

EXPUNGEMENT MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Raymond P. Ward

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

Legislative Vote: 13 voting for 0 voting against 4 absent

General Description:

This bill amends provisions related to expungement.

Highlighted Provisions:

This bill:

- ▶ amends the duties of the Utah Prosecution Council;
- ▶ recodifies Title 77, Chapter 40, Utah Expungement Act;
- ▶ amends definitions related to expungement;
- ▶ amends the procedures for the automatic expungement of certain offenses;
- ▶ amends provisions regarding rules made by the Judicial Council or the Supreme Court;
- ▶ modifies the requirements for the automatic deletion of traffic offenses;
- ▶ modifies the requirements for a certificate of eligibility to expunge the records of an arrest, investigation, or detention;
- ▶ modifies the requirements for a certificate of eligibility to expunge a record of a conviction;
- ▶ requires the Bureau of Criminal Identification to provide information needed for the issuance of an expungement order and to provide clear written instructions to



- 28 petitioners regarding the process for a petition for expungement;
- 29 ▶ addresses the expungement of a record associated with another law enforcement
- 30 agency case number;
- 31 ▶ modifies the requirements for a petition for expungement, including notice
- 32 requirements concerning prosecutorial entities;
- 33 ▶ provides that a certificate of eligibility is not required for a petition of expungement
- 34 for certain offenses;
- 35 ▶ requires the Bureau of Criminal Identification to notify all criminal justice agencies
- 36 affected by an order of expungement with an exception for the Board of Pardons
- 37 and Parole;
- 38 ▶ prohibits employees of an agency from divulging information contained in an
- 39 expunged record with certain exceptions;
- 40 ▶ allows a prosecuting attorney to communicate with another prosecuting attorney
- 41 regarding expunged records for certain offenses;
- 42 ▶ prohibits a prosecuting attorney from using an expunged record for a sentencing
- 43 enhancement or as a basis for charging the individual with an offense that requires a
- 44 prior conviction, unless there is a showing of good cause; and
- 45 ▶ makes technical and conforming changes.

46 **Money Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

52 **53-5-704**, as last amended by Laws of Utah 2021, Chapters 141 and 166

53 **53-10-202.5**, as last amended by Laws of Utah 2017, Chapter 286

54 **53E-6-506**, as last amended by Laws of Utah 2019, Chapter 186

55 **67-5a-1**, as last amended by Laws of Utah 2019, Chapter 86

56 **78B-9-108**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

57 ENACTS:

58 **77-40a-301**, Utah Code Annotated 1953

59 **77-40a-306**, Utah Code Annotated 1953
60 RENUMBERS AND AMENDS:
61 **77-40a-101**, (Renumbered from 77-40-101, as enacted by Laws of Utah 2010, Chapter
62 283)
63 **77-40a-102**, (Renumbered from 77-40-102, as last amended by Laws of Utah 2021,
64 Chapters 206 and 260)
65 **77-40a-103**, (Renumbered from 77-40-101.5, as last amended by Laws of Utah 2021,
66 Chapter 262)
67 **77-40a-104**, (Renumbered from 77-40-113, as renumbered and amended by Laws of
68 Utah 2010, Chapter 283)
69 **77-40a-105**, (Renumbered from 77-40-111, as last amended by Laws of Utah 2019,
70 Chapter 448)
71 **77-40a-106**, (Renumbered from 77-40-104.1, as last amended by Laws of Utah 2021,
72 Chapter 272)
73 **77-40a-201**, (Renumbered from 77-40-114, as last amended by Laws of Utah 2020,
74 Chapter 218)
75 **77-40a-202**, (Renumbered from 77-40-115, as enacted by Laws of Utah 2019, Chapter
76 448)
77 **77-40a-203**, (Renumbered from 77-40-116, as enacted by Laws of Utah 2019, Chapter
78 448)
79 **77-40a-302**, (Renumbered from 77-40-104, as last amended by Laws of Utah 2019,
80 Chapter 448)
81 **77-40a-303**, (Renumbered from 77-40-105, as last amended by Laws of Utah 2021,
82 Chapters 206, 260 and last amended by Coordination Clause, Laws of Utah 2021,
83 Chapter 261)
84 **77-40a-304**, (Renumbered from 77-40-106, as last amended by Laws of Utah 2017,
85 Chapter 356)
86 **77-40a-305**, (Renumbered from 77-40-107, as last amended by Laws of Utah 2021,
87 Chapter 206)
88 **77-40a-401**, (Renumbered from 77-40-108, as last amended by Laws of Utah 2019,
89 Chapter 448)

90 [77-40a-402](#), (Renumbered from 77-40-108.5, as last amended by Laws of Utah 2019,
91 Chapter 448)

92 [77-40a-403](#), (Renumbered from 77-40-109, as last amended by Laws of Utah 2019,
93 Chapter 448)

94 [77-40a-404](#), (Renumbered from 77-40-110, as last amended by Laws of Utah 2019,
95 Chapter 448)

96 [77-40a-405](#), (Renumbered from 77-40-112, as last amended by Laws of Utah 2017,
97 Chapters 356 and 447)

98 REPEALS:

99 [77-40-103](#), as last amended by Laws of Utah 2020, Chapters 12, 12, and 218



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

102 Section 1. Section **53-5-704** is amended to read:

103 **53-5-704. Bureau duties -- Permit to carry concealed firearm -- Certification for**
104 **concealed firearms instructor -- Requirements for issuance -- Violation -- Denial,**
105 **suspension, or revocation -- Appeal procedure.**

106 (1) (a) Except as provided in Subsection (1)(b), the bureau shall issue a permit to carry
107 a concealed firearm for lawful self defense to an applicant who is 21 years old or older within
108 60 days after receiving an application, unless the bureau finds proof that the applicant is not
109 qualified to hold a permit under Subsection (2) or (3).

110 (b) (i) Within 90 days before the day on which a provisional permit holder under
111 Section [53-5-704.5](#) reaches 21 years old, the provisional permit holder may apply under this
112 section for a permit to carry a concealed firearm for lawful self defense.

113 (ii) The bureau shall issue a permit for an applicant under Subsection (1)(b)(i) within
114 60 days after receiving an application, unless the bureau finds proof that the applicant is not
115 qualified to hold a permit under Subsection (2) or (3).

116 (iii) A permit issued under this Subsection (1)(b):

117 (A) is not valid until an applicant is 21 years old; and

118 (B) requires a \$10 application fee.

119 (iv) A person who applies for a permit under this Subsection (1)(b) is not required to
120 retake the firearms training described in Subsection [53-5-704\(8\)](#).

121 (c) The permit is valid throughout the state for five years, without restriction, except as
122 otherwise provided by Section 53-5-710.

123 (d) The provisions of Subsections 76-10-504(1) and (2), and Section 76-10-505 do not
124 apply to an individual issued a permit under Subsection (1)(a) or (b).

125 (e) Subsection (4)(a) does not apply to a nonresident:

126 (i) active duty service member, who presents to the bureau orders requiring the active
127 duty service member to report for duty in this state; or

128 (ii) active duty service member's spouse, stationed with the active duty service member,
129 who presents to the bureau the active duty service member's orders requiring the service
130 member to report for duty in this state.

131 (2) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if the
132 applicant or permit holder:

133 (i) has been or is convicted of a felony;

134 (ii) has been or is convicted of a crime of violence;

135 (iii) has been or is convicted of an offense involving the use of alcohol;

136 (iv) has been or is convicted of an offense involving the unlawful use of narcotics or
137 other controlled substances;

138 (v) has been or is convicted of an offense involving moral turpitude;

139 (vi) has been or is convicted of an offense involving domestic violence;

140 (vii) has been or is adjudicated by a state or federal court as mentally incompetent,
141 unless the adjudication has been withdrawn or reversed; and

142 (viii) is not qualified to purchase and possess a firearm pursuant to Section 76-10-503
143 and federal law.

144 (b) In determining whether an applicant or permit holder is qualified to hold a permit
145 under Subsection (2)(a), the bureau shall consider mitigating circumstances.

146 (3) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if it has
147 reasonable cause to believe that the applicant or permit holder has been or is a danger to self or
148 others as demonstrated by evidence, including:

149 (i) past pattern of behavior involving unlawful violence or threats of unlawful violence;

150 (ii) past participation in incidents involving unlawful violence or threats of unlawful
151 violence; or

- 152 (iii) conviction of an offense in violation of Title 76, Chapter 10, Part 5, Weapons.
- 153 (b) The bureau may not deny, suspend, or revoke a concealed firearm permit solely for
- 154 a single conviction of an infraction violation of Title 76, Chapter 10, Part 5, Weapons.
- 155 (c) In determining whether the applicant or permit holder has been or is a danger to self
- 156 or others, the bureau may inspect:
 - 157 (i) expunged records of arrests and convictions of adults as provided in Section
 - 158 [~~77-40-109~~] [77-40a-403](#); and
 - 159 (ii) juvenile court records as provided in Section [78A-6-209](#).
- 160 (d) (i) The bureau shall suspend a concealed firearm permit if a permit holder becomes
- 161 a temporarily restricted person in accordance with Section [53-5c-301](#).
- 162 (ii) Upon removal from the temporary restricted list, the permit holder's permit shall be
- 163 reinstated unless:
 - 164 (A) the permit has been revoked, been suspended for a reason other than the restriction
 - 165 described in Subsection (3)(d)(i), or expired; or
 - 166 (B) the permit holder has become a restricted person under Section [76-10-503](#).
- 167 (4) (a) In addition to meeting the other qualifications for the issuance of a concealed
- 168 firearm permit under this section, a nonresident applicant who resides in a state that recognizes
- 169 the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law
- 170 shall:
 - 171 (i) hold a current concealed firearm or concealed weapon permit issued by the
 - 172 appropriate permitting authority of the nonresident applicant's state of residency; and
 - 173 (ii) submit a photocopy or electronic copy of the nonresident applicant's current
 - 174 concealed firearm or concealed weapon permit referred to in Subsection (4)(a)(i).
- 175 (b) A nonresident applicant who knowingly and willfully provides false information to
- 176 the bureau under Subsection (4)(a) is prohibited from holding a Utah concealed firearm permit
- 177 for a period of 10 years.
- 178 (c) Subsection (4)(a) applies to all applications for the issuance of a concealed firearm
- 179 permit that are received by the bureau after May 10, 2011.
- 180 (d) Beginning January 1, 2012, Subsection (4)(a) also applies to an application for
- 181 renewal of a concealed firearm permit by a nonresident.
- 182 (5) The bureau shall issue a concealed firearm permit to a former peace officer who

183 departs full-time employment as a peace officer, in an honorable manner, within five years of
184 that departure if the officer meets the requirements of this section.

