

1                                   **EXPUNGEMENT ACT AMENDMENTS**

2                                   2019 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Eric K. Hutchings**

5                                   Senate Sponsor: Daniel W. Thatcher

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7   **LONG TITLE**

8   **General Description:**

9           This bill modifies the Utah Expungement Act.

10 **Highlighted Provisions:**

11       This bill:

12           ▶ allows for automatic expungement or deletion of charges for which an individual is  
13 acquitted, charges that are dismissed with prejudice, and certain convictions;

14           ▶ creates processes for automatic expungement and deletion, which include:

- 15               • defining terms;
- 16               • requiring identification of cases that may be eligible for automatic expungement  
17 or deletion;

- 18               • requiring a prosecuting agency to be notified before the record of a case is  
19 automatically expunged;

- 20               • providing for the Department of Public Safety to make rules to implement  
21 procedures for processing an automatic expungement; and

- 22               • providing for the Judicial Council to make rules to implement procedures to  
23 processing an automatic expungement or deletion;

- 24           ▶ modifies the circumstances under which the state may petition a court to open an  
25 expunged record; and

- 26           ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28       None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 77-40-102, as last amended by Laws of Utah 2017, Chapter 356

34 77-40-103, as last amended by Laws of Utah 2014, Chapter 263

35 77-40-104, as last amended by Laws of Utah 2018, Chapter 266

36 77-40-104.1, as enacted by Laws of Utah 2018, Chapter 278

37 77-40-105, as last amended by Laws of Utah 2018, Chapter 266

38 77-40-107, as last amended by Laws of Utah 2018, Chapter 266

39 77-40-108, as last amended by Laws of Utah 2017, Chapter 356

40 77-40-108.5, as enacted by Laws of Utah 2017, Chapter 447

41 77-40-109, as last amended by Laws of Utah 2017, Chapter 356

42 77-40-110, as last amended by Laws of Utah 2013, Chapter 41

43 77-40-111, as enacted by Laws of Utah 2010, Chapter 283

44 ENACTS:

45 77-40-114, Utah Code Annotated 1953

46 77-40-115, Utah Code Annotated 1953

47 77-40-116, Utah Code Annotated 1953



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

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

51 **77-40-102. Definitions.**

52 As used in this chapter:

53 (1) "Administrative finding" means a decision upon a question of fact reached by an  
54 administrative agency following an administrative hearing or other procedure satisfying the  
55 requirements of due process.

56 (2) "Agency" means a state, county, or local government entity that generates or  
57 maintains records relating to an investigation, arrest, detention, or conviction for an offense for

58 which expungement may be ordered.

59 (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
60 Safety established in Section [53-10-201](#).

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

64 (5) (a) "Clean slate eligible case" means a case:

65 (i) where, except as provided in Subsection (5)(c), each conviction within the case is:

66 (A) a misdemeanor conviction for possession of a controlled substance in violation of  
67 Subsection [58-37-8\(2\)\(a\)\(i\)](#);

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

69 (C) an infraction conviction;

70 (ii) that involves an individual:

71 (A) whose total number of convictions in Utah state courts, not including infractions,

72 traffic offenses, or minor regulatory offenses, does not exceed the limits described in

73 Subsections [77-40-105\(5\)](#) and (6) without taking into consideration the exception in Subsection

74 [77-40-105\(8\)](#); and

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

76 (iii) for which the following time periods have elapsed from the day on which the case

77 is adjudicated:

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

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

80 (C) at least seven years for a class A conviction for possession of a controlled

81 substance in violation of Subsection [58-37-8\(2\)\(a\)\(i\)](#).

