

## SB0163S02 compared with SB0163

~~text~~ shows text that was in SB0163 but was deleted in SB0163S02.

text shows text that was not in SB0163 but was inserted into SB0163S02.

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Senator Todd D. Weiler proposes the following substitute bill:

### EXPUNGEMENT ~~{FEE WAIVER AMENDMENTS}~~ REVISIONS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jerry W. Stevenson**

House Sponsor: ~~{\_\_\_\_\_}~~ Tyler Clancy

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#### LONG TITLE

##### General Description:

This bill ~~{addresses the waiver of fees for}~~ amends provisions related to expungement.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides a timeline for a prosecuting attorney to respond to a motion to reduce a conviction for purposes of expungement;
- ▶ modifies a chapter title related to expungement;
- ▶ clarifies the requirements for applying for the expungement of a criminal record;
- ▶ requires the Bureau of Criminal Identification to issue a certificate of eligibility, or a special certificate, for expungement without requiring the payment of an issuance fee ~~{in certain circumstances}~~ when the individual is receiving services for the

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expungement from a nonprofit organization or a public benefit corporation that provides services to low-income individuals seeking expungement;

- ▶ clarifies provisions related to a special certificate that is issued by the Bureau of Criminal Identification;
- ▶ addresses venue for the filing of a petition for expungement of a criminal record, an eviction record, a record of a protective order or stalking injunction, or a juvenile record;
- ▶ requires a court to notify the Bureau of Criminal Identification that an order of expungement for a criminal case has been issued and to provide the Bureau of Criminal Identification with all information needed for expungement;
- ▶ requires a court to provide a petitioner with certified copies of an order of expungement;
- ▶ addresses the expungement of criminal records when an agency has a retention schedule;
- ▶ addresses the redaction of an expunged record when the record pertains to more than one individual;
- ▶ clarifies the opening of expunged records when the individual is charged with a felony or an offense eligible for enhancement;
- ▶ allows an individual to bring a petition for expungement without paying a fee for the petition when 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; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

20A-2-101.3, as enacted by Laws of Utah 2011, Chapter 395

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[41-6a-501](#), as last amended by Laws of Utah 2023, Chapters 328, 415

[53-3-414](#), as last amended by Laws of Utah 2022, Chapters 46, 116

[53-6-302](#), as last amended by Laws of Utah 2021, First Special Session, Chapter 13

[53-9-108](#), as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 18

[63G-4-107](#), as last amended by Laws of Utah 2021, Chapters 84, 344

[76-3-402](#), as last amended by Laws of Utah 2023, Chapter 132

[77-2-2.3](#), as renumbered and amended by Laws of Utah 2021, Chapter 260

[77-27-5.1](#), as last amended by Laws of Utah 2017, Chapter 356

[77-40a-101](#), as last amended by Laws of Utah 2023, Chapter 265

[77-40a-105](#), 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-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-403](#), as last amended by Laws of Utah 2023, Chapter 265

[77-40a-404](#), as last amended by Laws of Utah 2023, Chapter 265

[77-41-109](#), as last amended by Laws of Utah 2023, Chapter 123

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

[78A-6-350 \(Superseded 07/01/24\)](#), as renumbered and amended by Laws of Utah  
2021, Chapter 261

[78A-6-350 \(Effective 07/01/24\)](#), as last amended by Laws of Utah 2023, Chapter 401

[78A-7-106](#), as last amended by Laws of Utah 2023, Chapter 34

[78A-7-209.5](#), as enacted by Laws of Utah 2022, Chapter 276

[78B-6-853](#), as enacted by Laws of Utah 2022, Chapter 372

[78B-7-1003](#), as last amended by Laws of Utah 2023, Chapters 139, 265

### ENACTS:

[78B-7-1002.1](#), Utah Code Annotated 1953

[80-6-1001.2](#), Utah Code Annotated 1953

### Utah Code Sections Affected By Coordination Clause:

[78A-7-106](#), as last amended by Laws of Utah 2023, Chapter 34

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

Section 1. Section 20A-2-101.3 is amended to read:

**20A-2-101.3. Convicted misdemeanants -- Restoration of right to vote or hold office.**

(1) As used in this section, "misdemeanant" means a person convicted of a misdemeanor for an offense under this title.

(2) A misdemeanant's right to register to vote and to vote in an election is restored when the misdemeanant:

(a) is sentenced to probation; or

(b) has successfully completed the term of incarceration to which the misdemeanant was sentenced.

(3) A misdemeanant's right to hold elective office is restored when:

(a) the misdemeanor for an offense under this title is expunged as provided in ~~[Title 77, Chapter 40a, Expungement]~~ [Title 77, Chapter 40a, Expungement of Criminal Records]; or

(b) (i) five years have passed since the date of the misdemeanant's most recent misdemeanor conviction of an offense under this title;

(ii) the misdemeanant has paid all court-ordered restitution and fines; and

(iii) for each misdemeanor conviction that has not been expunged, the misdemeanant has:

(A) completed probation in relation to the misdemeanor; or

(B) successfully completed the term of incarceration associated with the misdemeanor.

Section 2. Section 41-6a-501 is amended to read:

**41-6a-501. Definitions.**

(1) As used in this part:

(a) "Actual physical control" is determined by a consideration of the totality of the circumstances, but does not include a circumstance in which:

(i) the person is asleep inside the vehicle;

(ii) the person is not in the driver's seat of the vehicle;

(iii) the engine of the vehicle is not running;

(iv) the vehicle is lawfully parked; and

(v) under the facts presented, it is evident that the person did not drive the vehicle to

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the location while under the influence of alcohol, a drug, or the combined influence of alcohol and any drug.

(b) "Assessment" means an in-depth clinical interview with a licensed mental health therapist:

(i) used to determine if a person is in need of:

(A) substance abuse treatment that is obtained at a substance abuse program;

(B) an educational series; or

(C) a combination of Subsections (1)(b)(i)(A) and (B); and

(ii) that is approved by the Division of Integrated Healthcare in accordance with Section 26B-5-104.

(c) "Driving under the influence court" means a court that is approved as a driving under the influence court by the Judicial Council according to standards established by the Judicial Council.

(d) "Drug" or "drugs" means:

(i) a controlled substance as defined in Section 58-37-2;

(ii) a drug as defined in Section 58-17b-102; or

(iii) a substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.

(e) "Educational series" means an educational series obtained at a substance abuse program that is approved by the Division of Integrated Healthcare in accordance with Section 26B-5-104.

(f) "Negligence" means simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(g) "Novice learner driver" means an individual who:

(i) has applied for a Utah driver license;

(ii) has not previously held a driver license in this state or another state; and

(iii) has not completed the requirements for issuance of a Utah driver license.

