
Your Guide to

EXPUNGEMENT

in South Carolina

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Disclaimer: You are encouraged to talk to an attorney before going forward with any legal process. See Appendix 3 of this packet for information on how to get an attorney. Clerks of court, judges, or other court staff cannot give you legal advice. This informational packet is not meant to provide legal advice or counsel. This packet is only for South Carolina cases. Expungement is different in each state. Expungement procedures and laws may be updated so the information in the packet is subject to change. Make sure the packet you have is current.

Step 1: What is expungement?

What does expungement do?



To get something expunged is to get it erased. By state law, you can apply to have certain arrests, charges, or convictions erased from your criminal record. This is called an expungement and is a court order that removes something from your criminal record.

How can an expungement help me?



Getting your record expunged can give you a better chance at getting a job or getting a professional license because your charge or conviction will no longer be on your South Carolina criminal record. Expungement can also help with getting housing and any other area where a criminal record can be a problem.

What can be expunged?



South Carolina expungements can only erase South Carolina charges or convictions. If you have a criminal record from another state you will have to find out what the laws are in that state and apply for expungement there. In South Carolina, only certain kinds of charges or convictions can be expunged. Typically, only minor offenses can be expunged. DUIs cannot be expunged. This packet will explain the different types of expungement and help you determine if you might be eligible for expungement.

How does an expungement happen?

To get a record expunged you should:

- *learn what expungement is.* This guide helps you do that.
- *figure out if your charge or conviction can be expunged.* Not all crimes can be expunged from your record. If your charge or conviction cannot be expunged you can look at getting a pardon instead.
- *see what the requirements are for the type of expungement that matches your situation.* Each type of expungement has its own set of requirements.
- *start the application process.* Expungements can be free or can cost up to \$310. How much it will cost will depend on the type of expungement you get.

You do not have to have a lawyer for expungement. If you apply for an expungement on your own without a lawyer's help, you will be called a “self-represented litigant.” This is also called proceeding *pro se* (pronounced “pro say”). Both terms mean that you have decided to be your own lawyer.

Expungement can give you a fresh start. Expungement can also be complicated. This packet is meant to guide you through the process, but it cannot cover all situations. If you hit a roadblock, please ask for help. The additional resources page gives you suggestions on whom to contact for help. The next section will show the different types of expungement and help you decide if you match one of the types.

Step 2: What type of expungement do I need?

There are ten types of charges or convictions that may be eligible for expungement. Review the information below to see if your record matches one of the types. If you find a match, go to the page listed to learn more about that type of expungement.

<p>Type 1 <i>not convicted</i></p>	<p>The charge was dismissed, not prosecuted (<i>nolle prossed</i>), <u>or</u> you were found not guilty. Go to page 4.</p>
<p>Type 2 <i>completed PTI</i></p>	<p>You successfully completed a Pre-Trial Intervention Program (PTI). Go to page 5.</p>
<p>Type 3 <i>completed TEP</i></p>	<p>You successfully completed a Traffic Education Program (TEP). Go to page 6.</p>
<p>Type 4 <i>completed AEP</i></p>	<p>You successfully completed an Alcohol Education Program (AEP). Go to page 6.</p>
<p>Type 5 <i>fraudulent check</i></p>	<p>You were convicted of a first offense misdemeanor for writing a fraudulent check <u>AND</u> in the one year since you were convicted, <i>you have not been convicted of another criminal charge</i>. Go to page 7.</p>
<p>Type 6 <i>simple possession</i></p>	<p>You have a record of first offense misdemeanor drug possession, you received a conditional discharge, <u>AND</u> you successfully completed the terms of the discharge. Go to page 8.</p>
<p>Type 7 <i>general misdemeanor</i></p>	<p>You were convicted of a first offense with a <i>maximum penalty of 30 days or \$1000</i> <u>AND</u> in the three years since you were convicted, <i>you have not been convicted of another criminal charge</i>. <u>OR</u> five years without a conviction have passed since you were convicted of first offense domestic violence in the third degree (previously known as CDV). Go to page 9.</p>
<p>Type 8 <i>youthful offender</i></p>	<p>You were convicted of a first offense under the Youthful Offender Act (YOA) <u>AND</u> <i>you have not been convicted of another criminal charge</i> in the five years since you completed your sentence. Go to page 10.</p>
<p>Type 9 <i>failure to stop</i></p>	<p>You were convicted of first offense failure to stop your vehicle for the police <u>AND</u> <i>you have not been convicted of another criminal charge</i> in the three years since you completed your sentence. Go to page 11.</p>
<p>Type 10 <i>human trafficking victim</i></p>	<p>You were a victim of human trafficking convicted of trafficking in persons <u>OR</u> prostitution <u>AND</u> your participation in the offense was a direct result of being a victim. Go to page 12.</p>