82 (b) "Clean slate eligible case" includes a case that is dismissed as a result of a

83 successful completion of a plea in abeyance agreement governed by Subsection [77-2a-3\(2\)\(b\)](#)

84 if:

85 (i) except as provided in Subsection (5)(c), each charge within the case is:

86           (A) a misdemeanor for possession of a controlled substance in violation of Subsection  
87 58-37-8(2)(a)(i);  
88           (B) a class B or class C misdemeanor; or  
89           (C) an infraction;  
90           (ii) the individual involved meets the requirements of Subsection (5)(a)(ii); and  
91           (iii) the time periods described in Subsections (5)(a)(iii)(A) through (C) have elapsed  
92 from the day on which the case is dismissed.  
93           (c) "Clean slate eligible case" does not include a case:  
94           (i) where the individual is found not guilty by reason of insanity;  
95           (ii) where the case establishes a criminal judgment accounts receivable, as defined in  
96 Section 77-32a-101, that:  
97           (A) has been entered as a civil judgment and transferred to the Office of State Debt  
98 Collection; or  
99           (B) has not been satisfied according to court records;  
100           (iii) that resulted in one or more pleas held in abeyance or convictions for the following  
101 offenses:  
102           (A) any of the offenses listed in Subsection 77-40-105(2)(a);  
103           (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against  
104 the Person;  
105           (C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;  
106           (D) sexual battery in violation of Section 76-9-702.1;  
107           (E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;  
108           (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence  
109 and Reckless Driving;  
110           (G) damage to or interruption of a communication device in violation of Section  
111 76-6-108;  
112           (H) a domestic violence offense as defined in Section 77-36-1; or  
113           (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor

114 other than a class A misdemeanor conviction for possession of a controlled substance in  
115 violation of Subsection 58-37-8(2)(a)(i).

116 [~~5~~] (6) "Conviction" means judgment by a criminal court on a verdict or finding of  
117 guilty after trial, a plea of guilty, or a plea of nolo contendere.

118 [~~6~~] (7) "Department" means the Department of Public Safety established in Section  
119 53-1-103.

120 [~~7~~] (8) "Drug possession offense" means an offense under:

121 (a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i),  
122 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection  
123 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a  
124 controlled substance illegally in the person's body and negligently causing serious bodily injury  
125 or death of another;

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

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

128 (d) any local ordinance which is substantially similar to any of the offenses described  
129 in this Subsection [~~7~~] (8).

130 [~~8~~] (9) "Expunge" means to seal or otherwise restrict access to the [~~petitioner's~~]  
131 individual's record held by an agency when the record includes a criminal investigation,  
132 detention, arrest, or conviction.

133 [~~9~~] (10) "Jurisdiction" means a state, district, province, political subdivision, territory,  
134 or possession of the United States or any foreign country.

135 [~~10~~] (11) "Minor regulatory offense" means any class B or C misdemeanor offense,  
136 [~~as well as~~] and any local ordinance, except:

137 (a) any drug possession offense;

138 (b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

139 (c) Sections 73-18-13 through 73-18-13.6;

140 (d) those offenses defined in Title 76, Utah Criminal Code; or

141 (e) any local ordinance that is substantially similar to those offenses listed in

142 Subsections ~~[(10)]~~ (11)(a) through (d).

143 ~~[(11)]~~ (12) "Petitioner" means ~~[a person seeking]~~ an individual applying for  
144 expungement under this chapter.

145 ~~[(12)]~~ (13) (a) "Traffic offense" means:

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

148 (ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;

149 (iii) Title 73, Chapter 18, State Boating Act; and

150 (iv) all local ordinances that are substantially similar to those offenses.

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

152 (i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

153 (ii) Sections 73-18-13 through 73-18-13.6; or

154 (iii) any local ordinance that is substantially similar to the offenses listed in

155 Subsections ~~[(12)]~~ (13)(b)(i) and (ii).

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

157 **77-40-103. Petition for expungement procedure overview.**

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

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

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

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

165 (4) (a) The petitioner shall file the certificate of eligibility with a petition for  
166 expungement in the court in which the proceedings occurred.

