

EXPUNGEMENT MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Raymond P. Ward

LONG TITLE

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 petitioners regarding the process for a petition for expungement;
- ▶ modifies the requirements for a petition for expungement, including notice requirements concerning prosecutorial entities;
- ▶ provides that a certificate of eligibility is not required for a petition of expungement for certain offenses;

- 30 ▶ requires the Bureau of Criminal Identification to notify all criminal justice agencies
- 31 affected by an order of expungement with an exception for the Board of Pardons
- 32 and Parole;
- 33 ▶ prohibits employees of an agency from divulging information contained in an
- 34 expunged record with certain exceptions;
- 35 ▶ allows an agency or a research institution to use expunged records if the agency or a
- 36 research institution follows certain requirements;
- 37 ▶ allows a prosecuting attorney to communicate with another prosecuting attorney
- 38 regarding expunged records for certain offenses;
- 39 ▶ prohibits a prosecuting attorney from using an expunged record for a sentencing
- 40 enhancement or as a basis for charging the individual with an offense that requires a
- 41 prior conviction, unless there is a showing of good cause; and
- 42 ▶ makes technical and conforming changes.

43 **Money Appropriated in this Bill:**

44 None

45 **Other Special Clauses:**

46 None

47 **Utah Code Sections Affected:**

48 AMENDS:

49 **53-5-704**, as last amended by Laws of Utah 2021, Chapters 141 and 166

50 **53-10-202.5**, as last amended by Laws of Utah 2017, Chapter 286

51 **53E-6-506**, as last amended by Laws of Utah 2019, Chapter 186

52 **67-5a-1**, as last amended by Laws of Utah 2019, Chapter 86

53 **78B-9-108**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

54 ENACTS:

55 **77-40a-301**, Utah Code Annotated 1953

56 **77-40a-306**, Utah Code Annotated 1953

57 RENUMBERS AND AMENDS:

58 **77-40a-101**, (Renumbered from 77-40-102, as last amended by Laws of Utah 2021,
59 Chapters 206 and 260)
60 **77-40a-102**, (Renumbered from 77-40-101.5, as last amended by Laws of Utah 2021,
61 Chapter 262)
62 **77-40a-103**, (Renumbered from 77-40-113, as renumbered and amended by Laws of
63 Utah 2010, Chapter 283)
64 **77-40a-104**, (Renumbered from 77-40-111, as last amended by Laws of Utah 2019,
65 Chapter 448)
66 **77-40a-105**, (Renumbered from 77-40-104.1, as last amended by Laws of Utah 2021,
67 Chapter 272)
68 **77-40a-201**, (Renumbered from 77-40-114, as last amended by Laws of Utah 2020,
69 Chapter 218)
70 **77-40a-202**, (Renumbered from 77-40-115, as enacted by Laws of Utah 2019, Chapter
71 448)
72 **77-40a-203**, (Renumbered from 77-40-116, as enacted by Laws of Utah 2019, Chapter
73 448)
74 **77-40a-302**, (Renumbered from 77-40-104, as last amended by Laws of Utah 2019,
75 Chapter 448)
76 **77-40a-303**, (Renumbered from 77-40-105, as last amended by Laws of Utah 2021,
77 Chapters 206, 260 and last amended by Coordination Clause, Laws of Utah 2021,
78 Chapter 261)
79 **77-40a-304**, (Renumbered from 77-40-106, as last amended by Laws of Utah 2017,
80 Chapter 356)
81 **77-40a-305**, (Renumbered from 77-40-107, as last amended by Laws of Utah 2021,
82 Chapter 206)
83 **77-40a-401**, (Renumbered from 77-40-108, as last amended by Laws of Utah 2019,
84 Chapter 448)
85 **77-40a-402**, (Renumbered from 77-40-108.5, as last amended by Laws of Utah 2019,

86 Chapter 448)

87 77-40a-403, (Renumbered from 77-40-109, as last amended by Laws of Utah 2019,
88 Chapter 448)

89 77-40a-404, (Renumbered from 77-40-110, as last amended by Laws of Utah 2019,
90 Chapter 448)

91 77-40a-405, (Renumbered from 77-40-112, as last amended by Laws of Utah 2017,
92 Chapters 356 and 447)

93 REPEALS:

94 77-40-101, as enacted by Laws of Utah 2010, Chapter 283

95 77-40-103, as last amended by Laws of Utah 2020, Chapters 12, 12, and 218



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

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

99 **53-5-704. Bureau duties -- Permit to carry concealed firearm -- Certification for**
100 **concealed firearms instructor -- Requirements for issuance -- Violation -- Denial,**
101 **suspension, or revocation -- Appeal procedure.**

102 (1) (a) Except as provided in Subsection (1)(b), the bureau shall issue a permit to carry
103 a concealed firearm for lawful self defense to an applicant who is 21 years old or older within
104 60 days after receiving an application, unless the bureau finds proof that the applicant is not
105 qualified to hold a permit under Subsection (2) or (3).

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

109 (ii) The bureau shall issue a permit for an applicant under Subsection (1)(b)(i) within
110 60 days after receiving an application, unless the bureau finds proof that the applicant is not
111 qualified to hold a permit under Subsection (2) or (3).

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

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

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

115 (iv) A person who applies for a permit under this Subsection (1)(b) is not required to
116 retake the firearms training described in Subsection 53-5-704(8).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

146 (ii) past participation in incidents involving unlawful violence or threats of unlawful
147 violence; or

148 (iii) conviction of an offense in violation of Title 76, Chapter 10, Part 5, Weapons.

149 (b) The bureau may not deny, suspend, or revoke a concealed firearm permit solely for
150 a single conviction of an infraction violation of Title 76, Chapter 10, Part 5, Weapons.

151 (c) In determining whether the applicant or permit holder has been or is a danger to self
152 or others, the bureau may inspect:

153 (i) expunged records of arrests and convictions of adults as provided in Section
154 ~~[77-40-109]~~ [77-40a-403](#); and

155 (ii) juvenile court records as provided in Section [78A-6-209](#).

156 (d) (i) The bureau shall suspend a concealed firearm permit if a permit holder becomes
157 a temporarily restricted person in accordance with Section [53-5c-301](#).

