

HB0431S02 compared with HB0431S01

~~{deleted text}~~ shows text that was in HB0431S01 but was deleted in HB0431S02.

Inserted text shows text that was not in HB0431S01 but was inserted into HB0431S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

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 or deletion of charges for which an individual is acquitted, charges that are dismissed with prejudice, and certain convictions;
- ▶ creates ~~{a process}~~ processes for automatic expungement and deletion, which includes:
 - defining terms;
 - requiring identification of cases that may be eligible for automatic expungement

HB0431S02 compared with HB0431S01

or deletion;

- requiring a prosecuting agency to be notified before the record of a case is automatically expunged; and
- providing ~~{rulemaking authority to}~~ 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:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

ENACTS:

77-40-114, Utah Code Annotated 1953

77-40-115, Utah Code Annotated 1953

77-40-116, Utah Code Annotated 1953

HB0431S02 compared with HB0431S01

~~{ 77-40-117, Utah Code Annotated 1953~~

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

Section 1. Section ~~{63G-2-3}~~77-40-102 is amended to read:

~~{ 63G-2-302. Private records.~~

~~———— (1) The following records are private:~~

~~———— (a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;~~

~~———— (b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;~~

~~———— (c) records of publicly funded libraries that when examined alone or with other records identify a patron;~~

~~———— (d) records received by or generated by or for:~~

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

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

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

~~———— (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;~~

~~———— (e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;~~

~~———— (f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:~~

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

~~———— (A) reasonably could be expected to interfere with the investigation undertaken by the committee; or~~

~~———— (B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and~~

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

~~———— (g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address;~~

HB0431S02 compared with HB0431S01

~~home telephone number, social security number, insurance coverage, marital status, or payroll deductions;~~

~~—— (h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;~~

~~—— (i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;~~

~~—— (j) that part of a voter registration record identifying a voter's:~~

~~—— (i) driver license or identification card number;~~

~~—— (ii) social security number, or last four digits of the social security number;~~

~~—— (iii) email address; or~~

~~—— (iv) date of birth;~~

~~—— (k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-104(4)(f), 20A-2-101.1(5)(a), or 20A-2-204(4)(b);~~

~~—— (l) a record that:~~

~~—— (i) contains information about an individual;~~

~~—— (ii) is voluntarily provided by the individual; and~~

~~—— (iii) goes into an electronic database that:~~

~~—— (A) is designated by and administered under the authority of the Chief Information Officer; and~~

~~—— (B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;~~

~~—— (m) information provided to the Commissioner of Insurance under:~~

~~—— (i) Subsection 31A-23a-115(3)(a);~~

~~—— (ii) Subsection 31A-23a-302(4); or~~

~~—— (iii) Subsection 31A-26-210(4);~~

~~—— (n) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;~~

~~—— (o) information provided by an offender that is:~~

~~—— (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap~~

HB0431S02 compared with HB0431S01

~~Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and~~

~~—— (ii) not required to be made available to the public under Subsection 77-41-110(4) or 77-43-108(4);~~

~~—— (p) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;~~

~~—— (q) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;~~

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

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

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

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

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

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

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

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

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

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

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

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

HB0431S02 compared with HB0431S01

- ~~—— (ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or~~
- ~~—— (iii) records that must be disclosed in accordance with another statute;~~
- ~~—— (c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;~~
- ~~—— (d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;~~
- ~~—— (e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it;~~
- ~~—— (f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; [and]~~
- ~~—— (g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:~~
 - ~~—— (i) depict the commission of an alleged crime;~~
 - ~~—— (ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;~~
 - ~~—— (iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;~~
 - ~~—— (iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d);~~
- ~~or~~
- ~~—— (v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording[.]; and~~
- ~~—— (h) a record from a case that:~~
 - ~~—— (i) has an adjudication date before January 1, 2012;~~
 - ~~—— (ii) (A) resulted in an acquittal on all charges;~~
 - ~~—— (B) is dismissed with prejudice, other than a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b); or~~

HB0431S02 compared with HB0431S01

~~— (C) is a clean slate eligible case, as that term is defined in Section 77-40-102; and~~

~~— (iii) is not a traffic offense as that term is defined in Section 77-40-102.~~

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

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

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

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

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

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

‡ **77-40-102. Definitions.**

As used in this chapter:

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

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

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

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

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

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

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

HB0431S02 compared with HB0431S01

Subsection 58-37-8(2)(a)(i):

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

(C) an infraction conviction;

(ii) that involves an individual:

(A) whose total number of convictions in Utah state courts, not including infractions, traffic offenses, or minor regulatory offenses, does not exceed the limits described in Subsections 77-40-105(5) and (6) without taking into consideration the exception in Subsection 77-40-105(8); and

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

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

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

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

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

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

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

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

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

(C) an infraction;

(ii) the individual involved meets the requirements of Subsection (5)(a)(ii); and

(iii) the time periods described in Subsections (5)(a)(iii)(A) through (C) have elapsed from the day on which the case is dismissed.

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

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

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

(A) has been entered as a civil judgment and transferred to the Office of State Debt

HB0431S02 compared with HB0431S01

Collection; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) any local ordinance which is substantially similar to any of the offenses described

HB0431S02 compared with HB0431S01

in this Subsection ~~(7)~~ (8).

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

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

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

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

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

~~(12)~~ (13) (a) "Traffic offense" means:

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

- (ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;
- (iii) Title 73, Chapter 18, State Boating Act; and
- (iv) all local ordinances that are substantially similar to those offenses.