(h) "Screening" means a preliminary appraisal of a person:

(i) used to determine if the person is in need of:

(A) an assessment; or

(B) an educational series; and

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(ii) that is approved by the Division of Integrated Healthcare in accordance with Section 26B-5-104.

(i) "Serious bodily injury" means bodily injury that creates or causes:

(i) serious permanent disfigurement;

(ii) protracted loss or impairment of the function of any bodily member or organ; or

(iii) a substantial risk of death.

(j) "Substance abuse treatment" means treatment obtained at a substance abuse program that is approved by the Division of Integrated Healthcare in accordance with Section 26B-5-104.

(k) "Substance abuse treatment program" means a state licensed substance abuse program.

(l) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in Section 41-6a-102; and

(ii) "Vehicle" or "motor vehicle" includes:

(A) an off-highway vehicle as defined under Section 41-22-2; and

(B) a motorboat as defined in Section 73-18-2.

(2) As used in Sections 41-6a-502 and 41-6a-520.1:

(a) "Conviction" means any conviction arising from a separate episode of driving for a violation of:

(i) driving under the influence under Section 41-6a-502;

(ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a combination of both-related reckless driving under Sections 41-6a-512 and 41-6a-528; or

(B) for an offense committed on or after July 1, 2008, impaired driving under Section 41-6a-502.5;

(iii) driving with any measurable controlled substance that is taken illegally in the body under Section 41-6a-517;

(iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination of both-related reckless driving, or impaired driving under Section 41-6a-502.5 adopted in compliance with Section 41-6a-510;

(v) Section 76-5-207;

(vi) operating a motor vehicle with any amount of a controlled substance in an

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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);

(vii) negligently operating a vehicle resulting in injury under Section 76-5-102.1;

(viii) a violation described in Subsections (2)(a)(i) through (vii), which judgment of conviction is reduced under Section 76-3-402;

(ix) refusal of a chemical test under Subsection 41-6a-520.1(1); or

(x) statutes or ordinances previously in effect in this state or in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of both-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815.

(b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i) through (x) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of:

(i) enhancement of penalties under this part; and

(ii) expungement under ~~Title 77, Chapter 40a, Expungement~~ Title 77, Chapter 40a, Expungement of Criminal Records.

(c) An admission to a violation of Section 41-6a-502 in juvenile court is the equivalent of a conviction even if the charge has been subsequently dismissed in accordance with the Utah Rules of Juvenile Procedure for the purposes of enhancement of penalties under:

(i) this part;

(ii) negligently operating a vehicle resulting in injury under Section 76-5-102.1; and

(iii) negligently operating a vehicle resulting in death under Section 76-5-207.

(3) As used in Section 41-6a-505, "controlled substance" does not include an inactive metabolite of a controlled substance.

Section 3. Section 53-3-414 is amended to read:

**53-3-414. CDL disqualification or suspension -- Grounds and duration -- Procedure.**

(1) (a) An individual who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle for a period of not less than one year effective seven days

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from the date of notice to the driver if convicted of a first offense of:

(i) driving a motor vehicle while under the influence of alcohol, drugs, a controlled substance, or more than one of these;

(ii) driving a commercial motor vehicle while the concentration of alcohol in the person's blood, breath, or urine is .04 grams or more;

(iii) leaving the scene of an accident involving a motor vehicle the person was driving;

(iv) failing to provide reasonable assistance or identification when involved in an accident resulting in:

(A) personal injury in accordance with Section 41-6a-401.3;

(B) death in accordance with Section 41-6a-401.5; or

(v) using a motor vehicle in the commission of a felony;

(vi) refusal to submit to a test to determine the concentration of alcohol in the person's blood, breath, or urine;

(vii) driving a commercial motor vehicle while the person's commercial driver license is disqualified in accordance with the provisions of this section for violating an offense described in this section; or

(viii) operating a commercial motor vehicle in a negligent manner causing the death of another including the offenses of manslaughter under Section 76-5-205, negligent homicide under Section 76-5-206, or negligently operating a vehicle resulting in death under Section 76-5-207.

(b) The division shall subtract from any disqualification period under Subsection (1)(a)(i) the number of days for which a license was previously disqualified under Subsection (1)(a)(ii) or (14) if the previous disqualification was based on the same occurrence upon which the record of conviction is based.

(2) If any of the violations under Subsection (1) occur while the driver is transporting a hazardous material required to be placarded, the driver is disqualified for not less than three years.

(3) (a) Except as provided under Subsection (4), a driver of a motor vehicle who holds or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if convicted of or administrative action is taken for two or more of any of the offenses under Subsection (1), (5), or (14) arising from two or more separate incidents.



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(b) Subsection (3)(a) applies only to those offenses committed after July 1, 1989.

(4) (a) Any driver disqualified for life from driving a commercial motor vehicle under this section may apply to the division for reinstatement of the driver's CDL if the driver:

(i) has both voluntarily enrolled in and successfully completed an appropriate rehabilitation program that:

(A) meets the standards of the division; and

(B) complies with 49 C.F.R. Sec. 383.51;

(ii) has served a minimum disqualification period of 10 years; and

(iii) has fully met the standards for reinstatement of commercial motor vehicle driving privileges established by rule of the division.

(b) If a reinstated driver is subsequently convicted of another disqualifying offense under this section, the driver is permanently disqualified for life and is ineligible to again apply for a reduction of the lifetime disqualification.

(5) A driver of a motor vehicle who holds or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if the driver uses a motor vehicle in the commission of any felony involving:

(a) the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance and is ineligible to apply for a reduction of the lifetime disqualification under Subsection (4); or

(b) an act or practice of severe forms of trafficking in persons as defined and described in 22 U.S.C. Sec. 7102(11).

(6) (a) Subject to Subsection (6)(b), a driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for not less than:

(i) 60 days from driving a commercial motor vehicle if the driver is convicted of two serious traffic violations; and

(ii) 120 days if the driver is convicted of three or more serious traffic violations.

(b) The disqualifications under Subsection (6)(a) are effective only if the serious traffic violations:

(i) occur within three years of each other;

(ii) arise from separate incidents; and

(iii) involve the use or operation of a commercial motor vehicle.

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(c) If a driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle and the division receives notice of a subsequent conviction for a serious traffic violation that results in an additional disqualification period under this Subsection (6), the subsequent disqualification period is effective beginning on the ending date of the current serious traffic violation disqualification period.