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

169 (c) If a ~~[certificate is filed]~~ petitioner files a certificate of eligibility electronically, the

170 petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are  
171 concluded. [~~If the original certificate is filed~~]

172 (d) If the petitioner files the original certificate of eligibility with the petition, the clerk  
173 or the court shall scan [it] and return [it] the original certificate to the petitioner or the  
174 petitioner's attorney, who shall keep [it] the original certificate until the proceedings are  
175 concluded.

176 (5) (a) The petitioner shall deliver a copy of the petition and certificate of eligibility to  
177 the prosecutorial office that handled the court proceedings.

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

181 [~~(6) If an objection to the petition is filed by the prosecutor or victim, a hearing shall be~~  
182 ~~set by the court and the prosecutor and victim notified of the date.]~~

183 (6) If the prosecutor or the victim files an objection to the petition, the court shall set a  
184 hearing and notify the prosecutor and the victim of the date set for the hearing.

185 (7) If the court requests a response from Adult Probation and Parole and a response is  
186 received, the petitioner may file a written reply to the response within 15 days of receipt of the  
187 response.

188 (8) [~~An expungement may be granted~~] A court may grant an expungement without a  
189 hearing if no objection is received.

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

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

193 **77-40-104. Requirements to apply for certificate of eligibility to expunge records**  
194 **of arrest, investigation, and detention.**

195 [~~(1) A person~~] An individual who is arrested or formally charged with an offense may  
196 apply to the bureau for a certificate of eligibility to expunge the records of arrest, investigation,  
197 and detention that may have been made in the case, subject to the following conditions:

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

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

201 and

202            ~~[(c)]~~ (3) one of the following occurs:

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

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

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

207            ~~[(A)]~~ (i) the prosecutor consents in writing to the issuance of a certificate of eligibility;

208 or

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

210            ~~[(iv) the person]~~

211            (d) the individual is acquitted at trial on all of the charges contained in the case; or

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

213            ~~[(2) Notwithstanding Subsection (1)(a), the bureau shall issue a certificate of eligibility  
214 on an expedited basis to a petitioner seeking expungement under Subsection (1)(c)(iv).]~~

215            Section 4. Section **77-40-104.1** is amended to read:

216            **77-40-104.1. Eligibility for removing the link between personal identifying**  
217 **information and court case dismissed.**

218            (1) As used in this section:

219            (a) "Domestic violence offense" means the same as that term is defined in Section  
220 [77-36-1](#).

221            (b) "Personal identifying information" means:

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

223            (ii) date of birth.

224            (2) ~~[A person]~~ An individual whose criminal case is dismissed may move the court for  
225 an order to remove the link between the ~~[person's]~~ individual's personal identifying information



226 from the dismissed case in any publicly searchable database of the Utah state courts and the  
227 court shall grant that relief if:

- 228 (a) 30 days have passed from the day on which the case is dismissed;
- 229 (b) no appeal is filed for the dismissed case within the 30-day period described in  
230 Subsection (2)(a); and
- 231 (c) no charge in the case was a domestic violence offense.

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

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

236 Section 5. Section **77-40-105** is amended to read:

237 **77-40-105. Requirements to apply for a certificate of eligibility to expunge**  
238 **conviction.**

239 (1) [~~A person~~] An individual convicted of an offense may apply to the bureau for a  
240 certificate of eligibility to expunge the record of conviction as provided in this section.

241 (2) [~~A petitioner~~] An individual is not eligible to receive a certificate of eligibility from  
242 the bureau if:

- 243 (a) the conviction for which expungement is sought is:
  - 244 (i) a capital felony;
  - 245 (ii) a first degree felony;
  - 246 (iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);
  - 247 (iv) felony automobile homicide;
  - 248 (v) a felony violation of Subsection 41-6a-501(2);
  - 249 (vi) a registerable sex offense as defined in Subsection 77-41-102(17); or
  - 250 (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);
- 251 (b) a criminal proceeding is pending against the petitioner; or
- 252 (c) the petitioner intentionally or knowingly provides false or misleading information  
253 on the application for a certificate of eligibility.

