

The information provided here is for informational and educational purposes and current as of the date of publication. The information is not a substitute for legal advice and does not necessarily reflect the opinion or policy position of the Municipal Association of South Carolina.

Consult your attorney for advice concerning specific situations.



**Fifth Circuit Solicitor's Office**

**Serving Richland and Kershaw Counties**

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**South Carolina Judicial Circuits**

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**UNIFORM EXPUNGEMENT OF CRIMINAL RECORDS**

- S.C. Code §17-22-910: In South Carolina, applications for expungement of all criminal records must be administered by the Solicitor's Office in each circuit in the State.
- Mandatory Use of Form SCCA223A: Order for Destruction of Arrest Records (S.C. Code §17-22-930)

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## CRIMINAL RECORDS FROM OTHER JURISDICTIONS

Each state has established laws that determine what records, if any, can be expunged.



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## What is a CRIMINAL RECORD

...a record of a person's criminal history; it lists all non-expunged criminal offenses and includes arrests, convictions, charges dismissed, charges pending and even charges of which an individual has been acquitted.

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## How can I see what is on my criminal record?

- You can request a report from South Carolina Law Enforcement Division (SLED)
  - By Mailing in: \$25 Money Order payable to SLED
    - All Request must include the requester's name, date of birth, social security number and a stamped, self-addressed return envelope.
    - or
  - ONLINE at SLED's website: [www.sled.sc.gov](http://www.sled.sc.gov)
- and pay \$26 using either a credit or debit card

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## CRIMINAL RECORD EXPUNGEMENT. .

is the court ordered  
destruction of a person's  
legal records related to an  
arrest, charges filed against  
him/her or conviction of a  
crime.

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## South Carolina Criminal Courts

- Summary Courts: Magistrate/Municipal (misdemeanors)
- General Sessions Court: (high-court misdemeanors and felonies)
- Family Court: charges against juveniles (17 years of age or younger)
- United States District Court: Federal Court

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## WHAT IS A MISDEMEANOR?

- Misdemeanors are classified, for the purpose of sentencing, into three penalty categories:
- Class A misdemeanors: not more than 3 years
- Class B misdemeanors: not more than 2 years
- Class C misdemeanors: not more than 1 year

All offenses with a term of imprisonment of less than one year are misdemeanors and exempt from the classification system.

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## WHAT IS A FELONY?

- Felonies are classified, for the purpose of sentencing, into six penalty categories:
- Class A felonies: not more than 30 years
- Class B felonies: not more than 25 years
- Class C felonies: not more than 20 years
- Class D felonies: not more than 15 years
- Class E felonies: not more than 10 years
- Class F felonies: not more than 5 years

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## What is a Violent Crime?

- South Carolina law (§16-1-60) defines violent crimes by specifically listing all crimes classified as “violent.” If a crime is NOT listed, it is considered “non-violent.”
- Specifically listed are: murder, manslaughter, rape, kidnapping, trafficking, armed robbery, carjacking, arson, burglary 1<sup>st</sup>, homicide by child abuse, criminal domestic violence of a high and aggravated nature (CDVHAN), Felony DUI, death resulting; and attempt or accessory before the fact to commit these crimes.

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## PURPOSE OF EXPUNGEMENT

S.C. Code §17-22-150 & 170; §63-19-2050(C)

- To restore the person to the status he/she occupied before the arrest, indictment or conviction.
- No person who receives an Order of Expungement may be held pursuant to another provision of the law to be guilty of perjury or of giving a false statement by reason of his failure to recite or acknowledge the arrest, indictment or conviction in response to an inquiry made of him for **any** purpose.

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## EXPUNGEMENT FEES

S.C. Code §17-22-940

- **\$250: ADMINISTRATIVE FEE TO SOLICITOR'S OFFICE**
  - Per Individual Order
  - Fee is Non-Refundable
  - May be waived only when person falsely accused of crime resulting from identity theft
- **\$ 25: VERIFICATION FEE TO SLED**
  - Per Verification Request
  - No Fee: PII; AEP; Conditional Discharge; & Non-conviction
- **\$ 35: FILING FEE TO CLERK OF COURT**
  - Per Individual Order
  - Refundable if charge statutorily ineligible for expungement
  - No Fee: Non-conviction
- **FEES PAYABLE IN SEPARATE POSTAL MONEY ORDERS OR CERTIFIED CHECKS**

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## WHAT RECORDS CAN BE EXPUNGED?

- Records of charges which resulted in a non-conviction.
- Records of charges dismissed after completion of a diversion program.
- Records of convictions if qualification per a South Carolina statute; and after a set waiting period; and with no additional convictions.

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## ELIGIBILITY: Non-Convictions

S.C. Code §17-1-40

Charges not resulting in conviction:

- Dismissed charge \*Except per plea negotiations
- Not pressed charge
- No billed charge
- Not guilty verdict

NO FEES  
EXPUNGEMENT IS FREE

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## **NON-CONVICTIONS**

• **Summary Court** (Magistrate, Municipal):  
The presiding judge shall immediately  
issue an Expungement Order for non-  
convictions (after June 2, 2009)  
Per S.C. Code §17-22-950

• **General Sessions Court:** Person must  
apply to Solicitor's Office in the county  
where the arrest and charge occurred.