185 (6) Except as provided in Subsection (7), the bureau shall also require the applicant to
186 provide:

187 (a) the address of the applicant's permanent residence;

188 (b) one recent dated photograph;

189 (c) one set of fingerprints; and

190 (d) evidence of general familiarity with the types of firearms to be concealed as defined
191 in Subsection (8).

192 (7) An applicant who is a law enforcement officer under Section 53-13-103 may
193 provide a letter of good standing from the officer's commanding officer in place of the evidence
194 required by Subsection (6)(d).

195 (8) (a) General familiarity with the types of firearms to be concealed includes training
196 in:

197 (i) the safe loading, unloading, storage, and carrying of the types of firearms to be
198 concealed; and

199 (ii) current laws defining lawful use of a firearm by a private citizen, including lawful
200 self-defense, use of force by a private citizen, including use of deadly force, transportation, and
201 concealment.

202 (b) An applicant may satisfy the general familiarity requirement of Subsection (8)(a) by
203 one of the following:

204 (i) completion of a course of instruction conducted by a national, state, or local
205 firearms training organization approved by the bureau;

206 (ii) certification of general familiarity by an individual who has been certified by the
207 bureau, which may include a law enforcement officer, military or civilian firearms instructor,
208 or hunter safety instructor; or

209 (iii) equivalent experience with a firearm through participation in an organized
210 shooting competition, law enforcement, or military service.

211 (c) Instruction taken by a student under this Subsection (8) shall be in person and not
212 through electronic means.

213 (d) A person applying for a renewal permit is not required to retake the firearms

214 training described in this Subsection 53-5-704(8) if the person:

215 (i) has an unexpired permit; or

216 (ii) has a permit that expired less than one year before the date on which the renewal
217 application was submitted.

218 (9) (a) An applicant for certification as a Utah concealed firearms instructor shall:

219 (i) be at least 21 years old;

220 (ii) be currently eligible to possess a firearm under Section 76-10-503;

221 (iii) have:

222 (A) completed a firearm instruction training course from the National Rifle Association
223 or the Department of Public Safety, Division of Peace Officer Safety Standards and Training;

224 or

225 (B) received training equivalent to one of the courses referred to in Subsection

226 (9)(a)(iii)(A) as determined by the bureau;

227 (iv) have taken a course of instruction and passed a certification test as described in
228 Subsection (9)(c); and

229 (v) possess a Utah concealed firearm permit.

230 (b) An instructor's certification is valid for three years from the date of issuance, unless
231 revoked by the bureau.

232 (c) (i) In order to obtain initial certification or renew a certification, an instructor shall
233 attend an instructional course and pass a test under the direction of the bureau.

234 (ii) (A) The bureau shall provide or contract to provide the course referred to in
235 Subsection (9)(c)(i) twice every year.

236 (B) The course shall include instruction on current Utah law related to firearms,
237 including concealed carry statutes and rules, and the use of deadly force by private citizens.

238 (d) (i) Each applicant for certification under this Subsection (9) shall pay a fee of
239 \$50.00 at the time of application for initial certification.

240 (ii) The renewal fee for the certificate is \$25.

241 (iii) The bureau may use a fee paid under Subsections (9)(d)(i) and (ii) as a dedicated
242 credit to cover the cost incurred in maintaining and improving the instruction program required
243 for concealed firearm instructors under this Subsection (9).

244 (10) A certified concealed firearms instructor shall provide each of the instructor's

245 students with the required course of instruction outline approved by the bureau.

246 (11) (a) (i) A concealed firearms instructor shall provide a signed certificate to an
247 individual successfully completing the offered course of instruction.

248 (ii) The instructor shall sign the certificate with the exact name indicated on the
249 instructor's certification issued by the bureau under Subsection (9).

250 (iii) (A) The certificate shall also have affixed to it the instructor's official seal, which
251 is the exclusive property of the instructor and may not be used by any other individual.

252 (B) The instructor shall destroy the seal upon revocation or expiration of the
253 instructor's certification under Subsection (9).

254 (C) The bureau shall determine the design and content of the seal to include at least the
255 following:

256 (I) the instructor's name as it appears on the instructor's certification;

257 (II) the words "Utah Certified Concealed Firearms Instructor," "state of Utah," and "my
258 certification expires on (the instructor's certification expiration date)"; and

259 (III) the instructor's business or residence address.

260 (D) The seal shall be affixed to each student certificate issued by the instructor in a
261 manner that does not obscure or render illegible any information or signatures contained in the
262 document.

263 (b) The applicant shall provide the certificate to the bureau in compliance with
264 Subsection (6)(d).

265 (12) The bureau may deny, suspend, or revoke the certification of an applicant or a
266 concealed firearms instructor if it has reason to believe the applicant or the instructor has:

267 (a) become ineligible to possess a firearm under Section 76-10-503 or federal law; or

268 (b) knowingly and willfully provided false information to the bureau.

269 (13) An applicant for certification or a concealed firearms instructor has the same
270 appeal rights as described in Subsection (16).

271 (14) In providing instruction and issuing a permit under this part, the concealed
272 firearms instructor and the bureau are not vicariously liable for damages caused by the permit
273 holder.

274 (15) An individual who knowingly and willfully provides false information on an
275 application filed under this part is guilty of a class B misdemeanor, and the application may be

276 denied, or the permit may be suspended or revoked.

277 (16) (a) In the event of a denial, suspension, or revocation of a permit, the applicant or
278 permit holder may file a petition for review with the board within 60 days from the date the
279 denial, suspension, or revocation is received by the applicant or permit holder by certified mail,
280 return receipt requested.

281 (b) The bureau's denial of a permit shall be in writing and shall include the general
282 reasons for the action.

283 (c) If an applicant or permit holder appeals the denial to the review board, the applicant
284 or permit holder may have access to the evidence upon which the denial is based in accordance
285 with Title 63G, Chapter 2, Government Records Access and Management Act.

286 (d) On appeal to the board, the bureau has the burden of proof by a preponderance of
287 the evidence.

288 (e) (i) Upon a ruling by the board on the appeal of a denial, the board shall issue a final
289 order within 30 days stating the board's decision.

290 (ii) The final order shall be in the form prescribed by Subsection 63G-4-203(1)(i).

291 (iii) The final order is final bureau action for purposes of judicial review under Section
292 63G-4-402.

293 (17) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah
294 Administrative Rulemaking Act, necessary to administer this chapter.

295 Section 2. Section 53-10-202.5 is amended to read:

296 **53-10-202.5. Bureau services -- Fees.**

297 The bureau shall collect fees for the following services:

298 (1) applicant fingerprint card as determined by Section 53-10-108;

299 (2) bail enforcement licensing as determined by Section 53-11-115;

300 (3) concealed firearm permit as determined by Section 53-5-707;

301 (4) provisional concealed firearm permit as determined by Section 53-5-707.5;

302 (5) application for and issuance of a certificate of eligibility for expungement as
303 [determined by Section 77-40-106] described in Section 77-40a-304;

304 (6) firearm purchase background check as determined by Section 76-10-526;

305 (7) name check as determined by Section 53-10-108;

306 (8) private investigator licensing as determined by Section 53-9-111; and

307 (9) right of access as determined by Section [53-10-108](#).

308 Section 3. Section **53E-6-506** is amended to read:

309 **53E-6-506. UPPAC duties and procedures.**

310 (1) The state board may direct UPPAC to review a complaint about an educator and
311 recommend that the state board:

312 (a) dismiss the complaint; or

313 (b) investigate the complaint in accordance with this section.

314 (2) (a) The state board may direct UPPAC to:

315 (i) in accordance with this section, investigate a complaint's allegation or decision; or

316 (ii) hold a hearing.

317 (b) UPPAC may initiate a hearing as part of an investigation.

318 (c) Upon completion of an investigation or hearing, UPPAC shall:

319 (i) provide findings to the state board; and

320 (ii) make a recommendation for state board action.

321 (d) UPPAC may not make a recommendation described in Subsection (2)(c)(ii) to
322 adversely affect an educator's license unless UPPAC gives the educator an opportunity for a
323 hearing.

