

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 Public  
5 Safety.

6 (3) "Clean slate eligible case" means the same as defined in Utah Code §~~77-40-102~~ 77-  
7 40a-101.

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

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

12 **(b) Automatic expungement.**

13 (1) Cases eligible for automatic expungement.

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

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

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

18 ~~(ii) a case that is dismissed with prejudice, other than a case dismissed with~~  
19 ~~prejudice as a result of successful completion of a plea in abeyance which shall~~  
20 ~~be processed under (b)(1)(A)(iii); and~~

21 (iii) a clean slate eligible case.

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

24 ~~(B) Once a month the AOC must identify for each court the cases that are eligible~~  
25 ~~for automatic expungement under (b)(1)(A). Cases that are clean slate eligible~~

26 under (b)(1)(A)(iii) must be identified separately from those eligible for automatic  
27 expungement under (b)(1)(A)(i) and (b)(1)(A)(ii).

28 (2) Notice to prosecuting entities.

29 (A) When a list of clean slate eligible cases is created, the AOC must ~~email a list of~~  
30 ~~eligible cases to the entity that prosecuted the case. The information for each clean~~  
31 ~~slate eligible case must include, at a minimum, the individual's first name, last~~  
32 ~~name, date of birth, and case number.~~ notify each prosecuting agency that the list  
33 is available for review on the Utah Courts Xchange website.

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

37 (C) The AOC is not required to send the prosecuting entity notice of cases to be  
38 expunged under paragraphs (b)(1)(A)(i) and (b)(1)(A)(ii).

39 (3) Objection by prosecuting entities.

40 (A) If the prosecuting entity objects to the expungement of a clean slate eligible  
41 case, the prosecuting agency must e-file an appropriate and valid objection within  
42 35 days of the date notice was sent under paragraph ~~(d)(1) (b)(2)(A).~~ To be  
43 appropriate, the objection must be for at least one of the statutory bases for  
44 objection. To be valid, the objection must be e-filed using the correct document  
45 type. If an appropriate and valid objection is timely received, the AOC must  
46 remove the case from the list of clean slate eligible cases.

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

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

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52 (4) Expungement orders.

53 (A) ~~Upon receiving a list of cases eligible for automatic expungement~~ After the  
54 period for objections has expired, the AOC will compile a list of the remaining  
55 clean slate eligible cases and the court ~~must~~ will issue an expungement order for  
56 each eligible case.

57 (B) The AOC must provide copies of the expungement orders to the bureau and  
58 notify the prosecuting entity.

59 (c) **Expungement by petition.**

60 (1) How commenced. An expungement action is commenced upon the filing of a  
61 petition for expungement in the court where the criminal case was filed or if charges  
62 were never filed, in the district court of the county in which the arrest occurred or  
63 citation was issued. ~~The petitioner must attach a certificate of eligibility from the~~  
64 ~~Bureau unless the certificate has been provided to the court by the Bureau. The~~  
65 petition must include the identification number from the Bureau for the certificate of  
66 eligibility. A certificate of eligibility is not required if the petitioner is proceeding  
67 under Utah Code Section ~~77-40-103(5).~~ 77-40a-305(3) and (4).

68 (2) ~~Service on~~ Notice to the prosecutor. ~~The petition for expungement and certificate~~  
69 ~~of eligibility must be served pursuant to Rule 5 of the Utah Rules of Civil Procedure~~  
70 ~~on the prosecutor's office that prosecuted the case. The court must provide notice of~~  
71 a filing of a petition to the prosecutorial office that handled the court proceedings  
72 within three days after the day on which the petitioner's filing fee is paid or waived.  
73 If a case was never filed, ~~or the petitioner is unable to locate the prosecutor's office,~~  
74 ~~these documents must be served on the county attorney's office in the jurisdiction~~  
75 ~~where the arrest occurred or citation was issued. the court must provide notice of a~~  
76 filing of a petition to the district or county attorney's office in the jurisdiction where  
77 the arrest or citation occurred.

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79 ~~(3) Certificate of service. The petitioner must file with the court a certificate of service~~  
80 ~~stating the date and manner of service, and the name and address of the prosecutor's~~  
81 ~~office.~~

82 (43) Role of the prosecutor.