Step 3: What are the requirements for my type of expungement?

Type 1

Not Convicted

This type of expungement is only for records where there was no conviction. This is the easiest and cheapest (it's free!) type of expungement. There are three types of records that can be expunged under this law:

- A charge that was **discharged** or *nolle prossed* (not prosecuted).
- A charge that was **dismissed**.
- A charge where the person was found **not guilty**.

Important things you need to know about this type of expungement:

- It is free, *unless* your convictions were part of a plea bargain. If so, the regular fees may apply.
- If you meet the requirements, the court must expunge your record.
- This type of expungement does not apply to verdicts of “not guilty by reason of insanity.”

Other helpful information:

- *This type of expungement is for non-conviction records from higher courts like the Court of General Sessions.* If you have a non-conviction record from a Summary Court, like Magistrate Court or Municipal Court, from before June 2, 2009, you will have to apply to those courts for an expungement. For non-conviction records from June 2, 2009, or after: if **you were not fingerprinted**, you will need to apply to the appropriate Summary Court for an expungement; however, if **you were fingerprinted**, the record should have been expunged automatically, but you should check your record to be sure. Contact the Clerk of Court in that Summary Court’s county for more information. The application to apply for an expungement in Summary Court can be found at www.sccourts.org/forms/pdf/SCCA223E.pdf. The appropriate court order can be found at www.sccourts.org/forms/pdf/SCCA223B.pdf.
- Certain state and local agencies (like detention centers) may keep a sealed record for three years after you get this type of expungement. Those records may only be disclosed by court order or through a lawsuit. Anyone else who keeps a record that was supposed to be expunged is guilty of contempt of court. Law enforcement and prosecution agencies may keep the information indefinitely for certain purposes, while detention and correctional facilities must destroy the records after three years and one hundred twenty days, unless there is a valid reason to keep the records.

If you get this type of expungement, the court order will say:

§ 17-1-40. The charge was dismissed, *nolle prossed* or the defendant was found not guilty on _____.

If you think you fit the requirements, go to **Step 4 on page 13** to learn how to apply for expungement.

This type of expungement is only for people who have successfully finished doing everything required by a pretrial intervention program. To get your record expunged:

- You must have **successfully completed a pretrial intervention program**. Upon completion of the program, the solicitor should have marked your charge as not prosecuted (*nolle prossed*).
- The PTI Director must confirm that you have completed your program and are eligible.

There is one important effect of this type of expungement:

- After the expungement process is completed, you will not have to admit to the charge you had expunged if you are asked about your record. This only applies to the part of your record you have expunged, not to any other charges or convictions.

If you get this type of expungement, the court order will say:

§ 17-22-150(a). The charge was *nolle prossed* on _____ by the Solicitor because the defendant successfully completed the Pre-Trial Intervention Program. (PTI Director must attest to eligibility for expungement).

If you think you fit the requirements, go to **Step 4 on page 13** to learn how to apply for expungement.

Type 3

Completed TEP

This type of expungement is only for people who have successfully finished doing everything required by a traffic education program. To get your record expunged:

- You must have **successfully completed a traffic education program**. Upon completion of the program, the solicitor should have marked your charge as not prosecuted (*nolle prossed*).
- The TEP Director must confirm that you have completed your program and are eligible.