254 (3) A petitioner seeking to obtain expungement for a record of conviction is not  
255 eligible to receive a certificate of eligibility from the bureau until all of the following have  
256 occurred:

257 (a) the petitioner has paid in full all fines and interest ordered by the court related to the  
258 conviction for which expungement is sought [~~have been paid in full~~];

259 (b) the petitioner has paid in full all restitution ordered by the court pursuant to Section  
260 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6[~~, has been paid~~  
261 ~~in full~~]; and

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

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

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

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

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

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

272 (4) The bureau may not count pending or previous infractions, traffic offenses, or  
273 minor regulatory offenses, or fines or fees arising from the infractions, traffic offenses, or  
274 minor regulatory offenses, when determining expungement eligibility.

275 (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner  
276 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,  
277 including previously expunged convictions, contains any of the following, except as provided  
278 in Subsection (8):

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

281 (b) any combination of three or more convictions other than for drug possession

282 offenses that include two class A misdemeanor convictions, each of which is contained in a  
283 separate criminal episode;

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

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

289 (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner  
290 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,  
291 including previously expunged convictions, contains any of the following:

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

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

296 (7) If the petitioner's criminal history contains convictions for both a drug possession  
297 offense and a non drug possession offense arising from the same criminal episode, that criminal  
298 episode shall be counted as provided in Subsection (5) if any non drug possession offense in  
299 that episode:

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

301 (b) has the same or a longer waiting period under Subsection (3) than any drug  
302 possession offense in that episode.

303 (8) If at least 10 years have elapsed from the date the petitioner was convicted or  
304 released from incarceration, parole, or probation, whichever occurred last, for all convictions,  
305 then each eligibility limit defined in Subsection (5) shall be increased by one.

306 (9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board  
307 of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned  
308 crimes pursuant to Section [77-27-5.1](#).

309 Section 6. Section **77-40-107** is amended to read:

310           **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**  
311 **Standard of proof -- Exception.**

312           (1) (a) The petitioner shall file a petition for expungement and the certificate of  
313 eligibility in the court specified in Section 77-40-103 and deliver a copy of the petition and  
314 certificate to the prosecuting agency.~~[If the certificate is filed]~~

315           (b) If the petitioner files the certificate of eligibility electronically, the petitioner or the  
316 petitioner's attorney shall keep the original certificate until the proceedings are concluded.~~[If~~  
317 ~~the original certificate is filed]~~

318           (c) If the petitioner files the original certificate of eligibility with the petition, the clerk  
319 of the court shall scan [it] and return [it] the original certificate to the petitioner or the  
320 petitioner's attorney, who shall keep [it] the original certificate until the proceedings are  
321 concluded.

322           (2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting  
323 attorney shall provide notice of the expungement request by first-class mail to the victim at the  
324 most recent address of record on file.

325           (b) The notice shall:

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

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

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

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

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

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

337           (i) the reasons probation was terminated; and

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

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

342 (5) The petitioner may respond in writing to any objections filed by the prosecutor or  
343 the victim and the response prepared by the Division of Adult Probation and Parole within 14  
344 days after receipt.

345 (6) (a) (i) If the court receives an objection concerning the petition from any party, the  
346 court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the  
347 date set for the hearing.

348 (ii) The prosecuting attorney shall notify the victim of the date set for the hearing.

349 (b) The petitioner, the prosecuting attorney, the victim, and any other [person]  
350 individual who has relevant information about the petitioner may testify at the hearing.

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

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

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

357 (a) the petition and certificate of eligibility are sufficient;

358 (b) the statutory requirements have been met;

359 (c) if the petitioner seeks expungement after a case is dismissed without prejudice or  
360 without condition, the prosecutor provided written consent and has not filed and does not  
361 intend to refile related charges;

362 (d) if the petitioner seeks expungement of drug possession offenses allowed under  
363 Subsection 77-40-105(6), the petitioner is not illegally using controlled substances and is  
364 successfully managing any substance addiction; and

365 (e) it is not contrary to the interests of the public to grant the expungement.

