

HB0397S01 compared with HB0397

~~deleted text~~ shows text that was in HB0397 but was deleted in HB0397S01.

inserted text shows text that was not in HB0397 but was inserted into HB0397S01.

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Senator Todd Weiler proposes the following substitute bill:

EXPUNGEMENT CHANGES

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: ~~_____~~ Todd Weiler

LONG TITLE

General Description:

This bill amends provisions related to expungement.

Highlighted Provisions:

This bill:

- ▶ prohibits the Bureau of Criminal Identification from considering a petitioner's clean slate eligible case that has been automatically expunged when determining whether to issue a certificate of eligibility for expungement;
- ▶ provides that an acquittal due to a defendant being found not guilty by reason of insanity does not qualify for automatic expungement;
- ▶ makes consistent the number of days that a petitioner has to respond to a response from the Division of Adult Probation and Parole;
- ▶ defines terms;

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- ▶ creates the Juvenile Expungement Act;
- ▶ modifies the circumstances under which an adjudication or a nonjudicial adjustment in the juvenile court may be expunged;
- ▶ requires a state agency to send an affidavit to a petitioner indicating compliance with a juvenile expungement order;
- ▶ prohibits a court and a state agency from charging a fee for expunging a juvenile record with an exception for a court filing fee; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53-3-414, as last amended by Laws of Utah 2013, Chapter 411

77-38-14, as last amended by Laws of Utah 2010, Chapter 283

77-40-103 (Effective 05/01/20), as last amended by Laws of Utah 2019, Chapter 448

77-40-105 (Effective 05/01/20), as last amended by Laws of Utah 2019, Chapter 448

77-40-114 (Effective 05/01/20) ~~(,)~~ as enacted by Laws of Utah 2019, Chapter 448

78A-6-116, as last amended by Laws of Utah 2010, Chapter 38

ENACTS:

77-40-101.5, Utah Code Annotated 1953

78A-6-1501, Utah Code Annotated 1953

78A-6-1502, Utah Code Annotated 1953

78A-6-1504, Utah Code Annotated 1953

78A-6-1505, Utah Code Annotated 1953

78A-6-1506, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

78A-6-1503, (Renumbered from 78A-6-1105, as last amended by Laws of Utah 2015, Chapter 389)

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

Section 1. Section **53-3-414** is amended to read:

53-3-414. CDL disqualification or suspension -- Grounds and duration --

Procedure.

(1) (a) [~~A person~~] An individual who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle for a period of not less than one year effective seven days from the date of notice to the driver if convicted of a first offense of:

(i) driving a motor vehicle while under the influence of alcohol, drugs, a controlled substance, or more than one of these;

(ii) driving a commercial motor vehicle while the concentration of alcohol in the person's blood, breath, or urine is .04 grams or more;

(iii) leaving the scene of an accident involving a motor vehicle the person was driving;

(iv) failing to provide reasonable assistance or identification when involved in an accident resulting in:

(A) death in accordance with Section 41-6a-401.5; or

(B) personal injury in accordance with Section 41-6a-401.3;

(v) using a motor vehicle in the commission of a felony;

(vi) refusal to submit to a test to determine the concentration of alcohol in the person's blood, breath, or urine;

(vii) driving a commercial motor vehicle while the person's commercial driver license is disqualified in accordance with the provisions of this section for violating an offense described in this section; or

(viii) operating a commercial motor vehicle in a negligent manner causing the death of another including the offenses of automobile homicide under Section 76-5-207, manslaughter under Section 76-5-205, or negligent homicide under Section 76-5-206.

(b) The division shall subtract from any disqualification period under Subsection (1)(a)(i) the number of days for which a license was previously disqualified under Subsection (1)(a)(ii) or (14) if the previous disqualification was based on the same occurrence upon which the record of conviction is based.

(2) If any of the violations under Subsection (1) occur while the driver is transporting a hazardous material required to be placarded, the driver is disqualified for not less than three

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years.

(3) (a) Except as provided under Subsection (4), a driver of a motor vehicle who holds or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if convicted of or administrative action is taken for two or more of any of the offenses under Subsection (1), (5), or (14) arising from two or more separate incidents.

(b) Subsection (3)(a) applies only to those offenses committed after July 1, 1989.

