

Senator Todd D. Weiler proposes the following substitute bill:

EXPUNGEMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Craig Hall

LONG TITLE

General Description:

This bill amends provisions related to expungement.

Highlighted Provisions:

This bill:

- ▶ defines and amends terms;
- ▶ 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 law enforcement agency case number is associated with a law enforcement agency case number for an arrest, investigation, and detention, or a conviction, that is not eligible for expungement;
- ▶ allows an individual to move the court to delink the individual's personal identifying information from a court case under Title 78B, Chapter 7, Protective Orders and Stalking Injunctions, that has been denied;
- ▶ amends the requirements for expunging records of a conviction;
- ▶ prohibits the Bureau of Criminal Identification from issuing a certificate of



26 eligibility for a conviction if the law enforcement agency case number is associated with a law
27 enforcement agency case number for an arrest, investigation, and detention, or a conviction,
28 that is not eligible for expungement;

29 ▶ requires a copy of a petition to be served to the prosecutor in accordance with the
30 Utah Rules of Civil Procedure;

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

34 ▶ requires the Bureau of Criminal Identification to notify an agency of an order of
35 expungement;

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

38 ▶ makes technical and conforming changes.

39 **Money Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 AMENDS:

45 77-40-102, as last amended by Laws of Utah 2020, Chapter 354

46 77-40-103, as last amended by Laws of Utah 2020, Chapters 12, 12, and 218

47 77-40-104, as last amended by Laws of Utah 2019, Chapter 448

48 77-40-104.1, as last amended by Laws of Utah 2019, Chapter 448

49 77-40-105, as last amended by Laws of Utah 2020, Chapters 177 and 218

50 77-40-107, as last amended by Laws of Utah 2020, Chapters 12, 12, and 54

51 77-40-108, as last amended by Laws of Utah 2019, Chapter 448



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 [~~(1)~~] (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 law
237 enforcement agency case number associated with the record of arrest, investigation, and
238 detention is associated with another law enforcement agency case number for an arrest,
239 investigation, and detention, or a conviction, that is not eligible for expungement under this
240 chapter.

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

242 **77-40-104.1. Eligibility for removing the link between personal identifying**

243 **information and court case dismissed.**

244 (1) As used in this section:

245 (a) "Domestic violence offense" means the same as that term is defined in Section
246 77-36-1.

247 (b) "Personal identifying information" means:

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

249 (ii) date of birth.

250 (2) An individual whose criminal case is dismissed, or whose civil case filed in
251 accordance with Title 78B, Chapter 7, Protective Orders and Stalking Injunctions, is denied,
252 may move the court for an order to remove the link between the individual's personal
253 identifying information from the dismissed case in any publicly searchable database of the Utah
254 state courts and the court shall grant that relief if:

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

256 (b) no appeal is filed for the dismissed or denied case within the 30-day period
257 described in Subsection (2)(a); and

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

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

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

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

264 **77-40-105. Requirements to apply for a certificate of eligibility to expunge**
265 **conviction.**

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

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

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

270 (i) a capital felony;

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

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

273 (iv) felony automobile homicide;

274 (v) a felony conviction described in Subsection 41-6a-501(2);
275 [~~(vi) a registerable sex offense as defined in Subsection 77-41-102(17); or~~]
276 (vi) an offense, or a combination of offenses, that would require the individual to
277 register as a sex offender, as defined in Section 77-41-102; or
278 (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);
279 (b) a criminal proceeding is pending against the petitioner; [~~or~~]
280 (c) the petitioner intentionally or knowingly provides false or misleading information
281 on the application for a certificate of eligibility[~~;~~]; or
282 (d) a civil protective order, a criminal protective order, or a criminal stalking injunction
283 is in effect for the case.

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

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

289 (b) the petitioner has paid in full all restitution ordered by the court pursuant to Section
290 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6; and

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

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

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

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

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

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

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

303 (a) a petitioner's pending or previous:

304 (i) infraction;

