

**EXPUNGEMENT AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill amends provisions related to expungement.

**Highlighted Provisions:**

This bill:

- ▶ defines and amends terms related to expungement;
- ▶ addresses the service of a petition for expungement and a certificate of eligibility when the prosecuting agency is a city attorney's office;
- ▶ amends the requirements for expunging records of an arrest, investigation, and detention;
- ▶ prohibits the Bureau of Criminal Identification from issuing a certificate of eligibility for an arrest, investigation, and detention if the case number is associated with a case number for an arrest, investigation, and detention, or a conviction, that is not eligible for expungement;
- ▶ amends the requirements for expunging records of a conviction;
- ▶ prohibits the Bureau of Criminal Identification from issuing a certificate of eligibility for a conviction if the case number is associated with a case number for an arrest, investigation, and detention, or a conviction, that is not eligible for expungement;
- ▶ requires a copy of a petition to be served to the prosecutor in accordance with the Utah Rules of Civil Procedure;



28           ▶ requires the prosecutor to make a reasonable effort to provide notice to a victim if a  
29 prosecuting attorney receives a petition for expungement of a conviction or a charge  
30 dismissed by a plea in abeyance;

31           ▶ requires the Bureau of Criminal Identification to notify an agency of an order of  
32 expungement;

33           ▶ allows an agency to respond to a request about an arrest or conviction that is  
34 expunged as if the arrest or conviction did not happen;

35           ▶ allows an ex parte civil protective order or an ex parte civil stalking injunction to be  
36 expunged in certain circumstances; and

37           ▶ makes technical and conforming changes.

38 **Money Appropriated in this Bill:**

39           None

40 **Other Special Clauses:**

41           None

42 **Utah Code Sections Affected:**

43 AMENDS:

44           77-40-102, as last amended by Laws of Utah 2020, Chapter 354

45           77-40-103, as last amended by Laws of Utah 2020, Chapters 12, 12, and 218

46           77-40-104, as last amended by Laws of Utah 2019, Chapter 448

47           77-40-105, as last amended by Laws of Utah 2020, Chapters 177 and 218

48           77-40-107, as last amended by Laws of Utah 2020, Chapters 12, 12, and 54

49           77-40-108, as last amended by Laws of Utah 2019, Chapter 448

50 ENACTS:

51           78B-7-120, Utah Code Annotated 1953



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

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

55           **77-40-102. Definitions.**

56           As used in this chapter:

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

59 requirements of due process.

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

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

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

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

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

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

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

73 (C) an infraction conviction;

74 (ii) that involves an individual:

75 (A) whose total number of convictions in Utah state courts, not including infractions,  
76 traffic offenses, or minor regulatory offenses, does not exceed the limits described in  
77 Subsections 77-40-105(5) and (6) without taking into consideration the exception in Subsection  
78 77-40-105(8); and

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

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

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

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

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

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

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

90 (A) a misdemeanor for possession of a controlled substance in violation of Subsection  
91 58-37-8(2)(a)(i);

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

93 (C) an infraction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 (G) damage to or interruption of a communication device in violation of Section  
115 76-6-108;

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

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

120 (6) "Conviction" means judgment by a criminal court on a verdict or finding of guilty

121 after trial, a plea of guilty, or a plea of nolo contendere.

122 (7) (a) "Criminal proceeding" means every stage of a criminal prosecution after an  
123 arrest until the prosecution is dismissed or the sentence resulting from the prosecution is  
124 terminated or expires.

125 (b) "Criminal proceeding" includes parole, incarceration, or supervised or unsupervised  
126 probation.

127 (c) "Criminal proceeding" does not include a minor regulatory offense or a traffic  
128 offense.

129 ~~[(7)]~~ (8) "Department" means the Department of Public Safety established in Section  
130 [53-1-103](#).

