

**EXPUNGEMENT AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the Utah Expungement Act.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions;
- ▶ amends the procedural and notification requirements for a petition for expungement;
- ▶ addresses the expungement of a record associated with more than one law enforcement agency case number;
- ▶ modifies convictions that are not eligible for a certificate of eligibility;
- ▶ provides that an individual is not eligible for a certificate of eligibility if there is a criminal protective order or a criminal stalking injunction in effect for the case;
- ▶ modifies the eligibility limits for prior convictions;
- ▶ prohibits the Bureau of Criminal Identification from issuing a certificate of eligibility when the record has previously been denied expungement due to the interests of the public until at least five years have passed;
- ▶ modifies the requirements for when a petition for expungement may be granted;
- ▶ requires the Bureau of Criminal Identification to notify all criminal justice agencies affected by an order of expungement;
- ▶ requires an agency receiving an order for expungement to keep, index, and maintain the expunged records;
- ▶ prohibits employees of an agency from divulging information contained in an expunged record unless authorized by statute;
- ▶ allows a prosecuting attorney to communicate with another prosecuting attorney regarding expunged records for certain offenses;
- ▶ prohibits a prosecuting attorney from using an expunged record for a sentencing enhancement or as a basis for charging the individual with an offense that requires a

- 33 prior conviction, unless there is a showing of good cause;
- 34 ▶ allows the presiding judge of a justice court to grant an automatic expungement;
- 35 ▶ amends provisions regarding rules made by the Judicial Council and the Supreme
- 36 Court; and
- 37 ▶ makes technical and conforming changes.

38 **Money Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

42 **Utah Code Sections Affected:**

43 AMENDS:

- 44 **77-40-102**, as last amended by Laws of Utah 2021, Chapters 206 and 260
- 45 **77-40-103**, as last amended by Laws of Utah 2020, Chapters 12, 12, and 218
- 46 **77-40-104**, as last amended by Laws of Utah 2019, Chapter 448
- 47 **77-40-105**, as last amended by Laws of Utah 2021, Chapters 206, 260 and last amended
- 48 by Coordination Clause, Laws of Utah 2021, Chapter 261
- 49 **77-40-107**, as last amended by Laws of Utah 2021, Chapter 206
- 50 **77-40-108**, as last amended by Laws of Utah 2019, Chapter 448
- 51 **77-40-109**, as last amended by Laws of Utah 2019, Chapter 448
- 52 **77-40-114**, as last amended by Laws of Utah 2020, Chapter 218

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

55 Section 1. Section **77-40-102** is amended to read:

56 **77-40-102. Definitions.**

57 As used in this chapter:

58 (1) "Administrative finding" means a decision upon a question of fact reached by an

59 administrative agency following an administrative hearing or other procedure satisfying the

60 requirements of due process.

61 (2) "Agency" means a state, county, or local government entity that generates or

62 maintains records relating to an investigation, arrest, detention, or conviction for an offense for

63 which expungement may be ordered.

64 (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
65 Safety established in Section 53-10-201.

66 (4) "Certificate of eligibility" means a document issued by the bureau stating that the  
67 criminal record and all records of arrest, investigation, and detention associated with a case that  
68 is the subject of a petition for expungement is eligible for expungement.

69 (5) (a) [~~"Clean~~] Except as provided in Subsection (5)(c), "clean slate eligible case"  
70 means a case:

71 (i) where~~[, except as provided in Subsection (5)(c),]~~ each conviction within the case is:

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

74 (B) a class B or class C misdemeanor conviction; or

75 (C) an infraction conviction;

76 (ii) that involves an individual:

77 (A) whose total number of convictions in Utah state courts, not including infractions,  
78 traffic offenses, or minor regulatory offenses, does not exceed the limits described in  
79 Subsections 77-40-105(6) and (7) without taking into consideration the exception in Subsection  
80 77-40-105(9); and

81 (B) against whom no criminal proceedings are pending in the state; and

82 (iii) for which the following time periods have elapsed from the day on which the case  
83 is adjudicated:

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

85 (B) at least six years for a class B misdemeanor; and

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

88 (b) "Clean slate eligible case" includes a case:

