

Representative Eric K. Hutchings proposes the following substitute bill:

EXPUNGEMENT ACT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill modifies the Utah Expungement Act.

Highlighted Provisions:

This bill:

- ▶ amends the list of records, under the Government Records Access and Management Act, that are private if a governmental entity classifies the records as private;
- ▶ 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 identification of 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 Judicial Council and 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



26 expunged record; and

27 ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63G-2-302**, as last amended by Laws of Utah 2018, Chapters 206, 281, 415, and 461

35 **77-40-102**, as last amended by Laws of Utah 2017, Chapter 356

36 **77-40-103**, as last amended by Laws of Utah 2014, Chapter 263

37 **77-40-104**, as last amended by Laws of Utah 2018, Chapter 266

38 **77-40-104.1**, as enacted by Laws of Utah 2018, Chapter 278

39 **77-40-105**, as last amended by Laws of Utah 2018, Chapter 266

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

41 **77-40-108**, as last amended by Laws of Utah 2017, Chapter 356

42 **77-40-108.5**, as enacted by Laws of Utah 2017, Chapter 447

43 **77-40-109**, as last amended by Laws of Utah 2017, Chapter 356

44 **77-40-110**, as last amended by Laws of Utah 2013, Chapter 41

45 **77-40-111**, as enacted by Laws of Utah 2010, Chapter 283

46 ENACTS:

47 **77-40-114**, Utah Code Annotated 1953

48 **77-40-115**, Utah Code Annotated 1953

49 **77-40-116**, Utah Code Annotated 1953

50 **77-40-117**, Utah Code Annotated 1953

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

53 Section 1. Section **63G-2-302** is amended to read:

54 **63G-2-302. Private records.**

55 (1) The following records are private:

56 (a) records concerning an individual's eligibility for unemployment insurance benefits,

57 social services, welfare benefits, or the determination of benefit levels;

58 (b) records containing data on individuals describing medical history, diagnosis,

59 condition, treatment, evaluation, or similar medical data;

60 (c) records of publicly funded libraries that when examined alone or with other records

61 identify a patron;

62 (d) records received by or generated by or for:

63 (i) the Independent Legislative Ethics Commission, except for:

64 (A) the commission's summary data report that is required under legislative rule; and

65 (B) any other document that is classified as public under legislative rule; or

66 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,

67 unless the record is classified as public under legislative rule;

68 (e) records received by, or generated by or for, the Independent Executive Branch

69 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review

70 of Executive Branch Ethics Complaints;

71 (f) records received or generated for a Senate confirmation committee concerning

72 character, professional competence, or physical or mental health of an individual:

73 (i) if, prior to the meeting, the chair of the committee determines release of the records:

74 (A) reasonably could be expected to interfere with the investigation undertaken by the

75 committee; or

76 (B) would create a danger of depriving a person of a right to a fair proceeding or

77 impartial hearing; and

78 (ii) after the meeting, if the meeting was closed to the public;

79 (g) employment records concerning a current or former employee of, or applicant for

80 employment with, a governmental entity that would disclose that individual's home address,

81 home telephone number, social security number, insurance coverage, marital status, or payroll

82 deductions;

83 (h) records or parts of records under Section 63G-2-303 that a current or former

84 employee identifies as private according to the requirements of that section;

85 (i) that part of a record indicating a person's social security number or federal employer

