

**EXPUNGEMENT CHANGES**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marsha Judkins**

Senate Sponsor: Stephanie Pitcher

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**LONG TITLE**

**General Description:**

This bill amends provisions related to expungement.

**Highlighted Provisions:**

This bill:

- ▶ defines terms related to expungement;
- ▶ clarifies provisions related to an individual's eligibility for an expungement;
- ▶ requires an agency to provide written confirmation of expungement if the individual who received the expungement requests confirmation;
- ▶ allows the Bureau of Criminal Identification to charge a fee for providing a written confirmation of an expungement;
- ▶ amends the list of agencies that can access an expunged record;
- ▶ allows an individual who receives an expungement to request confirmation of an expungement from an agency; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28 77-40a-101, as last amended by Laws of Utah 2022, Chapters 116, 430 and renumbered  
29 and amended by Laws of Utah 2022, Chapter 250

30 77-40a-104, as renumbered and amended by Laws of Utah 2022, Chapter 250

31 77-40a-302, as renumbered and amended by Laws of Utah 2022, Chapter 250

32 77-40a-303, as last amended by Laws of Utah 2022, Chapter 116 and renumbered and  
33 amended by Laws of Utah 2022, Chapter 250

34 77-40a-304, as last amended by Laws of Utah 2022, Chapter 384 and renumbered and  
35 amended by Laws of Utah 2022, Chapter 250 and last amended by Coordination  
36 Clause, Laws of Utah 2022, Chapter 384

37 77-40a-401, as renumbered and amended by Laws of Utah 2022, Chapter 250

38 77-40a-402, as renumbered and amended by Laws of Utah 2022, Chapter 250

39 77-40a-403, as renumbered and amended by Laws of Utah 2022, Chapter 250

40 77-40a-404, as renumbered and amended by Laws of Utah 2022, Chapter 250



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

43 Section 1. Section 77-40a-101 is amended to read:

44 **77-40a-101. Definitions.**

45 As used in this chapter:

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

49 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
50 Safety established in Section 53-10-201.

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

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

56 (i) where each conviction within the case is:

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

- 59 (B) a class B or class C misdemeanor conviction; or  
60 (C) an infraction conviction;  
61 (ii) that involves an individual:  
62 (A) whose total number of convictions in Utah state courts, not including infractions,  
63 traffic offenses, or minor regulatory offenses, does not exceed the limits described in  
64 Subsections 77-40a-303(5) and (6) without taking into consideration the exception in  
65 Subsection 77-40a-303(8); and  
66 (B) against whom no criminal proceedings are pending in the state; and  
67 (iii) for which the following time periods have elapsed from the day on which the case  
68 is adjudicated:  
69 (A) at least five years for a class C misdemeanor or an infraction;  
70 (B) at least six years for a class B misdemeanor; and  
71 (C) at least seven years for a class A conviction for possession of a controlled  
72 substance in violation of Subsection 58-37-8(2)(a)(i).  
73 (b) "Clean slate eligible case" includes a case:  
74 (i) that is dismissed as a result of a successful completion of a plea in abeyance  
75 agreement governed by Subsection 77-2a-3(2)(b) if:  
76 (A) except as provided in Subsection (4)(c), each charge within the case is a  
77 misdemeanor for possession of a controlled substance in violation of Subsection  
78 58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;  
79 (B) the individual involved meets the requirements of Subsection (4)(a)(ii); and  
80 (C) the time periods described in Subsections (4)(a)(iii)(A) through (C) have elapsed  
81 from the day on which the case is dismissed; or  
82 (ii) where charges are dismissed without prejudice if each conviction, or charge that  
83 was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or  
84 (b)(i).  
85 (c) "Clean slate eligible case" does not include a case:  
86 (i) where the individual is found not guilty by reason of insanity;  
87 (ii) where the case establishes a criminal accounts receivable, as defined in Section  
88 77-32b-102, that:  
89 (A) has been entered as a civil accounts receivable or a civil judgment of restitution, as

90 those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt  
91 Collection under Section 77-18-114; or