If you get this type of expungement, the court order will say:

§ 17-22-330(A). The charge was *nolle prossed* on _____ by the Solicitor because the defendant successfully completed the Traffic Education Program. (TEP Director must attest to eligibility for expungement).

If you think you fit the requirements, go to **Step 4 on page 13** to learn how to apply for expungement.

Type 4

Completed AEP

This type of expungement is only for people who have successfully finished doing everything required by an alcohol education program. To get your record expunged:

- You must have **successfully completed an alcohol education program**. Upon completion of the program, the solicitor should have marked your charge as not prosecuted (*nolle prossed*).
- The AEP Director must confirm that you have completed your program and are eligible.

If you get this type of expungement, the court order will say:

§ 17-22-530(A). The charge was *nolle prossed* on _____ by the Solicitor because the defendant successfully completed the Alcohol Education Program. (AEP Director must attest to eligibility for expungement).

If you think you fit the requirements, go to **Step 4 on page 13** to learn how to apply for expungement.

This type of expungement is only for people who have been convicted of writing a fraudulent check as a first offense misdemeanor. To get your record expunged:

- The conviction you want to expunge must have been a **first offense fraudulent check misdemeanor**.
- One year** has passed since your conviction.
- During that year you have had **no other convictions**.

Important things you need to know about this type of expungement:

- The conviction of a traffic-related offense punishable only by a fine or loss of points does not prevent expungement.
- This type of expungement cannot be used to remove a felony fraudulent check charge. Fraudulent check writing is a felony if the check is written for more than \$5000.
- If you meet the requirements, the court must grant the expungement.
- You can only get one expungement under the fraudulent check type. The state will keep a non-public record of what you have expunged so they can check your history if you apply again.

Other helpful information:

- For this type of expungement, a guilty plea, a no contest (*nolo contendere*) plea, or the forfeiture of bail all count as a “conviction.”

If you get this type of expungement, the court order will say:

§ 34-11-90(e). The defendant was convicted of a first offense misdemeanor under the fraudulent check law on _____ and no additional criminal conviction as defined by § 34-11-90(e) has taken place in one year from date of conviction.

If you think you fit the requirements, go to **Step 4 on page 13** to learn how to apply for expungement.

This type of expungement is only for people who have been given a conditional discharge for a first offense drug possession charge. You must have completed all the terms of the conditional discharge, which may have included getting drug treatment or doing community service. To get your record expunged:

- The record you want to expunge must have been a **first offense misdemeanor for drug possession**.
- You must have **received a conditional discharge** from the court.
- You must have **fulfilled all of the terms** of the discharge.

Important things you need to know about this type of expungement:

- If you meet the requirements, the court must grant the expungement.
- The state will keep a non-public record of your expungement so that they can check your history in case of a new charge. By law, you can only receive one conditional discharge.
- After the expungement process is completed, you will not have to admit to the charge you had expunged if you are asked about your record. This only applies to the part of your record you have expunged, not to any other charges or convictions.

If you get this type of expungement, the court order will say:

§ 44-53-450(b). The defendant, who has not previously been convicted of any offense under Article 3, Chapter 53, Title 44 or any offense under any state or federal statute relating to marijuana, stimulant, depressant, or hallucinogenic drugs, successfully completed all terms of and received a conditional discharge of possession of a controlled substance under Section 44-53-370(c) and (d), or Section 44-53-375(A).

If you think you fit the requirements, go to **Step 4 on page 13** to learn how to apply for expungement.

Type 7 *General Misdemeanor*

This type of expungement covers misdemeanors that have a maximum sentence of \$1000 and/or 30 days, as well as first offense domestic violence in the third degree. To get your record expunged:

- The conviction you want to expunge must be a **first offense of a misdemeanor**.
- The misdemeanor must have a **maximum possible sentence of \$1000 and/or 30 days**.
- Three years** has to have passed since your conviction.
- During those three years you had **no other convictions**.
- The Summary Court Judge must confirm that your charge is eligible for expungement.

