

Effective 10/1/2024

Part 4
Expungement of Criminal Records

77-40a-401 Processing of expungement order -- Written confirmation of expungement -- Effect of an expungement.

- (1) In processing an expungement order, a court and the bureau shall give priority to:
 - (a) first, an expungement order granting a petition for expungement under Part 3, Petition for Expungement;
 - (b) second, an expungement order upon a pardon by the Board of Pardons and Parole as described in Section 77-27-5.1;
 - (c) third, an expungement order upon a plea in abeyance as described in Section 77-2a-3;
 - (d) fourth, an expungement order where an individual submitted a form requesting automatic expungement under Part 2, Automatic Expungement and Deletion; and
 - (e) fifth, an expungement order where the court identified the case as being eligible for automatic expungement under Part 2, Automatic Expungement and Deletion.
- (2) An individual, who receives an expungement order under Section 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process in Section 63J-1-504, before the bureau's record may be expunged.
- (3)
 - (a) An agency shall:
 - (i) develop and implement a process to identify an expunged record; and
 - (ii) keep, index, and maintain all expunged records of arrests and convictions.
 - (b) Subsection (3)(a) does not prevent an agency from maintaining or destroying a record in accordance with a retention schedule when the record is an expunged record.
 - (c) An agency is not required to redact an expunged record, or a record referencing an expunged record, that pertains to more than one individual until the agency is required to release the record.
- (4)
 - (a) If an individual who receives an expungement requests confirmation from an agency, the agency shall provide the individual with written confirmation that:
 - (i) the agency has identified all records subject to expungement; and
 - (ii) except as otherwise provided by Sections 77-40a-402 and 77-40a-403, the agency will restrict or deny access to all of the expunged records.
 - (b) The bureau may charge a fee for providing a written confirmation under Subsection (4)(a) in accordance with the process in Section 63J-1-504.
- (5) Upon entry of an expungement order, an individual, who received the expungement, may respond to any inquiry as though the arrest, investigation, detention, prosecution, or conviction did not occur unless otherwise provided by law or ordered by a court to respond differently.
- (6)
 - (a) An expungement order may not restrict an agency's use or dissemination of records in the agency's ordinary course of business until the agency has received a copy of the order.
 - (b) Any action taken by an agency after issuance of the order but prior to the agency's receipt of a copy of the order may not be invalidated by the order.
- (7) An expungement order may not:

- (a) terminate or invalidate any pending administrative proceedings or actions of which the individual had notice according to the records of the administrative body prior to issuance of the expungement order;
- (b) affect the enforcement of any order or findings issued by an administrative body pursuant to the administrative body's lawful authority prior to issuance of the expungement order;
- (c) remove any evidence relating to the individual including records of arrest, which the administrative body has used or may use in these proceedings; or
- (d) prevent an agency from maintaining, sharing, or distributing any record required by law.

Amended by Chapter 180, 2024 General Session

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

- (1) An individual who receives an order for vacatur under Subsection 78B-9-108(2) shall be responsible for delivering a copy of the order for vacatur to all affected agencies.
- (2) To complete delivery of the order for vacatur to the bureau, the individual shall complete and attach to the order for vacatur an application for a certificate of eligibility for expungement, including identifying information and fingerprints, in accordance with Section 77-40a-301.
- (3) Except as otherwise provided in this section, the bureau shall treat the order for vacatur and attached certificate of eligibility for expungement the same as a valid order for expungement under Section 77-40a-401.
- (4) Unless otherwise provided by law or ordered by a court to respond differently, an individual who has received a vacatur of conviction under Subsection 78B-9-108(2) may respond to any inquiry as though the conviction did not occur.
- (5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of Investigation.
- (6) An agency receiving an order for vacatur shall expunge the individual's identifying information contained in records in the agency's possession relating to the incident for which vacatur is ordered.
- (7) An agency or official may not divulge information contained in a record of arrest, investigation, detention, or conviction after receiving an order for vacatur to any person or agency, except for:
 - (a) the individual for whom vacatur was ordered; or
 - (b) Peace Officer Standards and Training, in accordance with Section 53-6-203 and Subsection 77-40a-403(2)(b).
- (8) The bureau may not count vacated convictions against any future expungement eligibility.

Amended by Chapter 180, 2024 General Session

77-40a-403 Release and use of expunged records -- Agencies.