131 ~~[(8)]~~ (9) "Drug possession offense" means an offense under:

132 (a) Subsection [58-37-8\(2\)](#), except any offense under Subsection [58-37-8\(2\)\(b\)\(i\)](#),  
133 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection  
134 [58-37-8\(2\)\(e\)](#), violation in a correctional facility or Subsection [58-37-8\(2\)\(g\)](#), driving with a  
135 controlled substance illegally in the person's body and negligently causing serious bodily injury  
136 or death of another;

137 (b) Subsection [58-37a-5\(1\)](#), use or possession of drug paraphernalia;

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

139 (d) any local ordinance which is substantially similar to any of the offenses described  
140 in this Subsection ~~[(8)]~~ (9).

141 ~~[(9)]~~ (10) (a) "Expunge" means to seal or otherwise restrict access to the individual's  
142 record held by an agency when the record includes a criminal investigation, detention, arrest, or  
143 conviction.

144 (b) "Expunge" does not include access of a record by an agency, so long as the record  
145 is not disclosed for any other purpose except as provided in Section [77-40-109](#).

146 ~~[(10)]~~ (11) "Jurisdiction" means a state, district, province, political subdivision,  
147 territory, or possession of the United States or any foreign country.

148 ~~[(11)]~~ (12) "Minor regulatory offense" means any class B or C misdemeanor offense,  
149 and any local ordinance, except:

150 (a) any drug possession offense;

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

152 (c) Sections [73-18-13](#) through [73-18-13.6](#);

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

154 (e) any local ordinance that is substantially similar to those offenses listed in

155 Subsections ~~[(11)]~~ [\(12\)](#)(a) through (d).

156 ~~[(12)]~~ [\(13\)](#) "Petitioner" means an individual applying for expungement under this

157 chapter.

158 ~~[(13)]~~ [\(14\)](#) (a) "Traffic offense" means:

159 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,

160 Chapter 6a, Traffic Code;

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

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

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

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

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

166 (ii) Sections [73-18-13](#) through [73-18-13.6](#); or

167 (iii) any local ordinance that is substantially similar to the offenses listed in

168 Subsections ~~[(13)]~~ [\(14\)](#)(b)(i) and (ii).

169 [\(15\)](#) "Victim" means the same as the term "victim of a crime" is defined in Section

170 [77-38-2](#).

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

172 **77-40-103. Petition for expungement procedure overview.**

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

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

- 175 (1) The petitioner shall apply to the bureau for a certificate of eligibility for
- 176 expungement and pay the application fee established by the department.
- 177 (2) Once the eligibility process is complete, the bureau shall notify the petitioner.
- 178 (3) If the petitioner is qualified to receive a certificate of eligibility for expungement,
- 179 the petitioner shall pay the issuance fee established by the department.
- 180 (4) (a) The petitioner shall file the certificate of eligibility with a petition for
- 181 expungement in the court in which the proceedings occurred.
- 182 (b) If there were no court proceedings, or the court no longer exists, the petitioner may

183 file the petition in the district court where the arrest occurred.

184 (c) If a petitioner files a certificate of eligibility electronically, the petitioner or the  
185 petitioner's attorney shall keep the original certificate until the proceedings are concluded.

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

189 (5) Notwithstanding Subsections (3) and (4), if the petitioner is not qualified to receive  
190 a certificate of eligibility for expungement, the petitioner may file a petition without a  
191 certificate to obtain expungement for a record of conviction related to cannabis possession if  
192 the petition demonstrates that:

193 (a) the petitioner had, at the time of the relevant arrest or citation leading to the  
194 conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and

195 (b) the possession of cannabis in question was in a form and an amount to medicinally  
196 treat the condition described in Subsection (5)(a).

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

199 (b) If there were no court proceedings, the petitioner shall deliver the copy of the  
200 petition and certificate to the county attorney's office in the jurisdiction where the arrest  
201 occurred.

202 (c) If the prosecuting agency with jurisdiction over the arrest, investigation, and  
203 detention, or the conviction, was a city attorney's office, the county attorney's office in the  
204 jurisdiction where the arrest occurred shall immediately notify the city attorney's office that a  
205 petition for expungement was served upon the county attorney's office.

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

208 (8) If the court requests a response from the Division of Adult Probation and Parole  
209 and a response is received, the petitioner may file a written reply in accordance with Section  
210 77-40-107.