158 (ii) Upon removal from the temporary restricted list, the permit holder's permit shall be
159 reinstated unless:

160 (A) the permit has been revoked, been suspended for a reason other than the restriction
161 described in Subsection (3)(d)(i), or expired; or

162 (B) the permit holder has become a restricted person under Section [76-10-503](#).

163 (4) (a) In addition to meeting the other qualifications for the issuance of a concealed
164 firearm permit under this section, a nonresident applicant who resides in a state that recognizes
165 the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law
166 shall:

167 (i) hold a current concealed firearm or concealed weapon permit issued by the
168 appropriate permitting authority of the nonresident applicant's state of residency; and

169 (ii) submit a photocopy or electronic copy of the nonresident applicant's current

170 concealed firearm or concealed weapon permit referred to in Subsection (4)(a)(i).

171 (b) A nonresident applicant who knowingly and willfully provides false information to
172 the bureau under Subsection (4)(a) is prohibited from holding a Utah concealed firearm permit
173 for a period of 10 years.

174 (c) Subsection (4)(a) applies to all applications for the issuance of a concealed firearm
175 permit that are received by the bureau after May 10, 2011.

176 (d) Beginning January 1, 2012, Subsection (4)(a) also applies to an application for
177 renewal of a concealed firearm permit by a nonresident.

178 (5) The bureau shall issue a concealed firearm permit to a former peace officer who
179 departs full-time employment as a peace officer, in an honorable manner, within five years of
180 that departure if the officer meets the requirements of this section.

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

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

184 (b) one recent dated photograph;

185 (c) one set of fingerprints; and

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

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

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

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

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

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

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

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

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

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

209 (d) A person applying for a renewal permit is not required to retake the firearms
210 training described in this Subsection 53-5-704(8) if the person:

211 (i) has an unexpired permit; or

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

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

215 (i) be at least 21 years old;

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

217 (iii) have:

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

220 or

221 (B) received training equivalent to one of the courses referred to in Subsection
222 (9)(a)(iii)(A) as determined by the bureau;

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

225 (v) possess a Utah concealed firearm permit.

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

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

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

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

234 (d) (i) Each applicant for certification under this Subsection (9) shall pay a fee of
235 \$50.00 at the time of application for initial certification.

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

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

240 (10) A certified concealed firearms instructor shall provide each of the instructor's
241 students with the required course of instruction outline approved by the bureau.

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

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

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

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

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

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

253 (II) the words "Utah Certified Concealed Firearms Instructor," "state of Utah," and "my

254 certification expires on (the instructor's certification expiration date)"; and

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

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

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

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

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

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

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

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

270 (15) An individual who knowingly and willfully provides false information on an
271 application filed under this part is guilty of a class B misdemeanor, and the application may be
272 denied, or the permit may be suspended or revoked.

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

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

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

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

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

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

287 (iii) The final order is final bureau action for purposes of judicial review under Section
288 63G-4-402.

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

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

292 **53-10-202.5. Bureau services -- Fees.**

293 The bureau shall collect fees for the following services:

- 294 (1) applicant fingerprint card as determined by Section 53-10-108;
- 295 (2) bail enforcement licensing as determined by Section 53-11-115;
- 296 (3) concealed firearm permit as determined by Section 53-5-707;
- 297 (4) provisional concealed firearm permit as determined by Section 53-5-707.5;
- 298 (5) application for and issuance of a certificate of eligibility for expungement as
299 ~~[determined by Section 77-40-106]~~ described in Section 77-40a-304;
- 300 (6) firearm purchase background check as determined by Section 76-10-526;
- 301 (7) name check as determined by Section 53-10-108;
- 302 (8) private investigator licensing as determined by Section 53-9-111; and
- 303 (9) right of access as determined by Section 53-10-108.

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

305 **53E-6-506. UPPAC duties and procedures.**

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

- 308 (a) dismiss the complaint; or
- 309 (b) investigate the complaint in accordance with this section.

- 310 (2) (a) The state board may direct UPPAC to:
- 311 (i) in accordance with this section, investigate a complaint's allegation or decision; or
- 312 (ii) hold a hearing.
- 313 (b) UPPAC may initiate a hearing as part of an investigation.
- 314 (c) Upon completion of an investigation or hearing, UPPAC shall:
- 315 (i) provide findings to the state board; and
- 316 (ii) make a recommendation for state board action.
- 317 (d) UPPAC may not make a recommendation described in Subsection (2)(c)(ii) to
- 318 adversely affect an educator's license unless UPPAC gives the educator an opportunity for a
- 319 hearing.
- 320 (3) (a) The state board may:
- 321 (i) select an independent investigator to conduct a UPPAC investigation with UPPAC
- 322 oversight; or
- 323 (ii) authorize UPPAC to select and oversee an independent investigator to conduct an
- 324 investigation.
- 325 (b) In conducting an investigation, UPPAC or an independent investigator shall
- 326 conduct the investigation independent of and separate from a related criminal investigation.
- 327 (c) In conducting an investigation, UPPAC or an independent investigator may:
- 328 (i) in accordance with Section [53E-6-606](#) administer oaths and issue subpoenas; or
- 329 (ii) receive evidence related to an alleged offense, including sealed or expunged
- 330 records released to the state board under Section [~~77-40-109~~] [77-40a-403](#).
- 331 (d) If UPPAC finds that reasonable cause exists during an investigation, UPPAC may
- 332 recommend that the state board initiate a background check on an educator as described in
- 333 Section [53G-11-403](#).
- 334 (e) UPPAC has a rebuttable presumption that an educator committed a sexual offense
- 335 against a minor child if the educator voluntarily surrendered a license or certificate or allowed a
- 336 license or certificate to lapse in the face of a charge of having committed a sexual offense
- 337 against a minor child.

