

"Criminal Record Expungements in South Carolina"

An expungement is a judicial order requiring the destruction of a person's official records relating to them being taken into custody, charges filed, adjudication and disposition (fingerprint cards, photographs, record keeping, etcetera). The effect of the order is to restore the person, in the contemplation of the law, as to the status occupied before being taken into custody. The proliferation of criminal background checks as part of the job application and screening process require that a person's criminal history be as clean and spotless as possible. Some of the specific provisions of the 2009 amendments to the "Uniform Expungement of Criminal Records" code section would be as follows:

Generally speaking.....

1. All expungement applications and inquiries are administered by the solicitor's office in each circuit;
2. Expungement of all charges is available if the proceedings against the person are dismissed or if the person was found not guilty;
3. A non-refundable administrative fee of \$250 must be paid to the solicitor's office (except in cases where the person was found not guilty or the charges were dismissed) for each expungement application;
4. Expunging of a person's record can only occur one time per statutory provision;
5. A copy of the completed expungement order must be forwarded to the applicant;
6. A guilty plea to a lesser included offense of the original charge does not allow for expungement of the original charge;
7. In plea negotiations, a new ticket or charge number is needed, before an expungement can occur of the original charge;
8. A non-violent conviction in juvenile court is eligible to be expunged;
9. Multiple charges arising from the same incident, occurring on the same day and resolved on the same court date are all counted as one charge for purposes of expungement.
10. An action seeking a judicial determination of eligibility for an expungement should be brought in circuit court when the solicitor's office, in its discretion, does not consent to an expungement;
11. DUI convictions are not eligible for expungement;
12. A "conviction" includes "no contest" pleas as well as bond forfeitures.
13. The entire process is currently running between 12-16 weeks.
14. There is no time limit as to when a person has to apply for expungement of old charges.
15. If the person's criminal history does not show a disposition of the charge, then they will need to obtain a letter from the court where they appeared stating that a disposition cannot be found.

Specifically speaking..... (the following charges are eligible for expungement):

1. A misdemeanor fraudulent check conviction if no other convictions for one year (SC Code Section 34-11-90(e));
2. Successful completion under a "conditional discharge order" for a drug offense (SC Code Section 44-53-450(A));
3. With the exception of any offenses involving the operation of a motor vehicle (DUI, DUS, DUAC, operating uninsured, etcetera) a first offense magistrate or municipal court conviction and no other convictions within three years (SC Code Section 22-5-910(A));
4. Misdemeanor criminal domestic violence if no other convictions within five years (SC Code Section 22-5-910(A)(3));
5. A defendant specifically sentenced under the "youthful offender act", five years after their entire sentence has been completed, including any probation or parole (SC Code Section 22-5-920(B));
6. Misdemeanor "failure to stop for a blue light", three years after completing all terms and conditions of the sentence (SC Code Section 56-5-750(F));
7. Non-violent juvenile charges, at the discretion of a family court judge;
8. Successful completion of pre-trial intervention and alcohol education programs (expungement is not automatic at the conclusion of the program and must be separately pursued).

Recent Cases

Fryer v. South Carolina Law Enforcement Division 369 S.C. 395, 399, 631 S.E.2d 918, 920 (Ct. App. 2006). While the holding of this case is directed more toward jurisdiction and judgments, the facts deal with an expungement order. The opinion confirms that SLED "expunges multiple offenses arising from a single arrest".

Gay v. Arial 673 381 S.C. 341, S.E.2d 418 (2009). The holding of this case was that under the clear and unambiguous terms of the statute in place at the time of Gay's application for expungement he was convicted as a "youthful offender"; and was therefore entitled to have his application for expungement considered by the circuit court.

South Carolina DUI Lawyer Steve Sumner exclusively handles misdemeanor and felony DUI defense. He is a member the National College for DUI Defense, holds an AV-preeminent rating from Martindale-Hubbell and a "Superb" ranking with Avvo. He represents clients in Greenville, Spartanburg and Anderson counties, South Carolina. You can contact him at upstatedui.com or 864-235-3834. His office is located at 1088 N. Church Street, Greenville, SC 29601.