

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 time frames applicable to the expungement of criminal records.

Highlighted Provisions:

This bill:

- ▶ 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 graduated series of deadlines within which a criminal justice agency must expunge criminal records if the records qualify for petition-based expungement;

- ▶ clarifies that certain expungement deadlines apply to a court's issuance of an order 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:



- 26 [77-40a-201](#), as renumbered and amended by Laws of Utah 2022, Chapter 250
 - 27 [77-40a-203](#), as renumbered and amended by Laws of Utah 2022, Chapter 250
 - 28 [77-40a-401](#), as renumbered and amended by Laws of Utah 2022, Chapter 250
 - 29 [77-40a-402](#), as renumbered and amended by Laws of Utah 2022, Chapter 250
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31 *Be it enacted by the Legislature of the state of Utah:*

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

33 **77-40a-201. Automatic expungement procedure.**

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

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

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

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

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

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

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

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

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

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

51 (d) For a case resulting in an acquittal on all charges on or before May 1, 2020, that is
52 automatically expunged under this Subsection (2), a law enforcement agency shall expunge
53 records for the case;

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

56 (ii) beginning on January 1, 2024, and ending on December 31, 2024, within 180 days

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

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

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

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

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

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

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

72 (d) For a case dismissed on or before May 1, 2020, that is automatically expunged
73 under this Subsection (3), a law enforcement agency shall expunge records for the case:

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

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

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

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

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

86 (b) A prosecuting agency, that has complied with Rule 42 of the Utah Rules of
87 Criminal Procedure, shall receive notice on a monthly basis for any case prosecuted by that

88 agency that appears to be a clean slate eligible case.

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

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

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

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

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

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

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

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

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

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

112 (g) For a clean slate case adjudicated or dismissed on or before May 1, 2020, that is
113 automatically expunged under this Subsection (4), a law enforcement agency shall expunge
114 records for the case:

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

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

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

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

124 (6) An automatic expungement performed under this section does not preclude a
125 person from requesting access to expunged records in accordance with Section 77-40a-403 or
126 77-40a-404.

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

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

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

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

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

136 **77-40a-203. Time periods for issuance of order of expungement or deletion --**
137 **Identification and processing of clean slate eligible cases.**

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

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

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

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

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

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

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

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

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

161 (2) (a) The Judicial Council or the Supreme Court shall make rules governing the
162 identification and processing of clean slate eligible cases in accordance with Section
163 77-40a-201.

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

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

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

170 **77-40a-401. Distribution of order -- Redaction -- Receipt of order -- Bureau**
171 **requirements -- Administrative proceedings.**

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

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

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

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

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

180 (d) An individual, who receives an expungement order under Section 77-27-5.1, shall

181 pay a processing fee to the bureau, established in accordance with the process in Section
182 63J-1-504, before the bureau's record may be expunged.

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

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

189 (4) An agency receiving an expungement order shall expunge the individual's
190 identifying information contained in records in the agency's possession relating to the incident
191 for which expungement is ordered[-]:

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

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

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

198 (5) Unless ordered by a court to do so, or in accordance with Subsection
199 77-40a-403(2), a government agency or official may not divulge information or records that
200 have been expunged.

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

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

206 (7) An expungement order may not:

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

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

212 order;

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

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

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

218 **77-40a-402. Distribution for order for vacatur.**

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

222 (2) To complete delivery of the order for vacatur to the bureau, the individual shall
223 complete and attach to the order for vacatur an application for a certificate of eligibility for
224 expungement, including identifying information and fingerprints, in accordance with Section
225 [77-40a-301](#).

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

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

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

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

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

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

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

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

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

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

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