**EXPUNGEMENT OF  
NON-CONVICTION IS FREE**  
**Exception: Plea negotiations**

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## **Fifth Circuit Solicitor's Office Diversion Programs**

• **Charge(s)** eligible for expungement after defendant completes  
diversion program.

• **Pretrial Intervention Program (PTI):** Diversion for non-violent  
offenders charged with first offense non-violent, non-DUI  
related charges. (JPTI – Juvenile diversion program)

• **Alcohol Education Program (AEP):** Diversion for first offense  
alcohol related charges committed by persons 17 -20 years old.

• **Traffic Education Program (TEP):** Diversion for traffic-related  
offenses punishable only by a fine and loss of four (4) points or  
less.

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## **Treatment Courts**

• **DRUG COURT:** court-supervised, long term drug treatment diversion  
program for non-violent persons (adult and juvenile) charged with non-  
violent offense(s)

• **VETERAN'S COURT:** court-supervised, long term treatment diversion  
program for non-violent military Veterans charged with non-violent  
offense(s); in partnership with the United States Department of Veteran's  
Affairs.

• **MENTAL HEALTH COURT:** court-supervised, long term treatment  
diversion program for non-violent persons (adult and juvenile) who have  
mental health issues and are charged with non-violent offense(s); in  
partnership with mental health professionals.

• **HOMELESS COURT:** court-supervised, long term treatment diversion  
program for non-violent homeless persons charged with non-violent  
offense(s).

• **DUI COURT:** court-supervised, long term treatment diversion program for  
non-violent persons charged with non-violent driving under the influence  
offense(s).

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## Additional Alternatives to Traditional Prosecution

### Fifth Circuit Solicitor's Worthless Check Unit:

- Collection of restitution for victims of Fraudulent Check crime
- FREE service to merchants as well as individual persons who receive a "bad check"
- Victims receive full restitution – face value of check and \$30 service charge
- Check writer avoids arrest in exchange for paying full restitution to the victim and administrative fees to the Solicitor's Office (\$50 - \$150)

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## CONVICTIONS ELIGIBLE FOR EXPUNGEMENT

### **FRAUDULENT CHECK CONVICTION**

S.C. Code §34-11-90(e)

Must be:

- 1st offense, and
- classified as a misdemeanor

•Each fraudulent check is a separate offense.

•Eligible for expungement one (1) year after the conviction date, IF no additional convictions.

•Can only use this statute ONCE

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## CONDITIONAL DISCHARGE

S.C. Code §43-53-450(b)

• Conditional Discharge: issued in General Sessions or Summary Court for first offense, misdemeanor drug possession crimes.

•Eligible for expungement upon fulfillment of terms and conditions of a Conditional Discharge

•Can only use this statute ONCE

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### Misdemeanor Conviction

S.C. Code §22-5-910

The conviction must be for a misdemeanor crime (No longer 1<sup>st</sup> Offense); and

- Misdemeanor crime carries penalty of not more than 30 days in jail and/or \$1000 fine; and
- Defendant has NO other convictions within three (3) years from the conviction date.
- Criminal Domestic Violence (CDV), 1<sup>st</sup> Offense is eligible for expungement if there are no additional convictions for five (5) years after the conviction.

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**Minor traffic offenses**, not involving DUI, appearing on an individual's criminal history no longer bar to certain expungements.

Closes YOA "loophole" to prohibit expungement if convictions occur during sentence or probation.

**Removes expungement eligibility for any Sex Offender Registry Act offense – S.C. Code Ann. § 23-3-430**

### S.C. Code Ann. § 22-5-910

As used in this section, 'conviction' includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail. For the purpose of this section, any number of offenses for crimes carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, for which the individual received sentences at a single sentencing proceeding that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.

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### S.C. Code Ann. § 22-5-910

No person may have the person's record expunged under this section if the person **has pending criminal charges of any kind** unless the charges have been pending for more than five years; however, this five-year time period is tolled for any time the defendant has been under a bench warrant for failure to appear.

No person may have the person's records expunged under this section more than once. A person may have the person's record expunged even though the conviction occurred before the effective date of this section. (Unlawful Carrying of Pistol March 7, 2024)

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## S.C. Code Ann. § 17-22-960

Any employer that employs a worker who has had an expungement shall not, at any time, be subject to any administrative or legal claim or cause of action related to the worker's expunged offense.

Except for criminal justice agencies, employers shall not use expunged information adversely against an employee.

No information related to an expungement shall be used or introduced as evidence in any administrative or legal proceeding involving negligent hiring, negligent retention, or similar claims.

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## S.C. Code Ann. § 17-22-960

After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once.

This nonpublic record is not subject to release pursuant to Section 34-11-95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once. (Always send a copy of the Expungement Order to SLED and any agency involved in that particular case)

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## YOA CONVICTION

•**First Offense conviction under Youthful Offender Act (YOA):** S.C. Code §22-5-920

•Youthful Offender is at least 17 years of age but less than 25 at the time of conviction.

