

EXPUNGEMENT CHANGES

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill amends provisions related to expungement.

Highlighted Provisions:

This bill:

- ▶ prohibits the Bureau of Criminal Identification from considering a petitioner's clean slate eligible case that has been automatically expunged when determining whether to issue a certificate of eligibility for expungement;
- ▶ provides that an acquittal due to a defendant being found not guilty by reason of insanity does not qualify for automatic expungement;
- ▶ makes consistent the number of days that a petitioner has to respond to a response from the Division of Adult Probation and Parole;
- ▶ defines terms;
- ▶ creates the Juvenile Expungement Act;
- ▶ modifies the circumstances under which an adjudication or a nonjudicial adjustment in the juvenile court may be expunged;
- ▶ requires a state agency to send an affidavit to a petitioner indicating compliance with a juvenile expungement order;
- ▶ prohibits a court and a state agency from charging a fee for expunging a juvenile record with an exception for a court filing fee; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **53-3-414**, as last amended by Laws of Utah 2013, Chapter 411

35 **77-38-14**, as last amended by Laws of Utah 2010, Chapter 283

36 **77-40-103 (Effective 05/01/20)**, as last amended by Laws of Utah 2019, Chapter 448

37 **77-40-105 (Effective 05/01/20)**, as last amended by Laws of Utah 2019, Chapter 448

38 **77-40-114 (Effective 05/01/20)**as enacted by Laws of Utah 2019, Chapter 448

39 **78A-6-116**, as last amended by Laws of Utah 2010, Chapter 38

40 ENACTS:

41 **77-40-101.5**, Utah Code Annotated 1953

42 **78A-6-1501**, Utah Code Annotated 1953

43 **78A-6-1502**, Utah Code Annotated 1953

44 **78A-6-1504**, Utah Code Annotated 1953

45 **78A-6-1505**, Utah Code Annotated 1953

46 **78A-6-1506**, Utah Code Annotated 1953

47 RENUMBERS AND AMENDS:

48 **78A-6-1503**, (Renumbered from 78A-6-1105, as last amended by Laws of Utah 2015,
49 Chapter 389)



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

52 Section 1. Section **53-3-414** is amended to read:

53 **53-3-414. CDL disqualification or suspension -- Grounds and duration --**

54 **Procedure.**

55 (1) (a) [~~A person~~] An individual who holds or is required to hold a CDL is disqualified
56 from driving a commercial motor vehicle for a period of not less than one year effective seven
57 days from the date of notice to the driver if convicted of a first offense of:

- 58 (i) driving a motor vehicle while under the influence of alcohol, drugs, a controlled
59 substance, or more than one of these;
- 60 (ii) driving a commercial motor vehicle while the concentration of alcohol in the
61 person's blood, breath, or urine is .04 grams or more;
- 62 (iii) leaving the scene of an accident involving a motor vehicle the person was driving;
- 63 (iv) failing to provide reasonable assistance or identification when involved in an
64 accident resulting in:
- 65 (A) death in accordance with Section 41-6a-401.5; or
66 (B) personal injury in accordance with Section 41-6a-401.3;
- 67 (v) using a motor vehicle in the commission of a felony;
- 68 (vi) refusal to submit to a test to determine the concentration of alcohol in the person's
69 blood, breath, or urine;
- 70 (vii) driving a commercial motor vehicle while the person's commercial driver license
71 is disqualified in accordance with the provisions of this section for violating an offense
72 described in this section; or
- 73 (viii) operating a commercial motor vehicle in a negligent manner causing the death of
74 another including the offenses of automobile homicide under Section 76-5-207, manslaughter
75 under Section 76-5-205, or negligent homicide under Section 76-5-206.
- 76 (b) The division shall subtract from any disqualification period under Subsection
77 (1)(a)(i) the number of days for which a license was previously disqualified under Subsection
78 (1)(a)(ii) or (14) if the previous disqualification was based on the same occurrence upon which
79 the record of conviction is based.
- 80 (2) If any of the violations under Subsection (1) occur while the driver is transporting a
81 hazardous material required to be placarded, the driver is disqualified for not less than three
82 years.
- 83 (3) (a) Except as provided under Subsection (4), a driver of a motor vehicle who holds
84 or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if
85 convicted of or administrative action is taken for two or more of any of the offenses under

86 Subsection (1), (5), or (14) arising from two or more separate incidents.

87 (b) Subsection (3)(a) applies only to those offenses committed after July 1, 1989.