86 identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202,

87 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

- 88 (j) that part of a voter registration record identifying a voter's:
89 (i) driver license or identification card number;
90 (ii) social security number, or last four digits of the social security number;
91 (iii) email address; or
92 (iv) date of birth;
- 93 (k) a voter registration record that is classified as a private record by the lieutenant
94 governor or a county clerk under Subsection 20A-2-104(4)(f), 20A-2-101.1(5)(a), or
95 20A-2-204(4)(b);
- 96 (l) a record that:
97 (i) contains information about an individual;
98 (ii) is voluntarily provided by the individual; and
99 (iii) goes into an electronic database that:
100 (A) is designated by and administered under the authority of the Chief Information
101 Officer; and
102 (B) acts as a repository of information about the individual that can be electronically
103 retrieved and used to facilitate the individual's online interaction with a state agency;
- 104 (m) information provided to the Commissioner of Insurance under:
105 (i) Subsection 31A-23a-115(3)(a);
106 (ii) Subsection 31A-23a-302(4); or
107 (iii) Subsection 31A-26-210(4);
- 108 (n) information obtained through a criminal background check under Title 11, Chapter
109 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 110 (o) information provided by an offender that is:
111 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
112 Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and
113 (ii) not required to be made available to the public under Subsection 77-41-110(4) or
114 77-43-108(4);
- 115 (p) a statement and any supporting documentation filed with the attorney general in
116 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
117 homeland security;
- 118 (q) electronic toll collection customer account information received or collected under

119 Section 72-6-118 and customer information described in Section 17B-2a-815 received or
120 collected by a public transit district, including contact and payment information and customer
121 travel data;

122 (r) an email address provided by a military or overseas voter under Section
123 20A-16-501;

124 (s) a completed military-overseas ballot that is electronically transmitted under Title
125 20A, Chapter 16, Uniform Military and Overseas Voters Act;

126 (t) records received by or generated by or for the Political Subdivisions Ethics Review
127 Commission established in Section 63A-15-201, except for:

128 (i) the commission's summary data report that is required in Section 63A-15-202; and

129 (ii) any other document that is classified as public in accordance with Title 63A,
130 Chapter 15, Political Subdivisions Ethics Review Commission;

131 (u) a record described in Subsection 53G-9-604(3) that verifies that a parent was
132 notified of an incident or threat;

133 (v) a criminal background check or credit history report conducted in accordance with
134 Section 63A-3-201; and

135 (w) a record described in Subsection 53-5a-104(7).

136 (2) The following records are private if properly classified by a governmental entity:

137 (a) records concerning a current or former employee of, or applicant for employment
138 with a governmental entity, including performance evaluations and personal status information
139 such as race, religion, or disabilities, but not including records that are public under Subsection
140 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

141 (b) records describing an individual's finances, except that the following are public:

142 (i) records described in Subsection 63G-2-301(2);

143 (ii) information provided to the governmental entity for the purpose of complying with
144 a financial assurance requirement; or

145 (iii) records that must be disclosed in accordance with another statute;

146 (c) records of independent state agencies if the disclosure of those records would
147 conflict with the fiduciary obligations of the agency;

148 (d) other records containing data on individuals the disclosure of which constitutes a
149 clearly unwarranted invasion of personal privacy;

150 (e) records provided by the United States or by a government entity outside the state
151 that are given with the requirement that the records be managed as private records, if the
152 providing entity states in writing that the record would not be subject to public disclosure if
153 retained by it;

154 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
155 created in Section [62A-3-102](#), that may disclose, or lead to the discovery of, the identity of a
156 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; ~~and~~

157 (g) audio and video recordings created by a body-worn camera, as defined in Section
158 [77-7a-103](#), that record sound or images inside a home or residence except for recordings that:

159 (i) depict the commission of an alleged crime;

160 (ii) record any encounter between a law enforcement officer and a person that results in
161 death or bodily injury, or includes an instance when an officer fires a weapon;

162 (iii) record any encounter that is the subject of a complaint or a legal proceeding
163 against a law enforcement officer or law enforcement agency;

164 (iv) contain an officer involved critical incident as defined in Section [76-2-408](#)(1)(d);
165 or

166 (v) have been requested for reclassification as a public record by a subject or
167 authorized agent of a subject featured in the recording~~[-];~~ and

168 (h) a record from a case that:

169 (i) has an adjudication date before January 1, 2012;

170 (ii) (A) resulted in an acquittal on all charges;

171 (B) is dismissed with prejudice, other than a case that is dismissed with prejudice as a
172 result of successful completion of a plea in abeyance agreement governed by Subsection
173 [77-2a-3\(2\)\(b\)](#); or

174 (C) is a clean slate eligible case, as that term is defined in Section [77-40-102](#); and

175 (iii) is not a traffic offense as that term is defined in Section [77-40-102](#).