89 (i) that is dismissed as a result of a successful completion of a plea in abeyance  
90 agreement governed by Subsection 77-2a-3(2)(b) if:

91 ~~[(i)]~~ (A) except as provided in Subsection (5)(c), each charge within the case is~~[(A)]~~ a  
92 misdemeanor for possession of a controlled substance in violation of Subsection  
93 58-37-8(2)(a)(i)~~[(B)]~~, a class B or class C misdemeanor~~[(C)]~~, or an infraction;

94 ~~[(ii)]~~ (B) the individual involved meets the requirements of Subsection (5)(a)(ii); and

95           ~~[(iii)]~~ (C) the time periods described in Subsections (5)(a)(iii)(A) through (C) have  
96 elapsed from the day on which the case is dismissed[-]; or

97           (ii) where charges are dismissed without prejudice if each conviction, or charge that  
98 was dismissed, in the case would otherwise meet the requirements under Subsection (5)(a) or  
99 (b)(i).

100           (c) "Clean slate eligible case" does not include a case:

101           (i) where the individual is found not guilty by reason of insanity;

102           (ii) where the case establishes a criminal accounts receivable, as defined in Section  
103 77-32b-102, that:

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

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

108           (iii) that resulted in one or more pleas held in abeyance or convictions for the following  
109 offenses:

110           (A) any of the offenses listed in Subsection 77-40-105(2)(a);

111           (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against  
112 the Person;

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

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

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

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

118           (G) damage to or interruption of a communication device in violation of Section  
119 76-6-108;

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

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

124           (6) "Conviction" means judgment by a criminal court on a verdict or finding of guilty  
125 after trial, a plea of guilty, or a plea of nolo contendere.

126 (7) (a) Except as provided in Subsection (7)(c), "criminal proceeding" means every  
127 stage of a criminal prosecution after an arrest until the criminal prosecution is dismissed or the  
128 sentence resulting from the criminal prosecution is terminated or expires.

129 (b) "Criminal proceeding" includes parole, incarceration, supervised or unsupervised  
130 probation, or a pending plea in abeyance agreement.

131 (c) "Criminal proceeding" does not include a criminal prosecution for a minor  
132 regulatory offense or a traffic offense.

133 (8) "Criminal protective order" means the same as that term is defined in Section  
134 78B-7-102.

135 (9) "Criminal stalking injunction" means the same as that term is defined in Section  
136 78B-7-102.

137 ~~[(7)]~~ (10) "Department" means the Department of Public Safety established in Section  
138 53-1-103.

139 ~~[(8)]~~ (11) "Drug possession offense" means an offense under:

140 (a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i),  
141 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection  
142 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a  
143 controlled substance illegally in the person's body and negligently causing serious bodily injury  
144 or death of another;

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

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

147 (d) any local ordinance which is substantially similar to any of the offenses described  
148 in this Subsection ~~[(8)]~~ (11).

149 ~~[(9) "Expunge"]~~ (12) (a) Except as provided in Subsection (12)(b), "expunge" means  
150 to seal or otherwise restrict access to the individual's record held by an agency when the record  
151 includes a criminal investigation, detention, arrest, or conviction.

152 (b) "Expunge" does not include access of an individual's record by an agency so long as  
153 the record is not disclosed for any other purpose except as provided in Section 77-40-109.

154 ~~[(10)]~~ (13) "Jurisdiction" means a state, district, province, political subdivision,  
155 territory, or possession of the United States or any foreign country.

156 ~~[(11) "Minor regulatory offense" means any class B or C misdemeanor offense, and~~

157 ~~any local ordinance, except:]~~

158 (14) (a) Except as provided in Subsection (14)(c), "minor regulatory offense" means a  
 159 class B or C misdemeanor or a local ordinance.

160 (b) "Minor regulatory offense" includes an offense under Section 76-9-701 or  
 161 76-10-105.