324 (3) (a) The state board may:

325 (i) select an independent investigator to conduct a UPPAC investigation with UPPAC
326 oversight; or

327 (ii) authorize UPPAC to select and oversee an independent investigator to conduct an
328 investigation.

329 (b) In conducting an investigation, UPPAC or an independent investigator shall
330 conduct the investigation independent of and separate from a related criminal investigation.

331 (c) In conducting an investigation, UPPAC or an independent investigator may:

332 (i) in accordance with Section [53E-6-606](#) administer oaths and issue subpoenas; or

333 (ii) receive evidence related to an alleged offense, including sealed or expunged
334 records released to the state board under Section [~~77-40-109~~] [77-40a-403](#).

335 (d) If UPPAC finds that reasonable cause exists during an investigation, UPPAC may
336 recommend that the state board initiate a background check on an educator as described in
337 Section [53G-11-403](#).

338 (e) UPPAC has a rebuttable presumption that an educator committed a sexual offense
339 against a minor child if the educator voluntarily surrendered a license or certificate or allowed a
340 license or certificate to lapse in the face of a charge of having committed a sexual offense
341 against a minor child.

342 (4) The state board may direct UPPAC to:

343 (a) recommend to the state board procedures for:

344 (i) receiving and processing complaints;

345 (ii) investigating a complaint's allegation or decision;

346 (iii) conducting hearings; or

347 (iv) reporting findings and making recommendations to the state board for state board
348 action;

349 (b) recommend to the state board or a professional organization of educators:

350 (i) standards of professional performance, competence, and ethical conduct for
351 educators; or

352 (ii) suggestions for improvement of the education profession; or

353 (c) fulfill other duties the state board finds appropriate.

354 (5) UPPAC may not participate as a party in a dispute relating to negotiations between:

355 (a) a school district and the school district's educators; or

356 (b) a charter school and the charter school's educators.

357 (6) The state board shall make rules establishing UPPAC duties and procedures.

358 Section 4. Section **67-5a-1** is amended to read:

359 **67-5a-1. Utah Prosecution Council -- Duties -- Membership.**

360 (1) There is created within the Office of the Attorney General the Utah Prosecution
361 Council, referred to as the council in this chapter.

362 (2) The council shall:

363 (a) (i) provide training and continuing legal education for state and local prosecutors;

364 and

365 (ii) ensure that any training or continuing legal education described in Subsection

366 (2)(a)(i) complies with Title 63G, Chapter 22, State Training and Certification Requirements;

367 (b) provide assistance to local prosecutors;

368 (c) as funds are available and as are budgeted for this purpose, provide reimbursement

369 for unusual expenses related to prosecution for violations of state laws; ~~and~~

370 (d) provide training and assistance to law enforcement officers, as required elsewhere
371 within this code~~[-]; and~~

372 (e) (i) gather and maintain contact information for all prosecuting entities in the state;

373 (ii) provide the contact information for all prosecuting entities in the state to the Utah
374 state courts; and

375 (iii) publish the contact information for all prosecuting entities in the state on the
376 council's website.

377 (3) The council shall be composed of 12 members, selected as follows:

378 (a) the attorney general or a designated representative;

379 (b) the commissioner of public safety or a designated representative;

380 (c) four currently serving county or district attorneys designated by the county or
381 district attorneys' section of the Utah Association of Counties;

382 (d) four city prosecutors designated as follows:

383 (i) two by the Utah Municipal Attorneys Association; and

384 (ii) two by the Utah Misdemeanor Prosecutors Association~~[-];~~

385 (e) the chair of the Board of Directors of the Statewide Association of Prosecutors and
386 Public Attorneys of Utah; and

387 (f) the chair of the governing board of the Utah Prosecutorial Assistants Association.

388 (4) Council members designated in Subsections (3)(c) and (3)(d) shall be approved by
389 a majority vote of currently serving council members.

390 (5) A county or district attorney's term expires when a successor is designated by the
391 county or district attorneys' section or when the county or district attorney is no longer serving
392 as a county attorney or district attorney, whichever occurs first.

393 (6) A city prosecutor's term expires when a successor is designated by the association
394 or when the city prosecutor is no longer employed as a city prosecutor, whichever occurs first.

395 Section 5. Section ~~77-40a-101~~, which is renumbered from Section 77-40-101 is
396 renumbered and amended to read:

397 **CHAPTER 40a. EXPUNGEMENT**

398 **Part 1. General Provisions**

399 ~~[77-40-101].~~ 77-40a-101. Title.

400 This chapter is known as ~~[the "Utah Expungement Act.]"~~ "Expungement."

401 Section 6. Section ~~77-40a-102~~, which is renumbered from Section 77-40-102 is
402 renumbered and amended to read:

403 ~~[77-40-102].~~ 77-40a-102. Definitions.

404 As used in this chapter:

405 ~~[(1) "Administrative finding" means a decision upon a question of fact reached by an
406 administrative agency following an administrative hearing or other procedure satisfying the
407 requirements of due process.]~~

408 ~~[(2)]~~ (1) "Agency" means a state, county, or local government entity that generates or
409 maintains records relating to an investigation, arrest, detention, or conviction for an offense for
410 which expungement may be ordered.

411 ~~[(3)]~~ (2) "Bureau" means the Bureau of Criminal Identification of the Department of
412 Public Safety established in Section ~~53-10-201~~.

413 ~~[(4)]~~ (3) "Certificate of eligibility" means a document issued by the bureau stating that
414 the criminal record and all records of arrest, investigation, and detention associated with a case
415 that is the subject of a petition for expungement is eligible for expungement.

416 ~~[(5)]~~ (4) (a) ~~["Clean"]~~ Except as provided in Subsection (4)(c), "clean slate eligible
417 case" means a case:

418 (i) where~~[-, except as provided in Subsection (5)(c);]~~ each conviction within the case is:

419 (A) a misdemeanor conviction for possession of a controlled substance in violation of
420 Subsection ~~58-37-8(2)(a)(i)~~;

421 (B) a class B or class C misdemeanor conviction; or

422 (C) an infraction conviction;

423 (ii) that involves an individual:

424 (A) whose total number of convictions in Utah state courts, not including infractions,
425 traffic offenses, or minor regulatory offenses, does not exceed the limits described in

426 Subsections ~~[77-40-105(6) and (7)]~~ 77-40a-303(5) and (6) without taking into consideration the
427 exception in Subsection ~~[77-40-105(9)]~~ 77-40a-303(8); and

428 (B) against whom no criminal proceedings are pending in the state; and

429 (iii) for which the following time periods have elapsed from the day on which the case
430 is adjudicated:

- 431 (A) at least five years for a class C misdemeanor or an infraction;
- 432 (B) at least six years for a class B misdemeanor; and
- 433 (C) at least seven years for a class A conviction for possession of a controlled
434 substance in violation of Subsection [58-37-8\(2\)\(a\)\(i\)](#).
- 435 (b) "Clean slate eligible case" includes a case:
- 436 (i) that is dismissed as a result of a successful completion of a plea in abeyance
437 agreement governed by Subsection [77-2a-3\(2\)\(b\)](#) if:
- 438 [(i)] (A) except as provided in Subsection [(5)] (4)(c), each charge within the case is[
439 (A)] a misdemeanor for possession of a controlled substance in violation of Subsection
440 [58-37-8\(2\)\(a\)\(i\)](#)[; (B)], a class B or class C misdemeanor[; or (C)], or an infraction;
- 441 [(ii)] (B) the individual involved meets the requirements of Subsection [(5)] (4)(a)(ii);
442 and
- 443 [(iii)] (C) the time periods described in Subsections [(5)] (4)(a)(iii)(A) through (C)
444 have elapsed from the day on which the case is dismissed[-]; or
- 445 (ii) where charges are dismissed without prejudice if each conviction, or charge that
446 was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or
447 (b)(i).
- 448 (c) "Clean slate eligible case" does not include a case:
- 449 (i) where the individual is found not guilty by reason of insanity;
- 450 (ii) where the case establishes a criminal accounts receivable, as defined in Section
451 [77-32b-102](#), that:
- 452 (A) has been entered as a civil accounts receivable or a civil judgment of restitution, as
453 those terms are defined in Section [77-32b-102](#), and transferred to the Office of State Debt
454 Collection under Section [77-18-114](#); or
- 455 (B) has not been satisfied according to court records; or
- 456 (iii) that resulted in one or more pleas held in abeyance or convictions for the following
457 offenses:
- 458 (A) any of the offenses listed in Subsection [[77-40-105\(2\)\(a\)](#)] [77-40a-303\(1\)\(a\)](#);
- 459 (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against
460 the Person;
- 461 (C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;

- 462 (D) sexual battery in violation of Section [76-9-702.1](#);
- 463 (E) an act of lewdness in violation of Section [76-9-702](#) or [76-9-702.5](#);
- 464 (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence
465 and Reckless Driving;
- 466 (G) damage to or interruption of a communication device in violation of Section
467 [76-6-108](#);
- 468 (H) a domestic violence offense as defined in Section [77-36-1](#); or
- 469 (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor
470 other than a class A misdemeanor conviction for possession of a controlled substance in
471 violation of Subsection [58-37-8\(2\)\(a\)\(i\)](#).

472 ~~[(6)]~~ (5) "Conviction" means judgment by a criminal court on a verdict or finding of
473 guilty after trial, a plea of guilty, or a plea of nolo contendere.