211 (9) A court may grant an expungement without a hearing if no objection is received.

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

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

215 **77-40-104. Requirements to apply for certificate of eligibility to expunge records**  
216 **of arrest, investigation, and detention.**

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

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

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

223 (c) there are no civil protective orders, criminal protective orders, or criminal stalking  
224 injunctions in effect for the case; and

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

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

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

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

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

231 or

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

233 [~~(2)~~] (iv) the individual is acquitted at trial on all of the charges contained in the case;

234 or

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

236 (2) The bureau may not issue a certificate of eligibility under this section if the case  
237 number associated with the record of arrest, investigation, and detention is associated with a  
238 case number for an arrest, investigation, and detention, or a conviction, that is not eligible for  
239 expungement under this chapter.

240 Section 4. Section 77-40-105 is amended to read:

241 **77-40-105. Requirements to apply for a certificate of eligibility to expunge**  
242 **conviction.**

243 (1) An individual convicted of an offense may apply to the bureau for a certificate of  
244 eligibility to expunge the record of conviction as provided in this section.



245 (2) An individual is not eligible to receive a certificate of eligibility from the bureau if:

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

247 (i) a capital felony;

248 (ii) a felony conviction of a first degree felony;

249 (iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

250 (iv) felony automobile homicide;

251 (v) a felony conviction described in Subsection 41-6a-501(2);

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

253 (vi) an offense, or a combination of offenses, that would require the individual to  
254 register as a sex offender, as defined in Section 77-41-102; or

255 (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);

256 (b) a criminal proceeding is pending against the petitioner; [~~or~~]

257 (c) the petitioner intentionally or knowingly provides false or misleading information  
258 on the application for a certificate of eligibility[~~;~~]; or

259 (d) a civil protective order, a criminal protective order, or a criminal stalking injunction  
260 is in effect for the case.

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

264 (a) the petitioner has paid in full all fines and interest ordered by the court related to the  
265 conviction for which expungement is sought;

266 (b) the petitioner has paid in full all restitution ordered by the court pursuant to Section  
267 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6; and

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

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

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

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

- 276 (iv) four years in the case of a class B misdemeanor; or
- 277 (v) three years in the case of any other misdemeanor or infraction.
- 278 (4) When determining whether to issue a certificate of eligibility, the bureau may not
- 279 consider:
  - 280 (a) a petitioner's pending or previous:
    - 281 (i) infraction;
    - 282 (ii) traffic offense;
    - 283 (iii) minor regulatory offense; or
    - 284 (iv) clean slate eligible case that was automatically expunged in accordance with
    - 285 Section [77-40-114](#); or
    - 286 (b) a fine or fee related to an offense described in Subsection (4)(a).
  - 287 (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner
  - 288 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
  - 289 including previously expunged convictions, contains any of the following, except as provided
  - 290 in Subsection (8):
    - 291 (a) two or more felony convictions other than for drug possession offenses, each of
    - 292 which is contained in a separate criminal episode;
    - 293 (b) any combination of three or more convictions other than for drug possession
    - 294 offenses that include two class A misdemeanor convictions, each of which is contained in a
    - 295 separate criminal episode;
    - 296 (c) any combination of four or more convictions other than for drug possession
    - 297 offenses that include three class B misdemeanor convictions, each of which is contained in a
    - 298 separate criminal episode; or
    - 299 (d) five or more convictions other than for drug possession offenses of any degree
    - 300 whether misdemeanor or felony, each of which is contained in a separate criminal episode.
    - 301 (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner
    - 302 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
    - 303 including previously expunged convictions, contains any of the following:
      - 304 (a) three or more felony convictions for drug possession offenses, each of which is
      - 305 contained in a separate criminal episode; or
      - 306 (b) any combination of five or more convictions for drug possession offenses, each of

307 which is contained in a separate criminal episode.

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

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

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

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

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

321 (10) The bureau may not issue a certificate of eligibility under this section if the case  
 322 number associated with the record of conviction is associated with another case number for an  
 323 arrest, investigation, and detention, or a conviction, that is not eligible for expungement under  
 324 this chapter.

