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March 10, 2026

TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

Senate Bills No. 2299, 2313, 2964, 2983

ENTITLED, ACTS RELATING TO CRIMINAL PROCEDURE – EXPUNGEMENT OF CRIMINAL OFFENSES.

Chairman LaMountain and Members of the Senate Judiciary Committee:

The Office of the Public Defender strongly supports the passage of Senate Bills 2299, 2313, 2964, 2983, all of which propose amendments to expand expungement opportunities for individuals who have completed their sentences and demonstrated a commitment to lawful behavior. While we strongly support the intent and overall provisions of these bills, we would like to point out a concern we have with two words contained within the proposed changes to S2299.

Our support of this legislation is based on research indicating that laws expanding expungement opportunities for individuals enhance public safety, since people who receive expungements have low recidivism rates.¹ The same research demonstrates that individuals with expunged records exhibit an overall crime rate lower than the general population.² The research stresses how important it is to recognize and support individuals who have successfully reintegrated into society after completing their sentences.

S2299 would remove the current barrier preventing individuals with more than one felony conviction from ever being eligible for a clean record. This is particularly important because it allows relief to those individuals who might have garnered a small but non-violent criminal record, something that is particularly common when one is working through a substance abuse or mental health issue. The relaxation of the “one felony” rule would allow many more people—people who have faced down their demons and committed to rehabilitation—to fully reintegrate into society with increased employment, housing, and education opportunities.

The other three bills would reduce the time that an individual must wait in order to clear their record: S2313 (decreases the wait time for the expungement of one misdemeanor from 5 to 3 years after the completion of a sentence, and for the expungement of one felony or multiple misdemeanors from 10 to 5 years after the completion of a sentence), S2964 (reduces the wait time for the expungement of petty misdemeanors and misdemeanors related to the simple possession of a controlled substance from 5 to 3 years after the completion of a sentence), and S2983 (starts the clock ticking on the expungement wait time after the imposition of a sentence instead of the

¹ J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460 (2020).

² *Id.* at 2514.

Administration	Appeals	Felony Division	Misdemeanor/PAC	Licht VOP Unit	Family Court	Investigations
222-1511	222-1510	222-1540	222-1520	222-1312	222-1530	222-3492

completion of a sentence). Together these three bills address two issues related to the current expungement laws: 1) that studies have demonstrated that our current waiting times are too long, for over 90% of people who have not offended in three years will not do so again³, and 2) that people who have already proven themselves by remaining out of trouble for the length of their probation should not have to wait an *additional* period of time before their records can be expunged—time where they are on the sidelines for the important educational, employment, and housing-related opportunities referenced earlier.

However, our office has concerns about the proposed language in S2299 relative to § 12-1.3-3(b)(1)(iv). This subsection requires that a person must not have been “convicted nor arrested for any felony and misdemeanor” in order to be eligible for expungement. This language tracks the language that is already in two other subsections of §12-1.3-3—(b)(1)(i) and (b)(1)(iii)—where the requirement is already law. The problem is that this could prevent someone from having their record expunged no matter how specious or unjustified the arrest. After all, defendants are presumed innocent before a conviction, and this language undercuts that presumption and would needlessly deprive some deserving individuals from receiving an expungement. To better align the legislation with its intended purpose, we recommend removing the phrase “nor arrested” from this clause in S2299, as well as from the other two subsections where it currently appears (§12-1.3-3(b)(1)(i) and (iii)).

In conclusion, the Office of the Public Defender urges the Committee to consider the positive impact that these four bills would have on individuals seeking to rebuild their lives after completing their sentences. We recommend supporting the bill with the amended language as outlined above.

Sincerely,



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³ Matthew Durose and Leonardo Antenangeli, *Recidivism of Prisoners Released in 34 States in 2012*, U.S. DEPARTMENT OF JUSTICE, SPECIAL REPORT (July 2021), available at <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/rpr34s125yfup1217.pdf>.