474 (6) "Criminal protective order" means the same as that term is defined in Section
475 [78B-7-102](#).

476 (7) "Criminal stalking injunction" means the same as that term is defined in Section
477 [78B-7-102](#).

478 ~~[(7)]~~ (8) "Department" means the Department of Public Safety established in Section
479 [53-1-103](#).

480 ~~[(8)]~~ (9) "Drug possession offense" means an offense under:

481 (a) Subsection [58-37-8\(2\)](#), except any offense under Subsection [58-37-8\(2\)\(b\)\(i\)](#),
482 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection
483 [58-37-8\(2\)\(e\)](#), violation in a correctional facility or Subsection [58-37-8\(2\)\(g\)](#), driving with a
484 controlled substance illegally in the person's body and negligently causing serious bodily injury
485 or death of another;

486 (b) Subsection [58-37a-5\(1\)](#), use or possession of drug paraphernalia;

487 (c) Section [58-37b-6](#), possession or use of an imitation controlled substance; or

488 (d) any local ordinance which is substantially similar to any of the offenses described
489 in this Subsection ~~[(8)]~~ (9).

490 ~~[(9)]~~ (10) "Expunge" means to seal or otherwise restrict access to the individual's
491 record held by an agency when the record includes a criminal investigation, detention, arrest, or
492 conviction.

493 ~~[(10)]~~ (11) "Jurisdiction" means a state, district, province, political subdivision,
494 territory, or possession of the United States or any foreign country.

495 ~~[(11) "Minor regulatory offense" means any class B or C misdemeanor offense, and
496 any local ordinance, except:]~~

497 (12) (a) Except as provided in Subsection (12)(c), "minor regulatory offense" means a
498 class B or C misdemeanor or a local ordinance.

499 (b) "Minor regulatory offense" includes an offense under Section [76-9-701](#) or
500 [76-10-105](#).

501 (c) "Minor regulatory offense" does not include:

502 ~~[(a)]~~ (i) any drug possession offense;

503 ~~[(b)]~~ (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
504 Reckless Driving;

505 ~~[(c)]~~ (iii) an offense under Sections [73-18-13](#) through [73-18-13.6](#);

506 ~~[(d) those offenses defined in]~~ (iv) except as provided in Subsection (12)(b), an
507 offense under Title 76, Utah Criminal Code; or

508 ~~[(e)]~~ (v) any local ordinance that is substantially similar to ~~[those offenses listed in~~
509 Subsections (11)(a) through (d)] an offense listed in Subsections (12)(c)(i) through (iv).

510 ~~[(12)]~~ (13) "Petitioner" means an individual applying for expungement under this
511 chapter.

512 ~~[(13)]~~ (14) (a) "Traffic offense" means:

513 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,
514 Chapter 6a, Traffic Code;

515 (ii) an offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;

516 (iii) an offense under Title 73, Chapter 18, State Boating Act; and

517 (iv) all local ordinances that are substantially similar to ~~[those offenses]~~ an offense
518 listed in Subsections (14)(a)(i) through (iii).

519 (b) "Traffic offense" does not mean:

520 (i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
521 Reckless Driving;

522 (ii) an offense under Sections [73-18-13](#) through [73-18-13.6](#); or

523 (iii) any local ordinance that is substantially similar to ~~[the offenses listed in~~

524 Subsections ~~(13)(b)(i) and (ii)~~ an offense listed in Subsection (14)(b)(i) or (ii).

525 (15) "Traffic offense case" means that each offense in the case is a traffic offense.

526 Section 7. Section **77-40a-103**, which is renumbered from Section 77-40-101.5 is
527 renumbered and amended to read:

528 ~~[77-40-101.5].~~ **77-40a-103. Applicability to juvenile court records.**

529 This chapter does not apply to an expungement of a record for an adjudication under
530 Section **80-6-701** or a nonjudicial adjustment, as that term is defined in Section **80-1-102**, of an
531 offense in the juvenile court.

532 Section 8. Section **77-40a-104**, which is renumbered from Section 77-40-113 is
533 renumbered and amended to read:

534 ~~[77-40-113].~~ **77-40a-104. Retroactive application.**

535 The provisions of this chapter apply retroactively to all arrests and convictions
536 regardless of the date on which the arrests were made or convictions were entered.

537 Section 9. Section **77-40a-105**, which is renumbered from Section 77-40-111 is
538 renumbered and amended to read:

539 ~~[77-40-111].~~ **77-40a-105. Rulemaking authority.**

540 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
541 department may make rules to:

- 542 (1) implement procedures for processing an automatic expungement;
- 543 (2) implement procedures for applying for certificates of eligibility;
- 544 (3) specify procedures for receiving a certificate of eligibility; and
- 545 (4) create forms and determine information necessary to be provided to the bureau.

546 Section 10. Section **77-40a-106**, which is renumbered from Section 77-40-104.1 is
547 renumbered and amended to read:

548 ~~[77-40-104.1].~~ **77-40a-106. Eligibility for removing the link between**
549 **personal identifying information and court case dismissed.**

550 (1) As used in this section:

551 (a) "Domestic violence offense" means the same as that term is defined in Section
552 **77-36-1.**

553 (b) "Personal identifying information" means:

- 554 (i) a current name, former name, nickname, or alias; and

555 (ii) date of birth.

556 (2) (a) An individual whose criminal case is dismissed, or civil case filed in accordance
557 with Title 78B, Chapter 7, Protective Orders and Stalking Injunctions, is denied, may move the
558 court for an order to remove the link between the individual's personal identifying information
559 from the dismissed case in any publicly searchable database of the Utah state courts [~~and~~].

560 (b) If a motion is filed under Subsection (2)(a), the court shall grant [~~that relief~~] the
561 motion if:

562 [~~(a)~~] (i) 30 days have passed from the day on which the case is dismissed or denied;

563 [~~(b)~~] (ii) no appeal is filed for the dismissed or denied case within the 30-day period
564 described in Subsection [~~(2)(a)~~] (2)(b)(i); and

565 [~~(c)~~] (iii) no charge in the case was a domestic violence offense.

566 (3) Removing the link to personal identifying information of a court record under
567 Subsection (2) does not affect a prosecuting, arresting, or other agency's records.

568 (4) A case history, unless expunged under this chapter, remains public and accessible
569 through a search by case number.

570 Section 11. Section ~~77-40a-201~~, which is renumbered from Section 77-40-114 is
571 renumbered and amended to read:

572 **Part 2. Automatic Expungement and Deletion**

573 [~~77-40-114~~]. **77-40a-201. Automatic expungement procedure.**

574 (1) (a) Except as provided in Subsection (1)(b) and subject to Section [~~77-40-116~~]
575 77-40a-203, this section governs the process for the automatic expungement of all records in:

576 (i) except as provided in Subsection (2)[~~(d)~~](e), a case that resulted in an acquittal on
577 all charges;

578 (ii) except as provided in Subsection (3)[~~(d)~~](e), a case that is dismissed with
579 prejudice; or

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

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

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

585 (b) If a court determines that the requirements for automatic expungement have been

586 met, a district court or justice court shall:

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

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

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

592 (d) For a case resulting in an acquittal on all charges on or before May 1, 2020, that is
593 automatically expunged under this Subsection (2), a law enforcement agency shall expunge
594 records for the case within one year after the day on which the law enforcement agency
595 receives notice from the bureau.

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

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

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

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

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

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

608 (d) For a case dismissed on or before May 1, 2020, that is automatically expunged
609 under this Subsection (3), a law enforcement agency shall expunge records for the case within
610 one year after the day on which the law enforcement agency receives notice from the bureau.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

645 (g) For a clean slate case adjudicated or dismissed on or before May 1, 2020, that is
646 automatically expunged under this Subsection (4), a law enforcement agency shall expunge
647 records for the case within one year after the day on which the law enforcement agency

648 receives notice from the bureau.

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

652 (6) An automatic expungement performed under this section does not preclude a
653 person from requesting access to expunged records in accordance with Section [~~77-40-109~~ or
654 ~~77-40-110~~.] 77-40a-403 or 77-40a-404.

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

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

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

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

663 Section 12. Section ~~77-40a-202~~, which is renumbered from Section 77-40-115 is
664 renumbered and amended to read:

665 [~~77-40-115~~]. **77-40a-202. Automatic deletion for traffic offense.**

666 (1) Subject to Section [~~77-40-116~~] 77-40a-203, records for the following traffic
667 offenses shall be deleted without a court order or notice to the prosecuting agency:

668 (a) a traffic offense case that resulted in an acquittal on all charges;

669 (b) a traffic offense case that is dismissed with prejudice, [~~other than~~] except for a case
670 that is dismissed with prejudice as a result of successful completion of a plea in abeyance
671 agreement governed by Subsection 77-2a-3(2)(b); or

672 (c) a traffic offense case [~~that is a clean slate eligible case, as that term is defined in~~
673 ~~Section 77-40-102~~.] for which the following time periods have elapsed from the day on which
674 the case is adjudicated:

675 (i) at least five years for a class C misdemeanor or an infraction; or

676 (ii) at least six years for a class B misdemeanor.

677 (2) The Judicial Council shall make rules to provide an ongoing process for identifying
678 and deleting records on all traffic offenses described in Subsection (1).

