

SB0231S01 compared with SB0231

~~text~~ shows text that was in SB0231 but was deleted in SB0231S01.

text shows text that was not in SB0231 but was inserted into SB0231S01.

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Senator Todd D. Weiler proposes the following substitute bill:

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 law enforcement agency case number is associated with a law enforcement agency case number for an arrest,

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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 eligibility for a conviction 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;
- ▶ requires a copy of a petition to be served to the prosecutor in accordance with the Utah Rules of Civil Procedure;
- ▶ requires the prosecutor to make a reasonable effort to provide notice to a victim if a prosecuting attorney receives a petition for expungement of a conviction or a charge dismissed by a plea in abeyance;
- ▶ requires the Bureau of Criminal Identification to notify an agency of an order of expungement;
- ▶ allows an agency to respond to a request about an arrest or conviction that is expunged as if the arrest or conviction did not happen;†
- ~~allows an ex parte civil protective order or an ex parte civil stalking injunction to be expunged in certain circumstances;‡~~ and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

~~{ENACTS:~~

~~———— 78B-7-120, Utah Code Annotated 1953~~

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

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

77-40-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

(C) an infraction conviction;

(ii) that involves an individual:

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

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77-40-105(8); and

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

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

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

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

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

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

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

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

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

(C) an infraction;

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

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

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

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

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

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

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

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

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

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

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(C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
(D) sexual battery in violation of Section 76-9-702.1;
(E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
(F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

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

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

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

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

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

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

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

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

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

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

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

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

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

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in this Subsection [~~(8)~~] (9).

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

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

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

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

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

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

~~[(12)]~~ (13) "Petitioner" means an individual applying for expungement under this chapter.

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

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

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

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

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

(b) "Traffic offense" does not mean:

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

(ii) Sections 73-18-13 through 73-18-13.6; or

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

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

(15) "Victim" means the same as the term "victim of a crime" is defined in Section 77-38-2.

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

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

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

- (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) Notwithstanding Subsections (3) and (4), if the petitioner is not qualified to receive a certificate of eligibility for expungement, the petitioner may file a petition without a certificate to obtain expungement for a record of conviction related to cannabis possession if the petition demonstrates that:
 - (a) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and
 - (b) the possession of cannabis in question was in a form and an amount to medicinally treat the condition described in Subsection (5)(a).
- (6) (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.

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

(7) 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.

(8) 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 in accordance with Section 77-40-107.

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

(10) 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 3. Section **77-40-104** is amended to read:

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

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

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

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

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

~~(3)~~ (d) one of the following occurs:

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

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

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

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

or

~~(2)~~ (B) at least 180 days have passed since the day on which the case is dismissed;

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

or

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

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

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

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

(1) As used in this section:

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

(b) "Personal identifying information" means:

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

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

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

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

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

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

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

Section ~~4~~ 5. Section 77-40-105 is amended to read:

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

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

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

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

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

(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

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

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

offense;

- (iv) four years in the case of a class B misdemeanor; or
- (v) three years in the case of any other misdemeanor or infraction.

(4) 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,

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including previously expunged convictions, contains any of the following:

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

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

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

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

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

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

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

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

Section ~~5~~6. Section 77-40-107 is amended to read:

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

(1) (a) The petitioner shall:

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

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

(b) If the certificate is filed electronically, the petitioner or the petitioner's attorney

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shall keep the original certificate until the proceedings are concluded.

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

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

(b) The notice shall:

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

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

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

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

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

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

(i) the reasons probation was terminated; and

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

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

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

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

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

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

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

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

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

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

(b) the statutory requirements have been met;

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~6~~7. Section 77-40-108 is amended to read:

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

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

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

(1) (a) The bureau, upon receiving notice from the court, shall notify ~~the agency identified in the case of;~~ **all criminal justice agencies affected by** the order of expungement.

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

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

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

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

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

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

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

(7) An order of expungement may not:

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

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

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

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

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

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

~~(1) As used in this section:~~

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

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

~~—— (c) "Petitioner" means the individual who filed the ex parte civil protective order or the ex parte civil stalking injunction.~~

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

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

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

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

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

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

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

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

~~—— (b) the original criminal history report obtained from the Bureau of Criminal Identification in accordance with Section 53-10-108.~~

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

~~—— (a) the petitioner; and~~

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

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

~~—— (i) set a date for a hearing; and~~

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

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

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

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

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

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

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

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

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

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

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

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

~~—— (c) a civil protective order;~~

~~—— (d) a civil stalking injunction;~~

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~~(e) a criminal protective order; or~~

~~(f) a criminal stalking injunction.~~

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