

**EXPUNGEMENT AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel W. Thatcher**

House Sponsor: Eric K. Hutchings

**LONG TITLE**

**Committee Note:**

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

**General Description:**

This bill makes changes to provisions regarding expungements and pardons.

**Highlighted Provisions:**

This bill:

- ▶ adds definitions;
- ▶ prevents the dissemination of information regarding pardons and expungements ~~§~~ **→ by a**

**person authorized to view expunged records pursuant to statute** ~~←§~~ ;

~~§~~ **→** [~~→ provides for the sealing of records of certain court cases;~~] ~~←§~~

▶ specifies that infractions, traffic offenses, and certain minor offenses will not count towards expungement eligibility;

▶ allows for an increase in the number of convictions counted to be eligible for expungement; ~~§~~ **→ and** ~~←§~~

~~§~~ **→** [~~→ decreases the waiting period after the petition for expungement is filed; and~~] ~~←§~~

▶ allows the court during sentencing in a criminal prosecution to take into account if the level of the offense has been reduced since the defendant's conviction.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-3-402**, as last amended by Laws of Utah 2012, Chapter 14531 **77-27-5.1**, as last amended by Laws of Utah 2014, Chapter 19932 **77-40-102**, as last amended by Laws of Utah 2014, Chapter 19933 **77-40-105**, as last amended by Laws of Utah 2016, Chapter 18534 **77-40-106**, as last amended by Laws of Utah 2013, Chapter 4135 **77-40-107**, as last amended by Laws of Utah 2014, Chapter 26336 **77-40-108**, as last amended by Laws of Utah 2013, Chapters 20 and 4137 **77-40-109**, as last amended by Laws of Utah 2016, Chapter 14438 **77-40-112**, as renumbered and amended by Laws of Utah 2010, Chapter 283

39

40 *Be it enacted by the Legislature of the state of Utah:*41 Section 1. Section **76-3-402** is amended to read:42 **76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

43 (1) If at the time of sentencing the court, having regard to the nature and circumstances  
 44 of the offense of which the defendant was found guilty and to the history and character of the  
 45 defendant, and after having given any victims present at the sentencing and the prosecuting  
 46 attorney an opportunity to be heard, concludes it would be unduly harsh to record the  
 47 conviction as being for that degree of offense established by statute, the court may enter a  
 48 judgment of conviction for the next lower degree of offense and impose sentence accordingly.

49 (2) (a) If the court suspends the execution of the sentence and places the defendant on  
 50 probation, whether or not the defendant is committed to jail as a condition of probation, the  
 51 court may enter a judgment of conviction for the next lower degree of offense:

52 ~~(a)~~ (i) after the defendant has been successfully discharged from probation;53 ~~(b)~~ (ii) upon motion and notice to the prosecuting attorney;54 ~~(c)~~ (iii) after reasonable effort has been made by the prosecuting attorney to provide  
55 notice to any victims;56 ~~(d)~~ (iv) after a hearing if requested by either party ~~under~~ described in Subsection57 (2)~~(c)~~(a)(iii); and58 ~~(e)~~ (v) if the court finds entering a judgment of conviction for the next lower degree

59 of offense is in the interest of justice.

60 (b) In making the finding in Subsection (2)(a)(v), the court shall consider as a factor in  
61 favor of granting the reduction that, subsequent to the defendant's conviction, the level of the  
62 offense has been reduced by law.

63 (3) (a) An offense may be reduced only one degree under this section, whether the  
64 reduction is entered under Subsection (1) or (2), unless the prosecutor specifically agrees in  
65 writing or on the court record that the offense may be reduced two degrees.

66 (b) In no case may an offense be reduced under this section by more than two degrees.

67 (4) This section does not preclude any person from obtaining or being granted an  
68 expungement of his record as provided by law.

69 (5) The court may not enter judgment for a conviction for a lower degree of offense if:

70 (a) the reduction is specifically precluded by law; or

71 (b) if any unpaid balance remains on court ordered restitution for the offense for which  
72 the reduction is sought.