- 338 (4) The state board may direct UPPAC to:
- 339 (a) recommend to the state board procedures for:
- 340 (i) receiving and processing complaints;
- 341 (ii) investigating a complaint's allegation or decision;
- 342 (iii) conducting hearings; or
- 343 (iv) reporting findings and making recommendations to the state board for state board
- 344 action;
- 345 (b) recommend to the state board or a professional organization of educators:
- 346 (i) standards of professional performance, competence, and ethical conduct for
- 347 educators; or
- 348 (ii) suggestions for improvement of the education profession; or
- 349 (c) fulfill other duties the state board finds appropriate.
- 350 (5) UPPAC may not participate as a party in a dispute relating to negotiations between:
- 351 (a) a school district and the school district's educators; or
- 352 (b) a charter school and the charter school's educators.
- 353 (6) The state board shall make rules establishing UPPAC duties and procedures.
- 354 Section 4. Section **67-5a-1** is amended to read:
- 355 **67-5a-1. Utah Prosecution Council -- Duties -- Membership.**
- 356 (1) There is created within the Office of the Attorney General the Utah Prosecution
- 357 Council, referred to as the council in this chapter.
- 358 (2) The council shall:
- 359 (a) (i) provide training and continuing legal education for state and local prosecutors;
- 360 and
- 361 (ii) ensure that any training or continuing legal education described in Subsection
- 362 (2)(a)(i) complies with Title 63G, Chapter 22, State Training and Certification Requirements;
- 363 (b) provide assistance to local prosecutors;
- 364 (c) as funds are available and as are budgeted for this purpose, provide reimbursement
- 365 for unusual expenses related to prosecution for violations of state laws; [~~and~~]

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

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

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

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

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

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

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

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

378 (d) four city prosecutors designated as follows:

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

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

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

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

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

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

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

391 Section 5. Section **77-40a-101**, which is renumbered from Section 77-40-102 is
392 renumbered and amended to read:

393 **CHAPTER 40a. EXPUNGEMENT**

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Part 1. General Provisions

~~[77-40-102].~~ 77-40a-101. Definitions.

As used in this chapter:

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

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

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

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

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

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

(A) a misdemeanor conviction for possession of a controlled substance in violation of Subsection [58-37-8\(2\)\(a\)\(i\)](#);

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

(C) an infraction conviction;

(ii) that involves an individual:

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

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

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

(iii) for which the following time periods have elapsed from the day on which the case

422 is adjudicated:

423 (A) at least five years for a class C misdemeanor or an infraction;

424 (B) at least six years for a class B misdemeanor; and

425 (C) at least seven years for a class A conviction for possession of a controlled

426 substance in violation of Subsection 58-37-8(2)(a)(i).

427 (b) "Clean slate eligible case" includes a case:

428 (i) that is dismissed as a result of a successful completion of a plea in abeyance

429 agreement governed by Subsection 77-2a-3(2)(b) if:

430 [(+)] (A) except as provided in Subsection [(5)] (4)(c), each charge within the case is[
431 (A)] a misdemeanor for possession of a controlled substance in violation of Subsection

432 58-37-8(2)(a)(i)[; (B)], a class B or class C misdemeanor[; or (C)], or an infraction;

433 [(+)] (B) the individual involved meets the requirements of Subsection [(5)] (4)(a)(ii);

434 and

435 [(+)] (C) the time periods described in Subsections [(5)] (4)(a)(iii)(A) through (C)

436 have elapsed from the day on which the case is dismissed[; or

437 (ii) where charges are dismissed without prejudice if each conviction, or charge that

438 was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or

439 (b)(i).

440 (c) "Clean slate eligible case" does not include a case:

441 (i) where the individual is found not guilty by reason of insanity;

442 (ii) where the case establishes a criminal accounts receivable, as defined in Section

443 77-32b-102, that:

444 (A) has been entered as a civil accounts receivable or a civil judgment of restitution, as

445 those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt

446 Collection under Section 77-18-114; or

447 (B) has not been satisfied according to court records; or

448 (iii) that resulted in one or more pleas held in abeyance or convictions for the following

449 offenses:

- 450 (A) any of the offenses listed in Subsection [~~77-40-105(2)(a)~~] 77-40a-303(1)(a);
- 451 (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against
452 the Person;
- 453 (C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
- 454 (D) sexual battery in violation of Section 76-9-702.1;
- 455 (E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
- 456 (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence
457 and Reckless Driving;
- 458 (G) damage to or interruption of a communication device in violation of Section
459 76-6-108;
- 460 (H) a domestic violence offense as defined in Section 77-36-1; or
- 461 (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor
462 other than a class A misdemeanor conviction for possession of a controlled substance in
463 violation of Subsection 58-37-8(2)(a)(i).
- 464 ~~[(6)]~~ (5) "Conviction" means judgment by a criminal court on a verdict or finding of
465 guilty after trial, a plea of guilty, or a plea of nolo contendere.
- 466 (6) "Criminal protective order" means the same as that term is defined in Section
467 78B-7-102.
- 468 (7) "Criminal stalking injunction" means the same as that term is defined in Section
469 78B-7-102.
- 470 ~~[(7)]~~ (8) "Department" means the Department of Public Safety established in Section
471 53-1-103.
- 472 ~~[(8)]~~ (9) "Drug possession offense" means an offense under:
473 (a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i),
474 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection
475 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a
476 controlled substance illegally in the person's body and negligently causing serious bodily injury
477 or death of another;

478 (b) Subsection [58-37a-5\(1\)](#), use or possession of drug paraphernalia;
 479 (c) Section [58-37b-6](#), possession or use of an imitation controlled substance; or
 480 (d) any local ordinance which is substantially similar to any of the offenses described
 481 in this Subsection ~~[(8)]~~ (9).

482 ~~[(9)]~~ (10) "Expunge" means to seal or otherwise restrict access to the individual's
 483 record held by an agency when the record includes a criminal investigation, detention, arrest, or
 484 conviction.

485 ~~[(10)]~~ (11) "Jurisdiction" means a state, district, province, political subdivision,
 486 territory, or possession of the United States or any foreign country.

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

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

491 (b) "Minor regulatory offense" includes an offense under Section [76-9-701](#) or
 492 [76-10-105](#).

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

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

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

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

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

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

502 ~~[(12)]~~ (13) "Petitioner" means an individual applying for expungement under this
 503 chapter.