(4) (a) Any driver disqualified for life from driving a commercial motor vehicle under this section may apply to the division for reinstatement of the driver's CDL if the driver:

(i) has both voluntarily enrolled in and successfully completed an appropriate rehabilitation program that:

(A) meets the standards of the division; and

(B) complies with 49 C.F.R. Sec. 383.51;

(ii) has served a minimum disqualification period of 10 years; and

(iii) has fully met the standards for reinstatement of commercial motor vehicle driving privileges established by rule of the division.

(b) If a reinstated driver is subsequently convicted of another disqualifying offense under this section, the driver is permanently disqualified for life and is ineligible to again apply for a reduction of the lifetime disqualification.

(5) A driver of a motor vehicle who holds or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if the driver uses a motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance and is ineligible to apply for a reduction of the lifetime disqualification under Subsection (4).

(6) (a) Subject to Subsection (6)(b), a driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for not less than:

(i) 60 days from driving a commercial motor vehicle if the driver is convicted of two serious traffic violations; and

(ii) 120 days if the driver is convicted of three or more serious traffic violations.

(b) The disqualifications under Subsection (6)(a) are effective only if the serious traffic violations:

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- (i) occur within three years of each other;
- (ii) arise from separate incidents; and
- (iii) involve the use or operation of a commercial motor vehicle.

(c) If a driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle and the division receives notice of a subsequent conviction for a serious traffic violation that results in an additional disqualification period under this Subsection (6), the subsequent disqualification period is effective beginning on the ending date of the current serious traffic violation disqualification period.

(7) (a) A driver of a commercial motor vehicle who is convicted of violating an out-of-service order while driving a commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period not less than:

- (i) 180 days if the driver is convicted of a first violation;
- (ii) two years if, during any 10 year period, the driver is convicted of two violations of out-of-service orders in separate incidents;
- (iii) three years but not more than five years if, during any 10 year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents;
- (iv) 180 days but not more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded or while operating a motor vehicle designed to transport 16 or more passengers, including the driver; or

(v) three years but not more than five years if, during any 10 year period, the driver is convicted of two or more violations, in separate incidents, of an out-of-service order while transporting hazardous materials required to be placarded or while operating a motor vehicle designed to transport 16 or more passengers, including the driver.

(b) A driver of a commercial motor vehicle who is convicted of a first violation of an out-of-service order is subject to a civil penalty of not less than \$2,500.

(c) A driver of a commercial motor vehicle who is convicted of a second or subsequent violation of an out-of-service order is subject to a civil penalty of not less than \$5,000.

(8) A driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for not less than 60 days if the division determines, in its check of the driver's driver license status, application, and record prior to issuing a CDL or at any time after the

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CDL is issued, that the driver has falsified information required to apply for a CDL in this state.

(9) A driver of a commercial motor vehicle who is convicted of violating a railroad-highway grade crossing provision under Section 41-6a-1205, while driving a commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period not less than:

(a) 60 days if the driver is convicted of a first violation;

(b) 120 days if, during any three-year period, the driver is convicted of a second violation in separate incidents; or

(c) one year if, during any three-year period, the driver is convicted of three or more violations in separate incidents.

(10) (a) The division shall update its records and notify the CDLIS within 10 days of suspending, revoking, disqualifying, denying, or cancelling a CDL to reflect the action taken.

(b) When the division suspends, revokes, cancels, or disqualifies a nonresident CDL, the division shall notify the licensing authority of the issuing state or other jurisdiction and the CDLIS within 10 days after the action is taken.

(c) When the division suspends, revokes, cancels, or disqualifies a CDL issued by this state, the division shall notify the CDLIS within 10 days after the action is taken.

(11) (a) The division may immediately suspend or disqualify the CDL of a driver without a hearing or receiving a record of the driver's conviction when the division has reason to believe that the:

(i) CDL was issued by the division through error or fraud;

(ii) applicant provided incorrect or incomplete information to the division;

(iii) applicant cheated on any part of a CDL examination;

(iv) driver no longer meets the fitness standards required to obtain a CDL; or

(v) driver poses an imminent hazard.

(b) Suspension of a CDL under this Subsection (11) shall be in accordance with Section 53-3-221.

(c) If a hearing is held under Section 53-3-221, the division shall then rescind the suspension order or cancel the CDL.

