

SB0058S01 compared with SB0058

~~{deleted text}~~ shows text that was in SB0058 but was deleted in SB0058S01.

inserted text shows text that was not in SB0058 but was inserted into SB0058S01.

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Senator Lincoln Fillmore proposes the following substitute bill:

BACKGROUND CHECK AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: ~~{_____}~~ Andrew Stoddard

LONG TITLE

General Description:

This bill addresses ~~{the}~~ time ~~{period within which a law enforcement agency must expunge}~~ frames applicable to the expungement of criminal records.

Highlighted Provisions:

This bill:

- ▶ ~~{reduces the time period}~~ creates a graduated series of deadlines within which a law enforcement agency must expunge criminal records if the records qualify for automatic expungement;
- ▶ establishes a ~~{deadline for}~~ graduated series of deadlines within which a ~~{law enforcement}~~ criminal justice agency ~~{to}~~ must expunge criminal records if the records ~~{are to be expunged pursuant to a petition for}~~ qualify for petition-based expungement ~~{granted by a court}~~;

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- ▶ clarifies that certain expungement deadlines apply to a court's issuance of an order ~~{of}~~ directing the expungement of criminal records; and
- ▶ makes technical and conforming changes. ~~{}~~

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-40a-201, as renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-203, as renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-401, as renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-402, as renumbered and amended by Laws of Utah 2022, Chapter 250

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

Section 1. Section **77-40a-201** is amended to read:

77-40a-201. Automatic expungement procedure.

(1) (a) Except as provided in Subsection (1)(b) and subject to Section 77-40a-203, this section governs the process for the automatic expungement of all records in:

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

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

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

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

(2) (a) Except as provided in Subsection (2)(e), the process for automatic expungement of records for a case that resulted in an acquittal on all charges is as described in Subsections (2)(b) through (d).

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

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

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

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identified in the case of the order of expungement.

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

(d) For a case resulting in an acquittal on all charges on or before May 1, 2020, that is automatically expunged under this Subsection (2), a law enforcement agency shall expunge records for the case ~~{ within [one year] 90 days };~~

(i) beginning on May 3, 2023, and ending on December 31, 2023, within one year after the day on which the law enforcement agency receives notice from the bureau[-];

(ii) beginning on January 1, 2024, and ending on December 31, 2024, within 180 days after the day on which the law enforcement agency receives notice from the bureau; and

(iii) beginning on January 1, 2025, within 90 days after the day on which the law enforcement agency receives notice from the bureau.

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

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

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

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

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

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

(d) For a case dismissed on or before May 1, 2020, that is automatically expunged under this Subsection (3), a law enforcement agency shall expunge records for the case ~~{ within [one year] 90 days };~~

(i) beginning on May 3, 2023, and ending on December 31, 2023, within one year after the day on which the law enforcement agency receives notice from the bureau[-];

(ii) beginning on January 1, 2024, and ending on December 31, 2024, within 180 days after the day on which the law enforcement agency receives notice from the bureau; and

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(iii) beginning on January 1, 2025, within 90 days after the day on which the law enforcement agency receives notice from the bureau.

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

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

(b) A prosecuting agency, that has complied with Rule 42 of the Utah Rules of Criminal Procedure, shall receive notice on a monthly basis for any case prosecuted by that agency that appears to be a clean slate eligible case.

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

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

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

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

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

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

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

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

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

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identified in the case of the order of expungement.

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

(g) For a clean slate case adjudicated or dismissed on or before May 1, 2020, that is automatically expunged under this Subsection (4), a law enforcement agency shall expunge records for the case ~~{ within [one year] 90 days}~~:

(i) beginning on May 3, 2023, and ending on December 31, 2023, within one year after the day on which the law enforcement agency receives notice from the bureau[-];

(ii) beginning on January 1, 2024, and ending on December 31, 2024, within 180 days after the day on which the law enforcement agency receives notice from the bureau; and

(iii) beginning on January 1, 2025, within 90 days after the day on which the law enforcement agency receives notice from the bureau.

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

(6) An automatic expungement performed under this section does not preclude a person from requesting access to expunged records in accordance with Section 77-40a-403 or 77-40a-404.

(7) (a) The Judicial Council and the Supreme Court shall make rules to govern the process for automatic expungement.

(b) The rules under Subsection (7)(a) may authorize:

(i) a presiding judge of a district court to issue an expungement order for any case when the requirements for automatic expungement are met; and

(ii) a presiding judge of a justice court to issue an expungement order for any justice court case within the presiding judge's judicial district when the requirements for automatic expungement are met.