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

163 ~~[(a) any]~~ (i) a drug possession offense;

164 ~~[(b)]~~ (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and  
 165 Reckless Driving;

166 ~~[(c)]~~ (iii) an offense under Sections 73-18-13 through 73-18-13.6;

167 ~~[(d) those offenses]~~ (iv) except as provided in Subsection (14)(b), an offense defined  
 168 in Title 76, Utah Criminal Code; or

169 ~~[(e)]~~ (v) any local ordinance that is substantially similar to [those offenses] an offense  
 170 listed in Subsections ~~[(11)(a) through (d)] (14)(c)(i) through (iv).~~

171 ~~[(12)]~~ (15) "Petitioner" means an individual applying for expungement under this  
 172 chapter.

173 ~~[(13)]~~ (16) (a) "Traffic offense" means:

174 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,  
 175 Chapter 6a, Traffic Code;

176 (ii) an offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;

177 (iii) an offense under Title 73, Chapter 18, State Boating Act; and

178 (iv) all local ordinances that are substantially similar to [those offenses] an offense  
 179 listed in Subsections (16)(a)(i) through (iii).

180 (b) "Traffic offense" does not mean:

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

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

184 (iii) any local ordinance that is substantially similar to [the offenses] an offense listed  
 185 in Subsections ~~[(13)] (16)(b)(i) and (ii).~~

186 (17) "Victim" means the same as the term "victim of a crime" is defined in Section  
 187 77-38-2.

188 Section 2. Section **77-40-103** is amended to read:

189 **77-40-103. Petition for expungement procedure overview.**

190 The process for a petition for the expungement of records under this chapter regarding  
191 the arrest, investigation, detention, and conviction of a petitioner is as follows:

192 (1) The petitioner shall apply to the bureau for a certificate of eligibility for  
193 expungement and pay the application fee established by the department.

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

195 (3) If the petitioner is qualified to receive a certificate of eligibility for expungement,  
196 the petitioner shall pay the issuance fee established by the department.

197 ~~[(4)(a) The petitioner shall file the certificate of eligibility with a petition for  
198 expungement in the court in which the proceedings occurred.]~~

199 ~~[(b) If there were no court proceedings, or the court no longer exists, the petitioner may  
200 file the petition in the district court where the arrest occurred.]~~

201 ~~[(c) If a petitioner files a certificate of eligibility electronically, the petitioner or the  
202 petitioner's attorney shall keep the original certificate until the proceedings are concluded.]~~

203 ~~[(d) If the petitioner files the original certificate of eligibility with the petition, the clerk  
204 or the court shall scan and return the original certificate to the petitioner or the petitioner's  
205 attorney, who shall keep the original certificate until the proceedings are concluded.]~~

206 (4) (a) The petitioner shall file a petition for expungement in accordance with the Utah  
207 Rules of Civil Procedure.

208 (b) If a petition for expungement is filed, the court shall obtain a certificate of  
209 eligibility from the bureau.

210 (c) A court may not accept a petition for expungement when the certificate of eligibility  
211 has expired.

212 (5) Notwithstanding Subsections (3) and (4), if the petitioner is not qualified to receive  
213 a certificate of eligibility for expungement, the petitioner may file a petition without a  
214 certificate to obtain expungement for a record of conviction related to cannabis possession if  
215 the petition demonstrates that:

216 (a) the petitioner had, at the time of the relevant arrest or citation leading to the  
217 conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and

218 (b) the possession of cannabis in question was in a form and an amount to medicinally

219 treat the condition described in Subsection (5)(a).

220 (6) (a) The [~~petitioner~~] court shall deliver a copy of the petition and certificate of  
221 eligibility to the prosecutorial office that handled the court proceedings.

222 (b) If there were no court proceedings, the [~~petitioner~~] court shall deliver the copy of  
223 the petition and certificate to the county attorney's office in the jurisdiction where the arrest  
224 occurred.

225 (c) If the prosecuting agency with jurisdiction over the arrest, investigation, and  
226 detention, or conviction, was a city attorney's office, the county attorney's office in the  
227 jurisdiction where the arrest occurred shall immediately notify the city attorney's office that a  
228 petition for expungement was served upon the county attorney's office.

229 (7) If the [~~prosecutor~~] prosecuting attorney or the victim files an objection to the  
230 petition, the court shall set a hearing and notify the [~~prosecutor~~] prosecuting attorney and the  
231 victim of the date set for the hearing.