679 Section 13. Section ~~77-40a-203~~, which is renumbered from Section 77-40-116 is
680 renumbered and amended to read:

681 ~~[77-40-116].~~ 77-40a-203. Time periods for expungement or deletion --
682 **Identification and processing of clean slate eligible cases.**

683 (1) Reasonable efforts within available funding shall be made to expunge or delete a
684 case as quickly as is practicable with the goal of:

685 (a) for cases adjudicated on or after May 1, 2020:

686 (i) expunging a case that resulted in an acquittal on all charges, 60 days after the
687 acquittal;

688 (ii) expunging a case that resulted in a dismissal with prejudice, other than a case that
689 is dismissed with prejudice as a result of successful completion of a plea in abeyance
690 agreement governed by Subsection ~~77-2a-3(2)(b)~~, 180 days after:

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

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

695 (iii) expunging a clean slate eligible case that is not a traffic offense within 30 days of
696 the court, in accordance with Section ~~[77-40-114]~~ 77-40a-201, determining that the
697 requirements for expungement have been satisfied; or

698 (iv) deleting ~~[a clean slate eligible case that is a traffic offense upon identification]~~ a
699 traffic offense case described in Subsection 77-40a-202(1)(c) upon identification; and

700 (b) for cases adjudicated before May 1, 2020, expunging or deleting a case within one
701 year of the day on which the case is identified as eligible for automatic expungement or
702 deletion.

703 (2) (a) The Judicial Council or the Supreme Court shall make rules governing the
704 identification and processing of clean slate eligible cases in accordance with ~~[Sections~~
705 ~~77-40-114 and 77-40-115:]~~ Section 77-40a-201.

706 (b) Reasonable efforts shall be made to identify and process all clean slate eligible
707 cases in accordance with ~~[Sections 77-40-114 and 77-40-115:]~~ Section 77-40a-201.

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

710 delete the records of a clean slate eligible case.

711 Section 14. Section **77-40a-301** is enacted to read:

712 **Part 3. Petition for Expungement**

713 **77-40a-301. Application for certificate of eligibility for expungement -- Penalty for**
 714 **false or misleading information on application.**

715 (1) If an individual seeks to expunge the individual's criminal record in regard to an
 716 arrest, investigation, detention, or conviction, the individual shall:

717 (a) except as provided in Subsection [77-40a-305\(3\)](#) or (4), apply to the bureau for a
 718 certificate of eligibility for expungement of the criminal record and pay the application fee as
 719 described in Section [77-40a-304](#);

720 (b) if the individual is qualified to receive a certificate of eligibility, pay the issuance
 721 fee for the certificate of eligibility as described in Section [77-40a-304](#); and

722 (c) file a petition for expungement in accordance with Section [77-40a-305](#).

723 (2) (a) An individual who intentionally or knowingly provides any false or misleading
 724 information to the bureau when applying for a certificate of eligibility is guilty of a class B
 725 misdemeanor and subject to prosecution under Section [76-8-504.6](#).

726 (b) Regardless of whether the individual is prosecuted, the bureau may deny a
 727 certificate of eligibility to anyone who knowingly provides false information on an application.

728 Section 15. Section **77-40a-302**, which is renumbered from Section 77-40-104 is
 729 renumbered and amended to read:

730 ~~[77-40-104].~~ **77-40a-302. Requirements for certificate of eligibility to**
 731 **expunge records of arrest, investigation, and detention.**

732 An individual who is arrested or formally charged with an offense [~~may apply to the~~
 733 ~~bureau for~~] is eligible to receive a certificate of eligibility from the bureau to expunge the
 734 records of arrest, investigation, and detention that may have been made in the case[~~, subject to~~
 735 ~~the following conditions~~] if:

736 (1) at least 30 days have passed since the day of the arrest for which a certificate of
 737 eligibility is sought;

738 (2) there are no criminal proceedings or pleas in abeyance pending against the
 739 individual; [~~and~~]

740 (3) the individual is not currently on probation or parole;

741 (4) there is not a criminal protective order or a criminal stalking injunction in effect for
 742 the case;

743 (5) there are no convictions in the case for a traffic offense; and

744 ~~[(3)]~~ (6) one of the following occurs:

745 (a) charges are screened by the investigating law enforcement agency and the
 746 ~~[prosecutor]~~ prosecuting attorney makes a final determination that no charges will be filed in
 747 the case;

748 (b) (i) ~~[the entire case is dismissed with prejudice; (c) the entire case is]~~ all charges
 749 contained in the case are dismissed; and

750 (ii) if any charge contained in the case is dismissed without prejudice or without
 751 condition [and]:

752 ~~[(i)]~~ (A) the [prosecutor] prosecuting attorney consents in writing to the issuance of a
 753 certificate of eligibility; or

754 ~~[(ii)]~~ (B) at least 180 days have passed since the day on which [the case is] the charge
 755 is dismissed;

756 ~~[(d)]~~ (c) the individual is acquitted at trial on all of the charges contained in the case; or

757 ~~[(e)]~~ (d) the statute of limitations expires on all of the charges contained in the case.

758 Section 16. Section ~~77-40a-303~~, which is renumbered from Section 77-40-105 is
 759 renumbered and amended to read:

760 ~~[77-40-105].~~ **77-40a-303. Requirements for a certificate of eligibility to**
 761 **expunge records of a conviction.**

762 ~~[(1) An individual convicted of an offense may apply to the bureau for a certificate of~~
 763 ~~eligibility to expunge the record of conviction as provided in this section.]~~

764 ~~[(2)]~~ (1) Except as provided in [Subsection (3)] Subsections (2) and (4), an individual
 765 is not eligible to receive a certificate of eligibility from the bureau to expunge the records of a
 766 conviction if:

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

768 (i) a capital felony;

769 (ii) a first degree felony;

770 (iii) a felony conviction of a violent felony as defined in Subsection

771 76-3-203.5(1)(c)(i);

- 772 (iv) felony automobile homicide;
- 773 (v) a felony conviction described in Subsection 41-6a-501(2);
- 774 [~~(vi) a registerable sex offense as defined in Subsection 77-41-102(17); or~~]
- 775 (vi) an offense, or a combination of offenses, that would require the individual to
- 776 register as a sex offender, as defined in Section 77-41-102; or
- 777 (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);
- 778 (b) a criminal proceeding or a plea in abeyance is pending against the petitioner; [~~or~~]
- 779 (c) the petitioner is on probation or parole;
- 780 [~~(c)~~] (d) the petitioner intentionally or knowingly provides false or misleading
- 781 information on the application for a certificate of eligibility[;]; or
- 782 (e) a criminal protective order or a criminal stalking injunction is in effect for the case.
- 783 [~~(3)~~] (2) The eligibility limitation described in Subsection [~~(2)~~] (1) does not apply in
- 784 relation to a conviction for a qualifying sexual offense, as defined in Subsection 76-3-209(1),
- 785 if, at the time of the offense, the individual who committed the offense was at least 14 years
- 786 old, but under 18 years old, unless the conviction occurred in district court after the individual
- 787 was:
- 788 (a) charged by criminal information under Section 80-6-502 or 80-6-503; and
- 789 (b) bound over to district court under Section 80-6-504.
- 790 [~~(4)~~] (3) A petitioner seeking to obtain expungement for a record of conviction is not
- 791 eligible to receive a certificate of eligibility from the bureau until all of the following have
- 792 occurred:
- 793 (a) the petitioner has paid in full all fines and interest ordered by the court related to the
- 794 conviction for which expungement is sought;
- 795 (b) the petitioner has paid in full all restitution ordered by the court under Section
- 796 77-38b-205; and
- 797 (c) the following time periods have elapsed from the date the petitioner was convicted
- 798 or released from incarceration, parole, or probation, whichever occurred last, for each
- 799 conviction the petitioner seeks to expunge:
- 800 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a
- 801 felony conviction of Subsection 58-37-8(2)(g);
- 802 (ii) seven years in the case of a felony;

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

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

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

807 ~~[(5)]~~ (4) When determining whether to issue a certificate of eligibility for a conviction,
808 the bureau may not consider:

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

810 (i) infraction;

811 (ii) traffic offense;

812 (iii) minor regulatory offense; or

813 (iv) clean slate eligible case that was automatically expunged in accordance with
814 Section ~~[77-40-114]~~ 77-40a-201; or

815 (b) a fine or fee related to an offense described in Subsection ~~[(5)]~~ (4)(a).

816 ~~[(6) The]~~ (5) Except as provided in Subsection (8), the bureau may not issue a
817 certificate of eligibility for a conviction if, at the time the petitioner seeks a certificate of
818 eligibility, the bureau determines that the petitioner's criminal history, including previously
819 expunged convictions, contains any of the following~~[-, except as provided in Subsection (9)]~~:

820 (a) two or more felony convictions other than for drug possession offenses, each of
821 which is contained in a separate criminal episode;

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

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

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

830 ~~[(7) The]~~ (6) Except as provided in Subsection (8), the bureau may not issue a
831 certificate of eligibility for a conviction if, at the time the petitioner seeks a certificate of
832 eligibility, the bureau determines that the petitioner's criminal history, including previously
833 expunged convictions, contains any of the following:

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

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

838 ~~[(8)]~~ (7) If the petitioner's criminal history contains convictions for both a drug
839 possession offense and a ~~[non-drug]~~ non-drug possession offense arising from the same
840 criminal episode, that criminal episode shall be counted as provided in Subsection ~~[(6)]~~ (5) if
841 any ~~[non-drug]~~ non-drug possession offense in that episode:

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

843 (b) has the same or a longer waiting period under Subsection ~~[(4)]~~ (3) than any drug
844 possession offense in that episode.