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

87 ~~(B) Any notice sent by the prosecutor to a victim must include a Judicial Council-~~  
88 ~~approved form victim objection, a copy of the petition, certificate of eligibility, and~~  
89 ~~copies of statutes and rules applicable to the petition.~~

90 ~~(B) The prosecutor must use the Judicial Council-approved expungement notice~~  
91 ~~form and include a Judicial Council-approved form victim objection, a copy of the~~  
92 ~~petition, certificate of eligibility, and copies of statutes and rules applicable to the~~  
93 ~~petition.~~

94 ~~(BC) The prosecutor must file with the court a certificate- declaration verifying the~~  
95 ~~date the notice was served- provided on to the victim, within 7 days after service~~  
96 ~~of the notice. If the prosecutor is unable to serve- provide notice to the victim,~~  
97 ~~prosecuting attorney must file a certificate disclosing the efforts made on or before~~  
98 ~~the date on which the judge may grant the petition without a hearing, the~~  
99 ~~declaration must disclose the efforts made to provide notice to the victim. If there~~  
100 ~~was no victim, the prosecutor need not file a declaration.~~

101 (D) If a prosecutor is unable to ~~serve- provide notice to~~ a victim, the court must  
102 make a finding whether the efforts made to provide the victim notice ~~were~~  
103 ~~reasonable and whether expungement process can proceed without notice to the~~  
104 ~~victim. in the declaration were reasonable.~~

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106 (54) Role of the victim.

107 (A) Within 35 days after the court provided notice to the prosecutor, the victim  
108 may file with the court an objection ~~to the expungement petition using the Judicial~~  
109 ~~Council-approved form victim objection~~ or recommendation to the expungement  
110 petition. The court will provide any objection or recommendation filed by the  
111 victim to the petitioner and the prosecutor.

112 ~~(B) The victim must serve any objection on the prosecutor and the petitioner under~~  
113 ~~Rule 5 of the Utah Rules of Civil Procedure. If the victim requests that the victim's~~  
114 ~~contact information be safeguarded, the court must serve the objection on the~~  
115 ~~prosecutor and the petitioner.~~

116 ~~(C)~~ A victim may appear at any expungement hearing and make a statement  
117 regarding the expungement.

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

122 ~~(E) If a victim is not served notice prior to the date on which the judge may grant~~  
123 ~~the petition without a hearing, and the court has entered an expungement order,~~  
124 ~~the victim can request an opportunity to object or make a statement regarding the~~  
125 ~~expungement petition. If the court finds there has been no unnecessary delay and~~  
126 ~~that the victim has been deprived of the right to be heard, through no fault of their~~  
127 ~~own, the court shall reinstate time to file an objection or make a statement~~  
128 ~~regarding the expungement. If the court receives an objection from the victim~~  
129 ~~within the reinstated time, the court must schedule a hearing and reconsider the~~  
130 ~~petition in light of the victim's objection or statement.~~

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133 (65) Objection by prosecutor.

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

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

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

140 (76) Response to Objection or Recommendation. The petitioner may respond in  
141 writing to any objections or statements filed in response to the petition within 14 days  
142 after the day on which the objection or statement was received.

143 (87) Objection not filed. ~~If an objection is not filed with the court within 35 days after~~  
144 ~~the petition is served on the prosecutor, the petitioner may file a request to submit for~~  
145 ~~decision and the expungement may be granted without a hearing, though a request~~  
146 ~~to submit is not required for the court to make a decision.~~

147 (A) If a response from the prosecutor and any victim is received by the court within  
148 35 days after the petition is served on the prosecutor and does not include an  
149 objection, the petitioner may file a request to submit for decision and the  
150 expungement may be granted without a hearing, though a request to submit is not  
151 required for the court to make a decision.

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

155 (98) Expungement order. If the court enters an expungement order, the court must  
156 provide to the petitioner certified copies of the order in the number requested by the  
157 petitioner. When issuing an expungement order, the court will use the forms  
158 approved by the Board of District Court Judges. The order of expungement will have  
159 a copy of the certificate of eligibility attached. ~~The petitioner is responsible for~~

160 ~~delivering copies of the order to all affected criminal justice agencies.~~ The court will  
161 provide notice to the Bureau of the expungement order. The Bureau will notify all  
162 criminal justice agencies affected by the expungement order.

163 (109) Timing. All timeframes must be read consistently with Rule 6 of the Utah Rules  
164 of Civil Procedure.

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166 *Effective July 13, 2022.*