73 (6) When the court enters judgment for a lower degree of offense under this section,  
74 the actual title of the offense for which the reduction is made may not be altered.

75 (7) (a) A person may not obtain a reduction under this section of a conviction that  
76 requires the person to register as a sex offender until the registration requirements under Title  
77 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

78 (b) A person required to register as a sex offender for the person's lifetime under  
79 Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or  
80 offenses that require the person to register as a sex offender.

81 (8) As used in this section, "next lower degree of offense" includes an offense  
82 regarding which:

83 (a) a statutory enhancement is charged in the information or indictment that would  
84 increase either the maximum or the minimum sentence; and

85 (b) the court removes the statutory enhancement pursuant to this section.

86 Section 2. Section 77-27-5.1 is amended to read:

87 **77-27-5.1. Board authority to order expungement.**

88 (1) Upon granting a pardon, the board shall issue an expungement order, directing any  
89 criminal justice agency to remove the recipient's identifying information relating to the

90 expunged convictions from its records.

91 (a) When a pardon has been granted, employees of the Bureau of Criminal  
92 Identification or employees of the Board of Pardons and Parole may not divulge any identifying  
93 information regarding the pardoned person to any person or agency, except for the pardoned  
94 person.

95 (b) The Bureau of Criminal Identification may not count pardoned convictions against  
96 any future expungement eligibility.

97 (2) An expungement order, issued by the board, has at least the same legal effect and  
98 authority as an order of expungement issued by a court, pursuant to Title 77, Chapter 40, Utah  
99 Expungement Act.

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

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

103 **77-40-102. Definitions.**

104 As used in this chapter:

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

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

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

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

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

118 (6) "Department" means the Department of Public Safety established in Section  
119 [53-1-103](#).

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

121 (a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i),  
 122 possession of 100 pounds or more of marijuana, any offense enhanced under Subsection  
 123 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a  
 124 controlled substance illegally in the person's body and negligently causing serious bodily injury  
 125 or death of another;

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

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

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

130 (8) "Expunge" means to seal or otherwise restrict access to the petitioner's record held  
 131 by an agency when the record includes a criminal investigation, detention, arrest, or conviction.

132 (9) "Jurisdiction" means a state, district, province, political subdivision, territory, or  
 133 possession of the United States or any foreign country.

134 (10) "Minor regulatory offense" means any class B or C misdemeanor offense, as well  
 135 as any local ordinance, except:

136 (a) any drug possession offense;

137 (b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

138 (c) Sections 73-18-13 through 73-18-13.6;

139 (d) those defined in Title 76, Utah Criminal Code; or

140 (e) any local ordinance that is substantially similar to those offenses listed in

141 Subsections (10)(a) through (d).

142 ~~[(10)]~~ (11) "Petitioner" means a person seeking expungement under this chapter.

143 ~~[(11)]~~ (12) (a) "Traffic offense" means:

144 (i) all ~~[offenses in the following parts]~~ infractions, class B misdemeanors, and class C  
 145 misdemeanors in Title 41, Chapter 6a, Traffic Code;

146 (ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;

147 (iii) Title 73, Chapter 18, State Boating Act; and

148 (iv) all local ordinances that are substantially similar to ~~[the]~~ those offenses[:].

149 ~~[(a) Title 41, Chapter 6a, Part 3, Traffic-Control Devices;]~~

150 ~~[(b) Title 41, Chapter 6a, Part 6, Speed Restrictions;]~~

151 ~~[(c) Title 41, Chapter 6a, Part 7, Driving on Right Side of Highway and Passing;]~~