845 ~~[(9)]~~ (8) If at least 10 years have elapsed from the date the petitioner was convicted or
846 released from incarceration, parole, or probation, whichever occurred last, for all convictions~~;~~
847 ~~then~~]:

848 (a) each numerical eligibility limit defined in ~~[Subsection (6)]~~ Subsections (5)(a) and

849 (b) shall be increased by one[-]; and

850 (b) each numerical eligibility limit defined in Subsections (5)(c), (5)(d), and (6) are not
851 applicable and the bureau may issue a certificate of eligibility if:

852 (i) the individual is otherwise eligible; and

853 (ii) the highest convicted offense in the criminal episode for each conviction is:

854 (A) a class B misdemeanor;

855 (B) a class C misdemeanor;

856 (C) a drug possession offense if none of the non-drug possession offenses in the
857 criminal episode are a felony or a class A misdemeanor; or

858 (D) an infraction.

859 ~~[(10)]~~ (9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah
860 Board of Pardons and Parole, the petitioner is entitled to an expungement order for all
861 pardoned crimes ~~[pursuant to]~~ in accordance with Section ~~77-27-5.1~~.

862 Section 17. Section ~~77-40a-304~~, which is renumbered from Section 77-40-106 is
863 renumbered and amended to read:

864 ~~[77-40-106]~~. 77-40a-304. Certificate of eligibility process -- Issuance of

865 **certificate -- Fees.**

866 ~~[(1) (a) A petitioner seeking to obtain an expungement for a criminal record shall apply~~
867 ~~for a certificate of eligibility from the bureau.]~~

868 ~~[(b) A petitioner who intentionally or knowingly provides any false or misleading~~
869 ~~information to the bureau when applying for a certificate of eligibility is guilty of a class B~~
870 ~~misdemeanor and subject to prosecution under Section 76-8-504.6.]~~

871 ~~[(c) Regardless of whether the petitioner is prosecuted, the bureau may deny a~~
872 ~~certificate of eligibility to anyone who knowingly provides false information on an~~
873 ~~application.]~~

874 ~~[(2)]~~ (1) (a) [The] When a petitioner applies for a certificate of eligibility as described
875 in Subsection 77-40a-301(1), the bureau shall perform a check of records of governmental
876 agencies, including national criminal data bases, to determine whether [a] the petitioner is
877 eligible to receive a certificate of eligibility under this chapter.

878 (b) For purposes of determining eligibility under this chapter, the bureau may review
879 records of arrest, investigation, detention, and conviction that have been previously expunged,
880 regardless of the jurisdiction in which the expungement occurred.

881 (c) Once the eligibility process is complete, the bureau shall notify the petitioner.

882 ~~[(e)]~~ (d) [Hf] Except as provided in Subsection (1)(f), if the petitioner meets all of the
883 criteria under Section [~~77-40-104 or 77-40-105;~~] 77-40a-302 or 77-40a-303:

884 (i) the bureau shall issue a certificate of eligibility [to the petitioner which shall be] that
885 is valid for a period of [~~90~~] 180 days from the [~~date~~] day on which the certificate is issued[-];

886 (ii) the bureau shall provide a petitioner with an identification number for the
887 certificate of eligibility; and

888 (iii) the petitioner shall pay the issuance fee established by the department as described
889 in Subsection (2).

890 ~~[(d)]~~ (e) If, after reasonable research, a disposition for an arrest on the criminal history
891 file is unobtainable, the bureau may issue a special certificate giving determination of
892 eligibility to the court[-] if:

893 (i) there are no criminal proceedings or pleas in abeyance pending against the
894 petitioner; and

895 (ii) the petitioner is not currently on probation or parole.

896 (f) The bureau may not issue a certificate of eligibility for a record of an arrest,
 897 detention, investigation, or conviction if the law enforcement agency case number listed on the
 898 court docket for the case for which expungement is sought is also associated with a law
 899 enforcement agency case number listed on a court docket for a case in court records that is not
 900 eligible for expungement under this chapter.

901 ~~[(3)]~~ (2) (a) The bureau shall charge application and issuance fees for a certificate of
 902 eligibility or special certificate in accordance with the process in Section [63J-1-504](#).

903 (b) The application fee shall be paid at the time the petitioner submits an application
 904 for a certificate of eligibility to the bureau.

905 (c) If the bureau determines that the issuance of a certificate of eligibility or special
 906 certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a
 907 certificate of eligibility or special certificate unless Subsection ~~[(3)]~~ (2)(d) applies.

908 (d) An issuance fee may not be assessed against a petitioner who qualifies for a
 909 certificate of eligibility under Section ~~[77-40-104]~~ [77-40a-302](#) unless the charges were
 910 dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in
 911 Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and
 912 Diversion.

913 (e) Funds generated under this Subsection ~~[(3)]~~ (2) shall be deposited in the General
 914 Fund as a dedicated credit by the department to cover the costs incurred in determining
 915 eligibility.

916 ~~[(4)]~~ (3) The bureau shall ~~[provide clear written directions to the petitioner along with~~
 917 ~~a list of agencies known to be affected by an order of expungement.]~~ include on the certificate
 918 of eligibility all information that is needed for the court to issue a valid expungement order.

919 (4) The bureau shall provide clear written instructions to the petitioner that explain:

920 (a) the process for a petition for expungement; and

921 (b) what is required of the petitioner to complete the process for a petition for
 922 expungement.

923 Section 18. Section **77-40a-305**, which is renumbered from Section 77-40-107 is
 924 renumbered and amended to read:

925 ~~[77-40-107]~~. **77-40a-305. Petition for expungement -- Prosecutorial**
 926 **responsibility -- Hearing.**

927 ~~[(1) The petitioner shall file a petition for expungement and, except as provided in~~
928 ~~Subsection 77-40-103(5), the certificate of eligibility in the court specified in Section~~
929 ~~77-40-103 and deliver a copy of the petition and certificate to the prosecuting agency. If the~~
930 ~~certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original~~
931 ~~certificate until the proceedings are concluded. If the original certificate is filed with the~~
932 ~~petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's~~
933 ~~attorney, who shall keep it until the proceedings are concluded.]~~

934 (1) (a) The petitioner shall file a petition for expungement, in accordance with the Utah
935 Rules of Criminal Procedure, that includes the identification number for the certificate of
936 eligibility described in Subsection 77-40a-304(1)(d)(ii).

937 (b) Information on a certificate of eligibility is incorporated into a petition by reference
938 to the identification number for the certificate of eligibility.

939 (2) (a) If a petition for expungement is filed under Subsection (1)(a), the court shall
940 obtain a certificate of eligibility from the bureau.

941 (b) A court may not accept a petition for expungement if the certificate of eligibility is
942 no longer valid as described in Subsection 77-40a-304(1)(d)(i).

943 (3) Notwithstanding Subsection (2), the petitioner may file a petition for expungement
944 of a traffic conviction without obtaining a certificate of eligibility if:

945 (a) (i) for a class C misdemeanor or infraction, at least three years have elapsed from
946 the day on which the petitioner was convicted; or

947 (ii) for a class B misdemeanor, at least four years have elapsed from the day on which
948 the petitioner was convicted; and

949 (b) all convictions in the case for the traffic conviction are for traffic offenses.

950 (4) Notwithstanding Subsection (2), a petitioner may file a petition for expungement of
951 a record for a conviction related to cannabis possession without a certificate of eligibility if the
952 petition demonstrates that:

953 (a) the petitioner had, at the time of the relevant arrest or citation leading to the
954 conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and

955 (b) the possession of cannabis in question was in a form and an amount to medicinally
956 treat the qualifying condition described in Subsection (4)(a).

957 (5) (a) The court shall provide notice of a filing of a petition and certificate of

958 eligibility to the prosecutorial office that handled the court proceedings within three days after
959 the day on which the petitioner's filing fee is paid or waived.

960 (b) If there were no court proceedings, the court shall provide notice of a filing of a
961 petition and certificate of eligibility to the county attorney's office in the jurisdiction where the
962 arrest occurred.

963 (c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention,
964 or conviction, was a city attorney's office, the county attorney's office in the jurisdiction where
965 the arrest occurred shall immediately notify the city attorney's office that the county attorney's
966 office has received a notice of a filing of a petition for expungement.

967 ~~[(2)]~~ (6) (a) Upon receipt of a notice of a filing of a petition for expungement of a
968 conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting
969 attorney shall [provide notice of the expungement request by first-class mail to the victim at the
970 most recent address of record on file.] make a reasonable effort to provide notice to any victim
971 of the conviction or charge.

972 (b) The notice under Subsection (6)(a) shall:

973 (i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable
974 to the petition;

975 (ii) state that the victim has a right to object to the expungement; and

976 (iii) provide instructions for registering an objection with the court.

977 ~~[(3)]~~ (7) The prosecuting attorney and the victim, if applicable, may respond to the
978 petition by filing a recommendation or objection with the court within 35 days after [receipt of
979 the petition.] the day on which the notice of the filing of the petition is sent by the court to the
980 prosecuting attorney.

981 ~~[(4)]~~ (8) (a) The court may request a written response to the petition from the Division
982 of Adult Probation and Parole within the Department of Corrections.

983 (b) If requested, the response prepared by the Division of Adult Probation and Parole
984 shall include:

985 (i) the reasons probation was terminated; and

986 (ii) certification that the petitioner has completed all requirements of sentencing and
987 probation or parole.