(7) (a) A driver of a commercial motor vehicle who is convicted of violating an out-of-service order while driving a commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period not less than:

(i) 180 days if the driver is convicted of a first violation;

(ii) two years if, during any 10 year period, the driver is convicted of two violations of out-of-service orders in separate incidents;

(iii) three years but not more than five years if, during any 10 year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents;

(iv) 180 days but not more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded or while operating a motor vehicle designed to transport 16 or more passengers, including the driver; or

(v) three years but not more than five years if, during any 10 year period, the driver is convicted of two or more violations, in separate incidents, of an out-of-service order while transporting hazardous materials required to be placarded or while operating a motor vehicle designed to transport 16 or more passengers, including the driver.

(b) A driver of a commercial motor vehicle who is convicted of a first violation of an out-of-service order is subject to a civil penalty of not less than \$2,500.

(c) A driver of a commercial motor vehicle who is convicted of a second or subsequent violation of an out-of-service order is subject to a civil penalty of not less than \$5,000.

(8) A driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for not less than 60 days if the division determines, in its check of the driver's driver license status, application, and record prior to issuing a CDL or at any time after the CDL is issued, that the driver has falsified information required to apply for a CDL in this state.

(9) A driver of a commercial motor vehicle who is convicted of violating a

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railroad-highway grade crossing provision under Section 41-6a-1205, while driving a commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period not less than:

(a) 60 days if the driver is convicted of a first violation;

(b) 120 days if, during any three-year period, the driver is convicted of a second violation in separate incidents; or

(c) one year if, during any three-year period, the driver is convicted of three or more violations in separate incidents.

(10) (a) The division shall update its records and notify the CDLIS within 10 days of suspending, revoking, disqualifying, denying, or cancelling a CDL to reflect the action taken.

(b) When the division suspends, revokes, cancels, or disqualifies a nonresident CDL, the division shall notify the licensing authority of the issuing state or other jurisdiction and the CDLIS within 10 days after the action is taken.

(c) When the division suspends, revokes, cancels, or disqualifies a CDL issued by this state, the division shall notify the CDLIS within 10 days after the action is taken.

(11) (a) The division may immediately suspend or disqualify the CDL of a driver without a hearing or receiving a record of the driver's conviction when the division has reason to believe that the:

(i) CDL was issued by the division through error or fraud;

(ii) applicant provided incorrect or incomplete information to the division;

(iii) applicant cheated on any part of a CDL examination;

(iv) driver no longer meets the fitness standards required to obtain a CDL; or

(v) driver poses an imminent hazard.

(b) Suspension of a CDL under this Subsection (11) shall be in accordance with Section 53-3-221.

(c) If a hearing is held under Section 53-3-221, the division shall then rescind the suspension order or cancel the CDL.

(12) (a) Subject to Subsection (12)(b), a driver of a motor vehicle who holds or is required to hold a CDL is disqualified for not less than:

(i) 60 days from driving a commercial motor vehicle if the driver is convicted of two serious traffic violations; and

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(ii) 120 days if the driver is convicted of three or more serious traffic violations.

(b) The disqualifications under Subsection (12)(a) are effective only if the serious traffic violations:

(i) occur within three years of each other;

(ii) arise from separate incidents; and

(iii) result in a denial, suspension, cancellation, or revocation of the non-CDL driving privilege from at least one of the violations.

(c) If a driver of a motor vehicle who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle and the division receives notice of a subsequent conviction for a serious traffic violation that results in an additional disqualification period under this Subsection (12), the subsequent disqualification period is effective beginning on the ending date of the current serious traffic violation disqualification period.

(13) (a) Upon receiving a notice that a person has entered into a plea of guilty or no contest to a violation of a disqualifying offense described in this section which plea is held in abeyance pursuant to a plea in abeyance agreement, the division shall disqualify, suspend, cancel, or revoke the person's CDL for the period required under this section for a conviction of that disqualifying offense, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(b) The division shall report the plea in abeyance to the CDLIS within 10 days of taking the action under Subsection (13)(a).

(c) A plea which is held in abeyance may not be removed from a person's driving record for 10 years from the date of the plea in abeyance agreement, even if the charge is:

(i) reduced or dismissed in accordance with the plea in abeyance agreement; or

(ii) expunged under ~~[Title 77, Chapter 40a, Expungement]~~ Title 77, Chapter 40a,

Expungement of Criminal Records.

(14) The division shall disqualify the CDL of a driver for an arrest of a violation of Section 41-6a-502 when administrative action is taken against the operator's driving privilege pursuant to Section 53-3-223 for a period of:

(a) one year; or

(b) three years if the violation occurred while transporting hazardous materials.

(15) The division may concurrently impose any disqualification periods that arise

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under this section while a driver is disqualified by the Secretary of the United States Department of Transportation under 49 C.F.R. Sec. 383.52 for posing an imminent hazard.

### Section 4. Section 53-6-302 is amended to read:

#### **53-6-302. Applicants for certification examination -- Requirements.**

(1) Before being allowed to take a dispatcher certification examination, each applicant shall meet the following requirements:

(a) be either:

(i) a United States citizen; or

(ii) a lawful permanent resident of the United States who:

(A) has been in the United States legally for the five years immediately before the day on which the application is made; and

(B) has legal authorization to work in the United States;

(b) be 18 years old or older at the time of employment as a dispatcher;

(c) be a high school graduate or have a G.E.D. equivalent;

(d) have not been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of this or another state;

(e) have demonstrated good moral character, as determined by a background investigation;

(f) be free of any physical, emotional, or mental condition that might adversely affect the performance of the applicant's duty as a dispatcher; and

(g) meet all other standards required by POST.

(2) (a) An application for certification shall be accompanied by a criminal history background check of local, state, and national criminal history files and a background investigation.

(b) The costs of the background check and investigation shall be borne by the applicant or the applicant's employing agency.

(3) (a) Notwithstanding ~~Title 77, Chapter 40a, Expungement~~ Title 77, Chapter 40a, Expungement of Criminal Records, regarding expungements, or a similar statute or rule of any other jurisdiction, any conviction obtained in this state or other jurisdiction, including a conviction that has been expunged, dismissed, or treated in a similar manner to either of these

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procedures, may be considered for purposes of this section.

(b) Subsection (3)(a) applies to convictions entered both before and after May 1, 1995.

(4) Any background check or background investigation performed under the requirements of this section shall be to determine eligibility for admission to training programs or qualification for certification examinations and may not be used as a replacement for any background investigations that may be required of an employing agency.

(5) An applicant is considered to be of good moral character under Subsection (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection 53-6-309(1).

### Section 5. Section 53-9-108 is amended to read:

#### **53-9-108. Qualifications for licensure.**

(1) (a) An applicant under this chapter shall be at least:

(i) 21 years [of age] old to apply for an agency license or a registrant license; or

(ii) 18 years [of age] old to apply for an apprentice license.