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

93 (iii) that resulted in one or more pleas held in abeyance or convictions for the following  
94 offenses:

95 (A) any of the offenses listed in Subsection 77-40a-303(1)(a);

96 (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against  
97 the Individual;

98 (C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;

99 (D) sexual battery in violation of Section 76-9-702.1;

100 (E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;

101 (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence  
102 and Reckless Driving;

103 (G) damage to or interruption of a communication device in violation of Section  
104 76-6-108;

105 (H) a domestic violence offense as defined in Section 77-36-1; or

106 (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor  
107 other than a class A misdemeanor conviction for possession of a controlled substance in  
108 violation of Subsection 58-37-8(2)(a)(i).

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

111 (6) "Criminal protective order" means the same as that term is defined in Section  
112 78B-7-102.

113 (7) "Criminal stalking injunction" means the same as that term is defined in Section  
114 78B-7-102.

115 (8) "Department" means the Department of Public Safety established in Section  
116 53-1-103.

117 (9) "Drug possession offense" means an offense under:

118 (a) Subsection 58-37-8(2), except:

119 (i) any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of  
120 marijuana;

- 121 (ii) any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional  
122 facility; or
- 123 (iii) driving with a controlled substance illegally in the person's body and negligently  
124 causing serious bodily injury or death of another, as codified before May 4, 2022, Laws of Utah  
125 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);
- 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 (9).
- 130 (10) "Expunge" means to seal or otherwise restrict access to the individual's record  
131 held by an agency when the record includes a criminal investigation, detention, arrest, or  
132 conviction.
- 133 (11) "Jurisdiction" means a state, district, province, political subdivision, territory, or  
134 possession of the United States or any foreign country.
- 135 [~~(12)(a) Except as provided in Subsection (12)(c), "minor regulatory offense" means~~]  
136 (12) (a) "Minor regulatory offense" means, except as provided in Subsection (12)(c), a  
137 class B or C misdemeanor or a local ordinance.
- 138 (b) "Minor regulatory offense" includes an offense under Section 76-9-701 or  
139 76-10-105.
- 140 (c) "Minor regulatory offense" does not include:
- 141 (i) any drug possession offense;
- 142 (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and  
143 Reckless Driving;
- 144 (iii) an offense under Sections 73-18-13 through 73-18-13.6;
- 145 (iv) except as provided in Subsection (12)(b), an offense under Title 76, Utah Criminal  
146 Code; or
- 147 (v) any local ordinance that is substantially similar to an offense listed in Subsections  
148 (12)(c)(i) through (iv).
- 149 (13) "Petitioner" means an individual applying for expungement under this chapter.
- 150 (14) "Plea in abeyance" means the same as that term is defined in Section 77-2a-1.
- 151 [~~(14)~~] (15) (a) "Traffic offense" means, except as provided in Subsection (15)(b):

- 152 (i) all infractions, class B misdemeanors, and class C misdemeanors in Title 41,
- 153 Chapter 6a, Traffic Code;
- 154 (ii) an offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;
- 155 (iii) an offense under Title 73, Chapter 18, State Boating Act; and
- 156 (iv) all local ordinances that are substantially similar to an offense listed in Subsections
- 157 (14)(a)(i) through (iii).

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

- 159 (i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
- 160 Reckless Driving;
- 161 (ii) an offense under Sections 73-18-13 through 73-18-13.6; or
- 162 (iii) any local ordinance that is substantially similar to an offense listed in Subsection
- 163 [(14)(b)(i)] (15)(b)(i) or (ii).

164 [(15)] (16) "Traffic offense case" means that each offense in the case is a traffic  
165 offense.