504 ~~[(13)]~~ (14) (a) "Traffic offense" means:

505 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,

506 Chapter 6a, Traffic Code;

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

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

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

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

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

514 (ii) an offense under Sections 73-18-13 through 73-18-13.6; or

515 (iii) any local ordinance that is substantially similar to [~~the offenses listed in~~
516 ~~Subsections (13)(b)(i) and (ii)] an offense listed in Subsection (14)(b)(i) or (ii).~~

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

518 Section 6. Section **77-40a-102**, which is renumbered from Section 77-40-101.5 is
519 renumbered and amended to read:

520 ~~[77-40-101.5].~~ **77-40a-102. Applicability to juvenile court records.**

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

524 Section 7. Section **77-40a-103**, which is renumbered from Section 77-40-113 is
525 renumbered and amended to read:

526 ~~[77-40-113].~~ **77-40a-103. Retroactive application.**

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

529 Section 8. Section **77-40a-104**, which is renumbered from Section 77-40-111 is
530 renumbered and amended to read:

531 ~~[77-40-111].~~ **77-40a-104. Rulemaking authority.**

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

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

538 Section 9. Section **77-40a-105**, which is renumbered from Section 77-40-104.1 is
 539 renumbered and amended to read:

540 ~~[77-40-104.1].~~ **77-40a-105. Eligibility for removing the link between**
 541 **personal identifying information and court case dismissed.**

542 (1) As used in this section:

543 (a) "Domestic violence offense" means the same as that term is defined in Section
 544 [77-36-1](#).

545 (b) "Personal identifying information" means:

- 546 (i) a current name, former name, nickname, or alias; and
- 547 (ii) date of birth.

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

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

- 554 ~~[(a)]~~ (i) 30 days have passed from the day on which the case is dismissed or denied;
- 555 ~~[(b)]~~ (ii) no appeal is filed for the dismissed or denied case within the 30-day period
 556 described in Subsection ~~[(2)(a)]~~ (2)(b)(i); and
- 557 ~~[(c)]~~ (iii) no charge in the case was a domestic violence offense.

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

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

562 Section 10. Section ~~77-40a-201~~, which is renumbered from Section 77-40-114 is
563 renumbered and amended to read:

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

565 ~~[77-40-114]~~. **77-40a-201. Automatic expungement procedure.**

566 (1) (a) Except as provided in Subsection (1)(b) and subject to Section ~~[77-40-116]~~
567 77-40a-203, this section governs the process for the automatic expungement of all records in:

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

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

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

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

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

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

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

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

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

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

588 ~~[(d)]~~ (e) For purposes of this section, a case that resulted in acquittal on all charges
589 does not include a case that resulted in an acquittal because the individual is found not guilty

590 by reason of insanity.

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

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

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

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

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

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

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

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

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

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

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

618 (ii) the individual has not paid court-ordered restitution to the victim; or
619 (iii) the prosecuting agency has a reasonable belief, grounded in supporting facts, that
620 an individual with a clean slate eligible case is continuing to engage in criminal activity within
621 or outside of the state.

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

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

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

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

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

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

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

637 (g) For a clean slate case adjudicated or dismissed on or before May 1, 2020, that is
638 automatically expunged under this Subsection (4), a law enforcement agency shall expunge
639 records for the case within one year after the day on which the law enforcement agency
640 receives notice from the bureau.

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

644 (6) An automatic expungement performed under this section does not preclude a
645 person from requesting access to expunged records in accordance with Section [77-40-109 or

646 ~~77-40-110;~~ 77-40a-403 or 77-40a-404.

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

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

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

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

655 Section 11. Section ~~77-40a-202~~, which is renumbered from Section 77-40-115 is
656 renumbered and amended to read:

657 ~~[77-40-115].~~ **77-40a-202. Automatic deletion for traffic offense.**

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

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

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

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

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

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

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

671 Section 12. Section ~~77-40a-203~~, which is renumbered from Section 77-40-116 is
672 renumbered and amended to read:

673 ~~[77-40-116].~~ **77-40a-203. Time periods for expungement or deletion --**

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

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

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

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

680 (ii) expunging a case that resulted in a dismissal with prejudice, other than a case that
681 is dismissed with prejudice as a result of successful completion of a plea in abeyance
682 agreement governed by Subsection [77-2a-3\(2\)\(b\)](#), 180 days after:

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

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

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

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

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

695 (2) (a) The Judicial Council or the Supreme Court shall make rules governing the
696 identification and processing of clean slate eligible cases in accordance with ~~[Sections~~
697 ~~[77-40-114](#) and [77-40-115](#).]~~ Section [77-40a-201](#).

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

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

702 delete the records of a clean slate eligible case.

703 Section 13. Section **77-40a-301** is enacted to read:

704 **Part 3. Petition for Expungement**

705 **77-40a-301. Application for certificate of eligibility for expungement -- Penalty for**
706 **false or misleading information on application.**

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

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

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

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

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

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

720 Section 14. Section **77-40a-302**, which is renumbered from Section 77-40-104 is
721 renumbered and amended to read:

722 ~~[77-40-104].~~ **77-40a-302. Requirements for certificate of eligibility to**
723 **expunge records of arrest, investigation, and detention.**

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

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

730 (2) there are no criminal proceedings or pleas in abeyance pending against the
 731 individual; [~~and~~]
 732 (3) the individual is not currently on probation or parole;
 733 (4) there is not a criminal protective order or a criminal stalking injunction in effect for
 734 the case;

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

736 [~~(3)~~] (6) one of the following occurs:

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

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

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

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

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

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

749 [(e)] (D) the statute of limitations expires on all of the charges contained in the case.

750 Section 15. Section ~~77-40a-303~~, which is renumbered from Section 77-40-105 is
 751 renumbered and amended to read:

752 [~~77-40-105~~]. **77-40a-303. Requirements for a certificate of eligibility to**
 753 **expunge records of a conviction.**

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

756 [(2)] (1) Except as provided in [~~Subsection (3)~~] Subsections (2) and (4), an individual
 757 is not eligible to receive a certificate of eligibility from the bureau to expunge the records of a

758 conviction if:

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

760 (i) a capital felony;

761 (ii) a first degree felony;

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

763 76-3-203.5(1)(c)(i);

764 (iv) felony automobile homicide;

765 (v) a felony conviction described in Subsection 41-6a-501(2);

766 [~~(vi) a registerable sex offense as defined in Subsection 77-41-102(17); or~~]

767 (vi) an offense, or a combination of offenses, that would require the individual to

768 register as a sex offender, as defined in Section 77-41-102; or

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

770 (b) a criminal proceeding or a plea in abeyance is pending against the petitioner; [~~or~~]

771 (c) the petitioner is on probation or parole;

772 [~~(e)~~] (d) the petitioner intentionally or knowingly provides false or misleading

773 information on the application for a certificate of eligibility[-]; or

774 (e) a criminal protective order or a criminal stalking injunction is in effect for the case.

