be amended to read:

"(2) An individual may institute, prosecute, defend, or appeal any cause in a court in this state without prepayment of fees and costs or security if:

(a) the individual submits an affidavit demonstrating that the individual is indigent[-];

or

(b) the cause is a petition for expungement and: (i) the individual provides the court with proof that another court granted a waiver of the fee for a petition for expungement as described in Subsection 77-40a-305(12)(b); or

(ii) the individual is receiving services for the expungement from a nonprofit organization, or a public benefit corporation, that provides services to low-income individuals seeking expungement.".