

INSTRUCTIONS AND CHECKLIST ON MOTION FOR EXPUNGEMENT

This form references specific South Dakota Codified Laws (SDCL), and you can find these laws on the South Dakota Legislature website. If you have any legal questions, it is highly recommended that you consult with an attorney. Court staff are unable to provide you with legal advice or assist you in completing this form. For specific questions related to the forms, you can contact the Legal Form Helpline at 1-855-784-0004 or email UJS staff at ujssrlhelp@uj.s.state.sd.us.

IMPORTANT NOTICES

An expungement is the sealing of an arrest record on file within any court, detention or correctional facility, law enforcement agency, criminal justice agency, or Department of Public Safety concerning a person's detection, apprehension, arrest, detention, trial, or disposition of an offense within the criminal justice system. An expungement does not imply the physical destruction of records. SDCL § 23A-3-26. When filing a Motion for Expungement, it is not guaranteed it will be granted. There are certain requirements to qualify for an expungement which are further detailed below.

The filing of an expungement starts as a new civil action and must be filed in the same court that had jurisdiction over the case you are trying to expunge. A Motion for Expungement can only be made on a record of an arrest. If you are requesting an Expungement on more than one record, you will need to initiate a case on each record.

Qualifications for filing a Motion for Expungement

To qualify for filing an Expungement, one of the following must be true.

- 1) It has been one year since the date of the arrest and no accusatory instrument has been filed.
 - If this is true you should obtain a copy of the record of arrest.
- 2) The prosecuting attorney declined to prosecute or formally dismissed the criminal case in its entirety.
 - If true you should obtain a copy of the filings dismissing the case.
- 3) You were acquitted of ALL charges at trial.
 - If this is true, you should obtain a copy of the Judgment of Acquittal.
- 4) Within one year of the date the prosecuting attorney formally dismisses the entire criminal case on record.
 - If true you should obtain a copy of the filings dismissing the case.

To file a Motion for Expungement you will need to:

- ☐ Complete the Motion for Expungement UJS-391A.
- ☐ Fill out a Case Filing Statement UJS-232.
- ☐ File the Motion for Expungement UJS-391A and Case Filing Statement UJS-232 with the Clerk of Court in the county where your record of arrest or case is filed and pay the \$72 filing fee.

INSTRUCTIONS AND CHECKLIST ON MOTION FOR EXPUNGEMENT

- ☐ Mail a copy of the Motion for Expungement UJS-391A and Admission of Service UJS-391B with a self-addressed stamped envelope to the States Attorney and/or their office who was assigned to your criminal case.
- ☐ Complete and file the Statement of Mailing UJS-391C with the Clerk of Court
- ☐ Once you receive the signed Admission of Service UJS-391B back from the States Attorney file it with the Clerk of Court.

Requesting a Hearing on Motion for Expungement – After you have filed your Motion for Expungement UJS-391A, a hearing will need to be arranged with the Clerk of Courts Office. You do have the option to request to waive the hearing. These steps can be followed below under Requesting to Waive Hearing on Motion for Expungement. To request a hearing on the Motion for Expungement you will need to:

- ☐ Complete and file the Notice of Hearing UJS-393 with the Clerk of Court.
- ☐ Mail a copy of the Notice of Hearing UJS-393 to the States Attorney.
 - The Motion for Expungement UJS-391A and Notice of Hearing UJS-393 must be provided to the States Attorney at least 14 days prior to the hearing.
- ☐ Complete the Statement of Mailing UJS-393 and file with the Clerk of Court.

Hearing on Motion for Expungement

- ☐ Attend the hearing on the date and time scheduled and bring with you a blank copy of the Order on Motion for Expungement UJS-394.
- ☐ If you plan to present any evidence at the hearing you should have multiple copies to provide to the Court, the States Attorney, and for yourself.

Requesting to Waive Hearing on Motion for Expungement – When requesting to waive the hearing on a Motion for Expungement, waivers must be signed by you, the States Attorney and victim, if there was one.