- 152 ~~[(d) Title 41, Chapter 6a, Part 8, Turning and Signaling for Turns;]~~
- 153 ~~[(e) Title 41, Chapter 6a, Part 9, Right-of-Way;]~~
- 154 ~~[(f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;]~~
- 155 ~~[(g) Title 41, Chapter 6a, Part 11, Bicycles, Regulation of Operation;]~~
- 156 ~~[(h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and~~
- 157 ~~Safety Zones;]~~
- 158 ~~[(i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;]~~
- 159 ~~[(j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;]~~
- 160 ~~[(k) Title 41, Chapter 6a, Part 15, Special Vehicles;]~~
- 161 ~~[(l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;]~~
- 162 ~~[(m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and]~~
- 163 ~~[(n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.]~~

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

165 (i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

166 (ii) Sections [73-18-13](#) through [73-18-13.6](#); or

167 (iii) any local ordinance that is substantially similar to the offenses listed in

168 Subsections (12)(b)(i) and (ii).

169 Section 4. Section **77-40-105** is amended to read:

170 **77-40-105. Eligibility for expungement of conviction -- Requirements.**

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

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

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

175 (i) a capital felony;

176 (ii) a first degree felony;

177 (iii) a violent felony as defined in Subsection [76-3-203.5\(1\)\(c\)\(i\)](#);

178 (iv) felony automobile homicide;

179 (v) a felony violation of Subsection [41-6a-501\(2\)](#); or

180 (vi) a registerable sex offense as defined in Subsection [77-41-102\(17\)](#);

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

182 (c) the petitioner intentionally or knowingly provides false or misleading information

183 on the application for a certificate of eligibility.

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

187 (a) all fines and interest ordered by the court have been paid in full;

188 (b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board  
189 of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and

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

193 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a  
194 felony conviction of Subsection 58-37-8(2)(g);

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

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

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

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

200 (4) The bureau may not count infractions, traffic offenses, or minor regulatory offenses  
201 when determining expungement eligibility.

202 [~~4~~] (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner  
203 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,  
204 including previously expunged convictions, contains any of the following, except as provided  
205 in Subsection (8):

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

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

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

214 (d) five or more convictions other than for drug possession offenses of any degree  
215 whether misdemeanor or felony, [~~excluding infractions and any traffic offenses,~~] each of which  
216 is contained in a separate criminal episode.

217 ~~[(5)]~~ (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner  
218 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,  
219 including previously expunged convictions, contains any of the following:

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

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

224 ~~[(6)]~~ (7) If the petitioner's criminal history contains convictions for both a drug  
225 possession offense and a non drug possession offense arising from the same criminal episode,  
226 that criminal episode shall be counted as provided in Subsection ~~[(4)]~~ (5) if any non drug  
227 possession offense in that episode:

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

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

231 (8) If at least 10 years have elapsed from the date the petitioner was convicted or  
232 released from incarceration, parole, or probation, whichever occurred last, for all convictions,  
233 then each eligibility limit defined in Subsection (5) shall be increased by one.

234 ~~[(7)]~~ (9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah  
235 Board of Pardons and Parole, the petitioner is entitled to an expungement order for all  
236 pardoned crimes pursuant to Section 77-27-5.1.

237 Section 5. Section 77-40-106 is amended to read:

238 **77-40-106. Application for certificate of eligibility -- Fees.**

239 (1) (a) A petitioner seeking to obtain an expungement for a criminal record shall apply  
240 for a certificate of eligibility from the bureau.

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

244 (c) Regardless of whether the petitioner is prosecuted, the bureau may deny a



245 certificate of eligibility to anyone [~~providing~~] who knowingly provides false information on an  
246 application.

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

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

253 (c) If the petitioner meets all of the criteria under Section 77-40-104 or 77-40-105, the  
254 bureau shall issue a certificate of eligibility to the petitioner which shall be valid for a period of  
255 90 days from the date the certificate is issued.

256 (d) If, after reasonable research, a disposition for an arrest on the criminal history file is  
257 unobtainable, the bureau may issue a special certificate giving determination of eligibility to  
258 the court.

259 (3) (a) The bureau shall charge application and issuance fees for a certificate of  
260 eligibility or special certificate in accordance with the process in Section 63J-1-504.