176 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
177 records, statements, history, diagnosis, condition, treatment, and evaluation.

178 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
179 doctors, or affiliated entities are not private records or controlled records under Section
180 [63G-2-304](#) when the records are sought:

181 (i) in connection with any legal or administrative proceeding in which the patient's
182 physical, mental, or emotional condition is an element of any claim or defense; or

183 (ii) after a patient's death, in any legal or administrative proceeding in which any party
184 relies upon the condition as an element of the claim or defense.

185 (c) Medical records are subject to production in a legal or administrative proceeding
186 according to state or federal statutes or rules of procedure and evidence as if the medical
187 records were in the possession of a nongovernmental medical care provider.

188 Section 2. Section 77-40-102 is amended to read:

189 **77-40-102. Definitions.**

190 As used in this chapter:

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

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

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

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

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

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

204 (A) a misdemeanor conviction for possession of a controlled substance in violation of

205 Subsection 58-37-8(2)(a)(i);

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

207 (C) an infraction conviction;

208 (ii) that involves an individual:

209 (A) whose total number of convictions in state courts, not including infractions, traffic
210 offenses, or minor regulatory offenses, does not exceed the limits described in Subsections

211 77-40-105(5) and (6) without taking into consideration the exception in Subsection

212 [77-40-105\(8\)](#); and
213 (B) against whom no criminal proceedings are pending in the state; and
214 (iii) for which the following time periods have elapsed from the day on which the case
215 is adjudicated:
216 (A) at least five years for a class C misdemeanor or an infraction;
217 (B) at least six years for a class B misdemeanor; and
218 (C) at least seven years for a class A conviction for possession of a controlled
219 substance in violation of Subsection [58-37-8\(2\)\(a\)\(i\)](#).
220 (b) "Clean slate eligible case" includes a case that is dismissed as a result of a
221 successful completion of a plea in abeyance agreement governed by Subsection [77-2a-3\(2\)\(b\)](#)
222 if:
223 (i) except as provided in Subsection (5)(c), each charge within the case is:
224 (A) a misdemeanor for possession of a controlled substance in violation of Subsection
225 [58-37-8\(2\)\(a\)\(i\)](#);
226 (B) a class B or class C misdemeanor; or
227 (C) an infraction;
228 (ii) the individual involved meets the requirements of Subsection (5)(a)(ii); and
229 (iii) the time periods described in Subsections (5)(a)(iii)(A) through (C) have elapsed
230 from the day on which the case is dismissed.
231 (c) "Clean slate eligible case" does not include a case:
232 (i) where the individual is found not guilty by reason of insanity;
233 (ii) where the case establishes a criminal judgment accounts receivable, as defined in
234 Section [77-32a-101](#), that:
235 (A) has been entered as a civil judgment and transferred to the Office of State Debt
236 Collection; or
237 (B) has not been satisfied according to court records;
238 (iii) that resulted in one or more pleas held in abeyance or convictions for the following
239 offenses:
240 (A) any of the offenses listed in Subsection [77-40-105\(2\)\(a\)](#);
241 (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against
242 the Person;

