



Africa Criminal Justice Reform
 Organisation pour la Réforme de la Justice Pénale en Afrique
 Organização para a Reforma da Justiça Criminal em África

Expungement of a criminal record

Crimes committed by a child

May 2018

What is the expungement of a criminal record?

- Expungement removes the criminal record of your conviction from the Criminal Record Centre of the South African Police Service (SAPS).
- This allows a person to carry on with life without a criminal record being an obstruction to employment opportunities or a source of discrimination.
- An expunged record does not exist, which means you don't need to declare it.
- Arrests are not recorded, only convictions for the purposes of a criminal record.
- Paying an admission of guilt fine also counts as a conviction, unless it was for an offence in Schedule 3 of the Criminal Procedure Act which are minor traffic offences. *See list on p. 4.*

Do you qualify for expungement?

You may apply for expungement if:

- The offence was committed when you were under 18 years of age.
- Five years have lapsed after the date of conviction in the case of a Schedule 1 offence. *See list at p. 4.*
- Ten years have lapsed after the date of conviction in the case of a Schedule 2 offence. *See list at p. 5.*
- Convictions for Schedule 3 offences cannot be expunged. *See list on p. 6.*
- If you were listed on the National Register of Sex Offenders and/or the National Child Protection Register (Part B) proof must be provided that your name has been removed from these registers as applicable. *See p. 3 below for more information.*

Process of expungement

Step 1: Application to SAPS for a clearance certificate:

- You require a *police clearance certificate* (PCC) from SAPS
- The PCC will show all your convictions in order to have the qualifying records expunged.
- Contact your nearest police station to find out if they take fingerprints as this will be required for the application for expungement. Not all stations take fingerprints.
- The application form is available at the police station.
- Have your fingerprints taken at the police station and complete the form.
- Your full name, surname, date of birth, place of birth and ID number must be on the form.
- You must have your ID with you **AND** a certified copy of your ID must go with your PCC application
- If you provide a cell number on the PCC application, you will receive SMS's about the progress of the application. You can also track the progress of the application at: https://www.saps.gov.za/services/applying_clearance_certificate.php
- **Hours:** Applications for a PCC be handed in, and completed certificates collected 24 hours a day and 7 days a week.
- **Cost:** Applications for a PCC presently (2018) cost R114 per application. This can be paid by bank-guaranteed cheque, a bankers draft or electronic payment (EFT) into the SAPS account:
 - The EFT reference number must show the applicant's initials and surname and the letters 'PCCF'.
 - ABSA cheque account number 4054522787; Branch code 632005; Swift code ABSA ZAJJ in favour of 'The National

Commissioner of the South African Police Service'.

- It takes on average 14 working days from the day that the completed application is received at the Criminal Record Centre until the Clearance Certificate is issued.

Step 2: Application to Director-General of Justice & Constitutional Development for certificate of expungement:

- Once you have your PCC from SAPS, you can make an application for expungement to the Director-General of Justice and Constitutional Development.
- The application form (Form 13 - J763) is available from magistrates' office and: http://www.justice.gov.za/forms/form_expungement.html.
- Your completed application form with a certified copy of your ID and the PCC must be posted to or hand delivered at:
- Postal Address
 - Director-General: Justice and Constitutional Development
 - Private Bag X 81
 - Pretoria 0001
- Street Address
 - Director-General: Justice and Constitutional Development
 - Momentum Centre
 - 329 Pretorius Street (corner of Pretorius and Prinsloo streets)
 - Pretoria 0001.

Step 3: Issuing certificate of expungement:

- If the Director-General of Justice and Constitutional Development is satisfied that you or the child being applied for meet the requirements set out in the Criminal Procedure Act, he/she will issue a certificate of expungement directing that your conviction and sentence be expunged. This process takes approximately 3 months.
- The Director-General will then submit within 14 working days the certificate of expungement to the head of the Criminal Record Centre of SAPS.

Step 4: Expungement

The head of the Criminal Records Centre expunges your qualifying criminal records on receipt of the certificate of expungement.