(b) An applicant may not have been:

(i) convicted of a felony;

(ii) convicted of an act involving illegally using, carrying, or possessing a dangerous weapon;

(iii) convicted of an act of personal violence or force on any person or convicted of threatening to commit an act of personal violence or force against another person;

(iv) convicted of an act constituting dishonesty or fraud;

(v) convicted of an act involving moral turpitude within the past 10 years unless the conviction has been expunged under the provisions of [Title 77, Chapter 40a, Expungement]

### Title 77, Chapter 40a, Expungement of Criminal Records;

(vi) placed on probation or parole;

(vii) named in an outstanding arrest warrant; or

(viii) convicted of illegally obtaining or disclosing private, controlled, or protected records as provided in Section 63G-2-801.

(c) If previously or currently licensed in another state or jurisdiction, the applicant shall be in good standing within that state or jurisdiction.

(2) In assessing if an applicant meets the requirements under Subsection (1)(b), the board shall consider mitigating circumstances presented by an applicant.

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(3) (a) An applicant for an agency license shall have:

(i) a minimum of 5,000 hours of investigative experience that consists of actual work performed as a licensed private investigator, an investigator in the private sector, an investigator for the federal government, or an investigator for a state, county, or municipal government; or

(ii) if the applicant held a registrant license or an apprentice license under this chapter on or before May 1, 2010, a minimum of 2,000 hours of investigative experience that consists of actual work performed as a licensed private investigator, an investigator in the private sector, an investigator for the federal government, or an investigator for a state, county, or municipal government.

(b) An applicant for a registrant license shall have a minimum of 2,000 hours of investigative experience that consists of actual investigative work performed as a licensed private investigator, an investigator in the private sector, an investigator for the federal government, an investigator for a state, county, or municipal government, or a process server.

(c) At least 1,000 hours of the investigative experience required under this Subsection (3) shall have been performed within 10 years immediately prior to the application.

(d) An applicant shall substantiate investigative work experience required under this Subsection (3) by providing:

(i) the exact details as to the character and nature of the investigative work on a form prescribed by the bureau and certified by the applicant's employers; or

(ii) if the applicant is applying for the reinstatement of an agency license, internal records of the applicant that demonstrate the investigative work experience requirement has previously been met.

(e) (i) The applicant shall prove completion of the investigative experience required under this Subsection (3) to the satisfaction of the board and the board may independently verify the certification offered on behalf of the applicant.

(ii) The board may independently confirm the claimed investigative experience and the verification of the applicant's employers.

(4) An applicant for an apprentice license, lacking the investigative experience required for a registrant license, shall meet all of the qualification standards in Subsection (1), and shall complete an apprentice application.

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(5) An applicant for an agency or registrant license may receive credit toward the hours of investigative experience required under Subsection (3) as follows:

(a) an applicant may receive credit for 2,000 hours of investigative experience if the applicant:

(i) has an associate's degree in criminal justice or police science from an accredited college or university; or

(ii) is certified as a peace officer; and

(b) an applicant may receive credit for 4,000 hours of investigative experience if the applicant has a bachelor's degree in criminal justice or police science from an accredited college or university.

(6) The board shall determine if the applicant may receive credit under Subsection (5) toward the investigative and educational experience requirements under Subsection (3).

Section 6. Section 63G-4-107 is amended to read:

### **63G-4-107. Petition to remove agency action from public access.**

(1) An individual may petition the agency that maintains, on a state-controlled website available to the public, a record of administrative disciplinary action, to remove the record of administrative disciplinary action from public access on the state-controlled website, if:

(a) (i) five years have passed since:

(A) the date the final order was issued; or

(B) if no final order was issued, the date the administrative disciplinary action was commenced; or

(ii) the individual has obtained a criminal expungement order under ~~Title 77, Chapter 40a, Expungement~~ Title 77, Chapter 40a, Expungement of Criminal Records, for the individual's criminal records related to the same incident or conviction upon which the administrative disciplinary action was based;

(b) the individual has successfully completed all action required by the agency relating to the administrative disciplinary action within the time frame set forth in the final order, or if no time frame is specified in the final order, within the time frame set forth in Title 63G, Chapter 4, Administrative Procedures Act;

(c) from the time that the original administrative disciplinary action was filed, the individual has not violated the same statutory provisions or administrative rules related to those



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statutory provisions that resulted in the original administrative disciplinary action; and

(d) the individual pays an application fee determined by the agency in accordance with Section 63J-1-504.

(2) The individual petitioning the agency under Subsection (1) shall provide the agency with a written request containing the following information:

(a) the petitioner's full name, address, telephone number, and date of birth;

(b) the information the petitioner seeks to remove from public access; and

(c) an affidavit certifying that the petitioner is in compliance with the provisions of Subsection (1).

(3) Within 30 days of receiving the documents and information described in Subsection (2):

(a) the agency shall review the petition and all documents submitted with the petition to determine whether the petitioner has met the requirements of Subsections (1) and (2); and

(b) if the agency determines that the petitioner has met the requirements of Subsections (1) and (2), the agency shall immediately remove the record of administrative disciplinary action from public access on the state-controlled website.

(4) Notwithstanding the provisions of Subsection (3), an agency is not required to remove a recording, written minutes, or other electronic information from the Utah Public Notice Website, created under Section 63A-16-601, if the recording, written minutes, or other electronic information is required to be available to the public on the Utah Public Notice Website under the provisions of Title 52, Chapter 4, Open and Public Meetings Act.

### Section 7. Section 76-3-402 is amended to read:

#### **76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

(1) As used in this section:

(a) "Lower degree of offense" includes an offense for which:

(i) a statutory enhancement is charged in the information or indictment that would increase either the maximum or the minimum sentence; and

(ii) the court removes the statutory enhancement in accordance with this section.

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

(c) (i) "Rehabilitation program" means a program designed to reduce criminogenic and

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recidivism risks.

(ii) "Rehabilitation program" includes:

(A) a domestic violence treatment program, as that term is defined in Section 62A-2-101;

(B) a residential, vocational, and life skills program, as that term is defined in Section 13-53-102;

(C) a substance abuse treatment program, as that term is defined in Section 62A-2-101;

(D) a substance use disorder treatment program, as that term is defined in Section 62A-2-101;

(E) a youth program, as that term is defined in Section 62A-2-101;

(F) a program that meets the standards established by the Department of Corrections under Section 64-13-25;

(G) a drug court, a veterans court, or a mental health court certified by the Judicial Council; or

(H) a program that is substantially similar to a program described in Subsections (1)(c)(ii)(A) through (G).

(d) "Serious offense" means a felony or misdemeanor offense that is not a minor regulatory offense or a traffic offense.

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

(f) (i) Except as provided in Subsection (1)(f)(ii), "violent felony" means the same as that term is defined in Section 76-3-203.5.

