

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:

- ▶ allows for automatic expungement or deletion of charges for which an individual is acquitted, charges that are dismissed with prejudice, and certain convictions;
- ▶ creates processes for automatic expungement and deletion, which includes:
 - defining terms;
 - requiring identification of cases that may be eligible for automatic expungement or deletion;
 - requiring a prosecuting agency to be notified before the record of a case is automatically expunged; and
 - providing for the Judicial Council and the Department of Public Safety to make rules 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:



26 None

27 **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

44 **77-40-115**, Utah Code Annotated 1953

45 **77-40-116**, Utah Code Annotated 1953



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

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

49 **77-40-102. Definitions.**

50 As used in this chapter:

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

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

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

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

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

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

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

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

67 (C) an infraction conviction;

68 (ii) that involves an individual:

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

71 Subsections [77-40-105\(5\)](#) and (6) without taking into consideration the exception in Subsection
72 [77-40-105\(8\)](#); and

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

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

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

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

78 (C) at least seven years for a class A conviction for possession of a controlled
79 substance in violation of Subsection [58-37-8\(2\)\(a\)\(i\)](#).

80 (b) "Clean slate eligible case" includes a case that is dismissed as a result of a
81 successful completion of a plea in abeyance agreement governed by Subsection [77-2a-3\(2\)\(b\)](#)
82 if:

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

84 (A) a misdemeanor for possession of a controlled substance in violation of Subsection
85 [58-37-8\(2\)\(a\)\(i\)](#);

86 (B) a class B or class C misdemeanor; or

87 (C) an infraction;

88 (ii) the individual involved meets the requirements of Subsection (5)(a)(ii); and
89 (iii) the time periods described in Subsections (5)(a)(iii)(A) through (C) have elapsed
90 from the day on which the case is dismissed.

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

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

93 (ii) where the case establishes a criminal judgment accounts receivable, as defined in
94 Section [77-32a-101](#), that:

95 (A) has been entered as a civil judgment and transferred to the Office of State Debt
96 Collection; or

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

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

100 (A) any of the offenses listed in Subsection [77-40-105\(2\)\(a\)](#);

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

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

104 (D) sexual battery in violation of Section [76-9-702.1](#);

105 (E) an act of lewdness in violation of Section [76-9-702](#) or [76-9-702.5](#);

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

108 (G) damage to or interruption of a communication device in violation of Section
109 [76-6-108](#);

110 (H) a domestic violence offense as defined in Section [77-36-1](#); or

111 (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor
112 other than a class A misdemeanor conviction for possession of a controlled substance in
113 violation of Subsection [58-37-8\(2\)\(a\)\(i\)](#).

114 ~~[(5)]~~ (6) "Conviction" means judgment by a criminal court on a verdict or finding of
115 guilty after trial, a plea of guilty, or a plea of nolo contendere.

116 ~~[(6)]~~ (7) "Department" means the Department of Public Safety established in Section
117 [53-1-103](#).

118 ~~[(7)]~~ (8) "Drug possession offense" means an offense under:

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

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

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

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

128 ~~[(8)]~~ (9) "Expunge" means to seal or otherwise restrict access to the ~~[petitioner's]~~
129 individual's record held by an agency when the record includes a criminal investigation,
130 detention, arrest, or conviction.

131 ~~[(9)]~~ (10) "Jurisdiction" means a state, district, province, political subdivision, territory,
132 or possession of the United States or any foreign country.

133 ~~[(10)]~~ (11) "Minor regulatory offense" means any class B or C misdemeanor offense,
134 ~~[as well as]~~ and any local ordinance, except:

135 (a) any drug possession offense;

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

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

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

139 (e) any local ordinance that is substantially similar to those offenses listed in
140 Subsections ~~[(10)]~~ (11)(a) through (d).

141 ~~[(11)]~~ (12) "Petitioner" means ~~[a person seeking]~~ an individual applying for
142 expungement under this chapter.

143 ~~[(12)]~~ (13) (a) "Traffic offense" means:

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

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

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

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

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

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

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

155 **~~77-40-103. Petition for expungement procedure overview.~~**

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

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

158 (1) The petitioner shall apply to the bureau for a certificate of eligibility for

159 expungement and pay the application fee established by the department.