- 243 (C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
244 (D) sexual battery in violation of Section [76-9-702.1](#);
245 (E) an act of lewdness in violation of Section [76-9-702](#) or [76-9-702.5](#);
246 (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence
247 and Reckless Driving;
248 (G) damage to or interruption of a communication device in violation of Section
249 [76-6-108](#);
250 (H) a domestic violence offense as defined in Section [77-36-1](#); or
251 (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor
252 other than a class A misdemeanor conviction for possession of a controlled substance in
253 violation of Subsection [58-37-8\(2\)\(a\)\(i\)](#).
- 254 ~~[(5)]~~ (6) "Conviction" means judgment by a criminal court on a verdict or finding of
255 guilty after trial, a plea of guilty, or a plea of nolo contendere.
- 256 ~~[(6)]~~ (7) "Department" means the Department of Public Safety established in Section
257 [53-1-103](#).
- 258 ~~[(7)]~~ (8) "Drug possession offense" means an offense under:
259 (a) Subsection [58-37-8\(2\)](#), except any offense under Subsection [58-37-8\(2\)\(b\)\(i\)](#),
260 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection
261 [58-37-8\(2\)\(e\)](#), violation in a correctional facility or Subsection [58-37-8\(2\)\(g\)](#), driving with a
262 controlled substance illegally in the person's body and negligently causing serious bodily injury
263 or death of another;
- 264 (b) Subsection [58-37a-5\(1\)](#), use or possession of drug paraphernalia;
265 (c) Section [58-37b-6](#), possession or use of an imitation controlled substance; or
266 (d) any local ordinance which is substantially similar to any of the offenses described
267 in this Subsection ~~[(7)]~~ (8).
- 268 ~~[(8)]~~ (9) "Expunge" means to seal or otherwise restrict access to the ~~[petitioner's]~~
269 individual's record held by an agency when the record includes a criminal investigation,
270 detention, arrest, or conviction.
- 271 ~~[(9)]~~ (10) "Jurisdiction" means a state, district, province, political subdivision, territory,
272 or possession of the United States or any foreign country.
- 273 ~~[(10)]~~ (11) "Minor regulatory offense" means any class B or C misdemeanor offense,

274 [~~as well as~~] and any local ordinance, except:

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

281 [~~(11)~~] (12) "Petitioner" means [~~a person seeking~~] an individual applying for

282 expungement under this chapter.

283 [~~(12)~~] (13) (a) "Traffic offense" means:

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

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

- 290 (i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
- 291 (ii) Sections 73-18-13 through 73-18-13.6; or
- 292 (iii) any local ordinance that is substantially similar to the offenses listed in
- 293 Subsections [~~(12)~~] (13)(b)(i) and (ii).

294 Section 3. Section 77-40-103 is amended to read:

295 **77-40-103. Petition for expungement procedure overview.**

296 The process for a petition for the expungement of records under this chapter regarding

297 the arrest, investigation, detention, and conviction of a petitioner is as follows:

- 298 (1) The petitioner shall apply to the bureau for a certificate of eligibility for
- 299 expungement and pay the application fee established by the department.
- 300 (2) Once the eligibility process is complete, the bureau shall notify the petitioner.
- 301 (3) If the petitioner is qualified to receive a certificate of eligibility for expungement,
- 302 the petitioner shall pay the issuance fee established by the department.
- 303 (4) (a) The petitioner shall file the certificate of eligibility with a petition for
- 304 expungement in the court in which the proceedings occurred.

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

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

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

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

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

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

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

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

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

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

330 Section 4. Section **77-40-104** is amended to read:

331 **77-40-104. Requirements to apply for certificate of eligibility to expunge records**
332 **of arrest, investigation, and detention.**

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

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

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

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

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

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

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

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

346 or

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

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

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

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

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

353 Section 5. Section **77-40-104.1** is amended to read:

354 **77-40-104.1. Eligibility for removing the link between personal identifying**
355 **information and court case dismissed.**

356 (1) As used in this section:

357 (a) "Domestic violence offense" means the same as that term is defined in Section
358 [77-36-1](#).

359 (b) "Personal identifying information" means:

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

361 (ii) date of birth.

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

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

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

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

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

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

374 Section 6. Section **77-40-105** is amended to read:

375 **77-40-105. Requirements to apply for a certificate of eligibility to expunge**
376 **conviction.**

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

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

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

382 (i) a capital felony;

383 (ii) a first degree felony;

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

385 (iv) felony automobile homicide;

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

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

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

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

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

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

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

397 (b) the petitioner has paid in full all restitution ordered by the court pursuant to Section

398 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6~~[-has been paid~~
399 ~~in full~~]; and

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

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

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

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

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

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

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

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

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

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

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

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

427 (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner
428 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,

429 including previously expunged convictions, contains any of the following:

