

EXPUNGEMENT ACT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Expungement Act.

Highlighted Provisions:

This bill:

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

▶ creates a process for automatic expungement, which includes:

- defining terms;
- requiring the Administrative Office of the Courts to identify cases that may be eligible for automatic expungement;
- requiring a prosecuting agency to be notified before the record of a case is automatically expunged; and

- providing rulemaking authority to the Department of Public Safety to implement procedures for processing an automatic expungement;

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

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **77-40-102**, as last amended by Laws of Utah 2017, Chapter 356

32 **77-40-103**, as last amended by Laws of Utah 2014, Chapter 263

33 **77-40-104**, as last amended by Laws of Utah 2018, Chapter 266

34 **77-40-104.1**, as enacted by Laws of Utah 2018, Chapter 278

35 **77-40-105**, as last amended by Laws of Utah 2018, Chapter 266

36 **77-40-107**, as last amended by Laws of Utah 2018, Chapter 266

37 **77-40-108**, as last amended by Laws of Utah 2017, Chapter 356

38 **77-40-108.5**, as enacted by Laws of Utah 2017, Chapter 447

39 **77-40-109**, as last amended by Laws of Utah 2017, Chapter 356

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

41 **77-40-111**, as enacted by Laws of Utah 2010, Chapter 283

42 ENACTS:

43 **77-40-114**, Utah Code Annotated 1953



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

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

47 **77-40-102. Definitions.**

48 As used in this chapter:

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

52 (2) "Agency" means a state, county, or local government entity that generates or
53 maintains records relating to an investigation, arrest, detention, or conviction for an offense for
54 which expungement may be ordered.

55 (3) (a) "Clean slate eligible case" means a case:

56 (i) where, except as provided in Subsection (3)(c), each conviction within the case is:

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

59 (B) a class B or class C misdemeanor conviction; or
60 (C) an infraction conviction;
61 (ii) that involves an individual:
62 (A) whose total number of convictions, not including infractions, traffic offenses, or
63 minor regulatory offenses, in Utah courts does not exceed the limits described in Subsections
64 77-40-105(5) and (6) without taking into consideration the exception in Subsection
65 77-40-105(8); and
66 (B) against whom no criminal proceedings are pending in the state; and
67 (iii) for which the following time periods have elapsed from the day on which the
68 individual was sentenced in the case:
69 (A) at least five years for a class C misdemeanor or an infraction;
70 (B) at least six years for a class B misdemeanor; and
71 (C) at least seven years for a class A conviction for possession of a controlled
72 substance in violation of Subsection 58-37-8(2)(a)(i).
73 (b) "Clean slate eligible case" includes a case that is dismissed as a result of a
74 successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b)
75 if:
76 (i) except as provided in Subsection (3)(c), each charge within the case is:
77 (A) a misdemeanor for possession of a controlled substance in violation of Subsection
78 58-37-8(2)(a)(i);
79 (B) a class B or class C misdemeanor; or
80 (C) an infraction;
81 (ii) the individual involved meets the requirements of Subsections (3)(a)(ii)(A) and
82 (B); and
83 (iii) the time periods described in Subsection (3)(a)(iii)(A) through (C) have elapsed
84 from the day on which the individual was sentenced in the case.
85 (c) "Clean slate eligible case" does not include a case that resulted in one or more
86 guilty pleas held in abeyance or convictions for the following offenses:
87 (i) any of the offenses listed in Subsection 77-40-105(2)(a);
88 (ii) an offense against the person in violation of Title 76, Chapter 5, Offenses Against
89 the Person;

- 90 (iii) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
- 91 (iv) sexual battery in violation of Section 76-9-702.1;
- 92 (v) an act of lewdness in violation of Section 76-9-702 or Section 76-9-702.5;
- 93 (vi) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence
- 94 and Reckless Driving;
- 95 (vii) damage to or interruption of a communication device in violation of Section
- 96 76-6-108;
- 97 (viii) a domestic violence offense as defined in Section 77-36-1; or
- 98 (ix) any other offense classified in the Utah Code as a felony or a class A misdemeanor
- 99 other than a class A misdemeanor conviction for possession of a controlled substance in
- 100 violation of Subsection 58-37-8(2)(a)(i).