775 [~~(3)~~] (2) The eligibility limitation described in Subsection [~~(2)~~] (1) does not apply in

776 relation to a conviction for a qualifying sexual offense, as defined in Subsection 76-3-209(1),

777 if, at the time of the offense, the individual who committed the offense was at least 14 years

778 old, but under 18 years old, unless the conviction occurred in district court after the individual

779 was:

780 (a) charged by criminal information under Section 80-6-502 or 80-6-503; and

781 (b) bound over to district court under Section 80-6-504.

782 [~~(4)~~] (3) A petitioner seeking to obtain expungement for a record of conviction is not

783 eligible to receive a certificate of eligibility from the bureau until all of the following have

784 occurred:

785 (a) the petitioner has paid in full all fines and interest ordered by the court related to the

786 conviction for which expungement is sought;

787 (b) the petitioner has paid in full all restitution ordered by the court under Section
788 [77-38b-205](#); and

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

792 (i) 10 years in the case of a misdemeanor conviction of Subsection [41-6a-501\(2\)](#) or a
793 felony conviction of Subsection [58-37-8\(2\)\(g\)](#);

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

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

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

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

799 ~~[(5)]~~ (4) When determining whether to issue a certificate of eligibility for a conviction,
800 the bureau may not consider:

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

802 (i) infraction;

803 (ii) traffic offense;

804 (iii) minor regulatory offense; or

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

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

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

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

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

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

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

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

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

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

830 [~~(8)~~] (7) If the petitioner's criminal history contains convictions for both a drug
 831 possession offense and a [~~non-drug~~] non-drug possession offense arising from the same
 832 criminal episode, that criminal episode shall be counted as provided in Subsection [~~(6)~~] (5) if
 833 any [~~non-drug~~] non-drug possession offense in that episode:

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

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

837 [~~(9)~~] (8) If at least 10 years have elapsed from the date the petitioner was convicted or
 838 released from incarceration, parole, or probation, whichever occurred last, for all convictions[
 839 ~~then~~]:

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

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

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

- 844 (i) the individual is otherwise eligible; and
- 845 (ii) the highest convicted offense in the criminal episode for each conviction is:
 - 846 (A) a class B misdemeanor;
 - 847 (B) a class C misdemeanor;
 - 848 (C) a drug possession offense if none of the non-drug possession offenses in the
 849 criminal episode are a felony or a class A misdemeanor; or
 - 850 (D) an infraction.

851 ~~[(10)]~~ (9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah
 852 Board of Pardons and Parole, the petitioner is entitled to an expungement order for all
 853 pardoned crimes ~~[pursuant to]~~ in accordance with Section ~~77-27-5.1~~.

854 Section 16. Section ~~77-40a-304~~, which is renumbered from Section 77-40-106 is
 855 renumbered and amended to read:

856 ~~[77-40-106]~~. **77-40a-304. Certificate of eligibility process -- Issuance of**
 857 **certificate -- Fees.**

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

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

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

866 ~~[(2)]~~ (1) (a) [The] When a petitioner applies for a certificate of eligibility as described
 867 in Subsection ~~77-40a-301~~(1), the bureau shall perform a check of records of governmental
 868 agencies, including national criminal data bases, to determine whether ~~[a]~~ the petitioner is
 869 eligible to receive a certificate of eligibility under this chapter.

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

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

874 ~~[(c)]~~ (d) If the petitioner meets all of the criteria under Section ~~[77-40-104 or~~
875 ~~77-40-105;]~~ 77-40a-302 or 77-40a-303:

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

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

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

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

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

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

888 ~~[(3)]~~ (2) (a) The bureau shall charge application and issuance fees for a certificate of
889 eligibility or special certificate in accordance with the process in Section 63J-1-504.

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

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

895 (d) An issuance fee may not be assessed against a petitioner who qualifies for a
896 certificate of eligibility under Section ~~[77-40-104]~~ 77-40a-302 unless the charges were
897 dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in

898 Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and
899 Diversion.

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

903 [(4)] (3) The bureau shall [~~provide clear written directions to the petitioner along with~~
904 ~~a list of agencies known to be affected by an order of expungement.~~] include on the certificate
905 of eligibility all information that is needed for the court to issue a valid expungement order.

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

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

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

910 Section 17. Section **77-40a-305**, which is renumbered from Section 77-40-107 is
911 renumbered and amended to read:

912 [~~77-40-107~~]. **77-40a-305. Petition for expungement -- Prosecutorial**
913 **responsibility -- Hearing.**

914 [(1) The petitioner shall file a petition for expungement and, except as provided in
915 Subsection ~~77-40-103~~(5), the certificate of eligibility in the court specified in Section
916 ~~77-40-103~~ and deliver a copy of the petition and certificate to the prosecuting agency. If the
917 certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original
918 certificate until the proceedings are concluded. If the original certificate is filed with the
919 petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's
920 attorney, who shall keep it until the proceedings are concluded.]

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

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

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

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

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

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

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

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

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

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

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

944 (5) (a) The court shall provide notice of a filing of a petition and certificate of
945 eligibility to the prosecutorial office that handled the court proceedings within three days after
946 the day on which the petitioner's filing fee is paid or waived.

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

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

954 ~~[(2)]~~ (6) (a) Upon receipt of a notice of a filing of a petition for expungement of a
955 conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting
956 attorney shall ~~[provide notice of the expungement request by first-class mail to the victim at the~~
957 ~~most recent address of record on file.]~~ make a reasonable effort to provide notice to any victim
958 of the conviction or charge.

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

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

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

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

964 ~~[(3)]~~ (7) The prosecuting attorney and the victim, if applicable, may respond to the
965 petition by filing a recommendation or objection with the court within 35 days after ~~[receipt of~~
966 ~~the petition.]~~ the day on which the notice of the filing of the petition is sent by the court to the
967 prosecuting attorney.

968 ~~[(4)]~~ (8) (a) The court may request a written response to the petition from the Division
969 of Adult Probation and Parole within the Department of Corrections.