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

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

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

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

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

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

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

447 Section 7. Section [77-40-107](#) is amended to read:

448 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
449 **Standard of proof -- Exception.**

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

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

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

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

463 (b) The notice shall:

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

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

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

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

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

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

475 (i) the reasons probation was terminated; and

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

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

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

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

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

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

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

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

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

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

496 (b) the statutory requirements have been met;

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

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

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

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

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

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

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

515 Section 8. Section 77-40-108 is amended to read:

516 **77-40-108. Distribution of order -- Redaction -- Receipt of order -- Bureau**
517 **requirements -- Administrative proceedings.**

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

522 the bureau.

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

525 (b) ~~[A person]~~ An individual who receives an order of expungement under Section
526 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process
527 in Section 63J-1-504, before the bureau's record may be expunged.

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

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

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

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

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

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

546 (7) An order of expungement may not:

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

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

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

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

557 Section 9. Section **77-40-108.5** is amended to read:

558 **77-40-108.5. Distribution for order for vacatur.**

559 (1) [~~A person~~] An individual who receives an order for vacatur under Subsection
560 **78B-9-108(2)** shall be responsible for delivering a copy of the order for vacatur to all affected
561 criminal justice agencies and officials including the court, arresting agency, booking agency,
562 prosecuting agency, Department of Corrections, and the bureau.

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

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

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

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

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

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

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

582 (b) Peace Officer Standards and Training, pursuant to Section **53-6-203** and Subsection
583 **77-40-109(2)(b)(ii)**.

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

586 Section 10. Section **77-40-109** is amended to read:

587 **77-40-109. Retention and release of expunged records -- Agencies.**

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

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

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

595 (i) the Board of Pardons and Parole;

596 (ii) Peace Officer Standards and Training;

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

598 (iv) the Department of Commerce;

599 (v) the Department of Insurance;

600 (vi) the State Board of Education; and

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

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

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

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

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

614 (b) The records are confidential and are available for inspection only by the court,

615 parties, counsel for the parties, and any other person who is authorized by the court to inspect
616 them.

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

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

622 (6) Records released under this chapter are classified as protected under Section
623 [63G-2-305](#) and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to
624 Records.

625 Section 11. Section **77-40-110** is amended to read:

626 **77-40-110. Use of expunged records -- Individuals -- Use in civil actions.**

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

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

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

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

636 Section 12. Section **77-40-111** is amended to read:

637 **77-40-111. Rulemaking.**

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

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

641 [~~(1)~~] (2) implement procedures for applying for certificates of eligibility;

642 [~~(2)~~] (3) specify procedures for receiving a certificate of eligibility; and

643 [~~(3)~~] (4) create forms and determine information necessary to be provided to the
644 bureau.

645 Section 13. Section **77-40-114** is enacted to read:

646 77-40-114. Automatic expungement procedure for case adjudicated on or after
647 **January 1, 2012.**

648 (1) (a) Except as provided in Subsection (1)(b), this section governs the process for the
649 automatic expungement of all records in a case with an adjudication date on or after January 1,
650 2012, if:

651 (i) the case resulted in an acquittal on all charges;

652 (ii) except as provided in Subsection (3)(d), the case is dismissed with prejudice; or

653 (iii) the case is a clean slate eligible case.

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

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

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

659 (i) issue, without a petition, an expungement order after the applicable time period
660 described in Section [77-40-117](#); and

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

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

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

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

669 (i) issue, without a petition, an expungement order after the applicable time period
670 described in Section [77-40-117](#); and

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

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

675 (d) For purposes of this Subsection (3), a case that is dismissed with prejudice does not
676 include a case that is dismissed with prejudice as a result of successful completion of a plea in

677 abeyance agreement governed by Subsection 77-2a-3(2)(b).

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

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

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

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

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

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

693 (d) If 35 days pass from the day on which the notice described in Subsection (4)(b) is
694 sent without the prosecuting agency providing written notice of any objection, the court may
695 proceed with automatic expungement.

