

EXPUNGEMENT RECORDS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Walt Brooks

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to expunged records.

Highlighted Provisions:

This bill:

- ▶ amends the list of agencies that may view information contained in expunged criminal records; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53E-6-506, as last amended by Laws of Utah 2022, Chapter 250

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

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

Section 1. Section **53E-6-506** is amended to read:

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

(1) The state board may direct UPPAC to review a complaint about an educator and



28 recommend that the state board:

29 (a) dismiss the complaint; or

30 (b) investigate the complaint in accordance with this section.

31 (2) (a) The state board may direct UPPAC to:

32 (i) in accordance with this section, investigate a complaint's allegation or decision; or

33 (ii) hold a hearing.

34 (b) UPPAC may initiate a hearing as part of an investigation.

35 (c) Upon completion of an investigation or hearing, UPPAC shall:

36 (i) provide findings to the state board; and

37 (ii) make a recommendation for state board action.

38 (d) UPPAC may not make a recommendation described in Subsection (2)(c)(ii) to

39 adversely affect an educator's license unless UPPAC gives the educator an opportunity for a

40 hearing.

41 (3) (a) The state board may:

42 (i) select an independent investigator to conduct a UPPAC investigation with UPPAC
43 oversight; or

44 (ii) authorize UPPAC to select and oversee an independent investigator to conduct an
45 investigation.

46 (b) In conducting an investigation, UPPAC or an independent investigator shall
47 conduct the investigation independent of and separate from a related criminal investigation.

48 (c) In conducting an investigation, UPPAC or an independent investigator may:

49 (i) in accordance with Section 53E-6-606 administer oaths and issue subpoenas; or

50 (ii) receive evidence related to an alleged offense[~~including sealed or expunged~~
51 ~~records released to the state board under Section 77-40a-403~~].

52 (d) If UPPAC finds that reasonable cause exists during an investigation, UPPAC may
53 recommend that the state board initiate a background check on an educator as described in
54 Section 53G-11-403.

55 (e) UPPAC has a rebuttable presumption that an educator committed a sexual offense
56 against a minor child if the educator voluntarily surrendered a license or certificate or allowed a
57 license or certificate to lapse in the face of a charge of having committed a sexual offense
58 against a minor child.

- 59 (4) The state board may direct UPPAC to:
- 60 (a) recommend to the state board procedures for:
- 61 (i) receiving and processing complaints;
- 62 (ii) investigating a complaint's allegation or decision;
- 63 (iii) conducting hearings; or
- 64 (iv) reporting findings and making recommendations to the state board for state board
- 65 action;
- 66 (b) recommend to the state board or a professional organization of educators:
- 67 (i) standards of professional performance, competence, and ethical conduct for
- 68 educators; or
- 69 (ii) suggestions for improvement of the education profession; or
- 70 (c) fulfill other duties the state board finds appropriate.
- 71 (5) UPPAC may not participate as a party in a dispute relating to negotiations between:
- 72 (a) a school district and the school district's educators; or
- 73 (b) a charter school and the charter school's educators.
- 74 (6) The state board shall make rules establishing UPPAC duties and procedures.

75 Section 2. Section ~~77-40a-403~~ is amended to read:

76 **77-40a-403. Retention and release of expunged records -- Agencies.**

- 77 (1) (a) The bureau, after receiving an expungement order, shall keep, index, and
- 78 maintain all expunged records of arrests and convictions.
- 79 (b) Any agency, other than the bureau, receiving an expungement order shall develop
- 80 and implement a process to identify and maintain an expunged record.
- 81 (2) (a) (i) An employee of the bureau, or any agency with an expunged record, may not
- 82 divulge any information contained in the expunged record to any person or agency without a
- 83 court order unless:
- 84 (A) specifically authorized by statute; or
- 85 (B) subject to Subsection (2)(a)(ii), the information in an expunged record is being
- 86 shared with another agency through a records management system that both agencies use for
- 87 the purpose of record management.
- 88 (ii) An agency with a records management system may not disclose any information in
- 89 an expunged record with another agency or person that does not use the records management

90 system for the purpose of record management.

91 (b) The following entities or agencies may receive information contained in expunged
92 records upon specific request:

93 (i) the Board of Pardons and Parole;

94 (ii) Peace Officer Standards and Training;

95 (iii) federal authorities if required by federal law;

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

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

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

99 [~~(vii)~~] (iv) the Commission on Criminal and Juvenile Justice, for purposes of
100 investigating applicants for judicial office; and

101 [~~(viii)~~] (v) a research institution or an agency engaged in research regarding the
102 criminal justice system if:

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

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

108 (C) any research using expunged records does not include any individual's name or
109 identifying information in any product of that research; and

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

112 (c) Except as otherwise provided by this Subsection (2) or by court order, a person, an
113 agency, or an entity authorized by this Subsection (2) to view expunged records may not reveal
114 or release any information obtained from the expunged records to anyone outside the specific
115 request, including distribution on a public website.

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

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

121 (ii) a domestic violence offense as defined in Section 77-36-1;
122 (iii) an offense that would require the individual to register as a sex offender, as
123 defined in Section 77-41-102; or
124 (iv) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.
125 (e) Except as provided in Subsection (4), a prosecuting attorney may not use an
126 expunged record for the purpose of a sentencing enhancement or as a basis for charging an
127 individual with an offense that requires a prior conviction.

128 (3) The bureau may also use the information in the bureau's index as provided in
129 Section 53-5-704.

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

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

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

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

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

143 (6) Records released under this chapter are classified as protected under Section
144 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to
145 Records, and Subsection 53-10-108(2)(k) for records held by the bureau.