166 Section 2. Section 77-40a-104 is amended to read:

167 **77-40a-104. Department rulemaking authority.**

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

- 170 (1) implement procedures for processing an automatic expungement;
- 171 (2) implement procedures for applying for certificates of eligibility;
- 172 (3) specify procedures for receiving a certificate of eligibility; ~~and~~
- 173 (4) create forms and determine information necessary to be provided to the bureau[-];
- 174 and
- 175 (5) implement procedures for the confirmation of an expungement as described in

176 Subsection 77-40a-403(2).

177 Section 3. Section 77-40a-302 is amended to read:

178 **77-40a-302. Requirements for certificate of eligibility to expunge records of**  
179 **arrest, investigation, and detention.**

- 180 (1) ~~An~~ Except as provided in Subsection (2), an individual who is arrested or
- 181 formally charged with an offense is eligible to receive a certificate of eligibility from the
- 182 bureau to expunge the records of arrest, investigation, and detention [~~that may have been made~~]

183 ~~in the case]~~ in the case for the offense if:

184 ~~[(1) at least 30 days have passed since the day of the arrest for which a certificate of~~  
185 ~~eligibility is sought;]~~

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

188 ~~[(3) the individual is not currently on probation or parole;]~~

189 ~~[(4) there is not a criminal protective order or a criminal stalking injunction in effect~~  
190 ~~for the case;]~~

191 ~~[(5) there are no convictions in the case for a traffic offense; and]~~

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

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

195 ~~[(b) (i) all charges contained in the case are dismissed; and]~~

196 ~~[(ii) if any charge contained in the case is dismissed without prejudice or without~~  
197 ~~condition;]~~

198 ~~[(A) the prosecuting attorney consents in writing to the issuance of a certificate of~~  
199 ~~eligibility; or]~~

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

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

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

203 (a) at least 30 days have passed since the day on which the individual is arrested for the  
204 offense; and

205 (b) one of the following occurs:

206 (i) an investigating law enforcement agency and the prosecuting attorney has screened  
207 the case and determined that no charges will be filed against the individual;

208 (ii) all charges in the case are dismissed with prejudice;

209 (iii) if a charge in the case is dismissed without prejudice or without condition:

210 (A) the prosecuting attorney consents in writing to the issuance of a certificate of  
211 eligibility; or

212 (B) at least 180 days have passed after the day on which the charge is dismissed;

213 (iv) the individual is acquitted at trial on all of the charges in the case; or

- 214 (v) the statute of limitations expires on all of the charges in the case.
- 215 (2) An individual is not eligible for a certificate of eligibility from the bureau to
- 216 expunge the records of arrest, investigation, and detention of an offense if:
- 217 (a) there is a criminal proceeding or a plea in abeyance pending against the individual,
- 218 unless the criminal proceeding or plea in abeyance pending against the petition is for an
- 219 infraction, a traffic offense, or a minor regulatory offense;
- 220 (b) the individual is on probation or parole for an offense, unless the individual is on
- 221 probation for an infraction, a traffic offense, or a minor regulatory offense; or
- 222 (c) there is a criminal protective order or a criminal stalking injunction in effect for the
- 223 offense.

224 Section 4. Section **77-40a-303** is amended to read:

225 **77-40a-303. Requirements for a certificate of eligibility to expunge records of a**

226 **conviction.**

- 227 (1) Except as [~~provided in Subsections (2) and (4)~~] otherwise provided in this section,
- 228 an individual is not eligible to receive a certificate of eligibility from the bureau to expunge the
- 229 records of a conviction if:
- 230 (a) the conviction for which expungement is sought is:
- 231 (i) a capital felony;
- 232 (ii) a first degree felony;
- 233 (iii) a felony conviction of a violent felony as defined in Subsection
- 234 [76-3-203.5\(1\)\(c\)\(i\)](#);
- 235 (iv) a felony conviction described in Subsection [41-6a-501\(2\)](#);
- 236 (v) an offense, or a combination of offenses, that would require the individual to
- 237 register as a sex offender, as defined in Section [77-41-102](#); or
- 238 (vi) a registerable child abuse offense as defined in Subsection [77-43-102\(2\)](#);
- 239 (b) a criminal proceeding or a plea in abeyance is pending against the petitioner, unless
- 240 the criminal proceeding or plea in abeyance pending against the petitioner is for an infraction, a
- 241 traffic offense, or a minor regulatory offense;
- 242 (c) the petitioner is on probation or parole for an offense, unless the petitioner is on
- 243 probation for an infraction, a traffic offense, or a minor regulatory offense;
- 244 (d) the petitioner intentionally or knowingly provides false or misleading information