(ii) "Violent felony" does not include an offense, or any attempt, solicitation, or conspiracy to commit an offense, for:

(A) the possession, use, or removal of explosive, chemical, or incendiary devices under Subsection 76-10-306(3), (5), or (6); or

(B) the purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503.

(2) The court may enter a judgment of conviction for a lower degree of offense than established by statute and impose a sentence at the time of sentencing for the lower degree of offense if the court:

(a) takes into account:

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(i) the nature and circumstances of the offense of which the defendant was found guilty; and

(ii) the history and character of the defendant;

(b) gives any victim present at the sentencing and the prosecuting attorney an opportunity to be heard; and

(c) concludes that the degree of offense established by statute would be unduly harsh to record as a conviction on the record for the defendant.

(3) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute:

(a) after the defendant is successfully discharged from probation or parole for the conviction; and

(b) if the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(4) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute if:

(a) the defendant's probation or parole for the conviction did not result in a successful discharge but the defendant is successfully discharged from probation or parole for a subsequent conviction of an offense;

(b) (i) at least five years have passed after the day on which the defendant is sentenced for the subsequent conviction; or

(ii) at least three years have passed after the day on which the defendant is sentenced for the subsequent conviction and the prosecuting attorney consents to the reduction;

(c) the defendant is not convicted of a serious offense during the time period described in Subsection (4)(b);

(d) there are no criminal proceedings pending against the defendant;

(e) the defendant is not on probation, on parole, or currently incarcerated for any other offense;

(f) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and

(g) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

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(5) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute if:

(a) the defendant's probation or parole for the conviction did not result in a successful discharge but the defendant is successfully discharged from a rehabilitation program;

(b) at least three years have passed after the day on which the defendant is successfully discharged from the rehabilitation program;

(c) the defendant is not convicted of a serious offense during the time period described in Subsection (5)(b);

(d) there are no criminal proceedings pending against the defendant;

(e) the defendant is not on probation, on parole, or currently incarcerated for any other offense;

(f) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and

(g) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(6) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute if:

(a) at least five years have passed after the day on which the defendant's probation or parole for the conviction did not result in a successful discharge;

(b) the defendant is not convicted of a serious offense during the time period described in Subsection (6)(a);

(c) there are no criminal proceedings pending against the defendant;

(d) the defendant is not on probation, on parole, or currently incarcerated for any other offense;

(e) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and

(f) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(7) In determining whether entering a judgment of a conviction for a lower degree of offense is in the interest of justice under Subsection (3), (4), (5), or (6):

(a) the court shall consider:

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- (i) the nature, circumstances, and severity of the offense for which a reduction is sought;
  - (ii) the physical, emotional, or other harm that the defendant caused any victim of the offense for which the reduction is sought; and
  - (iii) any input from a victim of the offense; and
- (b) the court may consider:
- (i) any special characteristics or circumstances of the defendant, including the defendant's criminogenic risks and needs;
  - (ii) the defendant's criminal history;
  - (iii) the defendant's employment and community service history;
  - (iv) whether the defendant participated in a rehabilitative program and successfully completed the program;
  - (v) any effect that a reduction would have on the defendant's ability to obtain or reapply for a professional license from the Department of Commerce;
  - (vi) whether the level of the offense has been reduced by law after the defendant's conviction;
  - (vii) any potential impact that the reduction would have on public safety; or
  - (viii) any other circumstances that are reasonably related to the defendant or the offense for which the reduction is sought.
- (8) (a) A court may only enter a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6) after:
- (i) notice is provided to the other party;
  - (ii) reasonable efforts have been made by the prosecuting attorney to provide notice to any victims; and
  - (iii) a hearing is held if a hearing is requested by either party.
- (b) A prosecuting attorney is entitled to a hearing on a motion seeking to reduce a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6).
- (c) In a motion under Subsection (3), (4), (5), or (6) and at a requested hearing on the motion, the moving party has the burden to provide evidence sufficient to demonstrate that the requirements under Subsection (3), (4), (5), or (6) are met.
- (d) If a defendant files a motion under this section, the prosecuting attorney shall

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respond to the motion within 35 days after the day on which the motion is filed with the court.

(9) A court has jurisdiction to consider and enter a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6) regardless of whether the defendant is committed to jail as a condition of probation or is sentenced to prison.

(10) (a) An offense may be reduced only one degree under this section, unless the prosecuting attorney specifically agrees in writing or on the court record that the offense may be reduced two degrees.

(b) An offense may not be reduced under this section by more than two degrees.

(11) This section does not preclude an individual from obtaining or being granted an expungement of the individual's record in accordance with ~~[Title 77, Chapter 40a, Expungement]~~ Title 77, Chapter 40a, Expungement of Criminal Records.

(12) The court may not enter a judgment for a conviction for a lower degree of offense under this section if:

(a) the reduction is specifically precluded by law; or

(b) any unpaid balance remains on court-ordered restitution for the offense for which the reduction is sought.

(13) When the court enters a judgment for a lower degree of offense under this section, the actual title of the offense for which the reduction is made may not be altered.

(14) (a) An individual may not obtain a reduction under this section of a conviction that requires the individual to register as a sex offender until the registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

(b) An individual required to register as a sex offender for the individual's lifetime under Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the individual to register as a sex offender.

(15) (a) An individual may not obtain a reduction under this section of a conviction that requires the individual to register as a child abuse offender until the registration requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.

(b) An individual required to register as a child abuse offender for the individual's lifetime under Subsection 77-43-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the individual to register as a child abuse offender.

Section 8. Section 77-2-2.3 is amended to read:

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### **77-2-2.3. Reducing the level of an offense.**

(1) Notwithstanding any other provision of law, a prosecuting attorney may:

(a) present and file an information charging an individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute if the prosecuting attorney believes that the sentence would be disproportionate to the offense because there are special circumstances relating to the offense; or

(b) subject to the approval of the court, amend an information, as part of a plea agreement, to charge an individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute.

(2) A court may:

(a) enter a judgment of conviction for an offense filed under Subsection (1) at one degree lower than classified in statute; and

(b) impose a sentence for the offense filed under Subsection (1) at one degree lower than classified in statute.

(3) A conviction of an offense at one degree lower than classified in statute under Subsection (2) does not affect the requirements for registration of the offense under Title 77, Chapter 41, Sex and Kidnap Offender Registry, or Title 77, Chapter 43, Child Abuse Offender Registry, if the elements of the offense for which the defendant is convicted are the same as the elements of an offense described in Section 77-41-102 or 77-43-102.