88 (4) (a) Any driver disqualified for life from driving a commercial motor vehicle under
89 this section may apply to the division for reinstatement of the driver's CDL if the driver:

90 (i) has both voluntarily enrolled in and successfully completed an appropriate
91 rehabilitation program that:

92 (A) meets the standards of the division; and

93 (B) complies with 49 C.F.R. Sec. 383.51;

94 (ii) has served a minimum disqualification period of 10 years; and

95 (iii) has fully met the standards for reinstatement of commercial motor vehicle driving
96 privileges established by rule of the division.

97 (b) If a reinstated driver is subsequently convicted of another disqualifying offense
98 under this section, the driver is permanently disqualified for life and is ineligible to again apply
99 for a reduction of the lifetime disqualification.

100 (5) A driver of a motor vehicle who holds or is required to hold a CDL is disqualified
101 for life from driving a commercial motor vehicle if the driver uses a motor vehicle in the
102 commission of any felony involving the manufacturing, distributing, or dispensing of a
103 controlled substance, or possession with intent to manufacture, distribute, or dispense a
104 controlled substance and is ineligible to apply for a reduction of the lifetime disqualification
105 under Subsection (4).

106 (6) (a) Subject to Subsection (6)(b), a driver of a commercial motor vehicle who holds
107 or is required to hold a CDL is disqualified for not less than:

108 (i) 60 days from driving a commercial motor vehicle if the driver is convicted of two
109 serious traffic violations; and

110 (ii) 120 days if the driver is convicted of three or more serious traffic violations.

111 (b) The disqualifications under Subsection (6)(a) are effective only if the serious traffic
112 violations:

113 (i) occur within three years of each other;

114 (ii) arise from separate incidents; and

115 (iii) involve the use or operation of a commercial motor vehicle.

116 (c) If a driver of a commercial motor vehicle who holds or is required to hold a CDL is
117 disqualified from driving a commercial motor vehicle and the division receives notice of a
118 subsequent conviction for a serious traffic violation that results in an additional disqualification
119 period under this Subsection (6), the subsequent disqualification period is effective beginning
120 on the ending date of the current serious traffic violation disqualification period.

121 (7) (a) A driver of a commercial motor vehicle who is convicted of violating an
122 out-of-service order while driving a commercial motor vehicle is disqualified from driving a
123 commercial motor vehicle for a period not less than:

124 (i) 180 days if the driver is convicted of a first violation;

125 (ii) two years if, during any 10 year period, the driver is convicted of two violations of
126 out-of-service orders in separate incidents;

127 (iii) three years but not more than five years if, during any 10 year period, the driver is
128 convicted of three or more violations of out-of-service orders in separate incidents;

129 (iv) 180 days but not more than two years if the driver is convicted of a first violation
130 of an out-of-service order while transporting hazardous materials required to be placarded or
131 while operating a motor vehicle designed to transport 16 or more passengers, including the
132 driver; or

133 (v) three years but not more than five years if, during any 10 year period, the driver is
134 convicted of two or more violations, in separate incidents, of an out-of-service order while
135 transporting hazardous materials required to be placarded or while operating a motor vehicle
136 designed to transport 16 or more passengers, including the driver.

137 (b) A driver of a commercial motor vehicle who is convicted of a first violation of an
138 out-of-service order is subject to a civil penalty of not less than \$2,500.

139 (c) A driver of a commercial motor vehicle who is convicted of a second or subsequent
140 violation of an out-of-service order is subject to a civil penalty of not less than \$5,000.