(12) (a) Subject to Subsection (12)(b), a driver of a motor vehicle who holds or is

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required to hold a CDL is disqualified for not less than:

(i) 60 days from driving a commercial motor vehicle if the driver is convicted of two serious traffic violations; and

(ii) 120 days if the driver is convicted of three or more serious traffic violations.

(b) The disqualifications under Subsection (12)(a) are effective only if the serious traffic violations:

(i) occur within three years of each other;

(ii) arise from separate incidents; and

(iii) result in a denial, suspension, cancellation, or revocation of the non-CDL driving privilege from at least one of the violations.

(c) If a driver of a motor vehicle who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle and the division receives notice of a subsequent conviction for a serious traffic violation that results in an additional disqualification period under this Subsection (12), the subsequent disqualification period is effective beginning on the ending date of the current serious traffic violation disqualification period.

(13) (a) Upon receiving a notice that a person has entered into a plea of guilty or no contest to a violation of a disqualifying offense described in this section which plea is held in abeyance pursuant to a plea in abeyance agreement, the division shall disqualify, suspend, cancel, or revoke the person's CDL for the period required under this section for a conviction of that disqualifying offense, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(b) The division shall report the plea in abeyance to the CDLIS within 10 days of taking the action under Subsection (13)(a).

(c) A plea which is held in abeyance may not be removed from a person's driving record for 10 years from the date of the plea in abeyance agreement, even if the charge is:

(i) reduced or dismissed in accordance with the plea in abeyance agreement; or

(ii) expunged under [~~Section 77-40-105~~] Title 77, Chapter 40, Utah Expungement Act.

(14) The division shall disqualify the CDL of a driver for an arrest of a violation of Section 41-6a-502 when administrative action is taken against the operator's driving privilege pursuant to Section 53-3-223 for a period of:

(a) one year; or

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(b) three years if the violation occurred while transporting hazardous materials.

(15) The division may concurrently impose any disqualification periods that arise under this section while a driver is disqualified by the Secretary of the United States Department of Transportation under 49 C.F.R. Sec. 383.52 for posing an imminent hazard.

Section 2. Section 77-38-14 is amended to read:

77-38-14. Notice of expungement petition -- Victim's right to object.

(1) (a) The Department of Corrections or the Juvenile Probation Department shall prepare a document explaining the right of a victim or a victim's representative to object to a petition for expungement under Section 77-40-107 or ~~[78A-6-1105]~~ 78A-6-1503 and the procedures for obtaining notice of ~~[any such]~~ the petition.

(b) The department or division shall ~~[also]~~ provide each trial court a copy of the document ~~[which]~~ that has jurisdiction over delinquencies or criminal offenses subject to expungement.

(2) The prosecuting attorney in any case leading to a conviction or an adjudication subject to expungement shall provide a copy of the document to each person who would be entitled to notice of a petition for expungement under Sections 77-40-107 and ~~[78A-6-1105]~~ ~~-----~~ 78A-6-116. Minor's cases considered civil proceedings -- Adjudication of jurisdiction by] 78A-6-1503.

Section 3. Section 77-40-101.5 is enacted to read:

77-40-101.5. Applicability to juvenile court ~~{not conviction of crime -- Exceptions -- Minor not to be charged with crime -- Exception -- Traffic violation cases -- Abstracts to Department of Public Safety.~~

~~-----~~ (1) Except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703, proceedings in a minor's case shall be regarded as civil proceedings with the court exercising equitable powers.

~~-----~~ (2) An adjudication by a juvenile court that a minor is within its jurisdiction under Section 78A-6-103 is not considered a conviction of a crime, except in cases involving traffic violations. An adjudication may not operate to impose any civil disabilities upon the minor nor to disqualify the minor for any civil service or military service or appointment.

~~-----~~ (3) A minor may not be charged with a crime or convicted in any court except as

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~~provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703, and in cases involving traffic violations. When a petition has been filed in the juvenile court, the minor may not later be subjected to criminal prosecution based on the same facts except as provided;~~records.

This chapter does not apply to an expungement of a record for an adjudication or a nonjudicial adjustment, as that term is defined in Section ~~78A-6-702 or 78A-6-703.~~

~~—— (4) An adjudication by a juvenile court that a minor is within its jurisdiction under Section 78A-6-103 is considered a conviction for the purposes of determining the level of offense for which a minor may be charged and enhancing the level;~~78A-6-105, of an offense in the juvenile court. { A prior adjudication may be used to enhance the level or degree of an offense committed by an adult only as otherwise specifically provided.