366 (9) (a) If the court denies a petition described in Subsection (8)(c) because the  
367 prosecutor intends to refile charges, the ~~[person]~~ individual seeking expungement may again  
368 apply for a certificate of eligibility if charges are not refiled within 180 days of the day on  
369 which the court denies the petition.

370 (b) A prosecutor who opposes an expungement of a case dismissed without prejudice  
371 or without condition shall have a good faith basis for the intention to refile the case.

372 (c) A court shall consider the number of times that good faith basis of intention to  
373 refile by the prosecutor is presented to the court in making the court's determination to grant  
374 the petition for expungement described in Subsection (8)(c).

375 (10) A court may not expunge a conviction of an offense for which a certificate of  
376 eligibility may not be or should not have been issued under Section [77-40-104](#) or [77-40-105](#).

377 Section 7. Section **77-40-108** is amended to read:

378 **77-40-108. Distribution of order -- Redaction -- Receipt of order -- Bureau**  
379 **requirements -- Administrative proceedings.**

380 (1) (a) ~~[A person]~~ (i) An individual who receives an order of expungement under [~~this~~  
381 ~~chapter~~] [Section 77-40-107](#) or [Section 77-27-5.1](#) shall be responsible for delivering a copy of  
382 the order of expungement to all affected criminal justice agencies and officials including the  
383 court, arresting agency, booking agency, prosecuting agency, Department of Corrections, and  
384 the bureau.

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

387 (b) ~~[A person]~~ An individual who receives an order of expungement under Section  
388 [77-27-5.1](#), shall pay a processing fee to the bureau, established in accordance with the process  
389 in Section [63J-1-504](#), before the bureau's record may be expunged.

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

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

396 (4) An agency receiving an expungement order shall expunge the [~~petitioner's~~  
397 individual's identifying information contained in records in [~~its~~] the agency's possession  
398 relating to the incident for which expungement is ordered.

399 (5) Unless ordered by a court to do so, or in accordance with Subsection ~~77-40-109~~(2),  
400 a government agency or official may not divulge information or records [~~which~~] that have been  
401 expunged [~~regarding the petitioner contained in a record of arrest, investigation, detention, or~~  
402 ~~conviction after receiving an expungement order~~].

403 (6) (a) An order of expungement may not restrict an agency's use or dissemination of  
404 records in [~~its~~] the agency's ordinary course of business until the agency has received a copy of  
405 the order.

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

408 (7) An order of expungement may not:

409 (a) terminate or invalidate any pending administrative proceedings or actions of which  
410 the [~~petitioner~~] individual had notice according to the records of the administrative body prior  
411 to issuance of the expungement order;

412 (b) affect the enforcement of any order or findings issued by an administrative body  
413 pursuant to [~~its~~] the administrative body's lawful authority prior to issuance of the  
414 expungement order;

415 (c) remove any evidence relating to the [~~petitioner~~] individual including records of  
416 arrest, which the administrative body has used or may use in these proceedings; or

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

419 Section 8. Section ~~77-40-108~~**5** is amended to read:

420 **77-40-108.5. Distribution for order for vacatur.**

421 (1) [~~A person~~] An individual who receives an order for vacatur under Subsection

422 78B-9-108(2) shall be responsible for delivering a copy of the order for vacatur to all affected  
423 criminal justice agencies and officials including the court, arresting agency, booking agency,  
424 prosecuting agency, Department of Corrections, and the bureau.

425 (2) ~~[In order to]~~ To complete delivery of the order for vacatur to the bureau, the  
426 ~~[petitioner]~~ individual shall complete and attach to the order for vacatur an application for a  
427 certificate of eligibility for expungement, including identifying information and fingerprints, as  
428 provided in Subsection 77-40-103(1).