- (1)
 - (a) An agency with an expunged record, or any employee of an agency with an expunged record, may not knowingly or intentionally divulge any information contained in the expunged record to any person, or another agency, without a court order unless:
 - (i) specifically authorized by Subsection (4) or Section 77-40a-404; or
 - (ii) subject to Subsection (1)(b), the information in an expunged record is being shared with another agency through a records management system that both agencies use for the purpose of record management.
 - (b) An agency with a records management system may not disclose any information in an expunged record to another agency or person, or allow another agency or person access to

an expunged record, if that agency or person does not use the records management system for the purpose of record management.

- (2) The following entities or agencies may receive information contained in expunged records upon specific request:
 - (a) the Board of Pardons and Parole;
 - (b) Peace Officer Standards and Training;
 - (c) federal authorities if required by federal law;
 - (d) the State Board of Education;
 - (e) the Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office; and
 - (f) a research institution or an agency engaged in research regarding the criminal justice system if:
 - (i) the research institution or agency provides a legitimate research purpose for gathering information from the expunged records;
 - (ii) the research institution or agency enters into a data sharing agreement with the court or agency with custody of the expunged records that protects the confidentiality of any identifying information in the expunged records;
 - (iii) any research using expunged records does not include any individual's name or identifying information in any product of that research; and
 - (iv) any product resulting from research using expunged records includes a disclosure that expunged records were used for research purposes.
- (3) Except as otherwise provided by this section or by court order, a person, an agency, or an entity authorized by this section to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the specific request, including distribution on a public website.
- (4) A prosecuting attorney may communicate with another prosecuting attorney, or another prosecutorial agency, regarding information in an expunged record that includes a conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance agreement, for:
 - (a) stalking as described in Section 76-5-106.5;
 - (b) a domestic violence offense as defined in Section 77-36-1;
 - (c) an offense that would result in the individual being a child abuse offender, a sex offender, or a kidnap offender under Section 53-29-202; or
 - (d) a weapons offense under Title 76, Chapter 11, Weapons.
- (5) Except as provided in Subsection (7), a prosecuting attorney may not use an expunged record for the purpose of a sentencing enhancement or as a basis for charging an individual with an offense that requires a prior conviction.
- (6) The bureau may also use the information in the bureau's index as provided in Section 53-5a-303.
- (7) If an individual is charged with a felony, or an offense eligible for enhancement based on a prior conviction, after obtaining an order of expungement, the prosecuting attorney may petition the court in which the individual is charged to open the expunged records upon a showing of good cause.
- (8)
 - (a) For judicial sentencing, a court may order any records expunged under this chapter or Section 77-27-5.1 to be opened and admitted into evidence.
 - (b) The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.

- (c) At the end of the action or proceeding, the court shall order the records expunged again.
- (d) Any person authorized by this Subsection (8) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court.
- (9) Records released under this chapter are classified as protected under Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to Records, and Subsection 53-10-108(2)(k) for records held by the bureau.

Amended by Chapter 173, 2025 General Session

Amended by Chapter 208, 2025 General Session

Amended by Chapter 291, 2025 General Session

77-40a-404 Confirmation of expungement -- Access to expunged records by individuals.

- (1) An individual who receives an expungement may request a written confirmation from an agency under Subsection 77-40a-401(4) to confirm that the agency has expunged all records of the offense for which the individual received the expungement.
- (2) The following individuals may view or obtain an expunged record under this chapter or Section 77-27-5.1:
 - (a) the petitioner or an individual who receives an automatic expungement under Part 2, Automatic Expungement and Deletion;
 - (b) a law enforcement officer, who was involved in the case, for use solely in the officer's defense of a civil action arising out of the officer's involvement with the petitioner in that particular case; and
 - (c) a party to a civil action arising out of the expunged incident if the information is kept confidential and utilized only in the action.

Amended by Chapter 180, 2024 General Session

77-40a-405 Penalty for disclosure of expunged, vacated, or pardoned records.

An employee or agent of an agency that is prohibited from disseminating information from expunged, vacated, or pardoned records under Section 77-27-5.1 or 77-40a-403 who knowingly or intentionally discloses identifying information from the expunged, vacated, or pardoned record that has been pardoned, vacated, or expunged, unless allowed by law, is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 250, 2022 General Session