- ☐ Complete your copy of the Waiver of Hearing UJS-392 and file with the Clerk of Court.
- ☐ Mail unsigned copies of the Waiver of Hearing UJS-392 to the States Attorney and the victim, if there was one, with a self-addressed stamped envelope for them to complete and return to you.
- ☐ File the signed waivers with the Clerk of Court once you receive them back.
- ☐ Once all waivers have been filed, provide the Order on Motion for Expungement UJS-394 to the Clerk of Court.
- ☐ If the States Attorney or victim does not sign the waiver, refer to the steps for requesting a hearing on Motion for Expungement.

INSTRUCTIONS AND CHECKLIST ON MOTION FOR EXPUNGEMENT

Notice of Entry of Order on Motion for Expungement – Whether or not a hearing was held on your Motion for Expungement, an Order will be entered either denying or granting the request. Once the Order has been signed by the Judge and filed by the Clerk of Court you will need to complete and file a Notice of Entry by:

- ☐ Completing the Notice of Entry of Order of Expungement UJS-395.
- ☐ Mailing a copy of the Notice of Entry Order of Expungement UJS-395 and a copy of the Order on Motion for Expungement UJS-394 to the States Attorney.
- ☐ Complete the Statement of Mailing UJS-395.
- ☐ File the Notice of Entry of Order of Expungement and Statement of Mailing UJS-395 with the Clerk of Court.

CASE FILING STATEMENT – Information Only; Not Retained in Case Records

Provide the Case File No. for the record you are filing into or the Case Type if initiating a new action: _____

*A list of case types and party roles can be found here: <https://ujs.sd.gov/Attorneys/FormsDocumentation.aspx>

Social Security Numbers (not Driver's License Numbers) must be provided for divorce, child support, & paternity cases, 42 USC 666(a)(13)(B). All filers are **required** to provide the SSN **or** DL# for each of **their** participants regardless of the case type.
Business entities must provide the EIN number in lieu of SSN or DL#.

INFORMATION FOR PLAINTIFF/PETITIONER/APPLICANT:

_____ Last/Business Name	_____ First Name	_____ Middle	_____ Suffix	
_____ Physical Address <input type="checkbox"/> Check if Same as Mailing	_____ City	_____ State	_____ Zip	
_____ Mailing Address	_____ City	_____ State	_____ Zip	
_____ Home	_____ Work	_____ Cell		
_____ Social Security No.	_____ Date of Birth	_____ Driver's License No.	_____ State	_____ Employer ID (Business)
Attorney:				
_____ Last Name	_____ First Name	_____ State Bar ID No.		
_____ Mailing Address	_____ City	_____ State	_____ Zip	
_____ Phone				

INFORMATION FOR DEFENDANT/RESPONDENT/MINOR/DECEDENT/PERSON IN NEED OF PROTECTION:

_____ Last/Business Name	_____ First Name	_____ Middle	_____ Suffix	
_____ Physical Address <input type="checkbox"/> Check if Same as Mailing	_____ City	_____ State	_____ Zip	
_____ Mailing Address	_____ City	_____ State	_____ Zip	
_____ Home	_____ Work	_____ Cell		
_____ Social Security No.	_____ Date of Birth	_____ Date of Death	_____ Driver's License No.	_____ State
		_____ Employer ID (Business)		
Attorney:				
_____ Last Name	_____ First Name	_____ State Bar ID No.		
_____ Mailing Address	_____ City	_____ State	_____ Zip	
_____ Phone				

INSTRUCTIONS AND FORMS ON MOTION FOR EXPUNGEMENT

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To complete these forms, you will need to:

- ☐ Complete the Motion for Expungement UJS-391A by:
 - ☐ Fill in the caption by entering the name of the county you are filing in and listing your name on the line provided as the Petitioner. (The county you file in will be the same county where the arrest record or case is filed in.)
 - ☐ The case number will be provided to you by the Clerk of Court at the time of filing.
 - ☐ Fill in the remainder of UJS-391A on the lines provided and select the appropriate basis for the Motion.
 - ☐ Sign, date, and file with the Clerk of Court along with the Case Filing Statement UJS-232 and pay the \$72 filing fee.
- ☐ Complete only the caption of the Admission of Service UJS-391B. The remainder of the form will need to be completed by the States Attorney and/or their office who handled your criminal case.
- ☐ Mail a copy of the Motion for Expungement UJS-391A, the partially completed Admission of Service UJS-391B, and a self-addressed stamped envelope to the States Attorney and/or their office who handled your criminal case.
 - ☐ The States Attorney will need to sign the Admission of Service UJS-391B as proof of service that they received your Motion for Expungement.
- ☐ Complete the Statement of Mailing UJS-391C once you have mailed a copy of your Motion for Expungement UJS-391A and Admission of Service UJS-391B to the States Attorney.
- ☐ File the Statement of Mailing UJS-391C with the Clerk of Court.
- ☐ File the Admission of Service UJS-391B with the Clerk of Court once you receive it back from the States Attorney.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

IN THE MATTER OF THE EXPUNGEMENT
OF RECORDS RELATED TO:

(Name of Applicant for Expungement)
Petitioner.

Case No.: _____

MOTION FOR EXPUNGEMENT

Pursuant to SDCL § 23A-3-27, Petitioner, whose date of birth is _____,
(enter your date of birth)

hereby moves this court for entry of an order expunging the record of the Petitioner's arrest
or ticket, which occurred on _____. The arrest or ticket
(insert the date of your arrest or date you received your ticket)

was for the following charge(s): _____. The
(enter what you were charged with)
criminal docket number is: _____.

The basis for this motion is (check the applicable line):

- ☐ It has been one year from the date of the arrest and no accusatory instrument has
been filed;
- ☐ The prosecuting attorney formally dismissed the entire criminal case on the record AND
(if this option is checked, check one of the options below):
- ☐ It has been more than a year since the formal dismissal; **or**
- ☐ Compelling necessity exists;
- ☐ I was acquitted of all charges at trial on _____.

Dated this _____ day of _____, 20_____.

Petitioner Signature

Petitioner Name

Address

City, State, Zip Code

Phone Number

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

IN THE MATTER OF THE EXPUNGEMENT
OF RECORDS RELATED TO:

(Name of Applicant for Expungement)
Petitioner.

Case No.: _____

ADMISSION OF SERVICE

I, _____, who was or is now the South Dakota States Attorney assigned to the criminal matter involving the above-named Petitioner in criminal case number _____, admit to receiving the Motion for Expungement and will mail this Admission of Service back to the Petitioner in the self-addressed stamped envelope that was provided.

I declare under penalty of perjury under the law of South Dakota that the foregoing is true and correct. Signed on the _____ *day of* _____ *at*
(Date) (Month) (Year)

_____.
(City or other location, and State)

States Attorney Signature

States Attorney Name

States Attorney Address

City, State, Zip Code

Phone Number

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

IN THE MATTER OF THE EXPUNGEMENT
OF RECORDS RELATED TO:

Case No.: _____

STATEMENT OF MAILING

(Name of Applicant for Expungement)
Petitioner.

THE UNDERSIGNED, being sworn, state that on this date _____, I did personally mail, postage prepaid, a true and correct copy of the Motion for Expungement and Admission of Service in an envelope addressed to:

(State's Attorney Name)

(Street Address)

(City, State, Zip Code)

and mailing, with sufficient postage, in the United States Mail from _____.
(City and State)

I declare under penalty of perjury under the law of South Dakota that the foregoing is true and correct. Signed on the _____ day of _____, _____ at _____
(Date) (Month) (Year) (City or other location, and State)

Petitioner Signature

Petitioner Name

Address

City, State, Zip Code

Phone Number

INSTRUCTIONS AND FORM ON WAIVER OF HEARING

This form references specific South Dakota Codified Laws (SDCL), and you can find these laws on the South Dakota Legislature website. If you have any legal questions, it is highly recommended that you consult with an attorney. Court staff are unable to provide you with legal advice or assist you in completing this form. For specific questions related to the forms, you can contact the Legal Form Helpline at 1-855-784-0004 or email UJS staff at ujssrlhelp@uds.state.sd.us.