101 [~~3~~] (4) "Bureau" means the Bureau of Criminal Identification of the Department of
 102 Public Safety established in Section 53-10-201.

103 [~~4~~] (5) "Certificate of eligibility" means a document issued by the bureau stating that
 104 the criminal record and all records of arrest, investigation, and detention associated with a case
 105 that is the subject of a petition for expungement is eligible for expungement.

106 [~~5~~] (6) "Conviction" means judgment by a criminal court on a verdict or finding of
 107 guilty after trial, a plea of guilty, or a plea of nolo contendere.

108 [~~6~~] (7) "Department" means the Department of Public Safety established in Section
 109 53-1-103.

110 [~~7~~] (8) "Drug possession offense" means an offense under:

111 (a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i),
 112 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection
 113 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a
 114 controlled substance illegally in the person's body and negligently causing serious bodily injury
 115 or death of another;

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

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

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

120 [~~8~~] (9) "Expunge" means to seal or otherwise restrict access to the petitioner's record

121 held by an agency when the record includes a criminal investigation, detention, arrest, or
 122 conviction.

123 ~~[(9)]~~ (10) "Jurisdiction" means a state, district, province, political subdivision, territory,
 124 or possession of the United States or any foreign country.

125 ~~[(10)]~~ (11) "Minor regulatory offense" means any class B or C misdemeanor offense,
 126 ~~[as well as]~~ and any local ordinance, except:

- 127 (a) any drug possession offense;
- 128 (b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 129 (c) Sections 73-18-13 through 73-18-13.6;
- 130 (d) those offenses defined in Title 76, Utah Criminal Code; or
- 131 (e) any local ordinance that is substantially similar to those offenses listed in
 132 Subsections ~~[(10)]~~ (11)(a) through (d).

133 ~~[(11)]~~ (12) "Petitioner" means ~~[a person seeking]~~ an individual applying for
 134 expungement under this chapter.

135 ~~[(12)]~~ (13) (a) "Traffic offense" means:

- 136 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,
 137 Chapter 6a, Traffic Code;
- 138 (ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;
- 139 (iii) Title 73, Chapter 18, State Boating Act; and
- 140 (iv) all local ordinances that are substantially similar to those offenses.

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

- 142 (i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 143 (ii) Sections 73-18-13 through 73-18-13.6; or
- 144 (iii) any local ordinance that is substantially similar to the offenses listed in

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

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

147 **77-40-103. Petition for expungement procedure overview.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

183 **77-40-104. Requirements to apply for certificate of eligibility to expunge records**
 184 **of arrest, investigation, and detention.**

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

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

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

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

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

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

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

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

198 or

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

200 ~~[(iv) the person]~~

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

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

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

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

206 **77-40-104.1. Eligibility for removing the link between personal identifying**
 207 **information and court case dismissed.**

208 (1) As used in this section:

209 (a) "Domestic violence offense" means the same as that term is defined in Section
 210 [77-36-1](#).

211 (b) "Personal identifying information" means:

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

213 (ii) date of birth.

214 (2) [~~A person~~] An individual whose criminal case is dismissed may move the court for
215 an order to remove the link between the [~~person's~~] individual's personal identifying information
216 from the dismissed case in any publicly searchable database of the Utah state courts and the
217 court shall grant that relief if:

218 (a) 30 days have passed from the day on which the case is dismissed;

219 (b) no appeal is filed for the dismissed case within the 30-day period described in
220 Subsection (2)(a); and

221 (c) no charge in the case was a domestic violence offense.

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

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

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

227 **77-40-105. Requirements to apply for a certificate of eligibility to expunge**
228 **conviction.**

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

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

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

234 (i) a capital felony;

235 (ii) a first degree felony;

236 (iii) a violent felony as defined in Subsection [76-3-203.5\(1\)\(c\)\(i\)](#);

237 (iv) felony automobile homicide;

238 (v) a felony violation of Subsection [41-6a-501\(2\)](#);

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

240 (vii) a registerable child abuse offense as defined in Subsection [77-43-102\(2\)](#);

241 (b) a criminal proceeding is pending against the petitioner; or

242 (c) the petitioner intentionally or knowingly provides false or misleading information
243 on the application for a certificate of eligibility.