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

972 (i) the reasons probation was terminated; and

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

975 (c) The Division of Adult Probation and Parole shall provide a copy of the response to
976 the petitioner and the prosecuting attorney.

977 ~~[(5)]~~ (9) The petitioner may respond in writing to any objections filed by the
978 ~~[prosecutor]~~ prosecuting attorney or the victim and the response prepared by the Division of
979 Adult Probation and Parole within 14 days after ~~[receipt.]~~ the day on which the objection or
980 response is received.

981 ~~[(6)]~~ (10) (a) If the court receives an objection concerning the petition from any party,

982 the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of
983 the date set for the hearing.

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

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

987 ~~(c)~~ (d) The court shall review the petition, the certificate of eligibility, and any
988 written responses submitted regarding the petition.

989 ~~(7)~~ (11) If no objection is received within 60 days from the ~~[date]~~ day on which the
990 petition for expungement is filed with the court, the expungement may be granted without a
991 hearing.

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

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

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

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

1000 ~~[(d) if the petitioner seeks expungement of drug possession offenses allowed under~~
1001 ~~Subsection 77-40-105(7), the petitioner is not illegally using controlled substances and is~~
1002 ~~successfully managing any substance addiction;]~~

1003 ~~[(e) if the petitioner seeks expungement without a certificate of eligibility for~~
1004 ~~expungement under Subsection 77-40-103(5) for a record of conviction related to cannabis~~
1005 ~~possession;]~~

1006 ~~[(i) the petitioner had, at the time of the relevant arrest or citation leading to the~~
1007 ~~conviction, a qualifying condition, as that term is defined in Section 26-61a-102; and]~~

1008 ~~[(ii) the possession of cannabis in question was in a form and an amount to medicinally~~
1009 ~~treat the condition described in Subsection (8)(e)(i);]~~

1010 ~~[(f) if an objection is received, the petition for expungement is for a charge dismissed~~
1011 ~~in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be~~
1012 ~~used for enhancement, there is good cause for the court to grant the expungement; and]~~

1013 ~~[(g) it is not contrary to the interests of the public to grant the expungement.]~~

1014 ~~[(9)(a) If the court denies a petition described in Subsection (8)(c) because the~~
1015 ~~prosecutor intends to refile charges, the person seeking expungement may again apply for a~~
1016 ~~certificate of eligibility if charges are not refiled within 180 days of the day on which the court~~
1017 ~~denies the petition.]~~

1018 ~~[(b) A prosecutor who opposes an expungement of a case dismissed without prejudice~~
1019 ~~or without condition shall have a good faith basis for the intention to refile the case.]~~

1020 ~~[(c) A court shall consider the number of times that good faith basis of intention to~~
1021 ~~refile by the prosecutor is presented to the court in making the court's determination to grant~~
1022 ~~the petition for expungement described in Subsection (8)(c).]~~

1023 ~~[(10) If the court grants a petition described in Subsection (8)(e), the court shall make~~
1024 ~~the court's findings in a written order.]~~

1025 ~~[(11) A court may not expunge a conviction of an offense for which a certificate of~~
1026 ~~eligibility may not be or should not have been issued under Section [77-40-104](#) or [77-40-105](#).]~~

1027 Section 18. Section **77-40a-306** is enacted to read:

1028 **77-40a-306. Order of expungement.**

1029 (1) If a petition is filed in accordance with Section [77-40a-305](#), the court shall issue an
1030 order of expungement if the court finds, by clear and convincing evidence, that:

1031 (a) except as provided in Subsection [77-40a-305](#)(3) or (4), the petition and certificate
1032 of eligibility are sufficient;

1033 (b) the statutory requirements have been met;

1034 (c) if the petitioner seeks expungement after a case is dismissed without prejudice or
1035 without condition, the prosecuting attorney provided written consent and has not filed and does
1036 not intend to refile related charges;

1037 (d) if the petitioner seeks expungement without a certificate of eligibility for

1038 expungement under Subsection [77-40a-305](#)(4) for a record of conviction related to cannabis
1039 possession:

1040 (i) the petitioner had, at the time of the relevant arrest or citation leading to the
1041 conviction, a qualifying condition, as that term is defined in Section [26-61a-102](#); and

1042 (ii) the possession of cannabis in question was in a form and an amount to medically
1043 treat the qualifying condition described in Subsection (1)(d)(i);

1044 (e) if an objection is received, the petition for expungement is for a charge dismissed in
1045 accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used
1046 for enhancement, there is good cause for the court to grant the expungement; and

1047 (f) the interests of the public would not be harmed by granting the expungement.

1048 (2) (a) If the court denies a petition described in Subsection (1)(c) because the
1049 prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of
1050 eligibility if charges are not refiled within 180 days after the day on which the court denies the
1051 petition.

1052 (b) A prosecuting attorney who opposes an expungement of a case dismissed without
1053 prejudice, or without condition, shall have a good faith basis for the intention to refile the case.

1054 (c) A court shall consider the number of times that good faith basis of intention to
1055 refile by the prosecuting attorney is presented to the court in making the court's determination
1056 to grant the petition for expungement described in Subsection (1)(c).

1057 (3) If the court grants a petition described in Subsection (1)(e), the court shall make the
1058 court's findings in a written order.

1059 (4) A court may not expunge a conviction of an offense for which a certificate of
1060 eligibility may not be, or should not have been, issued under Section [77-40a-302](#) or
1061 [77-40a-303](#).

1062 Section 19. Section ~~77-40a-401~~, which is renumbered from Section 77-40-108 is
1063 renumbered and amended to read:

1064 **Part 4. Distribution and Use of Expunged Records**

1065 ~~[77-40-108]~~. **77-40a-401. Distribution of order -- Redaction -- Receipt of**

1066 **order -- Bureau requirements -- Administrative proceedings.**

1067 ~~[(1) (a) (i) An individual who receives an order of expungement under Section~~
1068 ~~77-40-107 or Section 77-27-5.1 shall be responsible for delivering a copy of the order of~~
1069 ~~expungement to all affected criminal justice agencies and officials including the court, arresting~~
1070 ~~agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.]~~

1071 ~~[(ii) The provisions of Subsection (1)(a)(i) do not apply to an individual who receives~~
1072 ~~an automatic expungement under Section 77-40-114.]~~

1073 (1) (a) The bureau, upon receiving notice from the court, shall notify all criminal
1074 justice agencies affected by the expungement order.