232 (8) If the court requests a response from the Division of Adult Probation and Parole  
233 and a response is received, the petitioner may file a written reply in accordance with Section  
234 77-40-107.

235 (9) A court may grant an expungement without a hearing if no objection is received.

236 (10) Upon receipt of an order of expungement, the petitioner shall deliver copies to all  
237 government agencies in possession of records relating to the expunged matter.

238 Section 3. Section **77-40-104** is amended to read:

239 **77-40-104. Requirements to apply for certificate of eligibility to expunge records**  
240 **of arrest, investigation, and detention.**

241 (1) An individual who is arrested or formally charged with an offense may apply to the  
242 bureau for a certificate of eligibility to expunge the records of arrest, investigation, and  
243 detention that may have been made in the case, subject to the following conditions:

244 [~~(1)~~] (a) at least 30 days have passed since the day of the arrest for which a certificate  
245 of eligibility is sought;

246 [~~(2)~~] (b) there are no criminal proceedings pending against the individual; [~~and~~]

247 (c) there is not a criminal protective order or a criminal stalking injunction in effect for  
248 the case; and

249 [~~(3)~~] (d) one of the following occurs:



250           ~~[(a)]~~ (i) charges are screened by the investigating law enforcement agency and the  
 251 ~~[prosecutor]~~ prosecuting attorney makes a final determination that no charges will be filed in  
 252 the case;

253           ~~[(b)]~~ (ii) the entire case is dismissed with prejudice;

254           ~~[(c)]~~ (iii) the entire case is dismissed without prejudice or without condition and:

255           ~~[(i) the prosecutor]~~ (A) the prosecuting attorney consents in writing to the issuance of  
 256 a certificate of eligibility; or

257           ~~[(ii)]~~ (B) at least 180 days have passed since the day on which the case is dismissed;

258           ~~[(d)]~~ (iv) the individual is acquitted at trial on all of the charges contained in the case;

259 or

260           ~~[(e)]~~ (v) the statute of limitations expires on all of the charges contained in the case.

261           (2) The bureau may not issue a certificate of eligibility under this section if the law  
 262 enforcement agency case number associated with the arrest, investigation, detention, or  
 263 conviction for which expungement is sought is also associated with an arrest, investigation,  
 264 detention, or conviction that is not eligible for expungement under this chapter.

265           Section 4. Section **77-40-105** is amended to read:

266           **77-40-105. Requirements to apply for a certificate of eligibility to expunge**  
 267 **conviction.**

268           (1) An individual convicted of an offense may apply to the bureau for a certificate of  
 269 eligibility to expunge the record of conviction as provided in this section.

270           (2) Except as provided in Subsection (3), an individual is not eligible to receive a  
 271 certificate of eligibility from the bureau if:

272           (a) the conviction for which expungement is sought is:

273           (i) a capital felony;

274           (ii) a first degree felony;

275           (iii) a felony conviction of a violent felony as defined in Subsection

276 76-3-203.5(1)(c)(i);

277           (iv) felony automobile homicide;

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

279           ~~[(vi) a registerable sex offense as defined in Subsection 77-41-102(17); or]~~

280           (vi) an offense that would require the individual to register as a sex offender, as defined

281 in Section 77-41-102, and the individual is currently required to register as a sex offender for  
282 the offense; or

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

284 (b) a criminal proceeding is pending against the petitioner; [~~or~~]

285 (c) the petitioner intentionally or knowingly provides false or misleading information  
286 on the application for a certificate of eligibility[-]; or

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

288 (3) The eligibility limitation described in Subsection (2) does not apply in relation to a  
289 conviction for a qualifying sexual offense, as defined in Subsection 76-3-209(1), if, at the time  
290 of the offense, the individual who committed the offense was at least 14 years old, but under 18  
291 years old, unless the conviction occurred in district court after the individual was:

292 (a) charged by criminal information under Section 80-6-502 or 80-6-503; and

293 (b) bound over to district court under Section 80-6-504.

