

1 **Rule 42. Expungement**

2 **(a) Definitions**

3 (1) "AOC" means the Administrative Office of the Court.

4 (2) "Bureau" means the Bureau of Criminal Identification of the Department of  
5 Public Safety.

6 (3) "Clean slate eligible case" means the same as defined in Utah Code §77-40-102.

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

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

11 **(b) Automatic expungement**

12 (1) *Cases eligible for automatic expungement*

13 (A) Records in the following case types may be expunged automatically:

14 (i) a case that resulted in an acquittal on all charges;

15 (ii) except as provided in paragraph (b)(2), a case that is dismissed with  
16 prejudice; and

17 (iii) a clean slate eligible case.

18 (B) A case that is dismissed after completion of a plea in abeyance agreement is  
19 not eligible for automatic expungement.

20 (C) Once a month the AOC must identify for each court the cases that are eligible  
21 for automatic expungement under (b)(1)(A) and (B). The AOC must separately  
22 identify the cases that are clean slate eligible under (b)(1)(C).

23 (2) *Notice to prosecuting entities*

24 (A) When a list of clean slate eligible cases is created, the AOC must email a list  
25 of eligible cases to the entity that prosecuted the case. The information for each

26 clean slate eligible case must include, at a minimum, the individual's first name,  
27 last name, date of birth, and case number.

28 (B) Every prosecuting entity in the state must provide the AOC with the email  
29 address where notices should be sent. The prosecuting entity must immediately  
30 notify the AOC if the entity wants the notices sent to a different email address.

31 (C) The AOC is not required to send the prosecuting entity the lists of cases to be  
32 expunged under paragraphs (b)(1)(A) and (b)(1)(B).

33 (3) *Objection by prosecuting entities*

34 (A) If the prosecuting entity objects to the expungement of a clean slate eligible  
35 case, the prosecuting agency must e-file an objection within 35 days of the date  
36 notice was sent under paragraph (d)(1). If an objection is received, the AOC must  
37 remove the case from the list of clean slate eligible cases.

38 (B) Failure to properly e-file an objection will result in the objection being  
39 rejected.

40 (C) After the period for objections has expired, the AOC will provide each court  
41 with a list of the remaining clean slate eligible cases.

42 (4) *Expungement orders*

43 (A) Upon receiving a list of cases eligible for automatic expungement, the court  
44 must issue an expungement order for each eligible case.

45 (B) The AOC must provide copies of the expungement orders to the bureau and  
46 the prosecuting entity.

47 (c) **Expungement by petition**

48 (1) **How commenced.** An expungement case is commenced upon the filing of a  
49 petition for expungement in the court where the criminal case was filed or if charges  
50 were never filed, in the district court of the county in which the arrest occurred or  
51 citation was issued. The petitioner must attach a certificate of eligibility from the

52 Bureau unless the certificate has been provided to the court by the Bureau. A  
53 certificate of eligibility is not required if the petitioner is proceeding under Utah  
54 Code Section 77-40-103(5).

55 (2) **Service on the prosecutor.** The petition for expungement and certificate of  
56 eligibility must be served pursuant to Rule 5 of the Utah Rules of Civil Procedure on  
57 the prosecutor's office that prosecuted the case. If a case was never filed or the  
58 petitioner is unable to locate the prosecutor's office, these documents must be served  
59 on the county attorney's office in the jurisdiction where the arrest occurred or  
60 citation was issued.

61 (3) **Certificate of service.** The petitioner must file with the court a certificate of  
62 service stating the date and manner of service, and the name and address of the  
63 prosecutor's office.

64 (4) **Role of the prosecutor.**

65 (A) Upon receipt of a notice of a filing of a petition for expungement of a  
66 conviction or a charge dismissed in accordance with a plea in abeyance, the  
67 prosecuting attorney must make reasonable efforts to provide notice to any  
68 victim of the conviction or charge.

69 (B) The prosecutor must use the Judicial Council-approved expungement notice  
70 form and include a Judicial Council-approved form victim objection, a copy of  
71 the petition, certificate of eligibility, and copies of statutes and rules applicable to  
72 the petition.

73 (C) The prosecutor must file with the court a certificate verifying the date the  
74 notice was served on the victim within 7 days after service of the notice. If the  
75 prosecuting attorney is unable to serve the victim, the prosecuting attorney must  
76 file a certificate disclosing the efforts made on or before the date on which the  
77 judge may grant the petition without a hearing. If there was no victim, the  
78 prosecutor need not file a certificate.

79 (D) If a prosecutor is unable to serve a victim, the court must make a finding  
80 whether the efforts made to provide the victim notice were reasonable and  
81 whether the expungement process can proceed without notice to the victim.

82 **(5) Role of the victim.**

83 (A) Within 35 days after the court provided notice to the prosecutor, the victim  
84 may file with the court an objection to the expungement petition using the  
85 Judicial Council-approved form victim objection.

86 (B) The victim must serve any objection on the prosecutor and the petitioner  
87 under Rule 5 of the Utah Rules of Civil Procedure. If the victim requests that the  
88 victim's contact information be safeguarded, the court must serve the objection  
89 on the prosecutor and the petitioner.

90 (C) A victim may appear at any expungement hearing and make a statement  
91 regarding the expungement.

92 (D) If a victim is not served notice prior to the date on which the judge may grant  
93 the petition without a hearing, and the court has not yet entered an expungement  
94 order, the victim can request permission for additional time to file an objection or  
95 recommendation.

96 (E) If a victim is not served notice prior to the date on which the judge may grant  
97 the petition without a hearing, and the court has entered an expungement order,  
98 the victim can request an opportunity to object or make a statement regarding  
99 the expungement petition. If the court finds there has been no unnecessary delay  
100 and that the victim has been deprived of the right to be heard, through no fault  
101 of their own, the court shall reinstate time to file an objection or make a  
102 statement regarding the expungement. If the court receives an objection from the  
103 victim within the reinstated time, the court must schedule a hearing and  
104 reconsider the petition in light of the victim's objection or statement.

105 **(6) Objection by prosecutor.**

106 (A) The prosecutor has 35 days from the date the notice of the petition is  
107 provided to the prosecutor to file an objection or recommendation to the petition.

108 (B) If the prosecutor files an objection with the court within the time frame in  
109 paragraph (c)(6)(A), the court must schedule a hearing.

110 (C) The petitioner, prosecutor, victim, or any other person with relevant  
111 information may testify at the hearing.

112 (7) **Response to Objection or Recommendation.** The petitioner may respond in  
113 writing to any objections or statements filed in response to the petition within 14  
114 days after the day on which the objection or statement was received.

115 (8) **Objection not filed.** If an objection is not filed with the court within 35 days after  
116 the petition is served on the prosecutor, the petitioner may file a request to submit  
117 for decision and the expungement may be granted without a hearing, though a  
118 request to submit is not required for the court to make a decision.

119 (9) **Expungement order.** If the court enters an expungement order, the court must  
120 provide to the petitioner certified copies of the order in the number requested by the  
121 petitioner. When issuing an expungement order, the court will use the forms  
122 approved by the Board of District Court Judges. The order of expungement will  
123 have a copy of the certificate of eligibility attached. The petitioner is responsible for  
124 delivering copies of the order to all affected criminal justice agencies.

125 (10) **Timing.** All timeframes must be read consistently with Rule 6 of the Utah Rules  
126 of Civil Procedure.

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128 *Effective* \_\_\_\_\_