325 Section 5. Section 77-40-107 is amended to read:

326 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**  
 327 **Standard of proof -- Exception.**

328 (1) (a) The petitioner shall:

329 (i) file a petition for expungement and, except as provided in Subsection 77-40-103(5),  
 330 the certificate of eligibility in the court specified in Section 77-40-103; and ~~[deliver]~~

331 (ii) serve a copy of the petition and certificate to the prosecuting agency in accordance  
 332 with the Utah Rules of Civil Procedure.

333 (b) If the certificate is filed electronically, the petitioner or the petitioner's attorney  
 334 shall keep the original certificate until the proceedings are concluded.

335 (c) If the original certificate is filed with the petition, the clerk of the court shall scan  
 336 ~~[it]~~ the original certificate and return ~~[it]~~ the original certificate to the petitioner or the  
 337 petitioner's attorney, who shall keep ~~[it]~~ the original certificate until the proceedings are

338 concluded.

339 (2) (a) Upon receipt of a petition for expungement of a conviction or a charge  
340 dismissed in accordance with a plea in abeyance, the prosecuting attorney shall [~~provide notice~~  
341 ~~of the expungement request by first-class mail to the victim at the most recent address of record~~  
342 ~~on file~~] make a reasonable effort to provide notice to a victim of the conviction or charge  
343 dismissed with a plea in abeyance.

344 (b) The notice shall:

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

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

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

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

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

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

356 (i) the reasons probation was terminated; and

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

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

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

364 (6) (a) If the court receives an objection concerning the petition from any party, the  
365 court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the  
366 date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the  
367 hearing.

368 (b) The petitioner, the prosecuting attorney, the victim, and any other person who has

369 relevant information about the petitioner may testify at the hearing.

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

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

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

376 (a) the petition and, except as provided under Subsection 77-40-103(5), certificate of  
377 eligibility are sufficient;

378 (b) the statutory requirements have been met;

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

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

385 (e) if the petitioner seeks expungement without a certificate of eligibility for  
386 expungement under Subsection 77-40-103(5) for a record of conviction related to cannabis  
387 possession:

388 (i) the petitioner had, at the time of the relevant arrest or citation leading to the  
389 conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and

390 (ii) the possession of cannabis in question was in a form and an amount to medicinally  
391 treat the condition described in Subsection (8)(e)(i);

392 (f) if an objection is received, the petition for expungement is for a charge dismissed in  
393 accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used  
394 for enhancement, there is good cause for the court to grant the expungement; and

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

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

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

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

405 (10) If the court grants a petition described in Subsection (8)(e), the court shall make  
406 the court's findings in a written order.

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

409 Section 6. Section 77-40-108 is amended to read:

410 **77-40-108. Distribution of order -- Redaction -- Receipt of order -- Bureau**  
411 **requirements -- Administrative proceedings.**

412 [~~(1) (a) (i) An individual who receives an order of expungement under Section~~  
413 ~~77-40-107 or Section 77-27-5.1 shall be responsible for delivering a copy of the order of~~  
414 ~~expungement to all affected criminal justice agencies and officials including the court, arresting~~  
415 ~~agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.]~~

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

418 (1) (a) The bureau, upon receiving notice from the court, shall notify the agency  
419 identified in the case of the order of expungement.

420 (b) An individual who receives an order of expungement under Section 77-27-5.1,  
421 shall pay a processing fee to the bureau, established in accordance with the process in Section  
422 63J-1-504, before the bureau's record may be expunged.

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

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

429 (4) An agency receiving an expungement order shall expunge the individual's  
430 identifying information contained in records in the agency's possession relating to the incident

431 for which expungement is ordered.

432 (5) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2),  
433 a government agency or official may not divulge information or records that have been  
434 expunged.

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

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

440 (7) An order of expungement may not:

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

444 (b) affect the enforcement of any order or findings issued by an administrative body  
445 pursuant to the administrative body's lawful authority prior to issuance of the expungement  
446 order;

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

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

451 Section 7. Section 78B-7-120 is enacted to read:

452 **78B-7-120. Expungement of ex parte civil protective order or ex parte civil**  
453 **stalking injunction.**

454 (1) As used in this section:

455 (a) "Agency" means a state, county, or local government entity that generates or  
456 maintains records relating to an ex parte civil protective order or an ex parte civil stalking  
457 injunction.