294 (4) A petitioner seeking to obtain expungement for a record of conviction is not  
295 eligible to receive a certificate of eligibility from the bureau until all of the following have  
296 occurred:

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

299 (b) the petitioner has paid in full all restitution ordered by the court under Section  
300 77-38b-205; and

301 (c) the following time periods have elapsed from the date the petitioner was convicted  
302 or released from incarceration, parole, or probation, whichever occurred last, for each  
303 conviction the petitioner seeks to expunge:

304 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a  
305 felony conviction of Subsection 58-37-8(2)(g);

306 (ii) seven years in the case of a felony;

307 (iii) five years in the case of any class A misdemeanor or a felony drug possession  
308 offense;

309 (iv) four years in the case of a class B misdemeanor; or

310 (v) three years in the case of any other misdemeanor or infraction.

311 (5) When determining whether to issue a certificate of eligibility, the bureau may not

312 consider:

313 (a) a petitioner's pending or previous:

314 (i) infraction;

315 (ii) traffic offense;

316 (iii) minor regulatory offense; or

317 (iv) clean slate eligible case that was automatically expunged in accordance with

318 Section 77-40-114; or

319 (b) a fine or fee related to an offense described in Subsection (5)(a).

320 (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner  
321 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,  
322 including previously expunged convictions, contains any of the following, except as provided  
323 in Subsection (9):

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

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

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

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

334 (7) ~~[The]~~ Except as provided in Subsection (9), the bureau may not issue a certificate  
335 of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines  
336 that the petitioner's criminal history, including previously expunged convictions, contains any  
337 of the following:

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

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

342 (8) If the petitioner's criminal history contains convictions for both a drug possession

343 offense and a non drug possession offense arising from the same criminal episode, that criminal  
344 episode shall be counted as provided in Subsection (6) if any non drug possession offense in  
345 that episode:

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

347 (b) has the same or a longer waiting period under Subsection (4) than any drug  
348 possession offense in that episode.

349 (9) If at least 10 years have elapsed from the ~~[date]~~ day on which the petitioner was  
350 convicted or released from incarceration, parole, or probation, whichever occurred last, for all  
351 convictions, then:

352 (a) each eligibility limit defined in ~~[Subsection]~~ Subsections (6)(a) and (b) shall be  
353 increased by one[-]; and

354 (b) each eligibility limit defined in Subsections (6)(c), (6)(d), and (7) are not applicable  
355 and the bureau may issue a certificate of eligibility if the individual is eligible.

356 (10) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah  
357 Board of Pardons and Parole, the petitioner is entitled to an expungement order for all  
358 pardoned crimes ~~[pursuant to]~~ in accordance with Section 77-27-5.1.

359 (11) The bureau may not issue a certificate of eligibility:

360 (a) if the law enforcement agency case number associated with the conviction for  
361 which expungement is sought is also associated with an arrest, investigation, detention, or  
362 conviction that is not eligible for expungement under this chapter; or

363 (b) for a record of an arrest, investigation, detention, or conviction that was previously  
364 denied expungement under Subsection 77-40-107(8)(g), until at least five years have passed  
365 after the day on which the petition for expungement was denied.

366 Section 5. Section **77-40-107** is amended to read:

367 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**  
368 **Standard of proof -- Exception.**

369 (1) The petitioner shall file a petition for expungement ~~[and, except as provided in~~  
370 ~~Subsection 77-40-103(5), the certificate of eligibility in the court specified in Section~~  
371 ~~77-40-103 and deliver a copy of the petition and certificate to the prosecuting agency. If the~~  
372 ~~certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original~~  
373 ~~certificate until the proceedings are concluded. If the original certificate is filed with the~~

374 petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's  
375 attorney, who shall keep it until the proceedings are concluded] as described in Section  
376 77-40-103.

377 (2) (a) Upon receipt of a petition for expungement of a conviction or a charge  
378 dismissed in accordance with a plea in abeyance, the prosecuting attorney [~~shall provide notice~~  
379 ~~of the expungement request by first-class mail to the victim at the most recent address of record~~  
380 ~~on file] shall make a reasonable effort to provide notice to any victim of the conviction or  
381 charge.~~

382 (b) The notice shall:

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

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

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

387 (3) The prosecuting attorney and the victim, if applicable, may respond to the petition  
388 by filing a recommendation or objection with the court within 35 days after receipt of the  
389 petition.