Section 2. Section ~~77-40a-203~~ is amended to read:

77-40a-203. Time periods for issuance of order of expungement or deletion -- Identification and processing of clean slate eligible cases.

(1) ~~[Reasonable]~~ A court shall make reasonable efforts within available funding ~~[shall be made-{} to -{} expunge]~~ to issue an order of expungement or delete a case as quickly as is

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practicable with the goal of:

(a) for ~~[cases]~~ a case ~~{} that {} resulted~~ adjudicated on or after May 1, 2020:

(i) ~~[expunging a case {} that {} resulted]~~ that results in an acquittal on all charges, issuing an order of expungement within 60 days after the day of the acquittal;

(ii) ~~[expunging a case {} that {} resulted]~~ that results in a dismissal with prejudice, other than a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b), issuing an order of expungement within 180 days after:

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

(B) for a case in which an appeal was filed, the day on which a court issues a final unappealable order;

(iii) ~~[expunging]~~ that is a clean slate eligible case that is not a traffic offense, issuing an order of expungement within 30 days ~~[of]~~ after the day on which the court, ~~[in accordance with]~~ under Section 77-40a-201, ~~[determining]~~ determines that the requirements for expungement have been satisfied; or

(iv) deleting a traffic offense case described in Subsection 77-40a-202(1)(c) upon identification; and

(b) for ~~[cases]~~ a case adjudicated before May 1, 2020, ~~[expunging]~~ issuing an order of expungement or deleting ~~[a]~~ the case within one year ~~[of]~~ after the day on which the case is identified as eligible for automatic expungement or deletion.

(2) (a) The Judicial Council or the Supreme Court shall make rules governing the identification and processing of clean slate eligible cases in accordance with Section 77-40a-201.

(b) ~~[Reasonable]~~ A court shall make reasonable efforts ~~[shall be made]~~ to identify and process all clean slate eligible cases in accordance with Section 77-40a-201.

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

Section 3. Section **77-40a-401** is amended to read:

77-40a-401. Distribution of order -- Redaction -- Receipt of order -- Bureau

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requirements -- Administrative proceedings.

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

(b) For purposes of Subsection (1)(a), the bureau may not notify the Board of Pardons and Parole of an expungement order if the individual has never been:

(i) sentenced to prison in this state; or

(ii) under the jurisdiction of the Board of Pardons and Parole.

(c) A petitioner may deliver copies of the expungement to all criminal justice agencies affected by the order of expungement.

(d) An individual, who receives an expungement order 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 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.

(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~~{ }~~[]:

(a) beginning on May 3, 2023, and ending on December 31, 2023, within one year after the day on which the agency receives the order;

(b) beginning on January 1, 2024, and ending on December 31, 2024, within 180 days after the day on which the agency receives the order; and

(c) beginning on January 1, 2025, within 90 days after the day on which the agency receives the order.~~{ }~~

(5) Unless ordered by a court to do so, or in accordance with Subsection 77-40a-403(2), a government agency or official may not divulge information or records that have been expunged.

(6) (a) An expungement order may not restrict an agency's use or dissemination of

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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 expungement order 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 4. Section **77-40a-402** is amended to read:

77-40a-402. Distribution for order for vacatur.

(1) An individual who receives an order for vacatur under Subsection 78B-9-108(2) shall be responsible for delivering a copy of the order for vacatur to all affected criminal justice agencies and officials.

(2) To complete delivery of the order for vacatur to the bureau, the individual shall complete and attach to the order for vacatur an application for a certificate of eligibility for expungement, including identifying information and fingerprints, in accordance with Section 77-40a-301.

(3) Except as otherwise provided in this section, the bureau shall treat the order for vacatur and attached certificate of eligibility for expungement the same as a valid order for expungement under Section 77-40a-401.

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

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

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Investigation.

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

(a) beginning on May 3, 2023, and ending on December 31, 2023, within one year after the day on which the agency receives the order;

(b) beginning on January 1, 2024, and ending on December 31, 2024, within 180 days after the day on which the agency receives the order; and

(c) beginning January 1, 2025, within 90 days after the day on which the agency receives the order.

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

(a) the individual for whom vacatur was ordered; or

(b) Peace Officer Standards and Training, in accordance with Section 53-6-203 and Subsection 77-40a-403(2)(b)(ii).

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