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

161 (3) If the petitioner is qualified to receive a certificate of eligibility for expungement,

162 the petitioner shall pay the issuance fee established by the department.

163 (4) (a) The petitioner shall file the certificate of eligibility with a petition for

164 expungement in the court in which the proceedings occurred.

165 (b) If there were no court proceedings, or the court no longer exists, the petitioner may

166 file the petition ~~[may be filed]~~ in the district court where the arrest occurred.

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

168 petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are

169 concluded. ~~[If the original certificate is filed]~~

170 (d) If the petitioner files the original certificate of eligibility with the petition, the clerk

171 or the court shall scan ~~[it]~~ and return ~~[it]~~ the original certificate to the petitioner or the

172 petitioner's attorney, who shall keep ~~[it]~~ the original certificate until the proceedings are

173 concluded.

174 (5) (a) The petitioner shall deliver a copy of the petition and certificate of eligibility to

175 the prosecutorial office that handled the court proceedings.

176 (b) If there were no court proceedings, the petitioner shall deliver the copy of the

177 petition and certificate ~~[shall be delivered]~~ to the county attorney's office in the jurisdiction

178 where the arrest occurred.

179 ~~[(6) If an objection to the petition is filed by the prosecutor or victim, a hearing shall be~~

180 ~~set by the court and the prosecutor and victim notified of the date.]~~

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

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

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

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

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

191 **77-40-104. Requirements to apply for certificate of eligibility to expunge records**
192 **of arrest, investigation, and detention.**

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

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

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

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

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

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

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

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

206 or

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

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

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

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

211 [~~(2) Notwithstanding Subsection (1)(a), the bureau shall issue a certificate of eligibility~~]

212 ~~on an expedited basis to a petitioner seeking expungement under Subsection (1)(c)(iv).]~~

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

214 **77-40-104.1. Eligibility for removing the link between personal identifying**
215 **information and court case dismissed.**

216 (1) As used in this section:

217 (a) "Domestic violence offense" means the same as that term is defined in Section
218 [77-36-1](#).

219 (b) "Personal identifying information" means:

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

221 (ii) date of birth.

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

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

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

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

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

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

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

235 **77-40-105. Requirements to apply for a certificate of eligibility to expunge**
236 **conviction.**

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

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

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

242 (i) a capital felony;

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

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

253 eligible to receive a certificate of eligibility from the bureau until all of the following have

254 occurred:

255 (a) the petitioner has paid in full all fines and interest ordered by the court related to the

256 conviction for which expungement is sought [~~have been paid in full~~];

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

258 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6[~~, has been paid~~

259 ~~in full~~]; and

260 (c) the following time periods have elapsed from the date the petitioner was convicted

261 or released from incarceration, parole, or probation, whichever occurred last, for each

262 conviction the petitioner seeks to expunge:

263 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a

264 felony conviction of Subsection 58-37-8(2)(g);

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

266 (iii) five years in the case of any class A misdemeanor or a felony drug possession

267 offense;

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

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

270 (4) The bureau may not count pending or previous infractions, traffic offenses, or

271 minor regulatory offenses, or fines or fees arising from the infractions, traffic offenses, or

272 minor regulatory offenses, when determining expungement eligibility.

273 (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner

274 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
275 including previously expunged convictions, contains any of the following, except as provided
276 in Subsection (8):

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

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

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

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

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

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

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

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

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

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

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

304 (9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board

305 of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned
306 crimes pursuant to Section 77-27-5.1.

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

308 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
309 **Standard of proof -- Exception.**

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

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

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

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

323 (b) The notice shall:

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

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

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

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

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

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

335 (i) the reasons probation was terminated; and

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

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

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

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

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

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

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

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

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

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

356 (b) the statutory requirements have been met;

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

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

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

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

367 which the court denies the petition.

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

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

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

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

376 **77-40-108. Distribution of order -- Redaction -- Receipt of order -- Bureau**
377 **requirements -- Administrative proceedings.**

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

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

385 (b) [~~A person~~] An individual who receives an order of expungement under Section
386 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process
387 in Section 63J-1-504, before the bureau's record may be expunged.

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

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

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

397 (5) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2),

398 a government agency or official may not divulge information or records [~~which~~] that have been
399 expunged [~~regarding the petitioner contained in a record of arrest, investigation, detention, or~~
400 ~~conviction after receiving an expungement order~~].