141 (8) A driver of a commercial motor vehicle who holds or is required to hold a CDL is

142 disqualified for not less than 60 days if the division determines, in its check of the driver's
143 driver license status, application, and record prior to issuing a CDL or at any time after the
144 CDL is issued, that the driver has falsified information required to apply for a CDL in this
145 state.

146 (9) A driver of a commercial motor vehicle who is convicted of violating a
147 railroad-highway grade crossing provision under Section 41-6a-1205, while driving a
148 commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period
149 not less than:

150 (a) 60 days if the driver is convicted of a first violation;

151 (b) 120 days if, during any three-year period, the driver is convicted of a second
152 violation in separate incidents; or

153 (c) one year if, during any three-year period, the driver is convicted of three or more
154 violations in separate incidents.

155 (10) (a) The division shall update its records and notify the CDLIS within 10 days of
156 suspending, revoking, disqualifying, denying, or cancelling a CDL to reflect the action taken.

157 (b) When the division suspends, revokes, cancels, or disqualifies a nonresident CDL,
158 the division shall notify the licensing authority of the issuing state or other jurisdiction and the
159 CDLIS within 10 days after the action is taken.

160 (c) When the division suspends, revokes, cancels, or disqualifies a CDL issued by this
161 state, the division shall notify the CDLIS within 10 days after the action is taken.

162 (11) (a) The division may immediately suspend or disqualify the CDL of a driver
163 without a hearing or receiving a record of the driver's conviction when the division has reason
164 to believe that the:

165 (i) CDL was issued by the division through error or fraud;

166 (ii) applicant provided incorrect or incomplete information to the division;

167 (iii) applicant cheated on any part of a CDL examination;

168 (iv) driver no longer meets the fitness standards required to obtain a CDL; or

169 (v) driver poses an imminent hazard.

170 (b) Suspension of a CDL under this Subsection (11) shall be in accordance with
171 Section 53-3-221.

172 (c) If a hearing is held under Section 53-3-221, the division shall then rescind the
173 suspension order or cancel the CDL.

174 (12) (a) Subject to Subsection (12)(b), a driver of a motor vehicle who holds or is
175 required to hold a CDL is disqualified for not less than:

176 (i) 60 days from driving a commercial motor vehicle if the driver is convicted of two
177 serious traffic violations; and

178 (ii) 120 days if the driver is convicted of three or more serious traffic violations.

179 (b) The disqualifications under Subsection (12)(a) are effective only if the serious
180 traffic violations:

181 (i) occur within three years of each other;

182 (ii) arise from separate incidents; and

183 (iii) result in a denial, suspension, cancellation, or revocation of the non-CDL driving
184 privilege from at least one of the violations.

185 (c) If a driver of a motor vehicle who holds or is required to hold a CDL is disqualified
186 from driving a commercial motor vehicle and the division receives notice of a subsequent
187 conviction for a serious traffic violation that results in an additional disqualification period
188 under this Subsection (12), the subsequent disqualification period is effective beginning on the
189 ending date of the current serious traffic violation disqualification period.

190 (13) (a) Upon receiving a notice that a person has entered into a plea of guilty or no
191 contest to a violation of a disqualifying offense described in this section which plea is held in
192 abeyance pursuant to a plea in abeyance agreement, the division shall disqualify, suspend,
193 cancel, or revoke the person's CDL for the period required under this section for a conviction of
194 that disqualifying offense, even if the charge has been subsequently reduced or dismissed in
195 accordance with the plea in abeyance agreement.

196 (b) The division shall report the plea in abeyance to the CDLIS within 10 days of
197 taking the action under Subsection (13)(a).

198 (c) A plea which is held in abeyance may not be removed from a person's driving
199 record for 10 years from the date of the plea in abeyance agreement, even if the charge is:

- 200 (i) reduced or dismissed in accordance with the plea in abeyance agreement; or
- 201 (ii) expunged under ~~[Section 77-40-105]~~ Title 77, Chapter 40, Utah Expungement Act.