~~—— (5) Abstracts of court records for all adjudications of traffic violations shall be submitted to the Department of Public Safety as provided in Section 53-3-218.~~

~~—— (6) Information necessary to collect unpaid fines, fees, assessments, bail, or restitution may be forwarded to employers, financial institutions, law enforcement, constables, the Office of Recovery Services, or other agencies for purposes of enforcing the order as provided in Section 78A-6-117.~~

~~—— **78A-6-1105. Expungement of juvenile court record -- Petition -- Procedure.**~~

~~—— (1) (a) A person who has been adjudicated under this chapter may petition the court for the expungement of the person's juvenile court record and any related records in the custody of a state agency, if:~~

~~—— (i) the person has reached 18 years of age; and~~

~~—— (ii) one year has elapsed from the date of termination of the continuing jurisdiction of the juvenile court or, if the person was committed to a secure youth corrections facility, one year from the date of the person's unconditional release from the custody of the Division of Juvenile Justice Services.~~

~~—— (b) The court may waive the requirements in Subsection (1)(a), if the court finds, and states on the record, the reason why the waiver is appropriate.~~

~~—— (c) The petitioner shall include in the petition any agencies known or alleged to have any documents related to the offense for which expungement is being sought.~~

~~—— (d) The petitioner shall include with the petition the original criminal history report obtained from the Bureau of Criminal Identification in accordance with the provisions of~~

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Section 53-10-108:

~~—— (e) The petitioner shall send a copy of the petition to the county attorney or, if within a prosecution district, the district attorney:~~

~~—— (f) (i) Upon the filing of a petition, the court shall:~~

~~—— (A) set a date for a hearing;~~

~~—— (B) notify the county attorney or district attorney, and the agency with custody of the records at least 30 days prior to the hearing of the pendency of the petition; and~~

~~—— (C) notify the county attorney or district attorney, and the agency with records the petitioner is asking the court to expunge of the date of the hearing:~~

~~—— (ii) The court shall provide a victim with the opportunity to request notice of a petition for expungement. A victim shall receive notice of a petition for expungement at least 30 days prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a child or a person who is incapacitated or deceased, the victim's next of kin or authorized representative, submits a written and signed request for notice to the court in the judicial district in which the crime occurred or judgment was entered. The notice shall include a copy of the petition and statutes and rules applicable to the petition:~~

~~—— (2) (a) At the hearing, the county attorney or district attorney, a victim, and any other person who may have relevant information about the petitioner may testify:~~

~~—— (b) In deciding whether to grant a petition for expungement, the court shall consider whether the rehabilitation of the petitioner has been attained to the satisfaction of the court, taking into consideration the petitioner's response to programs and treatment, the petitioner's behavior subsequent to adjudication, and the nature and seriousness of the conduct:~~

~~—— (c) The court may order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's adjudicated juvenile court cases, including relevant related records contained in the Management Information System created by Section 62A-4a-1003 and the Licensing Information System created by Section 62A-4a-1005, if the court finds that:~~

~~—— (i) the petitioner has not, since the termination of the court's jurisdiction or the petitioner's unconditional release from the Division of Juvenile Justice Services, been convicted of a:~~

~~—— (A) felony; or~~

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~~— (B) misdemeanor involving moral turpitude;~~

~~— (ii) no proceeding involving a felony or misdemeanor is pending or being instituted against the petitioner; and~~

~~— (iii) a judgment for restitution entered by the court on the conviction for which the expungement is sought has been satisfied.~~

~~— (3) The petitioner shall be responsible for service of the order of expungement to all affected state, county, and local entities, agencies, and officials. To avoid destruction or sealing of the records in whole or in part, the agency or entity receiving the expungement order shall only expunge all references to the petitioner's name in the records pertaining to the petitioner's adjudicated juvenile court cases.~~

~~— (4) Upon the entry of the order, the proceedings in the petitioner's case shall be considered never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter only be permitted by the court upon petition by the person who is the subject of the records, and only to persons named in the petition.~~

~~— (5) The court may not expunge a juvenile court record if the record contains an adjudication of:~~

~~— (a) Section 76-5-202, aggravated murder; or~~

~~— (b) Section 76-5-203, murder.~~

~~— (6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments as provided in Section 78A-6-602 may petition the court for expungement of the person's record if the person:~~

~~— (i) has reached 18 years of age; and~~

~~— (ii) has completed the conditions of the nonjudicial adjustments;~~

~~— (b) The court shall, without a hearing, order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's nonjudicial adjustments.~~

~~— Section 2}~~

Section 4. Section 77-40-103 (Effective 05/01/20) is amended to read:

77-40-103 (Effective 05/01/20). Petition for expungement procedure overview.