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

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

406 (7) An order of expungement may not:

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

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

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

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

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

418 **77-40-108.5. Distribution for order for vacatur.**

419 (1) [~~A person~~] An individual who receives an order for vacatur under Subsection
420 **78B-9-108**(2) shall be responsible for delivering a copy of the order for vacatur to all affected
421 criminal justice agencies and officials including the court, arresting agency, booking agency,
422 prosecuting agency, Department of Corrections, and the bureau.

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

427 (3) The bureau shall treat the order for vacatur and attached certificate of eligibility for
428 expungement the same as a valid order for expungement under Section **77-40-108**, except as

429 provided in this section.

430 (4) Unless otherwise provided by law or ordered by a court of competent jurisdiction to
431 respond differently, [~~a person~~] an individual who has received a vacatur of conviction under
432 Section 78B-9-108(2)[~~5~~] may respond to any inquiry as though the conviction did not occur.

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

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

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

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

442 (b) Peace Officer Standards and Training, pursuant to Section 53-6-203 and Subsection
443 77-40-109(2)(b)(ii).

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

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

447 **77-40-109. Retention and release of expunged records -- Agencies.**

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

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

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

455 (i) the Board of Pardons and Parole;

456 (ii) Peace Officer Standards and Training;

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

458 (iv) the Department of Commerce;

459 (v) the Department of Insurance;

460 (vi) the State Board of Education; and

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

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

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

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

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

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

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

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

482 (6) Records released under this chapter are classified as protected under Section
483 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to
484 Records.

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

486 **77-40-110. Use of expunged records -- Individuals -- Use in civil actions.**

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

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

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

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

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

497 **77-40-111. Rulemaking.**

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

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

501 ~~[(1)]~~ (2) implement procedures for applying for certificates of eligibility;

502 ~~[(2)]~~ (3) specify procedures for receiving a certificate of eligibility; and

503 ~~[(3)]~~ (4) create forms and determine information necessary to be provided to the
504 bureau.

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

506 **77-40-114. Automatic expungement procedure.**

507 (1) (a) Except as provided in Subsection (1)(b), this section governs the process for the
508 automatic expungement of all records in:

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

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

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

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

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

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

517 (i) issue, without a petition, an expungement order after the applicable time period
518 described in Section [77-40-116](#); and

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

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

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

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

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

527 (i) issue, without a petition, an expungement order after the applicable time period
528 described in Section [77-40-116](#); and

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

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

533 (d) For purposes of this Subsection (3), a case that is dismissed with prejudice does not
534 include a case that is dismissed with prejudice as a result of successful completion of a plea in
535 abeyance agreement governed by Subsection [77-2a-3\(2\)\(b\)](#).

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

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

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

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

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

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

551 (d) If 35 days pass from the day on which the notice described in Subsection (4)(b) is
552 sent without the prosecuting agency providing written notice of any objection, the court may

553 proceed with automatic expungement.

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

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

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

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

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

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

566 (6) An automatic expungement performed under this section does not preclude a
567 person from requesting access to expunged records in accordance with Section [77-40-109](#) or
568 [77-40-110](#).

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

570 **77-40-115. Automatic deletion for traffic offense.**

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

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

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

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

579 (2) Deletion shall occur within the applicable time period described in Section
580 [77-40-116](#).

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

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

584 77-40-116. Time periods for expungement or deletion -- Identification and
585 processing of clean slate eligible cases.

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

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

589 (b) for a case that resulted in a dismissal with prejudice, other than a case that is
590 dismissed with prejudice as a result of successful completion of a plea in abeyance agreement
591 governed by Subsection [77-2a-3\(2\)\(b\)](#):

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

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

596 (c) for a clean slate eligible case:

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

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

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

601 (3) (a) The Judicial Council shall make rules governing the identification and
602 processing of clean slate eligible cases in accordance with Sections [77-40-114](#) and [77-40-115](#).

603 (b) Reasonable efforts shall be made to identify and process all clean slate eligible
604 cases in accordance with Sections [77-40-114](#) and [77-40-115](#).

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

608 **Section 15. Effective date.**

609 This bill takes effect on May 1, 2020.