202 (14) The division shall disqualify the CDL of a driver for an arrest of a violation of
203 Section ~~41-6a-502~~ when administrative action is taken against the operator's driving privilege
204 pursuant to Section ~~53-3-223~~ for a period of:

- 205 (a) one year; or
- 206 (b) three years if the violation occurred while transporting hazardous materials.

207 (15) The division may concurrently impose any disqualification periods that arise
208 under this section while a driver is disqualified by the Secretary of the United States
209 Department of Transportation under 49 C.F.R. Sec. 383.52 for posing an imminent hazard.

210 Section 2. Section ~~77-38-14~~ is amended to read:

211 **~~77-38-14. Notice of expungement petition -- Victim's right to object.~~**

212 (1) (a) The Department of Corrections or the Juvenile Probation Department shall
213 prepare a document explaining the right of a victim or a victim's representative to object to a
214 petition for expungement under Section ~~77-40-107~~ or ~~[78A-6-1105]~~ 78A-6-1503 and the
215 procedures for obtaining notice of ~~[any such]~~ the petition.

216 (b) The department or division shall ~~[also]~~ provide each trial court a copy of the
217 document ~~[which]~~ that has jurisdiction over delinquencies or criminal offenses subject to
218 expungement.

219 (2) The prosecuting attorney in any case leading to a conviction or an adjudication
220 subject to expungement shall provide a copy of the document to each person who would be
221 entitled to notice of a petition for expungement under Sections ~~77-40-107~~ and ~~[78A-6-1105]~~
222 78A-6-1503.

223 Section 3. Section ~~77-40-101.5~~ is enacted to read:

224 **~~77-40-101.5. Applicability to juvenile court records.~~**

225 This chapter does not apply to an expungement of a record for an adjudication or a

226 nonjudicial adjustment, as that term is defined in Section [78A-6-105](#), of an offense in the
227 juvenile court.

228 Section 4. Section **77-40-103 (Effective 05/01/20)** is amended to read:

229 **77-40-103 (Effective 05/01/20). Petition for expungement procedure overview.**

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

232 (1) The petitioner shall apply to the bureau for a certificate of eligibility for
233 expungement and pay the application fee established by the department.

234 (2) Once the eligibility process is complete, the bureau shall notify the petitioner.

235 (3) If the petitioner is qualified to receive a certificate of eligibility for expungement,
236 the petitioner shall pay the issuance fee established by the department.

237 (4) (a) The petitioner shall file the certificate of eligibility with a petition for
238 expungement in the court in which the proceedings occurred.

239 (b) If there were no court proceedings, or the court no longer exists, the petitioner may
240 file the petition in the district court where the arrest occurred.

241 (c) If a petitioner files a certificate of eligibility electronically, the petitioner or the
242 petitioner's attorney shall keep the original certificate until the proceedings are concluded.

243 (d) If the petitioner files the original certificate of eligibility with the petition, the clerk
244 or the court shall scan and return the original certificate to the petitioner or the petitioner's
245 attorney, who shall keep the original certificate until the proceedings are concluded.

246 (5) (a) The petitioner shall deliver a copy of the petition and certificate of eligibility to
247 the prosecutorial office that handled the court proceedings.

248 (b) If there were no court proceedings, the petitioner shall deliver the copy of the
249 petition and certificate to the county attorney's office in the jurisdiction where the arrest
250 occurred.

251 (6) If the prosecutor or the victim files an objection to the petition, the court shall set a
252 hearing and notify the prosecutor and the victim of the date set for the hearing.

253 (7) If the court requests a response from the Division of Adult Probation and Parole

254 and a response is received, the petitioner may file a written reply [~~to the response within 15~~
255 ~~days of receipt of the response~~] in accordance with Section 77-40-107.

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

257 (9) Upon receipt of an order of expungement, the petitioner shall deliver copies to all
258 government agencies in possession of records relating to the expunged matter.