There are special rules for expunging **first offense domestic violence in the third degree**. Instead of three years, **five years** must have passed during which there were **no other convictions**.

Important things you need to know about this type of expungement:

- Please note that convictions for **domestic violence in the third degree** before June 4, 2015, were called **criminal domestic violence (CDV)**.
- The conviction of a traffic-related offense punishable only by a fine or loss of points does not prevent expungement.
- You can only get one expungement under the general misdemeanor type. The state will keep a non-public record of what you have expunged so they can check your history if you apply again.

Other helpful information:

- You will have to find out what the maximum sentence is for your offense. For example, you may have been sentenced to 30 days, even though the judge could have given you 60 days by law. Check the additional resources page to find out who can help you look up this information if you do not know.
- For this type of expungement, a guilty plea, a no contest (*nolo contendere*) plea, or the forfeiture of bail all count as a “conviction.”
- There are some convictions that cannot be expunged by this type. These are the exceptions:
 - An offense involving the operation of a motor vehicle (Title 56).
 - An offense contained in Chapter 25, Title 16, which includes all domestic violence offenses, except for first offense domestic violence in the third degree.

If you get this type of expungement, the court order will say:

§ 22-5-910. The defendant was convicted of a first offense in magistrate, municipal or general sessions court for a crime carrying a penalty of not more than 30 days imprisonment or a fine of \$1,000, or both, on _____, that offense did not involve an offense involving the operation of a motor vehicle, and no additional criminal conviction as defined by §22-5-910 has taken place within three years from date of conviction or five years from the date of conviction for first offense criminal domestic violence (conduct occurring prior to June 4, 2015) or third degree domestic violence under §16-25-20. (Summary court judge must attest to eligibility if disposed of in that court.)

If you think you fit the requirements, go to **Step 4 on page 13** to learn how to apply for expungement.

This type of expungement is only for people who have been convicted under the Youthful Offender Act. Your criminal record will identify a conviction under the Youthful Offender Act with a “YOA.” To get your record expunged:

- The conviction you want to expunge must have been a **first offense under the Youthful Offender Act (YOA)**.
- Five years** has to have passed since you **completed your sentence**. Completion of your sentence includes finishing probation and parole.
- During those five years you had **no other convictions**.

Important things you need to know about this type of expungement:

- The conviction of a traffic-related offense punishable only by a fine or loss of points does not prevent expungement.
- You can only get one expungement under the youthful offender type. The state will keep a non-public record of what you have expunged so they can check your history if you apply again.

Other helpful information:

- For this type, a guilty plea, a no contest (*nolo contendere*) plea, or the forfeiture of bail all count as a “conviction.”
- Some convictions cannot be expunged by this type. These are the exceptions:
 - An offense involving the operation of a motor vehicle.
 - An offense that is classified as a violent crime. You should not have been convicted as a youthful offender if you committed one of these crimes.
 - An offense contained in Chapter 25, Title 16, which includes all domestic violence offenses.

If you get this type of expungement, the court order will say:

§ 22-5-920. The defendant was convicted of a first offense as a youthful offender on _____, that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by §22-5-920 has taken place during a five-year period following completion of his sentence, including probation and parole as a youthful offender.

If you think you fit the requirements, go to **Step 4 on page 13** to learn how to apply for expungement.

This type of expungement is only for people who have been convicted of a first offense for failure to stop for “blue lights.” This is the only traffic offense that can be expunged. To get your record expunged:

- The conviction you want to expunge must have been a **first offense for failure to stop a motor vehicle when signaled by law-enforcement vehicle**.
- Three years** has to have passed since you completed all of the terms and conditions of your sentence.
- During those three years you can have had **no other convictions**.