IMPORTANT NOTICE

If you are seeking to waive the hearing on your Motion for Expungement, it will need to be agreed upon by the States Attorney and/or the office who was assigned to your criminal case as well as the victim in your case, if there was one. The defendant of the criminal case, the State's Attorney, and the victim, if there was one, will each need to complete and sign their own waiver.

As the Petitioner you will need to complete this form you will need to:

- ☐ Fill in the caption.
- ☐ Fill in your name on the line provided.
- ☐ Enter your criminal case number.
- ☐ Mark the Petitioner's Box
- ☐ Sign and date.
- ☐ Provide a Waiver of Hearing UJS-392 to the States Attorney and victim, if there was one, for their signature by completing the following:
 - ☐ Fill in the caption.
 - ☐ Enter in the case number where prompted.
 - ☐ Mail a copy to each with a self-addressed stamped envelope.
 - ☐ File with the Clerk of Court once you receive the document(s) back.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

IN THE MATTER OF THE EXPUNGEMENT
OF RECORDS RELATED TO:

(Name of Applicant for Expungement)

Petitioner.

Case No.: _____

WAIVER OF HEARING

Pursuant to SDCL § 23A-3-29 I, _____, voluntarily waive my
right to a hearing on the Motion for Expungement that was filed regarding criminal
case _____. I am the: (check one)

☐

Petitioner

☐

Prosecutor

☐

Victim

I understand and acknowledge that I have a right to a hearing in this matter. I
further understand that the court may require the filing of affidavits and may
require the taking of evidence as it deems necessary.

I declare under penalty of perjury under the law of South Dakota that the foregoing is
true and correct. Signed on the _____ day of _____, _____ at
_____.
(Date) (Month) (Year)

(City or other location, and State)

Petitioner / Prosecutor / Victim Signature
(circle one)

Printed Name

Address

City, State, Zip Code

Phone Number

INSTRUCTIONS AND FORM ON NOTICE OF HEARING FOR EXPUNGEMENT OF RECORD

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To complete this form, you will need to:

- ☐ Complete only the caption of the Notice of Hearing UJS-393 and file with the Clerk of Court.
- ☐ Once you receive the Notice of Hearing UJS-393 back, mail a copy to the States Attorney at least 14 days before the hearing is scheduled for.
- ☐ Once the Notice of Hearing UJS-393 has been mailed to the States Attorney, complete the Statement of Mailing UJS-393 and file with the Clerk of Court.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

IN THE MATTER OF THE EXPUNGEMENT
OF RECORDS RELATED TO:

(Name of Applicant for Expungement)
Petitioner.

Case No.: _____

**NOTICE OF HEARING FOR
EXPUNGEMENT OF RECORD**

NOTICE IS HEREBY GIVEN that a Motion for Expungement has been filed by the above-named Petitioner. On the _____ day of _____, 20____, at the hour of ____:____ am/pm said motion will be heard by this Court before the Honorable _____, Presiding, at the Courtroom in the _____ County Courthouse, in the city of _____, South Dakota, or as soon thereafter as is convenient for the Court. Pursuant to SDCL § 23A-3-28, the Motion for Expungement shall be served at least fourteen days before the above hearing upon the office of the attorney who prosecuted the crime or violation, or who had authority to prosecute the charge if no accusatory instrument was filed.

Dated the _____ day of _____, 20_____.

Circuit Court Judge/Clerk of Court

ATTEST:

Clerk of Court

By: _____
Deputy Clerk of Court

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

IN THE MATTER OF THE EXPUNGEMENT
OF RECORDS RELATED TO:

Case No.: _____

STATEMENT OF MAILING

(Name of Applicant for Expungement)

Petitioner.