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

263 (c) If the bureau determines that the issuance of a certificate of eligibility or special  
264 certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a  
265 certificate of eligibility or special certificate unless Subsection (3)(d) applies.

266 (d) An issuance fee may not be assessed against a petitioner who qualifies for a  
267 certificate of eligibility under Section 77-40-104 unless the charges were dismissed pursuant to  
268 a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion  
269 agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

270 (e) Funds generated under this Subsection (3) shall be deposited in the General Fund as  
271 a dedicated credit by the department to cover the costs incurred in determining eligibility.

272 (4) The bureau shall provide clear written directions to the petitioner along with a list  
273 of agencies known to be affected by an order of expungement.

274 Section 6. Section 77-40-107 is amended to read:

275 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**

276 **Standard of proof -- Exception.**

277 (1) The petitioner shall file a petition for expungement and the certificate of eligibility  
278 in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to  
279 the prosecuting agency. If the certificate is filed electronically, the petitioner or the petitioner's  
280 attorney shall keep the original certificate until the proceedings are concluded. If the original  
281 certificate is filed with the petition, the clerk of the court shall scan it and return it to the  
282 petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

283 (2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting  
284 attorney shall provide notice of the expungement request by first-class mail to the victim at the  
285 most recent address of record on file.

286 (b) The notice shall include a copy of the petition, certificate of eligibility, statutes and  
287 rules applicable to the petition, state that the victim has a right to object to the expungement,  
288 and provide instructions for registering an objection with the court.

289 (3) The prosecuting attorney and the victim, if applicable, may respond to the petition  
290 by filing a recommendation or objection with the court within [~~30~~] 35 days after receipt of the  
291 petition.

292 (4) (a) The court may request a written response to the petition from the Division of  
293 Adult Probation and Parole within the Department of Corrections.

294 (b) If requested, the response prepared by Adult Probation and Parole shall include:

295 (i) the reasons probation was terminated; and

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

298 (c) A copy of the response shall be provided to the petitioner and the prosecuting  
299 attorney.

300 (5) The petitioner may respond in writing to any objections filed by the prosecutor or  
301 the victim and the response prepared by Adult Probation and Parole within [~~15~~] 14 days after  
302 receipt.

303 (6) (a) If the court receives an objection concerning the petition from any party, the  
304 court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the  
305 date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the  
306 hearing.

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

309 (c) The court shall review the petition, the certificate of eligibility, and any written  
310 responses submitted regarding the petition.

311 ~~§ → [(7) (a) If no objection is received within [60 days from the date the petition for~~  
312 ~~expungement was filed with the court] 35 days after receipt by the prosecutor, the~~  
313 ~~expungement may be granted without a hearing.~~

314 ~~—— (b) Receipt by the prosecutor may be established by verification of electronic~~  
315 ~~transmittal by the court to the prosecutor's inbox, post office mailing stamp, certificate of~~  
316 ~~delivery, or personal service.~~

317 ~~—— (c) The time period may be extended for 28 additional days upon the filing of a motion~~  
318 ~~and a finding of the court that good cause exists to extend the time period.~~

319 ~~—— (8) (7) ← §~~ The court shall issue an order of expungement if it finds by clear and convincing  
320 evidence that:

321 (a) the petition and certificate of eligibility are sufficient;

322 (b) the statutory requirements have been met;

323 (c) if the petitioner seeks expungement of drug possession offenses allowed under  
324 Subsection 77-40-105~~[(5)](6)~~, the petitioner is not illegally using controlled substances and is  
325 successfully managing any substance addiction; and

326 (d) it is not contrary to the interests of the public to grant the expungement.