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

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

394 (i) the reasons probation was terminated; and

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

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

399 (5) The petitioner may respond in writing to any objections filed by the [~~prosecutor~~]  
400 prosecuting attorney or the victim and the response prepared by the Division of Adult  
401 Probation and Parole within 14 days after receipt.

402 (6) (a) If the court receives an objection concerning the petition from any party, the  
403 court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the  
404 date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the

405 hearing.

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

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

410 (7) If no objection is received within 60 days from the date the petition for  
411 expungement is filed with the court, the expungement may be granted without a hearing.

412 (8) The court shall issue an order of expungement if the court finds, by clear and  
413 convincing evidence, that:

414 (a) the petition and, except as provided under Subsection 77-40-103(5), certificate of  
415 eligibility are sufficient;

416 (b) the statutory requirements have been met;

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

420 (d) if the petitioner seeks expungement of drug possession offenses allowed under  
421 Subsection 77-40-105(7), the petitioner is not illegally using controlled substances and is  
422 successfully managing any substance addiction;

423 (e) if the petitioner seeks expungement without a certificate of eligibility for  
424 expungement under Subsection 77-40-103(5) for a record of conviction related to cannabis  
425 possession:

426 (i) the petitioner had, at the time of the relevant arrest or citation leading to the  
427 conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and

428 (ii) the possession of cannabis in question was in a form and an amount to medicinally  
429 treat the condition described in Subsection (8)(e)(i);

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

433 (g) ~~[it is not contrary to the interests of the public to grant the expungement]~~ the  
434 interests of the public would benefit from, or be unaffected by, granting the expungement.

435 (9) (a) If the court denies a petition described in Subsection (8)(c) because the

436 [prosecutor] prosecuting attorney intends to refile charges, the person seeking expungement  
437 may again apply for a certificate of eligibility if charges are not refiled within 180 days of the  
438 day on which the court denies the petition.

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

442 (c) A court shall consider the number of times that good faith basis of intention to  
443 refile by the [prosecutor] prosecuting attorney is presented to the court in making the court's  
444 determination to grant the petition for expungement described in Subsection (8)(c).

445 (10) If the court grants a petition described in Subsection (8)(e), the court shall make  
446 the court's findings in a written order.

447 (11) A court may not expunge a conviction of an offense for which a certificate of  
448 eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

449 Section 6. Section **77-40-108** is amended to read:

450 **77-40-108. Distribution of order -- Redaction -- Receipt of order -- Bureau**  
451 **requirements -- Administrative proceedings.**

452 ~~[(1)(a)(i) An individual who receives an order of expungement under Section~~  
453 ~~77-40-107 or Section 77-27-5.1 shall be responsible for delivering a copy of the order of~~  
454 ~~expungement to all affected criminal justice agencies and officials including the court, arresting~~  
455 ~~agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.]~~

456 ~~[(ii) The provisions of Subsection (1)(a)(i) do not apply to an individual who receives~~  
457 ~~an automatic expungement under Section 77-40-114.]~~

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

460 (b) An individual who receives an order of expungement under Section 77-27-5.1,  
461 shall pay a processing fee to the bureau, established in accordance with the process in Section  
462 63J-1-504, before the bureau's record may be expunged.

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

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

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

472 (5) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2),  
473 a government agency or official may not divulge information or records that have been  
474 expunged.

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

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

480 (7) An order of expungement may not:

481 (a) terminate or invalidate any pending administrative proceedings or actions of which  
482 the individual had notice according to the records of the administrative body prior to issuance  
483 of the expungement order;

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

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

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

491 Section 7. Section **77-40-109** is amended to read:

492 **77-40-109. Retention and release of expunged records -- Agencies.**

493 (1) The bureau, and any agency receiving an expungement order, shall keep, index, and  
494 maintain all expunged records of arrests and convictions.

495 (2) (a) Employees of the bureau, and any agency with an expunged record, may not  
496 divulge any information contained in the [bureau's index] expunged record to any person or  
497 agency without a court order unless specifically authorized by statute.



