

BACKGROUND CHECK AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses the time period within which a law enforcement agency must expunge criminal records.

Highlighted Provisions:

This bill:

- ▶ reduces the time period within which a law enforcement agency must expunge criminal records if the records qualify for automatic expungement;
- ▶ establishes a deadline for a law enforcement agency to expunge criminal records if the records are to be expunged pursuant to a petition for expungement granted by a court;
- ▶ clarifies that certain expungement deadlines apply to a court's issuance of an order of expungement; and
- ▶ makes 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



28 [77-40a-203](#), as renumbered and amended by Laws of Utah 2022, Chapter 250
29 [77-40a-401](#), as renumbered and amended by Laws of Utah 2022, Chapter 250
30 [77-40a-402](#), as renumbered and amended by Laws of Utah 2022, Chapter 250

31
32 *Be it enacted by the Legislature of the state of Utah:*

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

34 **77-40a-201. Automatic expungement procedure.**

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

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

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

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

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

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

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

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

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

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

52 (d) For a case resulting in an acquittal on all charges on or before May 1, 2020, that is
53 automatically expunged under this Subsection (2), a law enforcement agency shall expunge
54 records for the case within [~~one year~~] 90 days after the day on which the law enforcement
55 agency receives notice from the bureau.

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

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

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

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

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

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

68 (d) For a case dismissed on or before May 1, 2020, that is automatically expunged
69 under this Subsection (3), a law enforcement agency shall expunge records for the case within
70 [~~one year~~] 90 days after the day on which the law enforcement agency receives notice from the
71 bureau.

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

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

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

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

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

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

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

90 or outside of the state.

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

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

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

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

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

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

104 (g) For a clean slate case adjudicated or dismissed on or before May 1, 2020, that is
105 automatically expunged under this Subsection (4), a law enforcement agency shall expunge
106 records for the case within [~~one year~~] 90 days after the day on which the law enforcement
107 agency receives notice from the bureau.

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

111 (6) An automatic expungement performed under this section does not preclude a
112 person from requesting access to expunged records in accordance with Section [77-40a-403](#) or
113 [77-40a-404](#).

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

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

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

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

121 expungement are met.

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

123 **77-40a-203. Time periods for issuance of order of expungement or deletion --**

124 **Identification and processing of clean slate eligible cases.**

125 (1) [~~Reasonable~~] A court shall make reasonable efforts within available funding [~~shall~~
126 ~~be made~~] to [expunge] issue an order of expungement or delete a case as quickly as is
127 practicable with the goal of:

128 (a) for [~~cases~~] a case adjudicated on or after May 1, 2020:

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

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

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

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

139 (iii) [~~expunging~~] that is a clean slate eligible case that is not a traffic offense, issuing an
140 order of expungement within 30 days [~~of~~] after the court, in accordance with Section
141 77-40a-201, [~~determining~~] determines that the requirements for expungement have been
142 satisfied; or

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

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

148 (2) (a) The Judicial Council or the Supreme Court shall make rules governing the
149 identification and processing of clean slate eligible cases in accordance with Section
150 77-40a-201.

151 (b) [~~Reasonable~~] A court shall make reasonable efforts [~~shall be made~~] to identify and

152 process all clean slate eligible cases in accordance with Section 77-40a-201.

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

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

157 **77-40a-401. Distribution of order -- Redaction -- Receipt of order -- Bureau**
158 **requirements -- Administrative proceedings.**

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

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

163 (i) sentenced to prison in this state; or

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

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

167 (d) An individual, who receives an expungement order under Section 77-27-5.1, shall
168 pay a processing fee to the bureau, established in accordance with the process in Section
169 63J-1-504, before the bureau's record may be expunged.

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

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

176 (4) An agency receiving an expungement order shall expunge the individual's
177 identifying information contained in records in the agency's possession relating to the incident
178 for which expungement is ordered within 90 days after the day on which the agency receives
179 the order.

180 (5) Unless ordered by a court to do so, or in accordance with Subsection
181 77-40a-403(2), a government agency or official may not divulge information or records that
182 have been expunged.

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

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

188 (7) An expungement order may not:

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

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

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

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

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

200 **77-40a-402. Distribution for order for vacatur.**

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

204 (2) To complete delivery of the order for vacatur to the bureau, the individual shall
205 complete and attach to the order for vacatur an application for a certificate of eligibility for
206 expungement, including identifying information and fingerprints, in accordance with Section
207 [77-40a-301](#).

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

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

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

216 (6) An agency receiving an order for vacatur shall expunge the individual's identifying
217 information contained in records in the agency's possession relating to the incident for which
218 vacatur is ordered within 90 days after the day on which the agency receives the order.

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

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

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

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