

c. Offense was not a motor vehicle offense, a violent crime, or Criminal Domestic Violence.

d. Defendant has not previously had a conviction expunged under this section.

**8. How long does the expungement process take?**

Depending on the office where you apply, and if every office involved consents to the expungement, it usually takes 3-4 weeks from start to finish. You should ask when you apply.

**9. Can I get a lawyer to do this for me?** Yes, you can hire a lawyer to initiate the expungement process.

**10. How will an expungement in another state affect my application for expungement in SC?**

Currently, activities in another state have no effect on your ability to get an expungement in South Carolina.

**11. How do I get an expungement in another state?**

The law of expungement varies considerably from state to state. In order to get an expungement in another state, consult the law of the state where the expungement is sought. A local attorney may be useful in navigating the expungement process in another state. Otherwise, the court in which you were convicted is always a good starting place for information about expungement.

**12. How should I explain an expungement on an employment application?**

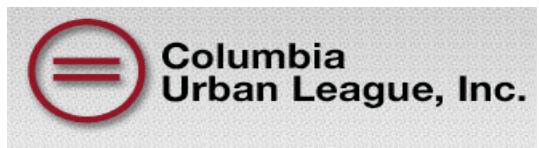
It is advisable to answer questions on an employment application as honestly and directly as possible. While expungement removes a charge or conviction from your official criminal record, information about your offense may be available to potential employers through other outlets, such as newspapers and internet reports.

**13. How should I explain an expungement in an employment interview?** In an interview, like an employment application, it is advisable to address expungement as honestly and directly as possible.

**14. If my expungement is denied, can I appeal?**

How do I do this? If the Solicitor denies an expungement, you can hire an attorney to apply on your behalf to appeal the denial with the Solicitor or initiate an action in Circuit Court to have the court decide the applicant's eligibility for expungement. If SLED denies the eligibility for expungement you may appeal but it is important to know that SLED will follow the process set out by the SC Supreme Court.

**NOTE: The procedure, timing of convictions and eligibility for expungement may change; it is important to check with the expungement clerk to determine if your particular circumstances fit the current policies.**



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## THE ABCS OF EXPUNGEMENT

**1. What is expungement?** Expungement is the procedure used to effectively remove eligible charges from a defendant's criminal history.

**2. What charges may be expunged?** What can and cannot be expunged depends on the exact wording of the charges or convictions. Only a few specific situations and types of South Carolina charges may be expunged. No expungement exists for federal criminal convictions.

Eight categories of charges or convictions may be expunged, set by state law. They are:

i. Charges were dismissed, nolle prossed, or the defendant was found not guilty.

ii. The defendant successfully completed a Pre-Trial Intervention Program.

iii. The defendant successfully completed an Alcohol Education Program

iv. The defendant was convicted under the Fraudulent Check law, and no additional criminal activity has taken place for one year from the initial conviction.

v. The defendant was convicted of First Offense Simple Possession of Marijuana under the "conditional discharge" provisions of the law, and successfully complied with the terms of the sentence.

vi. The defendant was convicted in magistrate's or municipal court of a first offense and no additional criminal activity has taken place for three years from the date of conviction.

First offense criminal domestic violence (CDV) can be expunged if there has been no additional criminal activity for *five* years from the date of conviction.

Motor vehicle offenses and fish, game or watercraft violation for which points are assessed, suspension provided for, or there were enhanced

penalties for subsequent offenses *cannot* be expunged.

vii. The defendant was convicted of a first offense, non-aggravated violation of Failure to Stop for A Blue Light and Siren, and had no other convictions for any crime for three years.

viii. The conviction was under the Youthful Offender Act—15 years after the conviction, the person may apply to the circuit court for expungement of the records of arrest and conviction.

2a. What does “nolle prossed” mean? The prosecutor decided to not prosecute the case and made an official notation of this decision in a person’s criminal record.

2b. What about a Driving Under the Influence (DUI) Conviction or Charge? A conviction for DUI cannot be expunged.

2c. What if my charge was a felony but my sentence was based on a misdemeanor? Eligibility for expungement is based upon the charge, not the sentence. Therefore, an offender entering into a plea agreement with the state for a misdemeanor sentence on a felony charge should request that the felony charge be dropped and that they be recharged with the misdemeanor.

2d. Are there other circumstances when expungement may NOT be available? Expungement is only available under the circumstances set forth by law. Expungement clerks should be able to fully apprise you of any new developments; but generally speaking, only the categories listed in the first part of question 2 are eligible for expungement.

2e. Can you expunge a charge for which you were not convicted (for whatever reason, including an acquittal, etc.)? Yes. Charges can be expunged where the state never obtained a conviction.

### **3. How many times can I get an expungement?**

If you have different convictions and they are eligible for expungement, you can apply. If you have multiple charges arising out of the same incident, you may apply to have all of them expunged in one order and for one fee; otherwise, each expungement requires a separate order and fee.

### **4. When my record is expunged, does this mean it won’t show up on a criminal record check?**

Once a charge or conviction has been expunged, it should not show up on a criminal record check. After your order of expungement has been approved and signed by all required people, and a reasonable period of time has passed, you should contact SLED and obtain a copy of your criminal record to be sure it reflects the expungement.

### **5. How do I apply for an expungement?**

a. Where do I apply? You must go to the Solicitor’s office located in the county where you were charged or convicted.

b. What does the Solicitor’s office do to process the application for expungement? At all stages of the process the required people must consent to the expungement. When you apply, the first step is for the Solicitor’s office to fill out the expungement order and send it to SLED to be sure the offense is eligible for expungement. If SLED determines that the conviction or charge is eligible for expungement, they will return the proposed order to the Solicitor’s Office for the other necessary signatures and consents. If the charge or conviction for which you seek expungement was at a magistrate level, a magistrate court judge must consent and sign the order. In addition, if the charge or conviction required you to successfully complete a Pre-Trial Intervention Program (PTI), the PTI Director must consent and sign the order. The Solicitor will submit the order to a circuit court judge for consent and signature. Finally, the order is filed with clerk

of court and then dispersed to appropriate agencies for the charge to be removed. Everything, including fingerprint cards, will be destroyed for that particular charge or conviction.

c. Will I get a copy of the expungement order? Yes. When the order is mailed out to the appropriate agencies, most solicitors’ offices will mail you a copy.

**6. What does it cost?** If you were found not guilty or the charge was nolle prossed or dismissed, you pay only a \$150 fee to the Solicitor’s office. If the you were found guilty, pled guilty, or participated in PTI, you must pay \$150 to the Solicitor’s office, \$35 to the Clerk of Court, and \$25 to SLED. The fee for expungement based on completion of an Alcohol Education or Drug Court program is \$150.

a. Will I get my money back if the expungement is denied? No. The fee for the expungement is a processing fee and is non-refundable.

b. Why does it require three different certified checks or money orders? Three different certified checks or money orders are required because the money is going to three different agencies—Solicitor’s office, Clerk of Court, and SLED—as described above.

**7. Can my juvenile record be expunged?** Yes, juveniles offenses are eligible for expungement. The Clerk of Court can direct you to the proper place to apply for expungement. There are special circumstances for expungement of a juvenile record, such as you must now be 18 years of age and have had no further charges or convictions.

A first offense conviction in Magistrate or Municipal Court, where the defendant was sentenced under the Youthful Offender Act, may be expunged if:

a. 15 years has passed since the date of conviction with no further charges or convictions during that time period

b. Offense was defendant’s first offense.