(b) "Traffic offense" does not mean:

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

Section ~~3~~2. Section **77-40-103** is amended to read:

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

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

HB0431S02 compared with HB0431S01

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Upon receipt of an order of expungement, the petitioner shall deliver copies to all

HB0431S02 compared with HB0431S01

government agencies in possession of records relating to the expunged matter.

Section ~~{4}~~3. Section 77-40-104 is amended to read:

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

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

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

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

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

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

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

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

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

or

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

~~[(iv) the person]~~

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

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

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

Section ~~{5}~~4. Section 77-40-104.1 is amended to read:

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

(1) As used in this section:

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

(b) "Personal identifying information" means:

HB0431S02 compared with HB0431S01

- (i) a current name, former name, nickname, or alias; and
- (ii) date of birth.

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

- (a) 30 days have passed from the day on which the case is dismissed;
- (b) no appeal is filed for the dismissed case within the 30-day period described in

Subsection (2)(a); and

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

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

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

Section ~~6~~5. Section **77-40-105** is amended to read:

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

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

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

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

HB0431S02 compared with HB0431S01

on the application for a certificate of eligibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0431S02 compared with HB0431S01

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0431S02 compared with HB0431S01

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

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

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

(b) The notice shall:

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

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

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

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

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

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

(i) the reasons probation was terminated; and

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

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

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

(6) (a) (i) If the court receives an objection concerning the petition from any party, the

HB0431S02 compared with HB0431S01

court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing.

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

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

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

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

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

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

(b) the statutory requirements have been met;

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

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

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

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

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

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

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

HB0431S02 compared with HB0431S01

Section ~~{8}~~7. Section 77-40-108 is amended to read:

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

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

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

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

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

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

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

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

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

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

HB0431S02 compared with HB0431S01

(7) An order of expungement may not:

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

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

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

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

Section ~~79~~8. Section **77-40-108.5** is amended to read:

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

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

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

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

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

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

(6) An agency receiving an order for vacatur shall expunge the [petitioner's] individual's identifying information contained in records in the agency's possession relating to

HB0431S02 compared with HB0431S01

the incident for which vacatur is ordered.

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

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

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

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

Section ~~110~~9. Section **77-40-109** is amended to read:

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

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

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

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

(i) the Board of Pardons and Parole;

(ii) Peace Officer Standards and Training;

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

(iv) the Department of Commerce;

(v) the Department of Insurance;

(vi) the State Board of Education; and

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

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

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

HB0431S02 compared with HB0431S01

Section 53-5-704.

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

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

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

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

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

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

Section ~~{11}~~10. Section 77-40-110 is amended to read:

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

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

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

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

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

Section ~~{12}~~11. Section 77-40-111 is amended to read:

77-40-111. Rulemaking.

[The] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

HB0431S02 compared with HB0431S01

the department may make rules to:

- (1) implement procedures for processing an automatic expungement;
- ~~[(1)]~~ (2) implement procedures for applying for certificates of eligibility;
- ~~[(2)]~~ (3) specify procedures for receiving a certificate of eligibility; and
- ~~[(3)]~~ (4) create forms and determine information necessary to be provided to the

bureau.

Section ~~{13}~~12. Section 77-40-114 is enacted to read:

77-40-114. Automatic expungement procedure~~{ for case adjudicated on or after January 1, 2012}~~.

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

- (i) ~~{the}~~a case ~~that~~ resulted in an acquittal on all charges;
- (ii) except as provided in Subsection (3)(d), ~~{the}~~a case ~~that~~ is dismissed with

prejudice; or

- (iii) ~~{the}~~a case ~~that~~ is a clean slate eligible case.

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

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

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

(i) issue, without a petition, an expungement order after the applicable time period described in Section ~~{77-40-117}~~77-40-116; and

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

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

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

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

HB0431S02 compared with HB0431S01

(i) issue, without a petition, an expungement order after the applicable time period described in Section ~~77-40-117~~;77-40-116; and

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

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

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

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

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

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

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

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

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

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

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

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

(ii) based on information available, notify the bureau and the prosecuting agency

HB0431S02 compared with HB0431S01

identified in the case of the order of expungement.

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

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

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

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

Section ~~{14}~~ 13. Section 77-40-115 is enacted to read:

~~{~~ ~~77-40-115. Procedure for classifying records from case adjudicated before January 1, 2012, as private.~~

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

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

~~_____ (b) a case that is dismissed with prejudice, other than a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b); or~~

~~_____ (c) a case that is a clean slate eligible case, as that term is defined in Section 77-40-102.~~

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

~~_____ (3) Reclassification shall occur within the applicable time period described in Section 77-40-117.~~

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

~~_____ Section 15. Section 77-40-116 is enacted to read:~~

HB0431S02 compared with HB0431S01

‡ ~~77-40-116~~77-40-115. **Automatic deletion for traffic offense.**

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

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

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

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

(2) Deletion shall occur within the applicable time period described in Section ~~77-40-117~~77-40-116.

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

Section ~~16~~14. Section ~~77-40-117~~77-40-116 is enacted to read:

~~77-40-117~~77-40-116. **Time periods for expungement~~, reclassification,~~ or deletion -- Identification and processing of clean slate eligible cases.**

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

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

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

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

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

(c) for a clean slate eligible case:

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

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

(2) For a case that is adjudicated before May 1, 2020, expungement~~, reclassification,~~

HB0431S02 compared with HB0431S01

or deletion shall occur by May 1, 2021.

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

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

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

Section ~~{17}~~15. **Effective date.**

This bill takes effect on May 1, 2020.