327 ~~§ → [(9) (8) ← §~~ A court may not expunge a conviction of an offense for which a certificate  
327a of

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

329 Section 7. Section 77-40-108 is amended to read:

330 **77-40-108. Distribution of order -- Redaction -- Receipt of order --**

331 **Administrative proceedings -- Bureau requirements.**

332 (1) (a) A person who receives an order of expungement under this chapter or Section  
333 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected  
334 criminal justice agencies and officials including the court, arresting agency, booking agency,  
335 prosecuting agency, Department of Corrections, and the bureau.

336 (b) A person who receives an order of expungement under Section 77-27-5.1, shall pay  
337 a processing fee to the bureau, established in accordance with the process in Section 63J-1-504,

338 before the bureau's record may be expunged.

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

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

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

348 (5) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2),  
 349 a government agency or official may not divulge information or records which have been  
 350 expunged regarding the petitioner contained in a record of arrest, investigation, detention, or  
 351 conviction after receiving an expungement order.

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

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

356 (7) An order of expungement may not:

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

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

362 (c) remove any evidence relating to the petitioner including records of arrest, which the  
 363 administrative body has used or may use in these proceedings[-]; or

364 (d) prevent ~~the Driver License Division~~ an agency from maintaining, sharing, or  
 364a distributing any  
 365 record required by law.

366 ~~Notwithstanding any other provision of the Utah Code, any agency that maintains~~  
 367 ~~an administrative record relating to an incident for which an order of expungement was issued~~  
 368 ~~may file with the court an objection to an order of expungement if:~~ ☺

369 ~~☉~~ ~~(a) the agency files the objection to the order of expungement within 60 days of the~~  
 370 ~~agency receiving the order of expungement;~~  
 371 ~~(b) at the time the petition for expungement was filed with the court, the agency did not~~  
 372 ~~receive a copy of the petition for expungement that resulted in the issuance of the order of~~  
 373 ~~expungement; and~~  
 374 ~~(c) enforcement of the order of expungement would adversely interfere with the~~  
 375 ~~agency's ability to perform its regular duties in relation to the incident for which the order of~~  
 376 ~~expungement was issued.~~  
 377 ~~(9) A court shall vacate an order of expungement if the court determines that an~~  
 378 ~~agency's objection meets the requirements set out in Subsection (8).] ←Š~~

379 Section 8. Section 77-40-109 is amended to read:

380 **77-40-109. Retention and release of expunged records -- Agencies.**

381 (1) The bureau shall keep, index, and maintain all expunged records of arrests and  
 382 convictions.

383 (2) (a) Employees of the bureau may not divulge any information contained in its index  
 384 to any person or agency without a court order unless specifically authorized by statute.

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

387 (i) the Board of Pardons and Parole;

388 (ii) Peace Officer Standards and Training;

389 (iii) federal authorities, ~~[unless prohibited]~~ only as required by federal law;

390 (iv) the Department of Commerce;

391 (v) the Department of Insurance;

392 (vi) the State Board of Education; and

393 (vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating  
 394 applicants for judicial office.

395 (c) A person or agency authorized by this Subsection (2) to view expunged records  
 396 may not reveal or release any information obtained from the expunged records to anyone  
 397 outside the court order or specific request, including distribution on a public website.

398 (3) The bureau may also use the information in its index as provided in Section

399 [53-5-704](#).

400 (4) If, after obtaining an expungement, the petitioner is charged with a felony, the state  
401 may petition the court to open the expunged records upon a showing of good cause.

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

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

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

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

412 (6) Records released under this chapter are classified as protected under Section  
413 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to  
414 Records.

415 Section 9. Section 77-40-112 is amended to read:

416 **77-40-112. Penalty.**

417 Any person ~~§~~→ **authorized to view expunged records pursuant to Section 77-40-109** ←~~§~~  
417a who [~~willfully violates any prohibition in this chapter~~] knowingly or  
418 intentionally discloses any identifying information from any record of conviction that has been  
419 pardoned or expunged, unless allowed by law, is guilty of a class A misdemeanor [~~unless the~~  
420 ~~prohibition specifically indicates a different penalty~~].

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**