

# 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@ajs.state.sd.us](mailto:ujssrlhelp@ajs.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.

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- 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 Affidavit 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 Affidavit 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.

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**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 Affidavit of Mailing UJS-395.
- File the Notice of Entry of Order of Expungement and Affidavit of Mailing UJS-395 with the Clerk of Court.