245 on the application for a certificate of eligibility; or

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

247 (2) The eligibility limitation described in Subsection (1) does not apply in relation to a  
248 conviction for a qualifying sexual offense, as defined in Subsection 76-3-209(1), if, at the time  
249 of the offense, the individual who committed the offense was at least 14 years old, but under 18  
250 years old, unless the conviction occurred in district court after the individual was:

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

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

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

256 (a) the petitioner has paid in full all fines and interest ordered by the court related to the  
257 conviction for which expungement is sought;

258 (b) the petitioner has paid in full all restitution ordered by the court under Section  
259 77-38b-205; and

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

263 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a  
264 felony conviction of operating a motor vehicle with any amount of a controlled substance in an  
265 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,  
266 Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

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

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

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

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

272 (4) When determining whether to issue a certificate of eligibility for a conviction, the  
273 bureau may not consider:

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

275 (i) infraction;

276 (ii) traffic offense;  
277 (iii) minor regulatory offense; or  
278 (iv) clean slate eligible case that was automatically expunged in accordance with  
279 Section 77-40a-201; or

280 (b) a fine or fee related to an offense described in Subsection (4)(a).

281 (5) Except as provided in Subsection (8), the bureau may not issue a certificate of  
282 eligibility for a conviction if, at the time the petitioner seeks a certificate of eligibility, the  
283 bureau determines that the petitioner's criminal history, including previously expunged  
284 convictions, contains any of the following:

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

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

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

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

295 (6) Except as provided in Subsection (8), the bureau may not issue a certificate of  
296 eligibility for a conviction if, at the time the petitioner seeks a certificate of eligibility, the  
297 bureau determines that the petitioner's criminal history, including previously expunged  
298 convictions, contains any of the following:

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

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

303 (7) If the petitioner's criminal history contains convictions for both a drug possession  
304 offense and a non-drug possession offense arising from the same criminal episode, that  
305 criminal episode shall be counted as provided in Subsection (5) if any non-drug possession  
306 offense in that episode:

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

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

310 (8) If at least 10 years have elapsed from the date the petitioner was convicted or  
311 released from incarceration, parole, or probation, whichever occurred last, for all convictions:

312 (a) each numerical eligibility limit defined in Subsections (5)(a) and (b) shall be  
313 increased by one; and

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

316 (i) the individual is otherwise eligible; and

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

318 (A) a class B misdemeanor;

319 (B) a class C misdemeanor;

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

322 (D) an infraction.

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

326 Section 5. Section **77-40a-304** is amended to read:

327 **77-40a-304. Certificate of eligibility process -- Issuance of certificate -- Fees.**

328 (1) (a) When a petitioner applies for a certificate of eligibility as described in  
329 Subsection [77-40a-301](#)(1), the bureau shall perform a check of records of governmental  
330 agencies, including national criminal data bases, to determine whether the petitioner is eligible  
331 to receive a certificate of eligibility under this chapter.

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

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

336 (d) If the petitioner meets all of the criteria under Section [77-40a-302](#) or [77-40a-303](#):

337 (i) the bureau shall issue a certificate of eligibility that is valid for a period of 180 days

338 from the day on which the certificate is issued;

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

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

343 (e) If, after reasonable research, a disposition for an arrest on the criminal history file is  
344 unobtainable, the bureau may issue a special certificate giving determination of eligibility to  
345 the court [~~if~~], except that the bureau may not issue the special certificate if:

346 (i) there [~~are no criminal proceedings or pleas~~] is a criminal proceeding or a plea in  
347 abeyance pending against the petitioner[; and], unless the criminal proceeding or plea in  
348 abeyance pending against the petitioner is for an infraction, a traffic offense, or a minor  
349 regulatory offense; or

350 (ii) the petitioner [~~is not currently on probation or parole~~] is on probation or parole for  
351 an offense, unless the petitioner is on probation for an infraction, a traffic offense, or a minor  
352 regulatory offense.