458 (b) "Expunge" means to seal or otherwise restrict access to the respondent's record that  
459 is held by a court or an agency when the record relates to an ex parte civil protective order or an  
460 ex parte civil stalking injunction.

461 (c) "Petitioner" means the individual who filed the ex parte civil protective order or the

462 ex parte civil stalking injunction.

463 (2) A respondent seeking to expunge an ex parte civil protective order or an ex parte  
464 civil stalking injunction may petition the district court for an order to expunge the ex parte civil  
465 protective order or the ex parte civil stalking injunction if:

466 (a) at least 90 days have passed since the ex parte civil protective order or the ex parte  
467 civil stalking injunction was issued;

468 (b) there are no criminal proceedings pending against the respondent; and

469 (c) (i) the ex parte civil protective order or the ex parte civil stalking injunction was  
470 dismissed before a hearing on the issue;

471 (ii) the petitioner failed to appear at the hearing and the court dismissed the ex parte  
472 civil protective order or the ex parte civil stalking injunction; or

473 (iii) after a hearing on the ex parte civil protective order or the ex parte civil stalking  
474 injunction, the court dismissed the ex parte civil protective order or the ex parte civil stalking  
475 injunction and did not enter a civil protective order or a civil stalking injunction.

476 (3) The respondent shall include in the petition described in Subsection (2):

477 (a) any agency known or alleged to have any records related to the ex parte civil  
478 protective order or the ex parte civil stalking injunction for which expungement is being  
479 sought; and

480 (b) the original criminal history report obtained from the Bureau of Criminal  
481 Identification in accordance with Section [53-10-108](#).

482 (4) The petitioner shall send a copy of the petition described in Subsections (2) and (3)  
483 to:

484 (a) the petitioner; and

485 (b) the county attorney or, if within a prosecution district, the district attorney.

486 (5) (a) If the petitioner or the county or district attorney objects to the petition for  
487 expungement described in Subsections (2) and (3), the district court shall:

488 (i) set a date for a hearing; and

489 (ii) notify the county or district attorney, the petitioner, and the agency with custody of  
490 the records at least 30 days before the day on which the hearing on the petition is scheduled.

491 (b) At the hearing described in Subsection (5)(a), the county or district attorney, the  
492 petitioner, and any other individual who may have relevant information about the respondent



493 may testify.

494 (6) If there is no objection received within 60 days after the day on which the petition  
495 for expungement was filed with the district court, the expungement may be granted without a  
496 hearing.

497 (7) (a) The district court shall issue an order of expungement if the court finds by clear  
498 and convincing evidence that the requirements for expungement in Subsection (1) have been  
499 met.

500 (b) If the district court grants expungement under Subsection (7)(a), the court shall  
501 order expunged all of the records for the ex parte civil protective order or the ex parte civil  
502 stalking injunction under the control of the court and an agency.

503 (c) The respondent is responsible for service of the expungement order issued under  
504 this Subsection (7) to any affected agency.

505 (8) (a) Upon receipt of an expungement order under this part, an agency shall expunge  
506 the individual's identifying information contained in records described in the expungement  
507 order that are in the agency's possession.

508 (b) An agency may not divulge information or records that have been expunged, unless  
509 a court orders the agency to divulge the information or records.

510 (c) An expungement may not restrict an agency's use or dissemination of records in the  
511 agency's ordinary course of business until the agency has received a copy of the expungement  
512 order.

513 (9) A district court may not expunge any record under this section that is related to:

514 (a) an ex parte civil protective order that results in a hearing where the district court  
515 entered a civil protective order;

516 (b) an ex parte civil stalking injunction that results in hearing where the district court  
517 entered a civil stalking injunction;

518 (c) a civil protective order;

519 (d) a civil stalking injunction;

520 (e) a criminal protective order; or

521 (f) a criminal stalking injunction.