988 (c) The Division of Adult Probation and Parole shall provide a copy of the response to

989 the petitioner and the prosecuting attorney.

990 ~~[(5)]~~ (9) The petitioner may respond in writing to any objections filed by the
991 ~~[prosecutor]~~ prosecuting attorney or the victim and the response prepared by the Division of
992 Adult Probation and Parole within 14 days after ~~[receipt:]~~ the day on which the objection or
993 response is received.

994 ~~[(6)]~~ (10) (a) If the court receives an objection concerning the petition from any party,
995 the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of
996 the date set for the hearing.

997 (b) The prosecuting attorney shall notify the victim of the date set for the hearing.

998 ~~[(b)]~~ (c) The petitioner, the prosecuting attorney, the victim, and any other person who
999 has relevant information about the petitioner may testify at the hearing.

1000 ~~[(e)]~~ (d) The court shall review the petition, the certificate of eligibility, and any
1001 written responses submitted regarding the petition.

1002 ~~[(7)]~~ (11) If no objection is received within 60 days from the ~~[date]~~ day on which the
1003 petition for expungement is filed with the court, the expungement may be granted without a
1004 hearing.

1005 ~~[(8) The court shall issue an order of expungement if the court finds by clear and~~
1006 ~~convincing evidence that:]~~

1007 ~~[(a) the petition and, except as provided under Subsection 77-40-103(5), certificate of~~
1008 ~~eligibility are sufficient;]~~

1009 ~~[(b) the statutory requirements have been met;]~~

1010 ~~[(c) if the petitioner seeks expungement after a case is dismissed without prejudice or~~
1011 ~~without condition, the prosecutor provided written consent and has not filed and does not~~
1012 ~~intend to refile related charges;]~~

1013 ~~[(d) if the petitioner seeks expungement of drug possession offenses allowed under~~
1014 ~~Subsection 77-40-105(7), the petitioner is not illegally using controlled substances and is~~
1015 ~~successfully managing any substance addiction;]~~

1016 ~~[(e) if the petitioner seeks expungement without a certificate of eligibility for~~
1017 ~~expungement under Subsection 77-40-103(5) for a record of conviction related to cannabis~~
1018 ~~possession;]~~

1019 ~~[(i) the petitioner had, at the time of the relevant arrest or citation leading to the~~

1020 conviction, a qualifying condition, as that term is defined in Section ~~26-61a-102~~; and]

1021 ~~[(ii) the possession of cannabis in question was in a form and an amount to medicinally~~

1022 ~~treat the condition described in Subsection (8)(c)(i);]~~

1023 ~~[(f) if an objection is received, the petition for expungement is for a charge dismissed~~

1024 ~~in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be~~

1025 ~~used for enhancement, there is good cause for the court to grant the expungement; and]~~

1026 ~~[(g) it is not contrary to the interests of the public to grant the expungement.]~~

1027 ~~[(9) (a) If the court denies a petition described in Subsection (8)(c) because the~~

1028 ~~prosecutor intends to refile charges, the person seeking expungement may again apply for a~~

1029 ~~certificate of eligibility if charges are not refiled within 180 days of the day on which the court~~

1030 ~~denies the petition.]~~

1031 ~~[(b) A prosecutor who opposes an expungement of a case dismissed without prejudice~~

1032 ~~or without condition shall have a good faith basis for the intention to refile the case.]~~

1033 ~~[(c) A court shall consider the number of times that good faith basis of intention to~~

1034 ~~refile by the prosecutor is presented to the court in making the court's determination to grant~~

1035 ~~the petition for expungement described in Subsection (8)(c).]~~

1036 ~~[(10) If the court grants a petition described in Subsection (8)(c), the court shall make~~

1037 ~~the court's findings in a written order.]~~

1038 ~~[(11) A court may not expunge a conviction of an offense for which a certificate of~~

1039 ~~eligibility may not be or should not have been issued under Section ~~77-40-104~~ or ~~77-40-105~~.]~~

1040 Section 19. Section ~~77-40a-306~~ is enacted to read:

1041 ~~**77-40a-306. Order of expungement.**~~

1042 ~~(1) If a petition is filed in accordance with Section ~~77-40a-305~~, the court shall issue an~~

1043 ~~order of expungement if the court finds, by clear and convincing evidence, that:~~

1044 ~~(a) except as provided in Subsection ~~77-40a-305~~(3) or (4), the petition and certificate~~

1045 ~~of eligibility are sufficient;~~

1046 ~~(b) the statutory requirements have been met;~~

1047 ~~(c) if the petitioner seeks expungement after a case is dismissed without prejudice or~~

1048 ~~without condition, the prosecuting attorney provided written consent and has not filed and does~~

1049 ~~not intend to refile related charges;~~

1050 ~~(d) if the petitioner seeks expungement without a certificate of eligibility for~~

1051 expungement under Subsection [77-40a-305](#)(4) for a record of conviction related to cannabis
 1052 possession:

1053 (i) the petitioner had, at the time of the relevant arrest or citation leading to the
 1054 conviction, a qualifying condition, as that term is defined in Section [26-61a-102](#); and

1055 (ii) the possession of cannabis in question was in a form and an amount to medicinally
 1056 treat the qualifying condition described in Subsection (1)(d)(i);

1057 (e) if an objection is received, the petition for expungement is for a charge dismissed in
 1058 accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used
 1059 for enhancement, there is good cause for the court to grant the expungement; and

1060 (f) the interests of the public would not be harmed by granting the expungement.

1061 (2) (a) If the court denies a petition described in Subsection (1)(c) because the
 1062 prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of
 1063 eligibility if charges are not refiled within 180 days after the day on which the court denies the
 1064 petition.

1065 (b) A prosecuting attorney who opposes an expungement of a case dismissed without
 1066 prejudice, or without condition, shall have a good faith basis for the intention to refile the case.

1067 (c) A court shall consider the number of times that good faith basis of intention to
 1068 refile by the prosecuting attorney is presented to the court in making the court's determination
 1069 to grant the petition for expungement described in Subsection (1)(c).

1070 (3) If the court grants a petition described in Subsection (1)(e), the court shall make the
 1071 court's findings in a written order.

1072 (4) A court may not expunge a conviction of an offense for which a certificate of
 1073 eligibility may not be, or should not have been, issued under Section [77-40a-302](#) or
 1074 [77-40a-303](#).

1075 Section 20. Section **77-40a-401**, which is renumbered from Section 77-40-108 is
 1076 renumbered and amended to read:

1077 **Part 4. Distribution and Use of Expunged Records**

1078 ~~[77-40-108].~~ **77-40a-401. Distribution of order -- Redaction -- Receipt of**
 1079 **order -- Bureau requirements -- Administrative proceedings.**

1080 ~~[(1) (a) (i) An individual who receives an order of expungement under Section~~
 1081 ~~[77-40-107](#) or Section [77-27-5.1](#) shall be responsible for delivering a copy of the order of~~

1082 expungement to all affected criminal justice agencies and officials including the court, arresting
1083 agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.]

1084 [(ii) The provisions of Subsection (1)(a)(i) do not apply to an individual who receives
1085 an automatic expungement under Section ~~77-40-114~~.]

1086 (1) (a) The bureau, upon receiving notice from the court, shall notify all criminal
1087 justice agencies affected by the expungement order.

1088 (b) For purposes of Subsection (1)(a), the bureau may not notify the Board of Pardons
1089 and Parole of an expungement order if the individual has never been:

1090 (i) sentenced to prison in this state; or

1091 (ii) under the jurisdiction of the Board of Pardons and Parole.

1092 (c) A petitioner may deliver copies of the expungement to all criminal justice agencies
1093 affected by the order of expungement.

1094 ~~[(b)]~~ (d) An individual, who receives an [order of] expungement order under Section
1095 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process
1096 in Section 63J-1-504, before the bureau's record may be expunged.

1097 (2) Unless otherwise provided by law or ordered by a court ~~[of competent jurisdiction]~~
1098 to respond differently, an individual or agency who has received an expungement of an arrest
1099 or conviction under this chapter or Section 77-27-5.1 may respond to any inquiry as though the
1100 arrest or conviction did not occur.

1101 (3) The bureau shall forward a copy of the expungement order to the Federal Bureau of
1102 Investigation.

1103 (4) An agency receiving an expungement order shall expunge the individual's
1104 identifying information contained in records in the agency's possession relating to the incident
1105 for which expungement is ordered.

1106 (5) Unless ordered by a court to do so, or in accordance with Subsection
1107 ~~[77-40-109(2)]~~ 77-40a-403(2), a government agency or official may not divulge information or
1108 records that have been expunged.

1109 (6) (a) An ~~[order of]~~ expungement order may not restrict an agency's use or
1110 dissemination of records in the agency's ordinary course of business until the agency has
1111 received a copy of the order.

1112 (b) Any action taken by an agency after issuance of the order but prior to the agency's

1113 receipt of a copy of the order may not be invalidated by the order.

1114 (7) An [~~order of~~] expungement order may not:

1115 (a) terminate or invalidate any pending administrative proceedings or actions of which
1116 the individual had notice according to the records of the administrative body prior to issuance
1117 of the expungement order;

1118 (b) affect the enforcement of any order or findings issued by an administrative body
1119 pursuant to the administrative body's lawful authority prior to issuance of the expungement
1120 order;

1121 (c) remove any evidence relating to the individual including records of arrest, which
1122 the administrative body has used or may use in these proceedings; or

1123 (d) prevent an agency from maintaining, sharing, or distributing any record required by
1124 law.