1075 (b) For purposes of Subsection (1)(a), the bureau may not notify the Board of Pardons
1076 and Parole of an expungement order if the individual has never been:

1077 (i) sentenced to prison in this state; or

1078 (ii) under the jurisdiction of the Board of Pardons and Parole.

1079 (c) A petitioner may deliver copies of the expungement to all criminal justice agencies
1080 affected by the order of expungement.

1081 ~~[(b)]~~ (d) An individual, who receives an [order of] expungement order under Section
1082 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process
1083 in Section 63J-1-504, before the bureau's record may be expunged.

1084 (2) Unless otherwise provided by law or ordered by a court [of competent jurisdiction]
1085 to respond differently, an individual or agency who has received an expungement of an arrest
1086 or conviction under this chapter or Section 77-27-5.1 may respond to any inquiry as though the
1087 arrest or conviction did not occur.

1088 (3) The bureau shall forward a copy of the expungement order to the Federal Bureau of
1089 Investigation.

1090 (4) An agency receiving an expungement order shall expunge the individual's
1091 identifying information contained in records in the agency's possession relating to the incident
1092 for which expungement is ordered.

1093 (5) Unless ordered by a court to do so, or in accordance with Subsection

1094 [~~77-40-109(2)~~] 77-40a-403(2), a government agency or official may not divulge information or
1095 records that have been expunged.

1096 (6) (a) An [~~order of~~] expungement order may not restrict an agency's use or
1097 dissemination of records in the agency's ordinary course of business until the agency has
1098 received a copy of the order.

1099 (b) Any action taken by an agency after issuance of the order but prior to the agency's
1100 receipt of a copy of the order may not be invalidated by the order.

1101 (7) An [~~order of~~] expungement order may not:

1102 (a) terminate or invalidate any pending administrative proceedings or actions of which
1103 the individual had notice according to the records of the administrative body prior to issuance
1104 of the expungement order;

1105 (b) affect the enforcement of any order or findings issued by an administrative body
1106 pursuant to the administrative body's lawful authority prior to issuance of the expungement
1107 order;

1108 (c) remove any evidence relating to the individual including records of arrest, which
1109 the administrative body has used or may use in these proceedings; or

1110 (d) prevent an agency from maintaining, sharing, or distributing any record required by
1111 law.

1112 Section 20. Section ~~77-40a-402~~, which is renumbered from Section 77-40-108.5 is
1113 renumbered and amended to read:

1114 ~~[77-40-108.5].~~ 77-40a-402. Distribution for order for vacatur.

1115 (1) An individual who receives an order for vacatur under Subsection ~~78B-9-108(2)~~
1116 shall be responsible for delivering a copy of the order for vacatur to all affected criminal justice
1117 agencies and officials [~~including the court, arresting agency, booking agency, prosecuting~~
1118 ~~agency, Department of Corrections, and the bureau~~].

1119 (2) To complete delivery of the order for vacatur to the bureau, the individual shall
1120 complete and attach to the order for vacatur an application for a certificate of eligibility for
1121 expungement, including identifying information and fingerprints, [~~as provided in Subsection~~

1122 ~~77-40-103(1):~~ in accordance with Section 77-40a-301.

1123 (3) ~~[The]~~ Except as otherwise provided in this section, the bureau shall treat the order
1124 for vacatur and attached certificate of eligibility for expungement the same as a valid order for
1125 expungement under Section ~~[77-40-108, except as provided in this section.]~~ 77-40a-401.

1126 (4) Unless otherwise provided by law or ordered by a court ~~[of competent jurisdiction]~~
1127 to respond differently, an individual who has received a vacatur of conviction under Section
1128 ~~78B-9-108(2)~~ may respond to any inquiry as though the conviction did not occur.

1129 (5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of
1130 Investigation.

1131 (6) An agency receiving an order for vacatur shall expunge the individual's identifying
1132 information contained in records in the agency's possession relating to the incident for which
1133 vacatur is ordered.

1134 (7) A government agency or official may not divulge information contained in a record
1135 of arrest, investigation, detention, or conviction after receiving an order for vacatur to any
1136 person or agency, except for:

1137 (a) the individual for whom vacatur was ordered; or

1138 (b) Peace Officer Standards and Training, ~~[pursuant to]~~ in accordance with Section
1139 ~~53-6-203~~ and Subsection ~~[77-40-109(2)(b)(ii)]~~ 77-40a-403(2)(b)(ii).

1140 (8) The bureau may not count vacated convictions against any future expungement
1141 eligibility.

1142 Section 21. Section ~~77-40a-403~~, which is renumbered from Section 77-40-109 is
1143 renumbered and amended to read:

1144 ~~[77-40-109].~~ **77-40a-403. Retention and release of expunged records --**
1145 **Agencies.**

1146 (1) (a) The bureau, after receiving an expungement order, shall keep, index, and
1147 maintain all expunged records of arrests and convictions.

1148 (b) Any agency, other than the bureau, receiving an expungement order shall develop
1149 and implement a process to identify and maintain an expunged record.

1150 (2) (a) (i) ~~[Employees of the bureau]~~ An employee of the bureau, or any agency with an
1151 expunged record, may not divulge any information contained in the ~~[bureau's index]~~ expunged
1152 record to any person or agency without a court order unless:

1153 (A) specifically authorized by statute[-]; or

1154 (B) subject to Subsection (2)(a)(ii), the information in an expunged record is being
1155 shared with another agency through a records management system that both agencies use for
1156 the purpose of record management.

1157 (ii) An agency with a records management system may not disclose any information in
1158 an expunged record with another agency or person that does not use the records management
1159 system for the purpose of record management.