259 Section 5. Section 77-40-105 (Effective 05/01/20) is amended to read:

260 **77-40-105 (Effective 05/01/20). Requirements to apply for a certificate of**
261 **eligibility to expunge conviction -- Requirements on bureau.**

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

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

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

266 (i) a capital felony;

267 (ii) a first degree felony;

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

269 (iv) felony automobile homicide;

270 (v) a felony violation of Subsection 41-6a-501(2);

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

272 (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);

273 (b) a criminal proceeding is pending against the petitioner; or

274 (c) the petitioner intentionally or knowingly provides false or misleading information
275 on the application for a certificate of eligibility.

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

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

281 (b) the petitioner has paid in full all restitution ordered by the court pursuant to Section

282 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6; and

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

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

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

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

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

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

293 ~~[(4) The bureau may not count pending or previous infractions, traffic offenses, or~~
294 ~~minor regulatory offenses, or fines or fees arising from the infractions, traffic offenses, or~~
295 ~~minor regulatory offenses, when determining expungement eligibility.]~~

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

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

299 (i) infraction;

300 (ii) traffic offense;

301 (iii) minor regulatory offense; or

302 (iv) clean slate eligible case that was automatically expunged in accordance with
303 Section 77-40-114; or

304 (b) a fine or fee related to an offense described in Subsection (4)(a).

305 (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner
306 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
307 including previously expunged convictions, contains any of the following, except as provided
308 in Subsection (8):

309 (a) two or more felony convictions other than for drug possession offenses, each of

310 which is contained in a separate criminal episode;

311 (b) any combination of three or more convictions other than for drug possession
312 offenses that include two class A misdemeanor convictions, each of which is contained in a
313 separate criminal episode;

314 (c) any combination of four or more convictions other than for drug possession
315 offenses that include three class B misdemeanor convictions, each of which is contained in a
316 separate criminal episode; or

317 (d) five or more convictions other than for drug possession offenses of any degree
318 whether misdemeanor or felony, each of which is contained in a separate criminal episode.

319 (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner
320 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
321 including previously expunged convictions, contains any of the following:

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

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

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

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

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

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

336 (9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board
337 of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned

338 crimes pursuant to Section 77-27-5.1.

339 Section 6. Section 77-40-114 (Effective 05/01/20) is amended to read:

340 77-40-114 (Effective 05/01/20). **Automatic expungement procedure.**

341 (1) (a) Except as provided in Subsection (1)(b) and subject to Section 77-40-116, this
342 section governs the process for the automatic expungement of all records in:

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

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

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

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

348 (2) (a) ~~[The]~~ Except as provided in Subsection (2)(d), the process for automatic
349 expungement of records for a case that resulted in an acquittal on all charges is as described in
350 Subsections (2)(b) through (c).

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

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

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

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

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

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

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

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

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

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

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

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

376 (b) A prosecuting agency shall receive notice on a monthly basis for any case
377 prosecuted by that agency that appears to be a clean slate eligible case.

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

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

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

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

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

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

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

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

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

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

401 (g) The Judicial Council shall make rules to govern the process for automatic
402 expungement of records for a clean slate eligible case in accordance with this Subsection (4).

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

406 (6) An automatic expungement performed under this section does not preclude a
407 person from requesting access to expunged records in accordance with Section [77-40-109](#) or
408 [77-40-110](#).

409 Section 7. Section **78A-6-116** is amended to read:

410 **78A-6-116. Minor's cases considered civil proceedings -- Adjudication of**
411 **jurisdiction by juvenile court not conviction of crime -- Exceptions -- Minor not to be**
412 **charged with crime -- Exception -- Traffic violation cases -- Abstracts to Department of**
413 **Public Safety -- Information sharing.**

414 (1) Except as provided in Sections [78A-6-701](#), [78A-6-702](#), and [78A-6-703](#),
415 proceedings in a minor's case shall be regarded as civil proceedings with the court exercising
416 equitable powers.

417 (2) An adjudication by a juvenile court that a minor is within its jurisdiction under
418 Section [78A-6-103](#) is not considered a conviction of a crime, except in cases involving traffic
419 violations. An adjudication may not operate to impose any civil disabilities upon the minor nor
420 to disqualify the minor for any civil service or military service or appointment.

