

90 (3) The board shall provide clear written directions to the recipient along with a list of  
 91 agencies known to be affected by the expungement order.

92 Section 3. Section **77-40-102** is amended to read:

93 **77-40-102. Definitions.**

94 As used in this chapter:

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

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

101 (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
 102 Safety established in Section 53-10-201.

103 (4) "Certificate of eligibility" means a document issued by the bureau stating that the  
 104 criminal record which is the subject of a petition for expungement is eligible for expungement.

105 (5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty  
 106 after trial, a plea of guilty, or a plea of nolo contendere.

107 (6) "Department" means the Department of Public Safety established in Section  
 108 53-1-103.

109 (7) "Drug possession offense" means an offense under:

110 (a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i) ~~§~~ , ~~←~~§  
 111 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection  
 112 58-37-8(2)(e) ~~§~~ → [for] , ~~←~~§ violation in a correctional facility or Subsection 58-37-8(2)(g), driving  
 112a with a  
 113 controlled substance illegally in the person's body and negligently causing serious bodily injury  
 114 or death of another;

115 (b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

116 (c) Section 58-37b-6, possession or use of an imitation controlled substance; or

117 (d) any local ordinance which is substantially similar to any of the offenses described  
 118 in this Subsection (7).

119 [~~(7)~~] (8) "Expunge" means to seal or otherwise restrict access to the petitioner's record  
 120 of arrest, investigation, detention, or conviction held by an agency.

152 no longer exists, the petition may be filed in the district court where the arrest occurred.

153 (5) The petitioner shall deliver a copy of the petition and certificate to the prosecutorial  
154 office that handled the court proceedings. If there were no court proceedings, the copy of the  
155 petition and certificate shall be delivered to the county attorney's office in the jurisdiction  
156 where the arrest occurred.

157 (6) If an objection to the petition is filed by the prosecutor or victim, a hearing shall be  
158 set by the court and the prosecutor and victim notified of the date.

159 (7) If the court requests a response from Adult Probation and Parole and a response is  
160 received, the petitioner may file a written reply to the response within 15 days of receipt of the  
161 response.

162 (8) An expungement may be granted without a hearing if no objection is received.

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

165 Section 5. Section **77-40-105** is amended to read:

166 **77-40-105. Eligibility for expungement of conviction -- Requirements.**

167 (1) A person convicted of an offense may apply to the bureau for a certificate of  
168 eligibility to expunge the record of conviction as provided in this section.

169 (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

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

171 (i) a capital felony;

172 (ii) a first degree felony;

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

174 (iv) ~~§~~ **→ felony ←** § automobile homicide;

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

176 (vi) a registerable sex offense as defined in Subsection 77-41-102(16);

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

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

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

214 contained in a separate criminal episode; or

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

217 (6) If the petitioner's criminal history contains convictions for both a drug possession  
218 offense and a non drug possession offense arising from the same criminal episode, that criminal  
219 episode shall be counted as provided in Subsection (4) if any non drug possession offense in  
220 that episode:

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

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

224 ~~[(5)]~~ (7) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah  
225 Board of Pardons and Parole, the petitioner is entitled to a certificate of eligibility for all  
226 pardoned crimes.

227 Section 6. Section **77-40-106** is amended to read:

228 **77-40-106. Application for certificate of eligibility -- Fees.**

229 (1) (a) A petitioner seeking to obtain an expungement for a criminal record

229a ~~H~~→ [f] shall [f] ~~[may]~~ ←~~H~~

230 apply for a certificate of eligibility from the bureau.

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

234 (c) Regardless of whether the petitioner is prosecuted, the bureau may deny a  
235 certificate of eligibility to anyone providing false information on an application.

236 (2) (a) The bureau shall perform a check of records of governmental agencies,  
237 including national criminal data bases, to determine whether a petitioner is eligible to receive a  
238 certificate of eligibility under this chapter.

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

242 (c) If the petitioner meets all of the criteria under Section 77-40-104 or 77-40-105, the  
243 bureau shall issue a certificate of eligibility to the petitioner which shall be valid for a period of  
244 90 days from the date the certificate is issued.

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

308 Section 8. Section **77-40-108** is amended to read:

309 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**

310 **Administrative proceedings -- Bureau requirements.**

311 (1) ~~H~~→ (a) ~~H~~ [The petitioner] A person who receives an order of expungement  
311a under this chapter

312 or Section 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to  
313 all affected criminal justice agencies and officials including the court, arresting agency,  
314 booking agency, prosecuting agency, Department of Corrections, and the bureau.

314a ~~H~~→ (b) A person who receives an order of expungement under Section 77-27-5.1, shall pay a  
314b processing fee to the bureau, established in accordance with the process in Section 63J-1-504,  
314c before the bureau's record may be expunged. ~~H~~

315 (2) Unless otherwise provided by law or ordered by a court of competent jurisdiction to  
316 respond differently, a person who has received an expungement of an arrest or conviction  
317 under this chapter or Section 77-27-5.1, may respond to any inquiry as though the arrest or  
318 conviction did not occur.

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

321 (4) An agency receiving an expungement order shall expunge the petitioner's  
322 identifying information contained in records in its possession relating to the incident for which  
323 expungement is ordered.

324 (5) Unless ordered by a court to do so, a government agency or official may not divulge  
325 identifying information regarding the petitioner contained in a record of arrest, investigation,  
326 detention, or conviction after receiving an expungement order.

327 (6) (a) An order of expungement may not restrict an agency's use or dissemination of  
328 records in its ordinary course of business until the agency has received a copy of the order.

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

331 (7) An order of expungement may not:

332 (a) terminate or invalidate any pending administrative proceedings or actions of which  
333 the petitioner had notice according to the records of the administrative body prior to issuance of  
334 the expungement order;

335 (b) affect the enforcement of any order or findings issued by an administrative body  
336 pursuant to its lawful authority prior to issuance of the expungement order; or

337 (c) remove any evidence relating to the petitioner including records of arrest, which the