

EXPUNGEMENT PROCESS - INSTRUCTION SHEET

The expungement statutes are found in [South Dakota Codified Laws chapter 23A-3](#). Please refer to the relevant Code sections in that chapter for complete information. There are two means of obtaining expungement:

- (1) By making a motion for expungement (SDCL 23A-3-26 through 23A-3-33); or
- (2) Automatically by successfully completing all terms of a diversion program and not being charged with any new crimes, except petty offenses or minor traffic citations, within one year and thirty days from the date of successfully completing the diversion program (SDCL 23A-3-35 through 23A-3-37).

Keep in mind that a motion for expungement can only be made on a "record of the arrest" if:

- (1) After one year from the date of the arrest no complaint, information, or indictment was filed;**
- (2) After one year from the date the prosecution "formally dismis[s]e[d] the entire criminal case on the record";**
- (3) At any time after an acquittal of all charges; or**
- (4) Within one year of the date the prosecuting attorney formally dismisses the entire criminal case on the record upon a showing of compelling necessity. [SDCL 23A-3-27](#).**

The expungement process begins when a motion is filed with the Clerk of Court for the court that had, or would have had, jurisdiction over the criminal matter sought to be expunged or removed from a person's criminal record. [SDCL 23A-3-27](#). A form for a Motion for

Expungement (UJS-391) is available on the UJS website's Expungement forms webpage: <https://ujslawhelp.sd.gov/Expungement.aspx>. Please fill out that form, but do not sign the form until you are in the presence of a Notary Public or Clerk of Court. Be sure to bring identification to show the Notary or Clerk.

A motion for expungement is a civil filing and requires payment of civil filing fees and costs, unless a waiver is granted by the court. [SDCL 23A-3-28](#). Along with the motion, an individual must file a case filing statement form, which is available on the UJS website's Expungement forms webpage: <https://ujslawhelp.sd.gov/Expungement.aspx>.

WARNING: By signing your name to a legal document that you file with the court, you are telling the court that you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth, if you are misleading the court, or if you are serving or filing this document for an improper purpose, the court could find you in contempt or you could be prosecuted.

A motion for expungement must be served on the office of the prosecuting attorney who prosecuted the crime at least 14 days before any hearing. [SDCL 23A-3-28](#). Note, however, that a hearing may not be necessary. The defendant (arrested person), prosecuting attorney and victim may all consent to waive the hearing. [SDCL 23A-3-29](#). The form for collecting this information—requiring one form for each of the three parties to fill out, including you—is the Waiver of Expungement Hearing form (UJS-392) available on the UJS website’s Expungement forms webpage.

If you cannot, or choose not to, seek a waiver from those other three parties, you need to properly serve notice of your expungement motion on the office of the prosecuting attorney as noted in the paragraph above. Contact the Clerk of Court or Court Administrator’s Office and request that a hearing be scheduled approximately a month in the future. Fill out a draft Notice of Hearing for Expungement of Record (UJS-393) with the date, time, and location and submit it to the Clerk. Then obtain certified copies of the Motion for Expungement and Notice of Hearing for Expungement of Record from the Clerk’s Office and mail them to the office of the prosecuting attorney via first class mail. Now, fill out the Affidavit of Mailing attached to the Motion for Expungement (UJS-391) form. [More information about serving motions can be found in SDCL 15-6-5(a) through SDCL 15-6-5(j) or the [UJS “Going Solo” guide](#).] The Affidavit of Mailing must be filled out truthfully and signed in the presence of a Notary Public (such as the Clerk) before it can be filed with the Clerk to provide proof of your timely, mailed service on the prosecuting attorney’s office to the court.

If a hearing is held and an expungement is ordered by the court, provide the court with a draft Order of Expungement (UJS-394) available on the UJS website’s Expungement Forms webpage. The court will send a nonpublic record of the disposition to the Division of Criminal Investigation.

You must then serve the prosecutor’s office with notice of the court’s order to “start the clock” on the prosecution’s 30-day timeframe for appeal per [SDCL 15-26A-6](#); otherwise, the prosecution may timely appeal the circuit court’s expungement order to the South Dakota Supreme Court many months, even years, after the court’s expungement decision. You start the clock by filling out the Notice of Entry of Order of Expungement (UJS-395) and attaching to it a certified copy of the court’s Order of Expungement that you obtained from the Clerk’s Office. You then send both documents by first class mail to the office of the prosecuting attorney. As with serving the Motion for Expungement and the Notice of Hearing for Expungement of Record, you must fill out the Affidavit of Mailing to provide proof of mailed service on the prosecuting attorney’s office and then sign it before a Notary Public (or Clerk), before it may be accepted by the Clerk for filing and, in turn, before the 30-day timeframe for appeal can start. Note also that there is not statute of limitation for seeking an expungement. [SDCL 23A-3-33](#).