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

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

- (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 in the district court where the arrest occurred.
(c) If a petitioner files a certificate of eligibility electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded.
(d) If the petitioner files the original certificate of eligibility with the petition, the clerk or the court shall scan and return the original certificate to the petitioner or the petitioner's attorney, who shall keep 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 to the county attorney's office in the jurisdiction where the arrest occurred.
- (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 the Division of 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~~] in accordance with Section 77-40-107.
- (8) 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 government agencies in possession of records relating to the expunged matter.

Section ~~33~~5. Section 77-40-105 (Effective 05/01/20) is amended to read:

77-40-105 (Effective 05/01/20). Requirements to apply for a certificate of eligibility to expunge conviction -- Requirements on bureau.

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(1) 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) 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 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;

(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; 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.

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~~[(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.]~~

(4) When determining whether to issue a certificate of eligibility, the bureau may not consider:

(a) a petitioner's pending or previous:

(i) infraction;

(ii) traffic offense;

(iii) minor regulatory offense; or

(iv) clean slate eligible case that was automatically expunged in accordance with Section 77-40-114; or

(b) a fine or fee related to an offense described in Subsection (4)(a).

(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;

(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

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(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 ~~44~~6. Section 77-40-114 (Effective 05/01/20) is amended to read:

77-40-114 (Effective 05/01/20). Automatic expungement procedure.

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

(i) except as provided in Subsection (2)(d), a case that resulted in an acquittal on all charges;

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

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

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

(2) (a) ~~[The]~~ Except as provided in Subsection (2)(d), the process for automatic expungement of records for a case that resulted in an acquittal on all charges 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; and

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

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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 section, a case that resulted in acquittal on all charges does not include a case that resulted in an acquittal because the individual is found not guilty by reason of insanity.

(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:

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

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an individual with a clean slate eligible case is continuing to engage in criminal activity within or outside of the state.

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

(ii) 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 an objection for a reason described in Subsection (4)(c), 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; and

(ii) based on information available, notify the bureau and the prosecuting agency 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) 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 7. Section 78A-6-116 is amended to read:

78A-6-116. Minor's cases considered civil proceedings -- Adjudication of jurisdiction by juvenile court not conviction of crime -- Exceptions -- Minor not to be charged with crime -- Exception -- Traffic violation cases -- Abstracts to Department of Public Safety -- Information sharing.

(1) Except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703, proceedings in a minor's case shall be regarded as civil proceedings with the court exercising equitable powers.

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(2) An adjudication by a juvenile court that a minor is within its jurisdiction under Section 78A-6-103 is not considered a conviction of a crime, except in cases involving traffic violations. An adjudication may not operate to impose any civil disabilities upon the minor nor to disqualify the minor for any civil service or military service or appointment.

(3) A minor may not be charged with a crime or convicted in any court except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703, and in cases involving traffic violations. When a petition has been filed in the juvenile court, the minor may not later be subjected to criminal prosecution based on the same facts except as provided in Section 78A-6-702 or 78A-6-703.

(4) An adjudication by a juvenile court that a minor is within its jurisdiction under Section 78A-6-103 is considered a conviction for the purposes of determining the level of offense for which a minor may be charged and enhancing the level of an offense in the juvenile court. A prior adjudication may be used to enhance the level or degree of an offense committed by an adult only as otherwise specifically provided.

(5) Abstracts of court records for all adjudications of traffic violations shall be submitted to the Department of Public Safety as provided in Section 53-3-218.

(6) A court or state agency with custody of an individual's record related to an offense that the individual is alleged to have committed, or an offense that the individual committed, before the individual was 18 years old may not disclose the record to a federal agency that is responsible for criminal justice research or proceedings unless the court or state agency is required to share the record under state or federal law.

~~(6)~~ (7) Information necessary to collect unpaid fines, fees, assessments, bail, or restitution may be forwarded to employers, financial institutions, law enforcement, constables, the Office of Recovery Services, or other agencies for purposes of enforcing the order as provided in Section 78A-6-117.

