

EXPUNGEMENT MODIFICATIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill prohibits the State Board of Education from accessing expunged records and limits the number of years the state board may consider certain offenses when conducting a background check.

Highlighted Provisions:

This bill:

- ▶ prohibits the State Board of Education (state board) from accessing expunged records; and
- ▶ limits the number of years the state board may consider certain offenses when conducting a background check.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53G-11-405, as last amended by Laws of Utah 2022, Chapter 430

77-40a-403, as last amended by Laws of Utah 2023, Chapter 265

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



28 Section 1. Section 53G-11-405 is amended to read:

29 **53G-11-405. Due process for individuals--Review of criminal history information.**

30 (1) (a) In accordance with Section 53-10-108, an authorized entity shall provide an
31 individual an opportunity to review and respond to any criminal history information received
32 under this part.

33 (b) If an authorized entity decides to disqualify an individual as a result of criminal
34 history information received under this part, an individual may request a review of:

- 35 (i) information received; and
- 36 (ii) the reasons for the disqualification.

37 (c) An authorized entity shall provide an individual described in Subsection (1)(b) with
38 written notice of:

- 39 (i) the reasons for the disqualification; and
- 40 (ii) the individual's right to request a review of the disqualification.

41 (2) (a) An LEA or qualifying private school shall make decisions regarding criminal
42 history information for the individuals subject to the background check requirements under
43 Section 53G-11-402 in accordance with:

- 44 (i) Subsection (3);
- 45 (ii) administrative procedures established by the LEA or qualifying private school; and
- 46 (iii) rules established by the state board.

47 (b) The state board shall make decisions regarding criminal history information for
48 licensed educators in accordance with:

- 49 (i) Subsection (3);
- 50 (ii) Title 53E, Chapter 6, Education Professional Licensure; and
- 51 (iii) rules established by the state board.

52 (3) ~~[When]~~ Except as provided in Subsection (4), when making decisions regarding
53 initial employment, initial licensing, or initial appointment for ~~[the individuals subject to~~
54 ~~background checks]~~ an individual who is subject to a background check under this part, an
55 authorized entity shall consider:

- 56 ~~[(a) any convictions, including pleas in abeyance;]~~
- 57 ~~[(b) any matters involving a felony; and]~~
- 58 ~~[(c) any matters involving an alleged:]~~

- 59 ~~[(i) sexual offense;]~~
- 60 ~~[(ii) class A misdemeanor drug offense;]~~
- 61 ~~[(iii) offense against the person under Title 76, Chapter 5, Offenses Against the~~
- 62 ~~Individual;]~~
- 63 ~~[(iv) class A misdemeanor property offense that is alleged to have occurred within the~~
- 64 ~~previous three years; and]~~
- 65 ~~[(v) any other type of criminal offense, if more than one occurrence of the same type of~~
- 66 ~~offense is alleged to have occurred within the previous eight years.]~~
- 67 (a) any felony offense of which an individual is convicted, as that term is defined under
- 68 Section 76-5-303.5;
- 69 (b) a misdemeanor that is:
- 70 (i) a property offense under Title 76, Chapter 8, Part 4, Offenses Against Public
- 71 Property;
- 72 (ii) an offense while on school property under:
- 73 (A) Title 76, Chapter 8, Part 14, Disruption of School Activities; or
- 74 (B) Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and
- 75 Performances;
- 76 (iii) an offense against an individual under Title 76, Chapter 5, Offenses Against the
- 77 Individual;
- 78 (iv) a drug offense, including driving under the influence;
- 79 (c) any sexual offense, including sexual offenses under:
- 80 (i) Title 76, Chapter 5, Part 4, Sexual Offenses; or
- 81 (ii) Title 76, Chapter 9, Part 7, Miscellaneous Provisions;
- 82 (iii) Title 76, Chapter 10, Part 13, Prostitution; and
- 83 (d) an offense against an individual under Title 76, Chapter 5, Offenses Against the
- 84 Individual.
- 85 (4) Except as provided in Subsection (3)(b), the state board, an LEA, or a qualifying
- 86 private school, when making a decision under Subsection (2) or (3), may not consider a class B
- 87 or C misdemeanor conviction that occurred more than 10 years from the day the authorized
- 88 entity conducts the background check.
- 89 Section 2. Section **77-40a-403** is amended to read:

90 **77-40a-403. Retention and release of expunged records -- Agencies.**

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

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

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

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

100 (3) (a) An employee of the bureau, or any agency with an expunged record, may not
101 divulge any information contained in the expunged record to any person or agency without a
102 court order unless:

103 (i) specifically authorized by statute; or

104 (ii) subject to Subsection (3)(b), the information in an expunged record is being shared
105 with another agency through a records management system that both agencies use for the
106 purpose of record management.

107 (b) An agency with a records management system may not disclose any information in
108 an expunged record with another agency or person that does not use the records management
109 system for the purpose of record management.

110 (4) The following entities or agencies may receive information contained in expunged
111 records upon specific request:

112 (a) the Board of Pardons and Parole;

113 (b) Peace Officer Standards and Training;

114 (c) federal authorities if required by federal law;

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

116 [~~(e)~~] (d) the Commission on Criminal and Juvenile Justice, for purposes of
117 investigating applicants for judicial office; and

118 [~~(f)~~] (e) a research institution or an agency engaged in research regarding the criminal
119 justice system if:

120 (i) the research institution or agency provides a legitimate research purpose for

121 gathering information from the expunged records;

122 (ii) the research institution or agency enters into a data sharing agreement with the
123 court or agency with custody of the expunged records that protects the confidentiality of any
124 identifying information in the expunged records;

125 (iii) any research using expunged records does not include any individual's name or
126 identifying information in any product of that research; and

127 (iv) any product resulting from research using expunged records includes a disclosure
128 that expunged records were used for research purposes.

129 (5) Except as otherwise provided by this section or by court order, a person, an agency,
130 or an entity authorized by this section to view expunged records may not reveal or release any
131 information obtained from the expunged records to anyone outside the specific request,
132 including distribution on a public website.

133 (6) A prosecuting attorney may communicate with another prosecuting attorney, or
134 another prosecutorial agency, regarding information in an expunged record that includes a
135 conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance
136 agreement, for:

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

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

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

141 (d) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.

142 (7) Except as provided in Subsection (9), a prosecuting attorney may not use an
143 expunged record for the purpose of a sentencing enhancement or as a basis for charging an
144 individual with an offense that requires a prior conviction.

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

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

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

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

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

157 (d) Any person authorized by this Subsection (10) to view expunged records may not
158 reveal or release any information obtained from the expunged records to anyone outside the
159 court.

160 (11) Records released under this chapter are classified as protected under Section
161 [63G-2-305](#) and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to
162 Records, and Subsection [53-10-108\(2\)\(k\)](#) for records held by the bureau.

163 Section 3. **Effective date.**

164 This bill takes effect on May 1, 2024.