421 (3) A minor may not be charged with a crime or convicted in any court except as

422 provided in Sections [78A-6-701](#), [78A-6-702](#), and [78A-6-703](#), and in cases involving traffic
423 violations. When a petition has been filed in the juvenile court, the minor may not later be
424 subjected to criminal prosecution based on the same facts except as provided in Section
425 [78A-6-702](#) or [78A-6-703](#).

426 (4) An adjudication by a juvenile court that a minor is within its jurisdiction under
427 Section [78A-6-103](#) is considered a conviction for the purposes of determining the level of
428 offense for which a minor may be charged and enhancing the level of an offense in the juvenile
429 court. A prior adjudication may be used to enhance the level or degree of an offense
430 committed by an adult only as otherwise specifically provided.

431 (5) Abstracts of court records for all adjudications of traffic violations shall be
432 submitted to the Department of Public Safety as provided in Section [53-3-218](#).

433 (6) A court or state agency with custody of an individual's record related to an offense
434 that the individual is alleged to have committed, or an offense that the individual committed,
435 before the individual was 18 years old may not disclose the record to a federal agency that is
436 responsible for criminal justice research or proceedings unless the court or state agency is
437 required to share the record under state or federal law.

438 [~~(6)~~] (7) Information necessary to collect unpaid fines, fees, assessments, bail, or
439 restitution may be forwarded to employers, financial institutions, law enforcement, constables,
440 the Office of Recovery Services, or other agencies for purposes of enforcing the order as
441 provided in Section [78A-6-117](#).

442 Section 8. Section [78A-6-1501](#) is enacted to read:

443 **Part 15. Juvenile Expungement Act**

444 **78A-6-1501. Title.**

445 This part is known as the "Juvenile Expungement Act."

446 Section 9. Section [78A-6-1502](#) is enacted to read:

447 **78A-6-1502. Definitions.**

448 (1) "Agency" means a state, county, or local government entity that generates or
449 maintains records relating to a nonjudicial adjustment or an adjudication for which

450 expungement may be ordered under this part.

451 (2) "Expunge" means to seal or otherwise restrict access to an individual's record held
452 by a court or an agency when the record relates to a nonjudicial adjustment or an adjudication
453 of an offense in the juvenile court.

454 Section 10. Section **78A-6-1503**, which is renumbered from Section 78A-6-1105 is
455 renumbered and amended to read:

456 ~~[78A-6-1105].~~ **78A-6-1503. Requirements to apply to expunge an**
457 **adjudication.**

458 (1) (a) ~~[A person]~~ An individual who has been adjudicated ~~[under this chapter]~~ by a
459 juvenile court may petition the court for ~~[the expungement of the person's juvenile court]~~ an
460 order to expunge the individual's juvenile court record and any related records in the custody of
461 ~~[a state]~~ an agency if:

462 (i) the ~~[person]~~ individual has reached 18 years ~~[of age]~~ old; and

463 (ii) at least one year has ~~[elapsed]~~ passed from the date of:

464 (A) termination of the continuing jurisdiction of the juvenile court; or ~~[, if the person~~
465 ~~was committed to a secure youth corrections facility, one year from the date of]~~

466 (B) the ~~[person's]~~ individual's unconditional release from the custody of the Division of
467 Juvenile Justice Services if the individual was committed to a secure youth corrections facility.

468 (b) The court may waive the requirements in Subsection (1)(a) ~~[,]~~ if the court finds, and
469 states on the record, the reason why the waiver is appropriate.

470 (c) The petitioner shall include in the petition described in Subsection (1)(a):

471 (i) any ~~[agencies]~~ agency known or alleged to have any ~~[documents]~~ records related to
472 the offense for which expungement is being sought ~~[,]~~ and

473 ~~[(d) The petitioner shall include with the petition]~~

474 (ii) the original criminal history report obtained from the Bureau of Criminal

475 Identification in accordance with ~~[the provisions of]~~ Section **53-10-108**.

476 ~~[(e)]~~ (d) The petitioner shall send a copy of the petition described in Subsection (1)(a)
477 to the county attorney or, if within a prosecution district, the district attorney.