1160 (b) The following ~~[organizations]~~ entities or agencies may receive information
1161 contained in expunged records upon specific request:

1162 (i) the Board of Pardons and Parole;

1163 (ii) Peace Officer Standards and Training;

1164 (iii) federal authorities~~[-, only as]~~ if required by federal law;

1165 (iv) the Department of Commerce;

1166 (v) the Department of Insurance;

1167 (vi) the State Board of Education; ~~[and]~~

1168 (vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating
1169 applicants for judicial office~~[-]; and~~

1170 (viii) a research institution or an agency engaged in research regarding the criminal
1171 justice system if:

1172 (A) the research institution or agency provides a legitimate research purpose for
1173 gathering information from the expunged records;

1174 (B) the research institution or agency enters into a data sharing agreement with the
1175 court or agency with custody of the expunged records that protects the confidentiality of any
1176 identifying information in the expunged records;

1177 (C) any research using expunged records does not include any individual's name or

1178 identifying information in any product of that research; and

1179 (D) any product resulting from research using expunged records includes a disclosure
1180 that expunged records were used for research purposes.

1181 (c) [A person or agency] Except as otherwise provided by this Subsection (2) or by
1182 court order, a person, an agency, or an entity authorized by this Subsection (2) to view
1183 expunged records may not reveal or release any information obtained from the expunged
1184 records to anyone outside the specific request, [except as directed by a court order,] including
1185 distribution on a public website.

1186 (d) A prosecuting attorney may communicate with another prosecuting attorney, or
1187 another prosecutorial agency, regarding information in an expunged record that includes a
1188 conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance
1189 agreement, for:

1190 (i) stalking as described in Section [76-5-106.5](#);

1191 (ii) a domestic violence offense as defined in Section [77-36-1](#);

1192 (iii) an offense that would require the individual to register as a sex offender, as
1193 defined in Section [77-41-102](#); or

1194 (iv) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.

1195 (e) Except as provided in Subsection (4), a prosecuting attorney may not use an
1196 expunged record for the purpose of a sentencing enhancement or as a basis for charging an
1197 individual with an offense that requires a prior conviction.

1198 (3) The bureau may also use the information in the bureau's index as provided in
1199 Section [53-5-704](#).

1200 (4) If, after obtaining an expungement, an individual is charged with a felony or an
1201 offense eligible for enhancement based on a prior conviction, the state may petition the court to
1202 open the expunged records upon a showing of good cause.

1203 (5) (a) For judicial sentencing, a court may order any records expunged under this
1204 chapter or Section [77-27-5.1](#) to be opened and admitted into evidence.

1205 (b) The records are confidential and are available for inspection only by the court,

1206 parties, counsel for the parties, and any other person who is authorized by the court to inspect
1207 them.

1208 (c) At the end of the action or proceeding, the court shall order the records expunged
1209 again.

1210 (d) Any person authorized by this Subsection (5) to view expunged records may not
1211 reveal or release any information obtained from the expunged records to anyone outside the
1212 court.

1213 (6) Records released under this chapter are classified as protected under Section
1214 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to
1215 Records, and Subsection 53-10-108(2)(k) for records held by the bureau.

1216 Section 22. Section 77-40a-404, which is renumbered from Section 77-40-110 is
1217 renumbered and amended to read:

1218 ~~77-40-110~~. **77-40a-404. Use of expunged records -- Individuals -- Use in**
1219 **civil actions.**

1220 ~~[Records]~~ A record expunged under this chapter or Section 77-27-5.1 may be released
1221 to or viewed by ~~[the following individuals]~~:

1222 (1) the petitioner or an individual who receives an automatic expungement under
1223 Section ~~[77-40-114]~~ 77-40a-201;

1224 (2) a law enforcement officer, who was involved in the case, for use solely in the
1225 officer's defense of a civil action arising out of the officer's involvement with the petitioner in
1226 that particular case; and

1227 (3) parties to a civil action arising out of the expunged incident~~[, providing]~~ if the
1228 information is kept confidential and utilized only in the action.

1229 Section 23. Section 77-40a-405, which is renumbered from Section 77-40-112 is
1230 renumbered and amended to read:

1231 ~~77-40-112~~. **77-40a-405. Penalty for disclosure of expunged, vacated, or**
1232 **pardoned records.**

1233 An employee or agent of an agency that is prohibited from disseminating information

1234 from expunged, vacated, or pardoned records under Section [77-27-5.1](#) or [~~77-40-109~~]
1235 [77-40a-403](#) who knowingly or intentionally discloses identifying information from the
1236 expunged, vacated, or pardoned record that has been pardoned, vacated, or expunged, unless
1237 allowed by law, is guilty of a class A misdemeanor.

1238 Section 24. Section **78B-9-108** is amended to read:

1239 **78B-9-108. Effect of granting relief -- Notice.**

1240 (1) If the court grants the petitioner's request for relief, except requests for relief under
1241 Subsection [78B-9-104\(1\)\(g\)](#), the court shall either:

1242 (a) modify the original conviction or sentence; or

1243 (b) vacate the original conviction or sentence and order a new trial or sentencing
1244 proceeding as appropriate.

1245 (2) If the court grants the petitioner's request for relief under Subsection
1246 [78B-9-104\(1\)\(g\)](#), the court shall:

1247 (a) vacate the original conviction and sentence; and

1248 (b) order the petitioner's records expunged [~~pursuant to Section [77-40-108.5](#)~~] in
1249 accordance with Section [77-40a-402](#).

1250 (3) (a) If the petitioner is serving a felony sentence, the order shall be stayed for five
1251 days. Within the stay period, the respondent shall give written notice to the court and the
1252 petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the
1253 order, or take no action.

1254 (b) If the respondent fails to provide notice or gives notice at any time during the stay
1255 period that it intends to take no action, the court shall lift the stay and deliver the order to the
1256 custodian of the petitioner.

1257 (c) If the respondent gives notice of intent to appeal the court's decision, the stay
1258 provided for by Subsection (3)(a) shall remain in effect until the appeal concludes, including
1259 any petitions for rehearing or for discretionary review by a higher court. The court may lift the
1260 stay if the petitioner can make the showing required for a certificate of probable cause under
1261 Section [77-20-302](#) and Utah Rules of Criminal Procedure, Rule 27.

1262 (d) If the respondent gives notice that it intends to retry or resentence the petitioner, the
1263 trial court may order any supplementary orders as to arraignment, trial, sentencing, custody,
1264 bail, discharge, or other matters that may be necessary.

1265 Section 25. **Repealer.**

1266 This bill repeals:

1267 Section **77-40-101**, **Title.**

1268 Section **77-40-103**, **Petition for expungement procedure overview.**