(4) This section does not preclude an individual from obtaining and being granted an expungement for the individual's record in accordance with ~~Title 77, Chapter 40a,~~

~~Expungement]~~ [Title 77, Chapter 40a, Expungement of Criminal Records.](#)

### **Section 9. Section 77-27-5.1 is amended to read:**

#### **77-27-5.1. Board authority to order expungement.**

(1) Upon granting a pardon, the board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records.

(a) When a pardon has been granted, employees of the Board of Pardons and Parole may not divulge any identifying information regarding the pardoned person to any person or

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agency, except for the pardoned person.

(b) The Bureau of Criminal Identification may not count pardoned convictions against any future expungement eligibility.

(2) An expungement order, issued by the board, has at least the same legal effect and authority as an order of expungement issued by a court, pursuant to ~~Title 77, Chapter 40a, Expungement~~ 1 Title 77, Chapter 40a, Expungement of Criminal Records.

(3) The board shall provide clear written directions to the recipient along with a list of agencies known to be affected by the expungement order.

Section 10. Section 77-40a-101 is amended to read:

### CHAPTER 40a. EXPUNGEMENT OF CRIMINAL RECORDS

#### **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.

~~(3)~~ (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)~~ (7) (a) "Clean slate eligible case" means, except as provided in Subsection ~~(4)(c)~~, (7)(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);



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

(A) except as provided in Subsection ~~[(4)(c)]~~ [(7)(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)]~~ [(7)(a)(ii)]; and

(C) the time periods described in Subsections ~~[(4)(a)(iii)(A)]~~ [(7)(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)]~~ [(7)(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:

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(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

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

~~(5)~~(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.

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~~[(9)]~~1(14) "Drug possession offense" means an offense under:

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

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

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

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

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

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

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection ~~[(9)]~~1(14).

~~[(10)]~~1(15) "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.

~~[(11)]~~1(16) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

~~[(12)]~~1(17) (a) "Minor regulatory offense" means, except as provided in Subsection ~~[(12)(c)]~~1(17)(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)]~~1(17)(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)]~~1(17)(c)(i) through (iv).

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~~[(13)]~~ (18) "Petitioner" means an individual applying for expungement under this chapter.

~~[(14)]~~ (19) "Plea in abeyance" means the same as that term is defined in Section 77-2a-1.

(20) "Special certificate" means a document issued as described in Subsection 77-40a-304(1)(c) 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.

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

(i) (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)(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)(b)(i) or (ii).

~~[(16)]~~ (22) "Traffic offense case" means that each offense in the case is a traffic offense.

Section 11. Section 77-40a-105 is amended to read:

**77-40a-105. Eligibility for removing the link between personal identifying information and court case dismissed.**

(1) As used in this section:

(a) "Domestic violence offense" means the same as that term is defined in Section

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77-36-1.

(b) "Personal identifying information" means:

- (i) a current name, former name, nickname, or alias; and
- (ii) date of birth.

(2) (a) An individual whose criminal case is dismissed ~~[; or civil case filed in~~ accordance with Title 78B, Chapter 7, Protective Orders and Stalking Injunctions, is denied,~~]~~ may move the court for an order to remove the link between the individual's personal identifying information from the dismissed case in any publicly searchable database of the Utah state courts.

(b) If a motion is filed under Subsection (2)(a), the court shall grant the motion if:

- (i) 30 days have passed from the day on which the case is dismissed ~~[or denied]~~;
- (ii) no appeal is filed for the dismissed ~~[or denied]~~ case within the 30-day period described in Subsection (2)(b)(i); and
- (iii) no charge in the case was a domestic violence offense.

(3) Removing the link to personal identifying information of a court record under Subsection (2) does not affect a prosecuting, arresting, or other agency's records.

(4) A case history, unless expunged under this chapter, remains public and accessible through a search by case number.

### Section 12. Section 77-40a-301 is amended to read:

**77-40a-301. ~~{Application for certificate of eligibility}~~Requirements for ~~{expungement}~~expunging a criminal record -- **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 Subsection 77-40a-304(2), pay the issuance fee for the certificate of eligibility or special certificate as described in Section 77-40a-304 if the

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individual is eligible to receive a certificate of eligibility or special certificate; 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 ~~{1}~~13. 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.

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

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

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

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

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

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

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

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(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 ~~a~~ 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 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

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~~(fii)b~~ is not required to pay the fee for a petition for expungement as described in Subsection indicates on the application for the certificate of eligibility that the petitioner is receiving services for the expungement from a nonprofit corporation or a public benefit corporation, as those terms are defined in Section 78A-2-302~~(2)(b)~~, that provides services to low-income individuals seeking expungement.

~~(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) 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.

(7) 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.

Section 14. Section 77-40a-305 is amended to read:

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

(1) (a) The petitioner shall file a petition for expungement~~(c)~~ in accordance with Rule 42 of the Utah Rules of Criminal Procedure~~(c)~~, that includes~~(c)~~.

(b) A petitioner shall include the identification number for the certificate of eligibility or special certificate described in Subsection ~~77-40a-304(1)(d)(ii)~~. 77-40a-304(2)(b)(ii) in the petition for expungement, unless the petitioner is not required to obtain a certificate of eligibility under Subsection (3) or (4).

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

(d) A petitioner shall bring a petition for expungement:



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(i) in the court where the criminal case was filed; or

(ii) if charges were never filed, in the district court in the county in which the arrest occurred or the citation was issued.

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

(b) A court may not accept a petition for expungement if the certificate of eligibility or special certificate 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]~~ case was adjudicated or dismissed; or

(ii) for a traffic offense case with a class B misdemeanor, at least four years have passed after the day on which the ~~[petitioner was convicted]~~ case was adjudicated or dismissed;

(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 or special certificate 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 or special certificate to the county attorney's office in the

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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 or special certificate, 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 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.

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(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 or special certificate, and any written responses submitted regarding the petition.

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

### Section 15. Section 77-40a-306 is amended to read:

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

(1) If a petition for expungement 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;]~~

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

(i) the certificate of eligibility is valid and contains the information needed for the court to issue an order for expungement; and

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

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

(i) the special certificate is valid; and

(ii) there is sufficient information in the petition for the court to determine that the statutory requirements for expungement 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

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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 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 the court 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;

(b) notify the bureau of the order of expungement; and

(c) provide the bureau with the order of expungement and all relevant information available to the court that the bureau will need to identify an expunged record.

(6) (a) The petitioner may request certified copies of an order of expungement within 28 days after the day on which the court issues an order of expungement.

(b) If a petitioner makes a request under Subsection (6)(a), the court shall provide the

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petitioner with certified copies of the order of expungement.

Section 16. Section 77-40a-403 is amended to read:

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

~~[(1)(a) The bureau, after receiving an expungement order,~~

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

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

(c) Subsection (1)(b) does not prevent an agency from maintaining or destroying a record in accordance with a retention schedule when the record is an expunged record.