478 ~~[(f)]~~ (e) (i) Upon the filing of a petition described in Subsection (1)(a), the court shall:

479 (A) set a date for a hearing;

480 (B) notify the county attorney or district attorney~~[-]~~ and the agency with custody of the
481 records at least 30 days ~~[prior to]~~ before the day on which the hearing of the pendency of the
482 petition is scheduled; and

483 (C) notify the county attorney or district attorney~~[-]~~ and the agency with records that
484 the petitioner is asking the court to expunge of the date of the hearing.

485 (ii) (A) The court shall provide a victim with the opportunity to request notice of a
486 petition ~~[for expungement. A]~~ described in Subsection (1)(a).

487 (B) Upon the victim's request under Subsection (1)(e)(ii)(A), the victim shall receive
488 notice of [a] the petition ~~[for expungement]~~ at least 30 days ~~[prior to]~~ before the day on which
489 the hearing ~~[if, prior to the entry of]~~ is scheduled if, before the day on which an expungement
490 order~~[-]~~ is made, the victim or, in the case of a child or ~~[a person]~~ an individual who is
491 incapacitated or deceased, the victim's next of kin or authorized representative~~[-]~~ submits a
492 written and signed request for notice to the court in the judicial district in which the ~~[crime]~~
493 offense occurred or judgment ~~[was]~~ is entered.

494 (C) The notice described in Subsection (1)(e)(ii)(B) shall include a copy of the petition
495 described in Subsection (1)(a) and any statutes and rules applicable to the petition.

496 (2) (a) At the hearing described in Subsection (1)(e)(i), the county attorney or district
497 attorney, a victim, and any other ~~[person]~~ individual who may have relevant information about
498 the petitioner may testify.

499 (b) In deciding whether to grant a petition described in Subsection (1)(a) for
500 expungement, the court shall consider whether the rehabilitation of the petitioner has been
501 attained to the satisfaction of the court, ~~[taking into consideration]~~ including the petitioner's
502 response to programs and treatment, the petitioner's behavior subsequent to the adjudication,
503 and the nature and seriousness of the conduct.

504 (c) The court may order sealed all of the petitioner's records under the control of the
505 juvenile court and ~~[any of petitioner's records under the control of any other agency or official]~~

506 ~~pertaining to the petitioner's adjudicated juvenile court cases, including relevant related~~
 507 ~~records]~~ an agency or an official, including any record contained in the Management
 508 Information System created [by] in Section 62A-4a-1003 and the Licensing Information
 509 System created [by] in Section 62A-4a-1005, if the court finds that:

510 (i) ~~the petitioner has not, [since the termination of the court's jurisdiction or the~~
 511 ~~petitioner's unconditional release from the Division of Juvenile Justice Services,]~~ in the five
 512 years preceding the day on which the petition described in Subsection (1)(a) is filed, been
 513 convicted of a[+] violent felony, as defined in Section 76-3-203.5;

514 ~~[(A) felony; or]~~

515 ~~[(B) misdemeanor involving moral turpitude;]~~

516 ~~[(ii) no proceeding involving a felony or misdemeanor is pending or being instituted]~~

517 (ii) there are no delinquency or criminal proceedings pending against the petitioner;

518 and

519 (iii) a judgment for restitution entered by the court on the conviction for which the
 520 expungement is sought has been satisfied.

521 (3) (a) The petitioner ~~[shall be]~~ is responsible for service of the ~~[order of]~~ expungement
 522 order issued under Subsection (2) to [all affected state, county, and local entities, agencies, and
 523 officials] any affected agency or official.

524 (b) To avoid destruction or sealing of the records in whole or in part, the agency or
 525 ~~[entity]~~ the official receiving the expungement order described in Subsection (3)(a) shall only
 526 expunge all references to the petitioner's name in the records pertaining to the petitioner's
 527 ~~[adjudicated juvenile court cases]~~ juvenile court record.