Section 8. Section 78A-6-1501 is enacted to read:

Part 15. Juvenile Expungement Act

78A-6-1501. Title.

This part is known as the "Juvenile Expungement Act."

Section 9. Section 78A-6-1502 is enacted to read:

78A-6-1502. Definitions.

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(1) "Agency" means a state, county, or local government entity that generates or maintains records relating to a nonjudicial adjustment or an adjudication for which expungement may be ordered under this part.

(2) "Expunge" means to seal or otherwise restrict access to an individual's record held by a court or an agency when the record relates to a nonjudicial adjustment or an adjudication of an offense in the juvenile court.

Section 10. Section 78A-6-1503, which is renumbered from Section 78A-6-1105 is renumbered and amended to read:

~~[78A-6-1105].~~ **78A-6-1503. Requirements to apply to expunge an adjudication.**

(1) (a) ~~[A person]~~ An individual who has been adjudicated ~~[under this chapter]~~ by a juvenile court may petition the court for ~~[the expungement of the person's juvenile court]~~ an order to expunge the individual's juvenile court record and any related records in the custody of ~~[a state]~~ an agency~~[-]~~ if:

(i) the ~~[person]~~ individual has reached 18 years ~~[of age]~~ old; and

(ii) at least one year has ~~[elapsed]~~ passed from the date of:

(A) ~~termination of the continuing jurisdiction of the juvenile court; or~~ ~~[-]~~ ~~if the person was committed to a secure youth corrections facility, one year from the date of]~~

(B) the ~~[person's]~~ individual's unconditional release from the custody of the Division of Juvenile Justice Services if the individual was committed to a secure youth corrections facility.

(b) The court may waive the requirements in Subsection (1)(a)~~[-]~~ if the court finds, and states on the record, the reason why the waiver is appropriate.

(c) The petitioner shall include in the petition described in Subsection (1)(a):

(i) any ~~[agencies]~~ agency known or alleged to have any ~~[documents]~~ records related to the offense for which expungement is being sought~~[-]~~; and

~~[(d) The petitioner shall include with the petition]~~

(ii) the original criminal history report obtained from the Bureau of Criminal Identification in accordance with ~~[the provisions of]~~ Section 53-10-108.

~~[(e)]~~ (d) The petitioner shall send a copy of the petition described in Subsection (1)(a) to the county attorney or, if within a prosecution district, the district attorney.

~~[(f)]~~ (e) (i) Upon the filing of a petition described in Subsection (1)(a), the court shall:

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(A) set a date for a hearing;

(B) notify the county attorney or district attorney[;] and the agency with custody of the records at least 30 days [prior to] before the day on which the hearing of the pendency of the petition is scheduled; and

(C) notify the county attorney or district attorney[;] and the agency with records that the petitioner is asking the court to expunge of the date of the hearing.

(ii) (A) The court shall provide a victim with the opportunity to request notice of a petition [for expungement. A] described in Subsection (1)(a).

(B) Upon the victim's request under Subsection (1)(e)(ii)(A), the victim shall receive notice of [a] the petition [for expungement] at least 30 days [prior to] before the day on which the hearing [if, prior to the entry of] is scheduled if, before the day on which an expungement order[;] is made, the victim or, in the case of a child or [a person] an individual who is incapacitated or deceased, the victim's next of kin or authorized representative[;] submits a written and signed request for notice to the court in the judicial district in which the [crime] offense occurred or judgment [was] is entered.

(C) The notice described in Subsection (1)(e)(ii)(B) shall include a copy of the petition described in Subsection (1)(a) and any statutes and rules applicable to the petition.

(2) (a) At the hearing described in Subsection (1)(e)(i), the county attorney or district attorney, a victim, and any other [person] individual who may have relevant information about the petitioner may testify.

(b) In deciding whether to grant a petition described in Subsection (1)(a) for expungement, the court shall consider whether the rehabilitation of the petitioner has been attained to the satisfaction of the court, [taking into consideration] including the petitioner's response to programs and treatment, the petitioner's behavior subsequent to the adjudication, and the nature and seriousness of the conduct.