(d) 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.

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

(i) specifically authorized by ~~[statute]~~ Subsection (4) or Section 77-40a-404; or

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

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

(4) The following entities or agencies may receive information contained in expunged

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records upon specific request:

- (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) 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) 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.

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

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

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

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

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

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

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

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

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

Section 17. 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) to confirm that the agency has expunged all records of the offense for which the individual received the expungement.

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(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;

(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.

### Section 18. Section 77-41-109 is amended to read:

#### **77-41-109. Miscellaneous provisions.**

(1) (a) If an offender is to be temporarily sent on any assignment outside a secure facility in which the offender is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This Subsection (1) does not apply to any person temporarily released under guard from the institution in which the person is confined.

(2) Notwithstanding ~~[Title 77, Chapter 40a, Expungement]~~ Title 77, Chapter 40a, Expungement of Criminal Records, a person convicted of any offense listed in Subsection 77-41-102(10) or (18) is not relieved from the responsibility to register as required under this section, unless the offender is removed from the registry under Section 77-41-112 or Section 77-41-113.

Section ~~{2}~~19. Section **78A-2-302** is amended to read:

#### **78A-2-302. Waiver of court 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.



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(b) "Indigent" means an individual who is financially unable to pay fees and costs or give security.

(c) "Nonprofit organization" means an organization that:

(i) qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code; and

(ii) has a charitable purpose.

~~(c)~~ (d) "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.

(e) "Public benefit corporation" means:

(i) a benefit corporation as defined in Section 16-10b-103; or

(ii) a business corporation that is incorporated as a public benefit corporation in another state.

~~{ (d) "Nonprofit organization" means an organization that:~~

~~— (i) qualifies as being tax exempt under Section 501(c)(3) of the Internal Revenue Code; and~~

~~— (ii) has a charitable purpose.~~

~~— ~~(c)~~ (e) "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 cause is a petition for expungement and 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.

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

(a) 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) the individual receives benefits from a means-tested government program, including Temporary Assistance to Needy Families, Supplemental Security Income, the

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Supplemental Nutrition Assistance Program, or Medicaid;

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

(d) 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) 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.

~~{Section 3}~~(7) For a petition for expungement, the signed petition shall indicate whether the individual is receiving services for the expungement from a nonprofit corporation, or a public benefit corporation, that provides services to low-income individuals seeking expungement.

Section 20. Section 78A-6-350 (Superseded 07/01/24) is amended to read:

78A-6-350 (Superseded 07/01/24). Venue -- Dismissal without adjudication on

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### merits.

(1) Notwithstanding Title 78B, Chapter 3, Part 3, Place of Trial -- Venue, a proceeding for a minor's case in the juvenile court shall be commenced in the court of the district in which:

(a) except as provided in Section 80-6-1001.2, for a proceeding under Title 80, Chapter 6, Juvenile Justice:

(i) the minor is living or found; or

(ii) the alleged offense occurred; or

(b) for [all other proceedings] any other proceeding, the minor is living or found.

(2) If a party seeks to transfer a case to another district after a petition has been filed in the juvenile court, the juvenile court may transfer the case in accordance with the Utah Rules of Juvenile Procedure.

(3) The dismissal of a petition in one district where the dismissal is without prejudice and where there has been no adjudication upon the merits may not preclude refile within the same district or another district where there is venue for the case.

Section 21. Section 78A-6-350 (Effective 07/01/24) is amended to read:

78A-6-350 (Effective 07/01/24). Venue -- Dismissal without adjudication on

### merits.

(1) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a proceeding for a minor's case in the juvenile court shall be commenced in the court of the district in which:

(a) except as provided in Section 80-6-1001.2, for a proceeding under Title 80, Chapter 6, Juvenile Justice:

(i) the minor is living or found; or

(ii) the alleged offense occurred; or

(b) for [all other proceedings] any other proceeding, the minor is living or found.

(2) If a party seeks to transfer a case to another district after a petition has been filed in the juvenile court, the juvenile court may transfer the case in accordance with the Utah Rules of Juvenile Procedure.

(3) The dismissal of a petition in one district where the dismissal is without prejudice and where there has been no adjudication upon the merits may not preclude refile within the same district or another district where there is venue for the case.

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

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Section 22. Section 78A-7-106 is amended to read:

### 78A-7-106. Jurisdiction.

(1) (a) Except for an offense for which the district court has original jurisdiction under Subsection 78A-5-102(8) or an offense for which the juvenile court has original jurisdiction under Subsection 78A-6-103(1)(c), a justice court has original jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within the justice court's territorial jurisdiction by an individual who is 18 years old or older.

(b) A justice court has original jurisdiction over the following offenses committed within the justice court's territorial jurisdiction by an individual who is 18 years old or older:

(i) class C misdemeanor and infraction violations of Title 53, Chapter 3, Part 2, Driver Licensing Act; and

(ii) class B and C misdemeanor and infraction violations of:

(A) Title 23A, Wildlife Resources Act;

(B) Title 41, Chapter 1a, Motor Vehicle Act;

(C) Title 41, Chapter 6a, Traffic Code, except Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(D) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;

(E) Title 41, Chapter 22, Off-highway Vehicles;

(F) Title 73, Chapter 18, State Boating Act, except Section 73-18-12;

(G) Title 73, Chapter 18a, Boating - Litter and Pollution Control;

(H) Title 73, Chapter 18b, Water Safety; and

(I) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and Operators Act.

(2) Except for an offense for which the district court has exclusive jurisdiction under Section 78A-5-102.5 or an offense for which the juvenile court has exclusive jurisdiction under Section 78A-6-103.5, a justice court has original jurisdiction over the following offenses committed within the justice court's territorial jurisdiction by an individual who is 16 or 17 years old:

(a) class C misdemeanor and infraction violations of Title 53, Chapter 3, Part 2, Driver Licensing Act; and

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(b) class B and C misdemeanor and infraction violations of:

(i) Title 23A, Wildlife Resources Act;

(ii) Title 41, Chapter 1a, Motor Vehicle Act;

(iii) Title 41, Chapter 6a, Traffic Code, except Title 41, Chapter 6a, Part 5, Driving

Under the Influence and Reckless Driving;

(iv) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and

Operators Act;

(v) Title 41, Chapter 22, Off-highway Vehicles;

(vi) Title 73, Chapter 18, State Boating Act, except for an offense under Section

73-18-12;

(vii) Title 73, Chapter 18a, Boating - Litter and Pollution Control;

(viii) Title 73, Chapter 18b, Water Safety; and

(ix) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and

Operators Act.

(3) (a) As used in this Subsection (3), "body of water" includes any stream, river, lake, or reservoir, whether natural or man-made.