- 305 (ii) traffic offense;
- 306 (iii) minor regulatory offense; or
- 307 (iv) clean slate eligible case that was automatically expunged in accordance with
- 308 Section 77-40-114; or
- 309 (b) a fine or fee related to an offense described in Subsection (4)(a).
- 310 (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner
- 311 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
- 312 including previously expunged convictions, contains any of the following, except as provided
- 313 in Subsection (8):
- 314 (a) two or more felony convictions other than for drug possession offenses, each of
- 315 which is contained in a separate criminal episode;
- 316 (b) any combination of three or more convictions other than for drug possession
- 317 offenses that include two class A misdemeanor convictions, each of which is contained in a
- 318 separate criminal episode;
- 319 (c) any combination of four or more convictions other than for drug possession
- 320 offenses that include three class B misdemeanor convictions, each of which is contained in a
- 321 separate criminal episode; or
- 322 (d) five or more convictions other than for drug possession offenses of any degree
- 323 whether misdemeanor or felony, each of which is contained in a separate criminal episode.
- 324 (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner
- 325 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
- 326 including previously expunged convictions, contains any of the following:
- 327 (a) three or more felony convictions for drug possession offenses, each of which is
- 328 contained in a separate criminal episode; or
- 329 (b) any combination of five or more convictions for drug possession offenses, each of
- 330 which is contained in a separate criminal episode.
- 331 (7) If the petitioner's criminal history contains convictions for both a drug possession
- 332 offense and a non drug possession offense arising from the same criminal episode, that criminal
- 333 episode shall be counted as provided in Subsection (5) if any non drug possession offense in
- 334 that episode:
- 335 (a) is a felony or class A misdemeanor; or

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

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

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

344 (10) The bureau may not issue a certificate of eligibility under this section if the law
345 enforcement agency case number associated with the record of conviction is associated with
346 another law enforcement agency case number for an arrest, investigation, and detention, or a
347 conviction, that is not eligible for expungement under this chapter.

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

349 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
350 **Standard of proof -- Exception.**

351 (1) (a) The petitioner shall:

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

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

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

358 (c) If the original certificate is filed with the petition, the clerk of the court shall scan
359 ~~[it]~~ the original certificate and return ~~[it]~~ the original certificate to the petitioner or the
360 petitioner's attorney, who shall keep ~~[it]~~ the original certificate until the proceedings are
361 concluded.

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

- 367 (b) The notice shall:
- 368 (i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable
369 to the petition;
- 370 (ii) state that the victim has a right to object to the expungement; and
- 371 (iii) provide instructions for registering an objection with the court.
- 372 (3) The prosecuting attorney and the victim, if applicable, may respond to the petition
373 by filing a recommendation or objection with the court within 35 days after receipt of the
374 petition.
- 375 (4) (a) The court may request a written response to the petition from the Division of
376 Adult Probation and Parole within the Department of Corrections.
- 377 (b) If requested, the response prepared by the Division of Adult Probation and Parole
378 shall include:
- 379 (i) the reasons probation was terminated; and
- 380 (ii) certification that the petitioner has completed all requirements of sentencing and
381 probation or parole.
- 382 (c) The Division of Adult Probation and Parole shall provide a copy of the response to
383 the petitioner and the prosecuting attorney.
- 384 (5) The petitioner may respond in writing to any objections filed by the prosecutor or
385 the victim and the response prepared by the Division of Adult Probation and Parole within 14
386 days after receipt.
- 387 (6) (a) If the court receives an objection concerning the petition from any party, the
388 court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the
389 date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the
390 hearing.
- 391 (b) The petitioner, the prosecuting attorney, the victim, and any other person who has
392 relevant information about the petitioner may testify at the hearing.
- 393 (c) The court shall review the petition, the certificate of eligibility, and any written
394 responses submitted regarding the petition.
- 395 (7) If no objection is received within 60 days from the date the petition for
396 expungement is filed with the court, the expungement may be granted without a hearing.
- 397 (8) The court shall issue an order of expungement if the court finds by clear and

398 convincing evidence that:

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

401 (b) the statutory requirements have been met;

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

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

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

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

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

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

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

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

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

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

428 (10) If the court grants a petition described in Subsection (8)(e), the court shall make

429 the court's findings in a written order.

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

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

433 **77-40-108. Distribution of order -- Redaction -- Receipt of order -- Bureau**
434 **requirements -- Administrative proceedings.**

435 ~~[(1) (a) (i) An individual who receives an order of expungement under Section~~
436 ~~77-40-107 or Section 77-27-5.1 shall be responsible for delivering a copy of the order of~~
437 ~~expungement to all affected criminal justice agencies and officials including the court, arresting~~
438 ~~agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.]~~

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

441 (1) (a) The bureau, upon receiving notice from the court, shall notify all criminal
442 justice agencies affected by the order of expungement.

443 (b) An individual who receives an order of expungement under Section 77-27-5.1,
444 shall pay a processing fee to the bureau, established in accordance with the process in Section
445 63J-1-504, before the bureau's record may be expunged.

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

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

452 (4) An agency receiving an expungement order shall expunge the individual's
453 identifying information contained in records in the agency's possession relating to the incident
454 for which expungement is ordered.

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

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

460 order.

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

463 (7) An order of expungement may not:

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

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

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

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