(c) The court may order sealed all of the petitioner's records under the control of the juvenile court and [any of petitioner's records under the control of any other agency or official pertaining to the petitioner's adjudicated juvenile court cases, including relevant related records] an agency or an official, including any record contained in the Management Information System created [by] in Section 62A-4a-1003 and the Licensing Information System created [by] in Section 62A-4a-1005, if the court finds that:

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(i) the petitioner has not, [since the termination of the court's jurisdiction or the petitioner's unconditional release from the Division of Juvenile Justice Services,] in the five years preceding the day on which the petition described in Subsection (1)(a) is filed, been convicted of a[:] violent felony, as defined in Section 76-3-203.5;

[(A) felony; or]

[(B) misdemeanor involving moral turpitude;]

[(ii) no proceeding involving a felony or misdemeanor is pending or being instituted]

(ii) there are no delinquency or criminal proceedings pending against the petitioner;

and

(iii) a judgment for restitution entered by the court on the conviction for which the expungement is sought has been satisfied.

(3) (a) The petitioner [shall be] is responsible for service of the [order of] expungement order issued under Subsection (2) to [all affected state, county, and local entities, agencies, and officials] any affected agency or official.

(b) To avoid destruction or sealing of the records in whole or in part, the agency or [entity] the official receiving the expungement order described in Subsection (3)(a) shall only expunge all references to the petitioner's name in the records pertaining to the petitioner's [adjudicated juvenile court cases] juvenile court record.

[(4) Upon the entry of the order, the proceedings in the petitioner's case shall be considered never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter only be permitted by the court upon petition by the person who is the subject of the records, and only to persons named in the petition.]

[(5)] (4) The court may not expunge a [juvenile court] record if the record contains an adjudication of:

(a) Section 76-5-202, aggravated murder; or

(b) Section 76-5-203, murder.

[(6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments as provided in Section 78A-6-602 may petition the court for expungement of the person's record if the person:]

[(i) has reached 18 years of age; and]

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[(ii) has completed the conditions of the nonjudicial adjustments.]

[(b) The court shall, without a hearing, order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's nonjudicial adjustments.]

Section 11. Section 78A-6-1504 is enacted to read:

78A-6-1504. Nonjudicial adjustment expungement.

(1) An individual whose record consists solely of one or more nonjudicial adjustments may petition the court for an order to expunge the individual's juvenile court record if the individual:

(a) has reached 18 years old; and

(b) has completed the conditions of each nonjudicial adjustment.

(2) (a) The petitioner shall include in the petition described in Subsection (1) any agency known or alleged to have any records related to the nonjudicial adjustment for which expungement is being sought.

(b) The petitioner is not required to include in the petition described in Subsection (1) an original criminal history report obtained from the Bureau of Criminal Identification in accordance with Section 53-10-108.

(3) Upon the filing of the petition described in Subsection (1), the court shall, without a hearing, order expungement of all of the petitioner's records under the control of the juvenile court, an agency, or an official.

(4) (a) The petitioner is responsible for service of the expungement order issued under Subsection (3) to any affected agency or official.

(b) To avoid destruction or sealing of the records in whole or in part, the agency or the official receiving the expungement order shall expunge only the references to the individual's name in the records relating to the petitioner's nonjudicial adjustment.

Section 12. Section 78A-6-1505 is enacted to read:

78A-6-1505. Effect of an expunged record -- Agency duties.

(1) Upon receipt of an expungement order under this part, an agency shall expunge all records described in the expungement order that are under the control of the agency in accordance with Subsection 78A-6-1504(3)(b).

(2) Upon the entry of the expungement order under this part:

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(a) an adjudication or a nonjudicial adjustment in a petitioner's case is considered to have never occurred; and

(b) the petitioner may reply to an inquiry on the matter as though there never was an adjudication or nonjudicial adjustment.

(3) The following persons may inspect an expunged record upon a petition by an individual who is the subject of the record:

(a) the individual who is the subject of the record; and

(b) a person that is named in the petition.

(4) An agency named in an expungement order under this part shall mail an affidavit to the petitioner verifying the agency has complied with the expungement order.

Section 13. Section 78A-6-1506 is enacted to read:

78A-6-1506. Fees.

(1) Except for a filing fee for a petition under this part, the court may not charge a fee for:

(a) an issuance of an expungement order under this part; or

(b) an expungement of a record under this part.

(2) An agency may not charge a fee for the expungement of a record under this part.

Section 14. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect on May 1, 2020.