244 (3) A petitioner seeking to obtain expungement for a record of conviction is not

245 eligible to receive a certificate of eligibility from the bureau until all of the following have
246 occurred:

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

249 (b) the petitioner has paid in full all restitution ordered by the court pursuant to Section
250 ~~77-38a-302~~, or by the Board of Pardons and Parole pursuant to Section ~~77-27-6~~ [~~has been paid~~
251 ~~in full~~]; and

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

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

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

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

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

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

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

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

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

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

274 (c) any combination of four or more convictions other than for drug possession
275 offenses that include three class B misdemeanor convictions, each of which is contained in a

276 separate criminal episode; or

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

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

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

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

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

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

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

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

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

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

300 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
301 **Standard of proof -- Exception.**

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

305 (b) If the petitioner files the certificate of eligibility electronically, the petitioner or the
306 petitioner's attorney shall keep the original certificate until the proceedings are concluded.~~[If~~

307 ~~the original certificate is filed]~~

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

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

315 (b) The notice shall:

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

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

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

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

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

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

327 (i) the reasons probation was terminated; and

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

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

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

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

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

339 (b) The petitioner, the prosecuting attorney, the victim, and any other [person]

340 individual who has relevant information about the petitioner may testify at the hearing.

341 (c) The court shall review the petition, the certificate of eligibility, and any written

342 responses submitted regarding the petition.

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

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

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

348 (b) the statutory requirements have been met;

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

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

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

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

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

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

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

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

368 **77-40-108. Distribution of order -- Redaction -- Receipt of order -- Bureau**

369 **requirements -- Administrative proceedings.**

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

375 (ii) The provisions of Subsection (1)(a)(i) do not apply to an individual who receives
376 an automatic expungement under Section 77-40-114.

377 (b) [~~A person~~] An individual who receives an order of expungement under Section
378 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process
379 in Section 63J-1-504, before the bureau's record may be expunged.

380 (2) (a) Unless otherwise provided by law or ordered by a court of competent
381 jurisdiction to respond differently, [~~a person~~] an individual who has received an expungement
382 of an arrest or conviction under [~~this chapter~~] Section 77-40-107 or Section 77-27-5.1[;] may
383 respond to any inquiry as though the arrest or conviction did not occur.

384 (b) The provisions of Subsection (2)(a) do not apply to an individual who receives an
385 automatic expungement under Section 77-40-114.

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

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

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

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

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

400 (7) An order of expungement may not:

401 (a) terminate or invalidate any pending administrative proceedings or actions of which
402 the petitioner had notice according to the records of the administrative body prior to issuance of
403 the expungement order;

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

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

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

411 Section 8. Section **77-40-108.5** is amended to read:

412 **77-40-108.5. Distribution for order for vacatur.**

413 (1) ~~[A person]~~ An individual who receives an order for vacatur under Subsection
414 **78B-9-108(2)** shall be responsible for delivering a copy of the order for vacatur to all affected
415 criminal justice agencies and officials including the court, arresting agency, booking agency,
416 prosecuting agency, Department of Corrections, and the bureau.

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

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

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

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

429 (6) An agency receiving an order for vacatur shall expunge the petitioner's identifying
430 information contained in records in the agency's possession relating to the incident for which

431 vacatur is ordered.

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

435 (a) the petitioner for whom vacatur was ordered; or

436 (b) Peace Officer Standards and Training, pursuant to Section 53-6-203 and Subsection
437 77-40-109(2)(b)(ii).

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

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

441 **77-40-109. Retention and release of expunged records -- Agencies.**

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

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

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

449 (i) the Board of Pardons and Parole;

450 (ii) Peace Officer Standards and Training;

451 (iii) federal authorities, only as required by federal law;

452 (iv) the Department of Commerce;

453 (v) the Department of Insurance;

454 (vi) the State Board of Education; and

455 (vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating
456 applicants for judicial office.

