

MOTION FOR EXPUNGEMENT- INSTRUCTION SHEET

The expungement statutes are found in South Dakota Code sections 23A-3-26 through 33. Please refer to those code sections for complete information. They are attached to this sheet for your convenience.

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 motion for expungement is a civil filing and requires payment of civil filing fees and costs of \$70, unless a waiver is granted by the court. SDCL 23A-3-28. Along with the motion, an individual must file a civil case filing statement ("IN THE MATTER OF" Cases) form, which is available on the UJS website.

A motion for expungement must be served on the prosecuting attorney who prosecuted the crime at least 14 days before any hearing. SDCL 23A-3-28. More information about serving motions is found in SDCL 15-6-5 or the UJS "Going Solo" guide.

There may be a hearing on the expungement motion unless the defendant, arrested person, prosecuting attorney and victim consent to waive the hearing. SDCL 23A-3-29.

If an expungement is ordered, the court will send a nonpublic record of the disposition to the Division of Criminal Investigation.

The motion should identify the records requested to be expunged. SDCL 23A-3-26.

When filing a motion for expungement, please use the heading (caption) below:

STATE OF SOUTH DAKOTA)		IN CIRCUIT COURT
)	SS	
COUNTY OF [])		[] JUDICIAL CIRCUIT
		CIV NO. ____ - ____
IN THE MATTER OF THE EXPUNGEMENT)		MOTION FOR
OF RECORDS RELATED TO [PETITIONER],)		EXPUNGEMENT
Petitioner,)		
)		

23A-3-26. Definition of expungement

Terms used in §§ 23A-3-27 to 23A-3-33, inclusive, mean:

(1) "Expungement," the sealing of all records 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. Expungement does not imply the physical destruction of records.

23A-3-27. Motion for expungement of arrest record

An arrested person may apply to the court that would have jurisdiction over the crime for which the person was arrested, for entry of an order expunging the record of the arrest:

- (1) After one year from the date of any arrest if no accusatory instrument was filed;
- (2) With the consent of the prosecuting attorney at any time after the prosecuting attorney formally dismisses the entire criminal case on the record; or
- (3) At any time after an acquittal.

23A-3-28. Service of motion--Fee

At least fourteen days before any hearing on a motion for expungement, a copy of the motion shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority to prosecute the charge if there was no accusatory instrument filed. The prosecuting attorney may contest the motion in writing and at the hearing on the motion.

When a defendant or arrested person makes a motion under this section, the defendant or arrested person shall pay to the clerk of courts in the county where the motion is filed a fee equal to the filing fee for a civil action. If the defendant or arrested person establishes to the court's satisfaction that the person is indigent and unable to pay the fee, the court may waive the filing fee.

23A-3-29. Hearing on motion for expungement

The court may fix a time and place for a hearing on the motion unless waived by the defendant, arrested person, prosecuting attorney, and victim. The court may require the filing of such affidavits and may require the taking of such evidence as it deems proper.

23A-3-30. Order of expungement

The court may enter an order of expungement if satisfied that the ends of justice and the best interest of the public as well as the defendant or the arrested person will be served by the entry of the order.

23A-3-31. Report to Division of Criminal Investigation--Retention and use of nonpublic records--Sealing of records

Any order of expungement shall be reported to the Division of Criminal Investigation pursuant to chapters 23-5 and 23-6. The court shall forward a nonpublic record of disposition to the Division of Criminal Investigation which shall be retained solely for use by law enforcement agencies, prosecuting attorneys, and courts in sentencing the defendant or arrested person for subsequent offenses.

As part of any order of expungement, the court shall order that all official records, other than the nonpublic records to be retained by the Division of Criminal Investigation, be sealed along with all records relating to the defendant or arrested person's arrest, detention, indictment or information, trial, and disposition.

23A-3-32. Effect of order of expungement

The effect of an order of expungement is to restore the defendant or arrested person, in the contemplation of the law, to the status the person occupied before the person's arrest or indictment or information. No person as to whom an order of expungement has been entered shall be held thereafter under any provision of any law to be guilty of perjury or of giving a false statement by reason of the person's failure to recite or acknowledge the person's arrest, indictment or information, or trial in response to any inquiry made of the person for any purpose.

23A-3-33. No time limitation for making application

A court may issue an order of expungement for arrests that occurred before, as well as those that occurred after, July 1, 2010. There is no statute of limitation for making an application.

*Statutes effective as of July 1, 2012