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

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

357 (c) If the bureau determines that the issuance of a certificate of eligibility or special  
358 certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a  
359 certificate of eligibility or special certificate unless Subsection (2)(d) applies.

360 (d) An issuance fee may not be assessed against a petitioner who qualifies for a  
361 certificate of eligibility under Section 77-40a-302 unless the charges were dismissed pursuant  
362 to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion  
363 agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

364 (e) Funds generated under this Subsection (2) shall be deposited in the General Fund as  
365 a dedicated credit by the department to cover the costs incurred in determining eligibility.

366 (3) The bureau shall include on the certificate of eligibility all information that is  
367 needed for the court to issue a valid expungement order.

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

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

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

372 (5) (a) The requirement for a petitioner to pay an issuance fee for a certificate of  
373 eligibility or a special certificate of eligibility under Subsection (2) is suspended from May 4,  
374 2022, to June 30, 2023.

375 (b) The bureau may not charge a fee for the issuance of a certificate of eligibility or a  
376 special certificate of eligibility during the time period described in Subsection (5)(a).

377 Section 6. Section **77-40a-401** is amended to read:

378 **77-40a-401. Distribution of order -- Redaction -- Receipt of order -- Bureau**  
379 **requirements -- Administrative proceedings.**

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

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

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

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

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

388 (d) An individual, who receives an expungement order under Section [77-27-5.1](#), shall  
389 pay a processing fee to the bureau, established in accordance with the process in Section  
390 [63J-1-504](#), before the bureau's record may be expunged.

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

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

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

400 (5) Unless ordered by a court to do so, or in accordance with Subsection  
401 [~~77-40a-403(2)~~] ~~77-40a-403~~(3), a government agency or official may not divulge information  
402 or records that have been expunged.

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

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

408 (7) An expungement order may not:

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

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

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

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

419 Section 7. Section ~~77-40a-402~~ is amended to read:

420 **77-40a-402. Distribution for order for vacatur.**

421 (1) An individual who receives an order for vacatur under Subsection ~~78B-9-108~~(2)  
422 shall be responsible for delivering a copy of the order for vacatur to all affected criminal justice  
423 agencies and officials.

424 (2) To complete delivery of the order for vacatur to the bureau, the individual shall  
425 complete and attach to the order for vacatur an application for a certificate of eligibility for  
426 expungement, including identifying information and fingerprints, in accordance with Section  
427 ~~77-40a-301~~.

428 (3) Except as otherwise provided in this section, the bureau shall treat the order for  
429 vacatur and attached certificate of eligibility for expungement the same as a valid order for  
430 expungement under Section ~~77-40a-401~~.

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

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

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

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

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

443 (b) Peace Officer Standards and Training, in accordance with Section 53-6-203 and  
444 Subsection [~~77-40a-403(2)(b)(ii)~~] 77-40a-403(3)(b)(ii).

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

447 Section 8. Section **77-40a-403** is amended to read:

448 **77-40a-403. Retention and release of expunged records -- Agencies.**

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

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

453 (2) (a) An agency shall provide an individual who receives an expungement with  
454 written confirmation that the agency has expunged all records of the offense for which the  
455 individual received the expungement if the individual requests confirmation from the agency.

456 (b) The bureau may charge a fee for providing a written confirmation under Subsection  
457 (2)(a) in accordance with the process in Section 63J-1-504.

458 [~~2~~] (3) (a) (i) An employee of the bureau, or any agency with an expunged record,  
459 may not divulge any information contained in the expunged record to any person or agency  
460 without a court order unless:

461 (A) specifically authorized by statute; or

462 (B) subject to Subsection ~~[(2)(a)(ii)]~~ (3)(a)(ii), the information in an expunged record is  
463 being shared with another agency through a records management system that both agencies use  
464 for the purpose of record management.

