

Criminal Record Expungement

Expungement (also called "expunction") is a court-ordered process in which the legal record of an arrest or a criminal conviction is "sealed," or erased in the eyes of the law. When a conviction is expunged, the process may also be referred to as "setting aside a criminal conviction."

The availability of expungement and the procedure for getting an arrest or conviction expunged, will vary according to several factors, including the state or county in which the arrest or conviction occurred. In some jurisdictions, it's not possible to get an expungement.

How can I “clear,” “seal” or “expunge” my criminal record?

Per SDCL 23A-3-26, expungement is defined as *“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.*

What is the effect or advantage of obtaining an order of expungement?

Pursuant to SDCL 23A-3-32, *“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.”*

Automatic removal of certain charges or convictions from background check record (new as of July 2016).

Per SDCL 23A-3-34, *“any charge or conviction resulting from a case where a petty offense, municipal ordinance violation, or a Class 2 misdemeanor was the highest charged offense shall be automatically removed from a defendant's public record after ten years if all court-ordered conditions on the case have been satisfied. However, the case record will remain available to court personnel or as authorized by order of the court.”*

How do I get an expungement?

How you pursue expungement of your criminal record in South Dakota depends on whether you are trying to remove:

1. An **ARREST record** (did not result in a conviction), OR
2. the record of a **CRIMINAL CONVICTION**

REMOVAL OF AN ARREST RECORD

According to SDCL 23A-3-27, *“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. *After one year from the date the prosecuting attorney formally dismisses the entire criminal case on the record; or*
3. *At any time after an acquittal.”*

REMOVAL OF A CRIMINAL CONVICTION

Removal of a criminal conviction in South Dakota may occur through:

1. Automatic removal pursuant to SDCL 23A-3-34 (see above).

2. Attorney general pursuant to SDCL 23-6-8.1. The S.D. Attorney General is also the Director of the Bureau of Criminal Statistics in South Dakota. Per SDCL 23-6-8.1, the Director of the Bureau of Criminal Statistics may authorize the destruction of information and records of:
 1. 1. Persons who are dead;
 2. Persons seventy-five years of age or older unless a violation has occurred within the last ten years;
 3. Incidents that are no longer considered crimes under the laws of the State of South Dakota;
 4. Misdemeanor offenses whose final date of disposition occurred at least ten years prior to authorized destruction date.
3. A Pardon by the Governor (Executive Clemency).

Online forms and information are available on the State of South Dakota's Executive Clemency - Pardon homepage may be found at: <https://doc.sd.gov/pardon/>. The homepage includes information about the pardon process, information on eligibility for a pardon, and the ability to complete and submit your pardon application online.

Although only the South Dakota Governor has the authority to grant or deny pardons, the Governor will normally not consider a pardon unless it is first reviewed by and receives a favorable recommendation from the South Dakota Board of Pardons and Paroles.

[Motion for Expungement Instruction Sheet](#)

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[Court Self Help Criminal Record Expungement](#)

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