Important things you need to know about this type of expungement:

- The conviction of a traffic-related offense punishable only by a fine or loss of points does not prevent expungement.
- You can only get one expungement under the failure to stop type. The DMV will keep a non-public record of what you have expunged so they can check your history if you apply again.
- This type of expungement does not apply to any felonies. That includes second offense “failure to stop for a law enforcement vehicle” and “failure to stop for a law enforcement vehicle” where a death occurs.

If you get this type of expungement, the court order will say:

§ 56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on _____ and no additional criminal conviction has taken place for three years after completion of the sentence.

If you think you fit the requirements, go to **Step 4 on page 13** to learn how to apply for expungement.

This type of expungement is only for people who are victims of human trafficking and, as a direct result of being a victim, have been convicted for either human trafficking or prostitution. To get your record expunged:

- You must be a victim of human trafficking.
- You must have been convicted of **human trafficking**, as defined in § 16-3-2020, OR you must have been convicted of **prostitution**.
- Your participation in the offense(s) you wish to be expunged must be a **direct result of being a victim**.

Important things to know about this type of expungement:

- Your record will inform you if you were convicted of human trafficking under § 16-3-2020 or if you were convicted of prostitution.

If you think you fit the requirements, go to **Step 4 on page 13** to learn how to apply for expungement.

Step 4: How do I apply for expungement?

Getting an expungement is a step-by-step process. It is the job of the solicitor's office to help you with this process. Each step will be explained below with the information you will need to know. This is how it works:

What do I need to have?

You will need:

- ✓ your **criminal record**
- ✓ the **application**
- ✓ any **required records**
- ✓ three **money orders**

What do I need to do?

You will need to:

- ✓ get a copy of your criminal record from SLED
- ✓ figure out what type of expungement you will use
- ✓ get the application from the solicitor's office
- ✓ ask the solicitor's office what records you will need
- ✓ get the records and fill out the application
- ✓ get the required money orders
- ✓ submit the application and money orders to the solicitor's office

These steps give you the information you need to successfully get through the expungement process:

Step 1: Get a copy of your criminal record from SLED. This record will help you figure out what you can get expunged and where you need to go to get it expunged. To get your record go to www.sled.sc.gov and click "SLED Catch." If you have problems, call the Records Check department at (803) 896-1443. A SLED record costs \$25.

Step 2: Figure out what type of expungement you will use. Use your criminal record to see if you might be a match for one of the types of expungement listed in this packet. If you think you might be able to get an expungement, now is a good time to figure out the cost (see next page) and start saving money to pay the fees. Think about putting aside a little money each week.

Step 3: Get the application from the solicitor's office. To get a charge or conviction expunged you must apply in the county where the charge or conviction was put on your record. Each county is part of a circuit, and each circuit has a solicitor. This packet has a list of the counties and solicitors to help you figure out which office to contact. Once you decide which solicitor's office to contact, get a copy of their application for expungement. You may be able to print the application from their webpage, get the application by fax, or you may need to go their office in person to get a copy. The application should have a form you fill out for the solicitor's office, as well as the court order you want the judge to sign. It is called an "Order for the Destruction of Arrest Records."

Step 4: Ask the solicitor's office what records you will need. Each solicitor's office has a person who handles expungements. See the list included in this packet. When contacting the solicitor's office, ask to talk to that person or someone else who can help you with an expungement. Ask that person any questions you have, including what records or documents you will need to complete your application and how to get them.

Step 5: Get the records and fill out the application. Follow the instructions the solicitor's office gives you for getting any records you need. Once you have the records, fill out the application you got from the solicitor's office. Make sure everything is correct. The address you put on the application will be where they send your expungement if you get it, so it is very important that this address is one where you will get mail over the next few months.

Step 6: Get the required money orders. The money orders you need depend on the type of expungement. No cash or personal checks are accepted. The table below shows the fees that are charged for each type of expungement. Be sure to check with the solicitor's office to make sure these are the fees they charge for your type of expungement.