1125 Section 21. Section ~~77-40a-402~~, which is renumbered from Section 77-40-108.5 is
1126 renumbered and amended to read:

1127 ~~[77-40-108.5].~~ 77-40a-402. Distribution for order for vacatur.

1128 (1) An individual who receives an order for vacatur under Subsection ~~78B-9-108(2)~~
1129 shall be responsible for delivering a copy of the order for vacatur to all affected criminal justice
1130 agencies and officials [~~including the court, arresting agency, booking agency, prosecuting~~
1131 ~~agency, Department of Corrections, and the bureau~~].

1132 (2) To complete delivery of the order for vacatur to the bureau, the individual shall
1133 complete and attach to the order for vacatur an application for a certificate of eligibility for
1134 expungement, including identifying information and fingerprints, [~~as provided in Subsection~~
1135 ~~77-40-103(1).~~] in accordance with Section 77-40a-301.

1136 (3) [~~The~~] Except as otherwise provided in this section, the bureau shall treat the order
1137 for vacatur and attached certificate of eligibility for expungement the same as a valid order for
1138 expungement under Section [~~77-40-108, except as provided in this section.~~] 77-40a-401.

1139 (4) Unless otherwise provided by law or ordered by a court [~~of competent jurisdiction~~]
1140 to respond differently, an individual who has received a vacatur of conviction under Section
1141 ~~78B-9-108(2)~~ may respond to any inquiry as though the conviction did not occur.

1142 (5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of
1143 Investigation.

1144 (6) An agency receiving an order for vacatur shall expunge the individual's identifying
 1145 information contained in records in the agency's possession relating to the incident for which
 1146 vacatur is ordered.

1147 (7) A government agency or official may not divulge information contained in a record
 1148 of arrest, investigation, detention, or conviction after receiving an order for vacatur to any
 1149 person or agency, except for:

1150 (a) the individual for whom vacatur was ordered; or

1151 (b) Peace Officer Standards and Training, ~~[pursuant to]~~ in accordance with Section
 1152 53-6-203 and Subsection ~~[77-40-109(2)(b)(ii)]~~ 77-40a-403(2)(b)(ii).

1153 (8) The bureau may not count vacated convictions against any future expungement
 1154 eligibility.

1155 Section 22. Section **77-40a-403**, which is renumbered from Section 77-40-109 is
 1156 renumbered and amended to read:

1157 ~~[77-40-109]~~. **77-40a-403. Retention and release of expunged records --**
 1158 **Agencies.**

1159 (1) (a) The bureau, after receiving an expungement order, shall keep, index, and
 1160 maintain all expunged records of arrests and convictions.

1161 (b) Any agency, other than the bureau, receiving an expungement order shall develop
 1162 and implement a process to identify an expunged record.

1163 (2) (a) (i) ~~[Employees of the bureau]~~ An employee of the bureau, or any agency with an
 1164 expunged record, may not divulge any information contained in the ~~[bureau's index]~~ expunged
 1165 record to any person or agency without a court order unless:

1166 (A) specifically authorized by statute[-]; or

1167 (B) subject to Subsection (2)(a)(ii), the information in an expunged record is being
 1168 shared with another agency through a records management system that both agencies use for
 1169 the purpose of record management.

1170 (ii) An agency with a records management system may not disclose any information in
 1171 an expunged record with another agency or person that does not use the records management
 1172 system for the purpose of record management.

1173 (b) The following organizations may receive information contained in expunged
 1174 records upon specific request:

1175 (i) the Board of Pardons and Parole;
1176 (ii) Peace Officer Standards and Training;
1177 (iii) federal authorities, only as required by federal law;
1178 (iv) the Department of Commerce;
1179 (v) the Department of Insurance;
1180 (vi) the State Board of Education; and
1181 (vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating
1182 applicants for judicial office[-] and authorizing the disclosure of expunged records for research
1183 purposes as described in Subsection 63G-2-202(8) or in Subsection 53-10-108(2)(k) for
1184 records held by the bureau.

1185 (c) A person or agency authorized by this Subsection (2) to view expunged records
1186 may not reveal or release any information obtained from the expunged records to anyone
1187 outside the specific request, except as directed by a court order, including distribution on a
1188 public website.

1189 (d) A prosecuting attorney may communicate with another prosecuting attorney, or
1190 another prosecutorial agency, regarding information in an expunged record that includes a
1191 conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance
1192 agreement, for:

1193 (i) stalking as described in Section 76-5-106.5;

1194 (ii) a domestic violence offense as defined in Section 77-36-1;

1195 (iii) an offense that would require the individual to register as a sex offender, as
1196 defined in Section 77-41-102; or

1197 (iv) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.

1198 (e) Except as provided in Subsection (4), a prosecuting attorney may not use an
1199 expunged record for the purpose of a sentencing enhancement or as a basis for charging an
1200 individual with an offense that requires a prior conviction.

1201 (3) The bureau may also use the information in the bureau's index as provided in
1202 Section 53-5-704.

1203 (4) If, after obtaining an expungement, an individual is charged with a felony or an
1204 offense eligible for enhancement based on a prior conviction, the state may petition the court to
1205 open the expunged records upon a showing of good cause.

1206 (5) (a) For judicial sentencing, a court may order any records expunged under this
1207 chapter or Section 77-27-5.1 to be opened and admitted into evidence.

1208 (b) The records are confidential and are available for inspection only by the court,
1209 parties, counsel for the parties, and any other person who is authorized by the court to inspect
1210 them.

1211 (c) At the end of the action or proceeding, the court shall order the records expunged
1212 again.

1213 (d) Any person authorized by this Subsection (5) to view expunged records may not
1214 reveal or release any information obtained from the expunged records to anyone outside the
1215 court.

1216 (6) Records released under this chapter are classified as protected under Section
1217 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to
1218 Records, and Subsection 53-10-108(2)(k) for records held by the bureau.

1219 Section 23. Section 77-40a-404, which is renumbered from Section 77-40-110 is
1220 renumbered and amended to read:

1221 ~~77-40-110~~. 77-40a-404. **Use of expunged records -- Individuals -- Use in**
1222 **civil actions.**

1223 ~~[Records]~~ A record expunged under this chapter or Section 77-27-5.1 may be released
1224 to or viewed by ~~[the following individuals]~~:

1225 (1) the petitioner or an individual who receives an automatic expungement under
1226 Section ~~[77-40-114]~~ 77-40-201;

1227 (2) a law enforcement officer who was involved in the case, for use solely in the
1228 officer's defense of a civil action arising out of the officer's involvement with the petitioner in
1229 that particular case; and

1230 (3) parties to a civil action arising out of the expunged incident, providing the
1231 information is kept confidential and utilized only in the action.

1232 Section 24. Section 77-40a-405, which is renumbered from Section 77-40-112 is
1233 renumbered and amended to read:

1234 ~~77-40-112~~. 77-40a-405. **Penalty for disclosure of expunged, vacated, or**
1235 **pardoned records.**

1236 An employee or agent of an agency that is prohibited from disseminating information

1237 from expunged, vacated, or pardoned records under Section [77-27-5.1](#) or [~~77-40-109~~]
1238 [77-40a-403](#) who knowingly or intentionally discloses identifying information from the
1239 expunged, vacated, or pardoned record that has been pardoned, vacated, or expunged, unless
1240 allowed by law, is guilty of a class A misdemeanor.

1241 Section 25. Section **78B-9-108** is amended to read:

1242 **78B-9-108. Effect of granting relief -- Notice.**

1243 (1) If the court grants the petitioner's request for relief, except requests for relief under
1244 Subsection [78B-9-104](#)(1)(g), the court shall either:

1245 (a) modify the original conviction or sentence; or

1246 (b) vacate the original conviction or sentence and order a new trial or sentencing
1247 proceeding as appropriate.

1248 (2) If the court grants the petitioner's request for relief under Subsection

1249 [78B-9-104](#)(1)(g), the court shall:

1250 (a) vacate the original conviction and sentence; and

1251 (b) order the petitioner's records expunged [~~pursuant to Section [77-40-108.5](#)~~] in
1252 accordance with Section [77-40a-402](#).

1253 (3) (a) If the petitioner is serving a felony sentence, the order shall be stayed for five
1254 days. Within the stay period, the respondent shall give written notice to the court and the
1255 petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the
1256 order, or take no action.

1257 (b) If the respondent fails to provide notice or gives notice at any time during the stay
1258 period that it intends to take no action, the court shall lift the stay and deliver the order to the
1259 custodian of the petitioner.

1260 (c) If the respondent gives notice of intent to appeal the court's decision, the stay
1261 provided for by Subsection (3)(a) shall remain in effect until the appeal concludes, including
1262 any petitions for rehearing or for discretionary review by a higher court. The court may lift the
1263 stay if the petitioner can make the showing required for a certificate of probable cause under
1264 Section [77-20-302](#) and Utah Rules of Criminal Procedure, Rule 27.

1265 (d) If the respondent gives notice that it intends to retry or resentence the petitioner, the
1266 trial court may order any supplementary orders as to arraignment, trial, sentencing, custody,
1267 bail, discharge, or other matters that may be necessary.

1268 Section 26. **Repealer.**

1269 This bill repeals:

1270 Section **77-40-103**, **Petition for expungement procedure overview.**