THE UNDERSIGNED, being sworn, state that on this date _____

I did personally mail, postage prepaid, a true and correct copy of the Notice of
Hearing on Expungement in an envelope addressed to:

(Name)

(Street Address)

(City, State, Zip Code)

and mailing, with sufficient postage, in the United States Mail from _____
(City and State)

I declare under penalty of perjury under the law of South Dakota that the
foregoing is true and correct. Signed on the _____ day of _____,
_____, at _____.
(Year) (City or other location, and State) (Date) (Month)

Petitioner Signature

Petitioner Name

Address

City, State, Zip Code

Phone Number

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

JUDICIAL CIRCUIT

IN THE MATTER OF THE EXPUNGEMENT OF
RECORDS RELATED TO:

(Name of Applicant for Expungement)
Petitioner.

Case No.: _____

CRI No.: _____

**ORDER ON MOTION FOR
EXPUNGEMENT**

☐

Granted

☐

Denied

The above-entitled matter came before this Court on the Petitioner's Motion for Expungement on the _____ day of _____, 20_____. The Court having reviewed the Petitioner's Motion for Expungement and all evidence presented on said motion, being fully advised in the premises, and otherwise for good cause shown,

FINDS that the Court has jurisdiction over the parties and the subject matter herein; and further

FINDS that the Court is satisfied by clear and convincing evidence that the ends of justice and the best interests of the public as well as the Petitioner or the arrested person will be served by the entry of an order of expungement.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to SDCL § 23A-3-31, that all official records related to the above referenced case, other than the non-public records to be retained by the Division of Criminal Investigation, be sealed along with all records relating to the Petitioner's arrest, detention, indictment, information, trial, and disposition.

Dated this _____ day of _____, 20_____.

BY THE COURT:

ATTEST:

Circuit Court Judge

Clerk of Court

By: _____
Deputy Clerk of Court

INSTRUCTIONS ON NOTICE OF ENTRY OF ORDER OF EXPUNGEMENT

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IMPORTANT NOTICE

Whether or not your request for an expungement on a record of arrest is granted, the Judge will enter an order granting or denying and a Notice of Entry will need to be filed with the Clerk of Court.

To complete this form, you will need to:

- ☐ Complete the caption.
- ☐ Enter the day the Order was signed by the Judge, the name of the Judge who signed the Order, and the County in which it was filed in.
- ☐ Sign and date.
- ☐ Complete page 2, the Statement of Mailing UJS-395.
- ☐ Mail a copy of the Notice of Entry UJS-395 and a copy of the Order on Motion for Expungement UJS-394 to the States Attorney.
- ☐ File the Notice of Entry and the Statement of Mailing UJS-395 with the Clerk of Court.

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF _____

_____ JUDICIAL CIRCUIT

IN THE MATTER OF THE EXPUNGEMENT
OF RECORDS RELATED TO:

(Name of Applicant for Expungement)
Petitioner.

Case No.: _____

**NOTICE OF ENTRY OF ORDER FOR
EXPUNGEMENT**

PLEASE TAKE NOTICE that pursuant to SDCL § 23A-3-30, the Order on Motion for Expungement was entered in the above-entitled matter on the _____ day of _____, 20____, by the Honorable _____ and duly filed by the _____ County South Dakota Clerk of Courts. A copy of said Order of Expungement is attached hereto and served upon the office of the prosecuting attorney.

Dated this _____ day of _____, 20_____.

Petitioner Signature

Petitioner Name

Address

City, State, Zip Code

Phone Number

STATEMENT OF MAILING

I, _____ (full legal name of Petitioner), being sworn, state that on the _____ day of _____, 20____, I served a copy of the Order on Motion for Expungement and a copy of the Notice of Entry of Order on Motion for Expungement by placing a true and correct copy of the document in an envelope addressed to the following named individual: _____ at the following mailing address: _____ in the City of _____, State of _____, Zip Code _____ and depositing the envelope, with sufficient postage, in the United States Mail at _____ (city and state mailed from).

I declare under penalty of perjury under the law of South Dakota that the foregoing is true and correct. Signed on the _____ day of _____, _____ at _____.
(City or other location, and State)

Petitioner Signature

Petitioner Name

Address

City, State, Zip Code

Phone Number