<u>Expungement Type</u>	Solicitor Fee	SLED Fee	Clerk of Court Fee	Total Fees
1: Not Convicted*	<i>No fee</i>	<i>No fee</i>	<i>No fee</i>	<i>None</i>
2: Completed PTI	\$250.00	<i>No fee</i>	\$35.00	\$285.00
3: Completed TEP	\$250.00	<i>No fee</i>	\$35.00	\$285.00
4: Completed AEP	\$250.00	<i>No fee</i>	\$35.00	\$285.00
5: Fraudulent Check	\$250.00	\$25.00	\$35.00	\$310.00
6: Simple Possession	\$250.00	<i>No fee</i>	\$35.00	\$285.00
7: General Misdemeanor	\$250.00	\$25.00	\$35.00	\$310.00
8: Youthful Offender	\$250.00	\$25.00	\$35.00	\$310.00
9: Failure to Stop	\$250.00	\$25.00	\$35.00	\$310.00
10: Human Trafficking Victim	\$250.00	\$25.00	\$35.00	\$310.00

Some solicitor's offices do not keep their fee until they know you are eligible, but they don't have to do that. You should get the clerk of court fee back if you are not eligible.

You must have a separate money order for each fee.

Step 7: Submit the application and money orders to the solicitor's office. This is the last step for you. Once you have completed the application and have the money orders you need, submit them to the solicitor's office. The solicitor's office will then review your application and determine if you are eligible. If you are, they will send your application to a judge. If the judge signs the order, you will get a copy of it in the mail. Because your application has to be reviewed by several people, it could take a few weeks or a few months for you to find out the result.

*The normal fees will be charged if your non-convictions were part of a plea bargain agreement.

Note: The process described in this packet is for adult record expungement. Juvenile record expungement is similar, but not the same. Information about juvenile record expungement can be obtained from the South Carolina Center for Fathers and Families, from the solicitor's office, or from the South Carolina Department of Juvenile Justice.

Step 5: What happens after I get an expungement?

After a judge has signed your expungement order there are still a few more things to do. These last few steps will help make sure that your record has been erased everywhere.

First, make sure that the record you had expunged has been removed from your SLED record. To do this, order another copy of your record from SLED. The contact information for SLED is in Step 1 on page 13.

Second, check the public index to make sure the record is gone from there as well. You can find the public index at www.sccourts.org/caseSearch. Click the county for the record you expunged and accept the terms. You may have to choose which court the record was from and then type your name into the form. Although you may see entries for other things (such as an eviction or traffic ticket) you should not see the entry for the record you had expunged.

Third, make sure that your record has been expunged in commercial databases. Many employers and landlords use commercial background check services. These services may not have the same records as SLED, or keep their records up-to-date with expungement orders. To help fix this issue, send a copy of your expungement order to the Foundation for Continuing Justice. Here's what to do:

1. **Get a certified copy of your expungement order** from the Clerk of Court in the county where your record was expunged. This copy must be certified and must have a raised seal. Do not send the copy of your expungement that you received in the mail after the judge signed it. Keep that copy for yourself.
2. **Go to www.continuingjustice.org/our-projects/criminal-database-update/**. Read through the page and click “form” at the very bottom. Download the .pdf application. Print the application. Fill in the requested information and mail the application and the certified copy of your expungement order to the address on the application. It will take approximately one month for the Foundation for Continuing Justice to process your application.

Note: Commercial background check services are not always as careful as government agencies like SLED. There may be mistakes in a background check that they produce. Mistakes are most common on the records of people with a common name.

Going forward...

Generally, after you have received an expungement you no longer have to admit to whatever you had expunged. If what you had expunged was the only thing on your criminal record and a job application asks you if you have a criminal record, you can now answer “no.” Only the laws for types 2 and 5 specifically say that you cannot be charged with perjury or giving a false statement for denying an expunged record, but this is generally considered true.

There are certain special circumstances where you may have to disclose a record that has been expunged. One situation could be applying to join the military. If you have questions about this issue, you may want to talk to an attorney. Information about how to contact an attorney who can help you is in Appendix 3 of this packet.