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

468 ~~[(b)]~~ (4) The following entities or agencies may receive information contained in  
469 expunged records upon specific request:

470 ~~[(i)]~~ (a) the Board of Pardons and Parole;

471 ~~[(ii)]~~ (b) Peace Officer Standards and Training;

472 ~~[(iii)]~~ (c) federal authorities if required by federal law;

473 ~~[(iv) the Department of Commerce;]~~

474 ~~[(v) the Department of Insurance;]~~

475 ~~[(vi)]~~ (d) the State Board of Education;

476 ~~[(vii)]~~ (e) the Commission on Criminal and Juvenile Justice, for purposes of  
477 investigating applicants for judicial office; and

478 ~~[(viii)]~~ (f) a research institution or an agency engaged in research regarding the  
479 criminal justice system if:

480 ~~[(A)]~~ (i) the research institution or agency provides a legitimate research purpose for  
481 gathering information from the expunged records;

482 ~~[(B)]~~ (ii) the research institution or agency enters into a data sharing agreement with  
483 the court or agency with custody of the expunged records that protects the confidentiality of  
484 any identifying information in the expunged records;

485 ~~[(C)]~~ (iii) any research using expunged records does not include any individual's name  
486 or identifying information in any product of that research; and

487 ~~[(D)]~~ (iv) any product resulting from research using expunged records includes a  
488 disclosure that expunged records were used for research purposes.

489 ~~[(e)]~~ (5) Except as otherwise provided by this Subsection ~~[(2)]~~ (3) or by court order, a  
490 person, an agency, or an entity authorized by ~~[this Subsection (2)]~~ this section to view  
491 expunged records may not reveal or release any information obtained from the expunged  
492 records to anyone outside the specific request, including distribution on a public website.



493           ~~[(d)]~~ (6) A prosecuting attorney may communicate with another prosecuting attorney,  
494 or another prosecutorial agency, regarding information in an expunged record that includes a  
495 conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance  
496 agreement, for:

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

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

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

501           ~~[(iv)]~~ (d) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.

502           ~~[(e)]~~ (7) Except as provided in Subsection ~~[(4)]~~ (9), a prosecuting attorney may not use  
503 an expunged record for the purpose of a sentencing enhancement or as a basis for charging an  
504 individual with an offense that requires a prior conviction.

505           ~~[(3)]~~ (8) The bureau may also use the information in the bureau's index as provided in  
506 Section [53-5-704](#).

507           ~~[(4)]~~ (9) If, after obtaining an expungement, an individual is charged with a felony or  
508 an offense eligible for enhancement based on a prior conviction, the state may petition the court  
509 to open the expunged records upon a showing of good cause.

510           ~~[(5)]~~ (10) (a) For judicial sentencing, a court may order any records expunged under  
511 this chapter or Section [77-27-5.1](#) to be opened and admitted into evidence.

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

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

517           (d) Any person authorized by this Subsection ~~[(5)]~~ (10) to view expunged records may  
518 not reveal or release any information obtained from the expunged records to anyone outside the  
519 court.

520           ~~[(6)]~~ (11) Records released under this chapter are classified as protected under Section  
521 [63G-2-305](#) and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to  
522 Records, and Subsection [53-10-108](#)(2)(k) for records held by the bureau.

523           Section 9. Section **77-40a-404** is amended to read:

524           **77-40a-404. Confirmation of expungement -- Access to expunged records by**  
525 **individuals.**

526           ~~[A record expunged under this chapter or Section [77-27-5.1](#) may be released to or~~  
527 ~~viewed by:]~~

528           (1) An individual who receives an expungement may request a written confirmation  
529 from an agency under Subsection [77-40a-403](#)(2) to confirm that the agency has expunged all  
530 records of the offense for which the individual received the expungement.

531           (2) The following individuals may view or obtain an expunged record under this  
532 chapter or Section [77-27-5.1](#):

533           ~~[(1)]~~ (a) the petitioner or an individual who receives an automatic expungement under  
534 Section [77-40a-201](#);

535           ~~[(2)]~~ (b) a law enforcement officer, who was involved in the case, for use solely in the  
536 officer's defense of a civil action arising out of the officer's involvement with the petitioner in  
537 that particular case; and

538           ~~[(3)]~~ (c) ~~[parties]~~ a party to a civil action arising out of the expunged incident if the  
539 information is kept confidential and utilized only in the action.