429 (3) The bureau shall treat the order for vacatur and attached certificate of eligibility for  
430 expungement the same as a valid order for expungement under Section 77-40-108, except as  
431 provided in this section.

432 (4) Unless otherwise provided by law or ordered by a court of competent jurisdiction to  
433 respond differently, ~~[a person]~~ an individual who has received a vacatur of conviction under  
434 Section 78B-9-108(2)~~;~~ may respond to any inquiry as though the conviction did not occur.

435 (5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of  
436 Investigation.

437 (6) An agency receiving an order for vacatur shall expunge the ~~[petitioner's]~~  
438 individual's identifying information contained in records in the agency's possession relating to  
439 the incident for which vacatur is ordered.

440 (7) A government agency or official may not divulge information contained in a record  
441 of arrest, investigation, detention, or conviction after receiving an order for vacatur to any  
442 person or agency, except for:

443 (a) the ~~[petitioner]~~ individual for whom vacatur was ordered; or

444 (b) Peace Officer Standards and Training, pursuant to Section 53-6-203 and Subsection  
445 77-40-109(2)(b)(ii).

446 (8) The bureau may not count vacated convictions against any future expungement  
447 eligibility.

448 Section 9. Section 77-40-109 is amended to read:

449 **77-40-109. Retention and release of expunged records -- Agencies.**



450 (1) The bureau shall keep, index, and maintain all expunged records of arrests and  
451 convictions.

452 (2) (a) Employees of the bureau may not divulge any information contained in ~~[its]~~ the  
453 bureau's index to any person or agency without a court order unless specifically authorized by  
454 statute.

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

- 457 (i) the Board of Pardons and Parole;
- 458 (ii) Peace Officer Standards and Training;
- 459 (iii) federal authorities, only as required by federal law;
- 460 (iv) the Department of Commerce;
- 461 (v) the Department of Insurance;
- 462 (vi) the State Board of Education; and
- 463 (vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating  
464 applicants for judicial office.

465 (c) A person or agency authorized by this Subsection (2) to view expunged records  
466 may not reveal or release any information obtained from the expunged records to anyone  
467 outside the ~~[court order or]~~ specific request, except as directed by a court order, including  
468 distribution on a public website.

469 (3) The bureau may also use the information in ~~[its]~~ the bureau's index as provided in  
470 Section 53-5-704.

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

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

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

478 them.

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

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

484 (6) Records released under this chapter are classified as protected under Section  
485 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to  
486 Records.

487 Section 10. Section 77-40-110 is amended to read:

488 **77-40-110. Use of expunged records -- Individuals -- Use in civil actions.**

489 Records expunged under this chapter or Section 77-27-5.1 may be released to or viewed  
490 by the following individuals:

491 (1) the petitioner or an individual who receives an automatic expungement under  
492 Section 77-40-114;

493 (2) a law enforcement officer who was involved in the case, for use solely in the  
494 officer's defense of a civil action arising out of the officer's involvement with the petitioner in  
495 that particular case; and

496 (3) parties to a civil action arising out of the expunged incident, providing the  
497 information is kept confidential and utilized only in the action.

498 Section 11. Section 77-40-111 is amended to read:

499 **77-40-111. Rulemaking.**

500 [~~The~~] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
501 the department may make rules to:

502 (1) implement procedures for processing an automatic expungement;

503 [~~(1)~~] (2) implement procedures for applying for certificates of eligibility;

504 [~~(2)~~] (3) specify procedures for receiving a certificate of eligibility; and

505 [~~(3)~~] (4) create forms and determine information necessary to be provided to the

506 bureau.

507 Section 12. Section **77-40-114** is enacted to read:

508 **77-40-114. Automatic expungement procedure.**

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

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

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

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

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

515 (2) (a) The process for automatic expungement of records for a case that resulted in an  
516 acquittal is as described in Subsections (2)(b) through (c).