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

461 (3) The bureau may also use the information in [its] the bureau's index as provided in

462 Section [53-5-704](#).

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

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

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

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

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

476 (6) Records released under this chapter are classified as protected under Section
477 [63G-2-305](#) and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to
478 Records.

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

480 **77-40-110. Use of expunged records -- Individuals -- Use in civil actions.**

481 Records expunged under this chapter or Section [77-27-5.1](#) may be released to or viewed
482 by the following individuals:

483 (1) the petitioner or an individual who receives an automatic expungement under
484 Section [77-40-114](#);

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

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

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

491 **77-40-111. Rulemaking.**

492 The department may make rules to:

493 (1) implement procedures for processing an automatic expungement;
494 ~~[(+)]~~ (2) implement procedures for applying for certificates of eligibility;
495 ~~[(2)]~~ (3) specify procedures for receiving a certificate of eligibility; and
496 ~~[(3)]~~ (4) create forms and determine information necessary to be provided to the
497 bureau.

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

499 **77-40-114. Automatic expungement procedure.**

500 (1) This section controls the process for the automatic expungement of records
501 regarding the arrest, investigation, detention, and conviction, if any, of:

502 (a) an individual acquitted at trial of all charges contained in a case;

503 (b) except as provided in Subsection (3)(d), an individual charged with a criminal
504 offense whose case was dismissed with prejudice; or

505 (c) an individual convicted and sentenced in a clean slate eligible case.

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

508 (b) A district or justice court shall:

509 (i) issue, without a petition, an expungement order 60 days after the day on which an
510 individual is acquitted at trial on all charges contained within a case; and

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

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

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

517 (b) A district or justice court shall:

518 (i) issue, without a petition, an expungement order 180 days after the day on which the
519 entire case against the individual is dismissed with prejudice; 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 (d) For purposes of this Subsection (3), a case that was dismissed with prejudice does
525 not include a case that was dismissed with prejudice as a result of successful completion of a
526 plea in abeyance agreement governed by Subsection 77-2a-3(2)(b).

527 (4) (a) Except as provided in Subsection (4)(g), the process for the automatic
528 expungement of records for a clean slate eligible case is as described in Subsections (b)
529 through (f).

530 (b) Subject to Subsection (6), the Administrative Office of the Courts shall identify, on
531 a monthly basis, all case numbers that qualify as clean slate eligible cases and notify the
532 applicable prosecuting agencies that those cases qualify for automatic expungement under this
533 section.

534 (c) Within 35 days of the day on which the applicable prosecuting agency received the
535 notice described in Subsection (4)(b), the applicable prosecuting agency shall notify the
536 Administrative Office of the Courts, in writing, if the prosecuting agency objects to an
537 automatic expungement for any of the following reasons:

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

540 (ii) the court records show that the individual has not paid restitution to the victim as
541 ordered by the court.

542 (d) If 35 days pass from the day on which the prosecuting agency receives the notice
543 described in Subsection (4)(b) without the prosecuting agency providing written notice of any
544 objection, the Administrative Offices of the Courts shall notify each district and justice court of
545 any cases that are eligible for automatic expungement within the court's jurisdiction.

546 (e) Each district or justice court, upon receiving the notice described in Subsection
547 (4)(c), shall:

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

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

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

553 (g) The court may create a process for expunging a traffic offense that qualifies for
554 automatic expungement under this section without a court order.

555 (5) (a) The Administrative Office of the Courts shall make reasonable efforts to
556 identify all clean slate eligible cases for automatic expungement under this section.

557 (b) If the Administrative Office of the Courts fails to identify a clean slate eligible case,
558 an individual does not have a cause of action for damages.

559 (6) Nothing in this section precludes a petitioner from filing a petition for expungement
560 of records that are eligible for automatic expungement under this section if an automatic
561 expungement has not occurred pursuant to this section.

562 (7) An automatic expungement performed under this section does not preclude a
563 person from requesting access to expunged records in accordance with Section [77-40-109](#) or
564 [77-40-110](#).

565 Section 13. **Effective date.**

566 This bill takes effect on May 1, 2020.