•Eligible for expungement five (5) years after completion of YOA sentence, including probation & parole; and no additional convictions.

•Judge must sentence defendant at the time of conviction per the YOA statute (After June 2010)

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PTI Eligibility - § 17-22-50

(A) A person **must not be considered for intervention** if:

- (1) he previously has been accepted into an intervention program; or
- (2) the person is charged with:
  - (a) blackmail;
  - (b) driving under the influence or driving with an unlawful alcohol concentration;
  - (c) a traffic-related offense which is punishable only by fine or loss of points;

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PTI Eligibility - § 17-22-50

(A)(d) a fish, game, wildlife, or commercial fishery-related offense which is punishable by a loss of eighteen points as provided in Section 50-9-1120;

**(e) a crime of violence as defined in Section 16-1-60;** or

(f) an offense contained in Chapter 25 of Title 16 if the offender has been convicted previously of a violation of that chapter or a similar offense in another jurisdiction.

(B) However, this section does not apply if the solicitor determines the elements of the crime do not fit the charge.

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**CONVICTION FOR FTSBL:**  
**FAILURE TO STOP FOR A BLUE LIGHT**  
S.C. Code §56-50-750(f)

- Eligible after misdemeanor conviction of FTSBL 1<sup>st</sup> offense, where no great bodily injury or death resulted; and NO additional convictions during three (3) year waiting period.
- All other traffic offense convictions NOT eligible for expungement

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### Non-Criminal Offenses

- 63-3-620 – Contempt of Court (Civil)
- **(Both CDR Codes 763 and 2442)**
- 44-53-391 – Drug Paraphernalia
- 56-5-6520 – Seatbelt Violation
- 16-17-500(F)(1) – Cigarette Purchase By Minor
- 56-5-3425 – Bicycle Violations
- 6-9-80 – Building Code Violations

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### Non-Criminal Offenses

- 55-1-100(B) – Aircraft / Refusal of Breath Test
- 55-5-260(A) – Aircraft / USARA Violation
- 55-13-10 – Violation of Regulations Enacted by Counties Regarding Airports
- 56-5-3890(B) – Texting
- 58-23-1680(B) – Passenger / TNCA Violation

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### **TYPES OF CONVICTIONS**

#### **NOT EXPUNGEABLE**

S.C. Code §22-5-910

Conviction for ...

- Felonies are NOT eligible (Exception: YOA conviction)
- Traffic and Motor Vehicle convictions (Exception: misdemeanor FTSBL, 1<sup>st</sup> Offense)
- Fish, Game & Watercraft convictions
- Convictions for Violent Crimes
- Each expungement statute (except non-convictions) can only be used ONCE!

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## JUVENILE EXPUNGEMENT:

§63-19-2050

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- Expungement is the process by which a youth's legal record of involvement with the juvenile justice system destroyed.
- Juvenile records are "**confidential**" not "sealed;" therefore certain persons are legally entitled to information from a juvenile's criminal record
- Applicant must be at least 18 years old; and have completed the juvenile sentence; and has no additional criminal charges.

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## JUVENILE EXPUNGEMENT

...when a juvenile was charged with, but not adjudicated delinquent for a delinquent act (non-convictions);

... when a juvenile was adjudicated delinquent for non-violent or status offenses.

... Violent offenses listed in S.C. Code §16-1-60 are NOT eligible for expungement.

Juvenile Expungement is a privilege, not a right. Family Court Judge may deny the request.

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## EXPUNGEMENT FEES-process takes between 8-12 weeks to complete

<u>OFFENSE</u>	<u>SOLICITOR</u>	<u>SLED</u>	<u>CLERK OF COURT</u>
Dismissed, Not Guilty	No Fee	No Fee	No Fee
Dismissed(Plea Negotiation)	250.00	No Fee	No Fee
Pretrial Intervention	250.00	No Fee	35.00
Alcohol Education	250.00	No Fee	35.00
Conditional Discharge	250.00	No Fee	35.00
Drug/Veteran's Court	250.00	No Fee	35.00
1 <sup>st</sup> Check Conviction	250.00	25.00	35.00
1 <sup>st</sup> Misdemeanor	250.00	25.00	35.00
Youthful Offender Act	250.00	25.00	35.00
Failure to Stop Vehicle	250.00	25.00	35.00
Juvenile Offenses	250.00	25.00	35.00

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## PARDONS

•A Pardon is the alternative option for convictions that cannot be expunged.

•Application Fee: \$100.00 (List all charges on ONE application)

•Contact:

• South Carolina Department of ProbationParole and Pardon Services:  
2221 Devine Street Columbia, SC 29205  
803.734.9220

Or Onlineat: [www.dppps.sc.gov](http://www.dppps.sc.gov)

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## How to Contact the Fifth Circuit Solicitor's Office

We are located at:

*The Richland County Judicial Center  
1701 Main Street  
Post Office Box 192 (29202)  
Columbia, SC 29201*

Solicitor's Office: 803.576.1800

Expungement Division: 803.576.1620

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