



# Administrative Office of the Courts

**Chief Justice Matthew B. Durrant**  
Utah Supreme Court  
Chair, Utah Judicial Council

**Hon. Mary T. Noonan**  
State Court Administrator

**Catherine J. Dupont**  
Deputy Court Administrator

## MEMORANDUM

TO: Utah Prosecution Council, c/o Bob Church  
FROM: Michael C. Drechsel, Assistant State Court Administrator  
DATE: Tuesday, August 20, 2019  
RE: HB0431 (2019) – Clean Slate Expungement Process – Notification to Prosecutors

### HISTORY

During the 2019 legislative session, the Utah Legislature enacted [HB0431 – Expungement Act Amendments](#). The bill requires the Courts to notify “the prosecuting agency”:

- when an expungement order issues for “a case that resulted in acquittal” (see Utah Code § 77-40-114(2)(b)(ii) – lines 520-21);
- when an expungement order issues for “a case that is dismissed with prejudice” (see Utah Code § 77-40-114(3)(b)(ii) – lines 529-30);
- “on a monthly basis for any case prosecuted by that agency that appears to be clean slate eligible” (see Utah Code § 77-40-114(4)(b) – lines 539-40); and
- when an expungement order issues for “a clean slate eligible case” (see Utah Code § 77-40-114(4)(e)(ii) – lines 560-61).

This memo is focused on the third type of notification (underlined above). The bill provides the prosecuting agency 35 days (from the date the court sends the prosecuting agency notice) to file an objection to automatic expungement (see Utah Code § 77-40-114(4)(c) – lines 541-44). The Legislature has authorized the prosecuting agency to object for three reasons:

- the prosecuting agency believes the case does not meet the definition of “clean slate eligible” (see Utah Code § 77-40-114(4)(c)(i) – lines 545-46);
- the individual has not paid court-ordered restitution to the victim (see Utah Code § 77-40-114(4)(c)(ii) – lines 547); or
- the prosecuting agency has a reasonable belief that the individual continues to engage in criminal activity (see Utah Code § 77-40-114(4)(c)(iii) – lines 548-50).

If the prosecuting agency provides written notice of objection for one of those three reasons within the 35-day objection period, the court may not proceed with automatic expungement (see Utah Code § 77-40-114(4)(d)(i)).

Although this bill goes into effect on May 1, 2020, the bill states that “[r]easonable efforts within available funding shall be made to expunge a case as quickly as is practicable with a goal of” meeting certain dates outlined in the bill (see Utah Code § 77-40-116(1) – lines 587-605). These “reasonable efforts” include:

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- defining rules that govern the process of identifying clean slate eligible cases;
- notifying the prosecuting agency when a case appears to be clean slate eligible;
- waiting for the 35-day objection period to run;
- automatically expunging any cases that remain eligible after the objection period; and
- notifying the prosecutor of the expungement order.

The bill authorizes the Judicial Council to create rules governing the automatic expungement of clean slate eligible cases (see Utah Code §§ 77-40-114(4)(a), (4)(c), (4)(g) and 77-40-116(2)(a)). The Judicial Council is currently formulating ideas on how to accomplish these important tasks in a way that avoids unnecessary friction for both the Courts and prosecuting agencies around the state.

### **GOAL**

Create a single process that works for all prosecuting agencies around the state, minimizing or eliminating unnecessary friction for both the Courts and the prosecuting agencies.

### **INITIAL PROCESS OUTLINE**

Our initial process outline for how this might work is as follows:

- 1) Each month, the Administrative Office of the Courts (AOC) will prepare a customized list of cases that appear to be “clean slate eligible” (per the statutory definition) for each prosecuting entity around the state. This list would be in an electronic format (most likely a .xls or .csv file) and would contain rows and columns for each case detailing the defendant’s name and the court case number.
- 2) The AOC will email that customized list to each respective prosecuting agency (in other words, you’ll receive a list of only the cases prosecuted by your agency). Ideally, this email address would be a unique and stable email address that is dedicated solely to automatic expungement (i.e., cleanslate@prosecutingagency.gov). This would avoid having to continually update the email address with the Courts each time there are personnel changes in your office.
- 3) The AOC will wait for the 35-day objection period.
- 4) The AOC will have created a new e-filing document type for clean slate expungement objections. Prosecuting agencies would be required to select that document type to file an objection. Once filed, an objection would automatically inform our system that the case is no longer eligible for automatic expungement.
- 5) After the 35-day objection period, the AOC will assemble the list of clean slate eligible cases (excluding those for which an objection was filed). An expungement order will then be generated and issued for each of the clean slate eligible cases.
- 6) The AOC will notify the prosecuting agency via email of any cases that were automatically expunged through this clean slate process.

These are the initial thoughts on a workable process. The process outlined above does not attempt to define how you use the data in the emailed list as part of your office expungement process under HB0431. The Judicial Council is seeking feedback and input from prosecutors regarding how the process outlined above might work for your particular office. While HB0431 directs the Judicial Council to adopt rules to govern the process, there is no need for that process to be more intrusive than absolutely necessary to fulfill the purpose of the law.

Please send questions or comments regarding the process outlined in this memo to:



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