(b) An offense is committed within the territorial jurisdiction of a justice court if:

(i) conduct constituting an element of the offense or a result constituting an element of the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is itself unlawful;

(ii) either an individual committing an offense or a victim of an offense is located within the court's jurisdiction at the time the offense is committed;

(iii) either a cause of injury occurs within the court's jurisdiction or the injury occurs within the court's jurisdiction;

(iv) an individual commits any act constituting an element of an inchoate offense within the court's jurisdiction, including an agreement in a conspiracy;

(v) an individual solicits, aids, or abets, or attempts to solicit, aid, or abet another individual in the planning or commission of an offense within the court's jurisdiction;

(vi) the investigation of the offense does not readily indicate in which court's jurisdiction the offense occurred, and:

(A) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft

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passing within the court's jurisdiction;

(B) the offense is committed on or in any body of water bordering on or within this state if the territorial limits of the justice court are adjacent to the body of water;

(C) an individual who commits theft exercises control over the affected property within the court's jurisdiction; or

(D) the offense is committed on or near the boundary of the court's jurisdiction;

(vii) the offense consists of an unlawful communication that was initiated or received within the court's jurisdiction; or

(viii) jurisdiction is otherwise specifically provided by law.

(4) If in a criminal case the defendant is 16 or 17 years old, a justice court judge may transfer the case to the juvenile court for further proceedings if the justice court judge determines and the juvenile court concurs that the best interests of the defendant would be served by the continuing jurisdiction of the juvenile court.

(5) ~~[Justice courts have jurisdiction of small claims cases]~~ A justice court has jurisdiction over:

(a) a small claims case under Title 78A, Chapter 8, Small Claims Courts, if a defendant resides in or the debt arose within the territorial jurisdiction of the justice court[-]; or

(b) a petition for expungement under Title 77, Chapter 40a, Expungement of Criminal Records.

(6) (a) As used in this Subsection (6), "domestic violence offense" means the same as that term is defined in Section 77-36-1.

(b) If a justice court has jurisdiction over a criminal action involving a domestic violence offense and the criminal action is set for trial, the prosecuting attorney or the defendant may file a notice of transfer in the justice court to transfer the criminal action from the justice court to the district court.

(c) If a justice court receives a notice of transfer from the prosecuting attorney or the defendant as described in Subsection (6)(b), the justice court shall transfer the criminal action to the district court.

Section 23. Section 78A-7-209.5 is amended to read:

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

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(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

(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.

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

Section 24. Section 78B-6-853 is amended to read:

### **78B-6-853. Expungement by petition for eviction -- Venue -- Objection.**

(1) Any party to an eviction may petition the court to expunge all records of the eviction if:

(a) the eviction was for:

(i) remaining after the end of the lease as described in Subsection 78B-6-802(1)(a); or

(ii) the nonpayment of rent as described in Subsection 78B-6-802(1)(c); and

(b) any judgment for the eviction has been satisfied and a satisfaction of judgment has been filed for the judgment.

(2) (a) A petitioner shall file a petition and provide notice to any other party to the eviction in accordance with the Utah Rules of Civil Procedure.

(b) A petitioner shall bring a petition to expunge records of an eviction in the court that issued the order of restitution.

(3) (a) Any party to the eviction may file a written objection to the petition with the court.

(b) If the court receives a written objection to the petition, the court may not expunge the eviction.

(4) Except as provided in Subsection (5), the court shall order expungement of all records of the eviction if the court does not receive a written objection within 60 days from the day on which the petition is filed.

(5) A court may not expunge an eviction if the judgment for the eviction has not been satisfied.

Section 25. Section 78B-7-1002.1 is enacted to read:

**78B-7-1002.1. Eligibility for removing the link between personal identifying information and court case dismissed.**

(1) As used in this section, "personal identifying information" means:

(a) a current name, former name, nickname, or alias; and

(b) date of birth.

(2) If a civil order is sought against an individual and the court denies the civil order,



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the individual may move the court for an order to remove the link between the individual's personal identifying information from the dismissed case in any publicly searchable database of the Utah state courts.

(3) If a motion is filed under Subsection (2), the court shall grant the motion if:

(a) 30 days have passed from the day on which the case is denied; and

(b) an appeal has not been filed in the denied case within the 30-day period described in Subsection (3)(a).

(4) Removing the link to personal identifying information of a court record under Subsection (3) does not affect another agency's records.

(5) A case history, unless expunged under this chapter, remains public and accessible through a search by case number.

Section 26. Section 78B-7-1003 is amended to read:

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

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

(b) A petitioner shall bring a petition for expungement under Subsection (1) in the court that issued the civil order.

~~[(b) A petition under Subsection (1)(a) shall be filed]~~

(2) The petitioner shall file the petition for expungement under Subsection (1) in accordance with the Utah Rules of Civil Procedure.

~~[(2)]~~ (3) (a) The petitioner shall provide notice to the individual filed the civil order against the petitioner in accordance with Rule 4 of the Utah Rules of Civil Procedure.

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

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

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

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

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

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

(A) all parties of the civil order; and

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

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

[~~(3)~~ (4) If no written objection is received within 60 days from the day on which the petition for expungement is filed under Subsection (1), the court may grant the expungement in accordance with Subsection [~~(4) or (5)~~ (5) or (6) without a hearing.

[~~(4)~~ (5) A court may expunge an ex parte civil protective order or an ex parte civil stalking injunction if:

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

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

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

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

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

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

(b) (i) the individual who filed the ex parte civil protective order or the ex parte civil stalking injunction failed to appear for the hearing on the ex parte civil protective order or ex parte civil stalking injunction;

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

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

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

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

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

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

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

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

Section 27. Section 80-6-1001.2 is enacted to read:

### **80-6-1001.2. Venue for petition seeking expungement.**

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

(1) in the court where the petition for delinquency was filed; or

(2) if a petition for delinquency was never filed, in the juvenile court in the county in which the arrest occurred or the citation was issued.

Section 28. **Effective date.**

{This}(1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.

(2) The actions affecting Section 78A-6-350 (Effective 07/01/24) take effect on July 1, 2024.

Section 29. **Coordinating S.B. 163 with S.B. 180.**

If S.B. 163, Expungement Revisions, and S.B. 180, Court Jurisdiction Modifications, both pass and become law, the Legislature intends that, on May 1, 2024, Subsection 78A-7-106(4) enacted in S.B. 180 be amended to read:

"(4) A justice court has jurisdiction over:

(a) a small claims case under Chapter 8, Small Claims Courts, if a defendant resides in or the debt arose within the territorial jurisdiction of the justice court; and

(b) a petition for expungement as described in Title 77, Chapter 40a, Expungement of Criminal Records."