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

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

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

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

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

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

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

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

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

533 (d) For purposes of this Subsection (3), a case that is dismissed with prejudice does not

534 include a case that is dismissed with prejudice as a result of successful completion of a plea in  
535 abeyance agreement governed by Subsection 77-2a-3(2)(b).

536 (4) (a) The process for the automatic expungement of a clean slate eligible case is as  
537 described in Subsections (4)(b) through (f) and in accordance with any rules made by the  
538 Judicial Council as described in Subsection (4)(g).

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

541 (c) Within 35 days of the day on which the notice described in Subsection (4)(b) is  
542 sent, the prosecuting agency shall provide written notice in accordance with any rules made by  
543 the Judicial Council if the prosecuting agency objects to an automatic expungement for any of  
544 the following reasons:

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

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

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

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

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

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

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

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

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

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

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

569 (6) An automatic expungement performed under this section does not preclude a  
570 person from requesting access to expunged records in accordance with Section [77-40-109](#) or  
571 [77-40-110](#).

572 Section 13. Section **77-40-115** is enacted to read:

573 **77-40-115. Automatic deletion for traffic offense.**

574 (1) Subject to Section [77-40-116](#), records for the following traffic offenses shall be  
575 deleted without a court order or notice to the prosecuting agency:

576 (a) a traffic offense case that resulted in an acquittal on all charges;

577 (b) a traffic offense case that is dismissed with prejudice, other than a case that is  
578 dismissed with prejudice as a result of successful completion of a plea in abeyance agreement  
579 governed by Subsection [77-2a-3\(2\)\(b\)](#); or

580 (c) a traffic offense case that is a clean slate eligible case, as that term is defined in  
581 Section [77-40-102](#).

582 (2) The Judicial Council shall make rules to provide an ongoing process for identifying  
583 and deleting records on all traffic offenses described in Subsection (1).

584 Section 14. Section **77-40-116** is enacted to read:

585 **77-40-116. Time periods for expungement or deletion -- Identification and**  
586 **processing of clean slate eligible cases.**

587 (1) Reasonable efforts within available funding shall be made to expunge or delete a  
588 case as quickly as is practicable with the goal of:

589 (a) for cases adjudicated on or after May 1, 2020:

590 (i) expunging a case that resulted in an acquittal on all charges, 60 days after the  
591 acquittal;

592 (ii) expunging a case that resulted in a dismissal with prejudice, other than a case that  
593 is dismissed with prejudice as a result of successful completion of a plea in abeyance  
594 agreement governed by Subsection 77-2a-3(2)(b), 180 days after:

595 (A) for a case in which no appeal was filed, the day on which the entire case against the  
596 individual is dismissed with prejudice; or

597 (B) for a case in which an appeal was filed, the day on which a court issues a final  
598 unappealable order;

599 (iii) expunging a clean slate eligible case that is not a traffic offense within 30 days of  
600 the court, in accordance with Section 77-40-114, determining that the requirements for  
601 expungement have been satisfied; or

602 (iv) deleting a clean slate eligible case that is a traffic offense upon identification; and

603 (b) for cases adjudicated before May 1, 2020, expunging or deleting a case within one  
604 year of the day on which the case is identified as eligible for automatic expungement or  
605 deletion.

606 (2) (a) The Judicial Council shall make rules governing the identification and  
607 processing of clean slate eligible cases in accordance with Sections 77-40-114 and 77-40-115.

608 (b) Reasonable efforts shall be made to identify and process all clean slate eligible  
609 cases in accordance with Sections 77-40-114 and 77-40-115.

610 (c) An individual does not have a cause of action for damages as a result of the failure  
611 to identify an individual's case as a clean slate eligible case or to automatically expunge or  
612 delete the records of a clean slate eligible case.

613 Section 15. **Effective date.**

614 This bill takes effect on May 1, 2020.