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

698 (i) issue, without a petition, an expungement order within 30 days; and

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

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

703 (g) In accordance with Title 78A, Chapter 2, Judicial Administration, the Judicial
704 Council shall make rules to govern the process for automatic expungement of records for a
705 clean slate eligible case in accordance with this Subsection (4).

706 (5) Nothing in this section precludes an individual from filing a petition for
707 expungement of records that are eligible for automatic expungement under this section if an

708 automatic expungement has not occurred pursuant to this section.

709 (6) An automatic expungement performed under this section does not preclude a
710 person from requesting access to expunged records in accordance with Section [77-40-109](#) or
711 [77-40-110](#).

712 Section 14. Section **77-40-115** is enacted to read:

713 **77-40-115. Procedure for classifying records from case adjudicated before**
714 **January 1, 2012, as private.**

715 (1) Except as provided in Subsection (2), an entity that has any of the following records
716 from a case that has an adjudication date before January 1, 2012, shall reclassify the records as
717 private under Subsection [63G-2-302\(2\)\(h\)](#):

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

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

722 (c) a case that is a clean slate eligible case, as that term is defined in Section
723 [77-40-102](#).

724 (2) This section does not apply to a record relating to a traffic offense.

725 (3) Reclassification shall occur within the applicable time period described in Section
726 [77-40-117](#).

727 (4) In accordance with Title 78A, Chapter 2, Judicial Administration, the Judicial
728 Council may make rules to govern the procedure for reclassification of the records described in
729 Subsection (1) from public to private.

730 Section 15. Section **77-40-116** is enacted to read:

731 **77-40-116. Automatic deletion for traffic offense.**

732 (1) Records for the following traffic offenses shall be deleted without a court order or
733 notice to the prosecuting agency:

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

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

738 (c) a traffic offense case that is a clean slate eligible case, as that term is defined in

739 Section 77-40-102.

740 (2) Deletion shall occur within the applicable time period described in Section
741 77-40-117.

742 (3) In accordance with Title 78A, Chapter 2, Judicial Administration, the Judicial
743 Council shall make rules to provide an ongoing process for identifying and deleting records on
744 all traffic offenses described in Subsection (1).

745 Section 16. Section 77-40-117 is enacted to read:

746 **77-40-117. Time periods for expungement, reclassification, or deletion --**

747 **Identification and processing of clean slate eligible cases.**

748 (1) For a case that is adjudicated on or after May 1, 2020, expungement or deletion
749 shall occur:

750 (a) for a case that resulted in an acquittal on all charges, 60 days after the acquittal;

751 (b) for a case that resulted in a dismissal with prejudice, other than a case that is
752 dismissed with prejudice as a result of successful completion of a plea in abeyance agreement
753 governed by Subsection 77-2a-3(2)(b):

754 (i) for a case in which no appeal was filed, 180 days after the day on which the entire
755 case against the individual is dismissed with prejudice; or

756 (ii) for a case in which an appeal was filed, 180 days after the day on which a court
757 issues a final unappealable order; or

758 (c) for a clean slate eligible case:

759 (i) that is not a traffic offense, in accordance with Section 77-40-114; or

760 (ii) that is a traffic offense, upon identification.

761 (2) For a case that is adjudicated before May 1, 2020, expungement, reclassification, or
762 deletion shall occur by May 1, 2021.

763 (3) (a) In accordance with Title 78A, Chapter 2, Judicial Administration, the Judicial
764 Council shall make rules governing the identification and processing of clean slate eligible
765 cases in accordance with Sections 77-40-114, 77-40-115, and 77-40-116.

766 (b) Reasonable efforts shall be made to identify and process all clean slate eligible
767 cases in accordance with Sections 77-40-114, 77-40-115, and 77-40-116.

768 (c) An individual does not have a cause of action for damages as a result of the failure
769 to identify an individual's case as a clean slate eligible case or to automatically expunge,

770 reclassify, or delete the records of a clean slate eligible case.

771 Section 17. **Effective date.**

772 This bill takes effect on May 1, 2020.