498 (b) The following organizations may receive information contained in expunged  
499 records upon specific request:

- 500 (i) the Board of Pardons and Parole;
- 501 (ii) Peace Officer Standards and Training;
- 502 (iii) federal authorities, only as required by federal law;
- 503 (iv) the Department of Commerce;
- 504 (v) the Department of Insurance;
- 505 (vi) the State Board of Education; and
- 506 (vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating  
507 applicants for judicial office.

508 (c) A person or agency authorized by this Subsection (2) to view expunged records  
509 may not reveal or release any information obtained from the expunged records to anyone  
510 outside the specific request, except as directed by a court order, including distribution on a  
511 public website.

512 (d) A prosecuting attorney may communicate with another prosecuting attorney, or  
513 another prosecutorial agency, regarding information in an expunged record that includes a  
514 conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance  
515 agreement, for:

- 516 (i) stalking, as described in Section 76-5-106.5;
- 517 (ii) a domestic violence offense as defined in Section 77-36-1;
- 518 (iii) an offense that would require the individual to register as a sex offender, as  
519 defined in Section 77-41-102; or
- 520 (iv) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.

521 (e) Except as provided in Subsection (4), a prosecuting attorney may not use an  
522 expunged record for the purpose of a sentencing enhancement or as a basis for charging an  
523 individual with an offense that requires a prior conviction.

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

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

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

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

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

536 (d) Any person authorized by this Subsection (5) to view expunged records may not  
537 reveal or release any information obtained from the expunged records to anyone outside the  
538 court.

539 (6) Records released under this chapter are classified as protected under Section  
540 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to  
541 Records.

542 Section 8. Section **77-40-114** is amended to read:

543 **77-40-114. Automatic expungement procedure.**

544 (1) (a) Except as provided in Subsection (1)(b) and subject to Section 77-40-116, this  
545 section governs the process for the automatic expungement of all records in:

546 (i) except as provided in Subsection (2)(d), a case that resulted in an acquittal on all  
547 charges;

548 (ii) except as provided in Subsection (3)(d), a case that is dismissed with prejudice; or

549 (iii) a case that is a clean slate eligible case.

550 (b) This section does not govern automatic expungement of a traffic offense.

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

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

556 (i) issue, without a petition, an expungement order; and

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

559 (c) The bureau, upon receiving notice from the court, shall notify the law enforcement

560 agencies identified in the case of the order of expungement.

561 (d) For purposes of this section, a case that resulted in acquittal on all charges does not  
562 include a case that resulted in an acquittal because the individual is found not guilty by reason  
563 of insanity.

564 (3) (a) The process for an automatic expungement of a case that is dismissed with  
565 prejudice is as described in Subsections (3)(b) through (c).

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

568 (i) issue, without a petition, an expungement order; and

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

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

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

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

579 (b) A prosecuting agency shall receive notice on a monthly basis for any case  
580 prosecuted by that agency that appears to be a clean slate eligible case.

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

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

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

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

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

594 (ii) If 35 days pass from the day on which the notice described in Subsection (4)(b) is  
595 sent without the prosecuting agency providing written notice of an objection for a reason  
596 described in Subsection (4)(c), the court may proceed with automatic expungement.

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

599 (i) issue, without a petition, an expungement order; and

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

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

604 ~~[(g) The Judicial Council shall make rules to govern the process for automatic  
605 expungement of records for a clean slate eligible case in accordance with this Subsection (4).]~~

606 (5) Nothing in this section precludes an individual from filing a petition for  
607 expungement of records that are eligible for automatic expungement under this section if an  
608 automatic expungement has not occurred pursuant to this section.

609 (6) An automatic expungement performed under this section does not preclude a  
610 person from requesting access to expunged records in accordance with Section 77-40-109 or  
611 77-40-110.

612 (7) (a) The Judicial Council and the Supreme Court shall make rules to govern the  
613 process for automatic expungement.

614 (b) The rules under Subsection (7)(a) may authorize a district court judge to sign an  
615 expungement order issued by a justice court.