528 ~~[(4) Upon the entry of the order, the proceedings in the petitioner's case shall be~~
 529 ~~considered never to have occurred and the petitioner may properly reply accordingly upon any~~
 530 ~~inquiry in the matter. Inspection of the records may thereafter only be permitted by the court~~
 531 ~~upon petition by the person who is the subject of the records, and only to persons named in the~~
 532 ~~petition.]~~

533 ~~[(5)]~~ (4) The court may not expunge a ~~[juvenile court]~~ record if the record contains an

534 adjudication of:

535 (a) Section 76-5-202, aggravated murder; or

536 (b) Section 76-5-203, murder.

537 ~~[(6) (a) A person whose juvenile court record consists solely of nonjudicial~~
538 ~~adjustments as provided in Section 78A-6-602 may petition the court for expungement of the~~
539 ~~person's record if the person:]~~

540 ~~[(i) has reached 18 years of age; and]~~

541 ~~[(ii) has completed the conditions of the nonjudicial adjustments.]~~

542 ~~[(b) The court shall, without a hearing, order sealed all petitioner's records under the~~
543 ~~control of the juvenile court and any of petitioner's records under the control of any other~~
544 ~~agency or official pertaining to the petitioner's nonjudicial adjustments.]~~

545 Section 11. Section 78A-6-1504 is enacted to read:

546 **78A-6-1504. Nonjudicial adjustment expungement.**

547 (1) An individual whose record consists solely of one or more nonjudicial adjustments
548 may petition the court for an order to expunge the individual's juvenile court record if the
549 individual:

550 (a) has reached 18 years old; and

551 (b) has completed the conditions of each nonjudicial adjustment.

552 (2) (a) The petitioner shall include in the petition described in Subsection (1) any
553 agency known or alleged to have any records related to the nonjudicial adjustment for which
554 expungement is being sought.

555 (b) The petitioner is not required to include in the petition described in Subsection (1)
556 an original criminal history report obtained from the Bureau of Criminal Identification in
557 accordance with Section 53-10-108.

558 (3) Upon the filing of the petition described in Subsection (1), the court shall, without a
559 hearing, order expungement of all of the petitioner's records under the control of the juvenile
560 court, an agency, or an official.

561 (4) (a) The petitioner is responsible for service of the expungement order issued under

562 Subsection (3) to any affected agency or official.

563 (b) To avoid destruction or sealing of the records in whole or in part, the agency or the
564 official receiving the expungement order shall expunge only the references to the individual's
565 name in the records relating to the petitioner's nonjudicial adjustment.

566 Section 12. Section **78A-6-1505** is enacted to read:

567 **78A-6-1505. Effect of an expunged record -- Agency duties.**

568 (1) Upon receipt of an expungement order under this part, an agency shall expunge all
569 records described in the expungement order that are under the control of the agency in
570 accordance with Subsection [78A-6-1504](#)(4)(b).

571 (2) Upon the entry of the expungement order under this part:

572 (a) an adjudication or a nonjudicial adjustment in a petitioner's case is considered to
573 have never occurred; and

574 (b) the petitioner may reply to an inquiry on the matter as though there never was an
575 adjudication or nonjudicial adjustment.

576 (3) The following persons may inspect an expunged record upon a petition by an
577 individual who is the subject of the record:

578 (a) the individual who is the subject of the record; and

579 (b) a person that is named in the petition.

580 (4) An agency named in an expungement order under this part shall mail an affidavit to
581 the petitioner verifying the agency has complied with the expungement order.

582 Section 13. Section **78A-6-1506** is enacted to read:

583 **78A-6-1506. Fees.**

584 (1) Except for a filing fee for a petition under this part, the court may not charge a fee
585 for:

586 (a) an issuance of an expungement order under this part; or

587 (b) an expungement of a record under this part.

588 (2) An agency may not charge a fee for the expungement of a record under this part.

589 Section 14. **Effective date.**

590 If approved by two-thirds of all the members elected to each house, this bill takes effect
591 on May 1, 2020.