Step 5: Written confirmation of expungement:

- The head of the Criminal Records Centre of the SAPS must within 21 working days confirm the expungement(s) to you in writing.
- If you do not receive this confirmation within a reasonable time, you can write to the Head of the Criminal Record Centre requesting confirmation in this regard:

The Head of the South African Criminal Record and Crime Scene Management
(For attention: Police Clearance Certificates)
Private Bag X308
0001 PRETORIA

Note

The National Commissioner of Police must destroy the fingerprints of a child upon receipt of a Certificate of

Expungement in terms of section 87 (4) of the Child Justice Act.

National Sex Offender Register and Child Protection Register (Part B)

- The **National Register for Sex Offenders (NRSO)** is not operational. Once it is, you will first have to remove your name if it is on the NRSO in relation to the conviction you want expunged.
- If your name has been included in the National Child Protection Register, confirmation must be obtained from the Director- General: Social Development that your name has been removed from the Register. The confirmation or a certified copy of the confirmation must be attached to the application. See below for this procedure.

Removal from Child Protection Register (Part B)

If your name appears on the Child Protection Register (Part B) you may apply for the removal of your name and any information on the Register.

- The application may be made to:
 - any court, including a children’s court;
 - the Director-General, if the entry was made in error; or
 - the High Court, if the Director-General refuses an application to have it removed because of an error.
- The name and particulars of a person convicted of more than one offence against a child may not be removed from Part B of the Register

The removal of your name from the Register must be based on one of the following reasons:

- Erroneous entry of name on the Register: your name was erroneously entered on the Register giving reasons why it must be removed.
- A court has overturned the decision placing you on the register.

- At least five years have lapsed since the entry was made to the Register and you have been rehabilitated. You must present proof from the institution that offered rehabilitation services.

If successful, you will be issued with a Clearance Certificate as proof that your name and any information relating to you have been removed from the Register.

- Clearance certificates are only issued if your name was entered on the Register and you have fulfilled the requirements for the removal of your name.
- The issuing of a clearance certificate is in relation to the Child Protection Register, and is only issued by the Department of Social Development.
- You will need this if you are applying for the expungement of a criminal record.

Schedule 3 offences of CPA

- Driving a vehicle at a speed exceeding a prescribed limit;
- Driving a vehicle which does not bear prescribed lights, or any prescribed means of identification;
- Leaving or stopping a vehicle at a place where it may not be left or stopped, or leaving a vehicle in a condition in which it may not be left;
- Driving a vehicle at a place where and at a time when it may not be driven;
- Driving a vehicle which is defective or any part whereof is not properly adjusted, or causing any undue noise by means of a motor vehicle;
- Owning or driving a vehicle for which no valid licence is held;
- Driving a motor vehicle without holding a licence to drive it.

Offence schedules of the Child Justice Act

Schedule 1

1. Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen or theft by false pretences, where the amount involved does not exceed R2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), where the amount involved does not exceed R1 500.
3. Malicious injury to property, where the amount involved does not exceed R1 500.
4. Common assault where grievous bodily harm has not been inflicted.
5. Perjury.
6. Contempt of court.
7. Blasphemy.
8. Compounding.
9. Crimen injuria.
10. Defamation.
11. Trespass.
12. Public Indecency.
13. Engaging sexual services of persons 18 years or older, referred to in section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007).
14. Bestiality, referred to in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
15. Acts of consensual sexual penetration with certain children (statutory rape) and acts of consensual sexual violation with certain children (statutory sexual assault), referred to in and subject to sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
16. Any offence under any law relating to the illicit possession of dependence producing drugs, other than any offence referred to in Item 17 of this Schedule, where the quantity involved does not exceed R500 in value.
17. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period of no longer than three months or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act 101 of 1991).

18. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Schedule 2

1. Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, or theft by false pretenses, where the amount involved exceeds R2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), where the amount involved exceeds R1 500.
3. Robbery, other than robbery with aggravating circumstances.
4. Malicious injury to property, where the amount involved exceeds R1 500.
5. Assault, involving the infliction of grievous bodily harm.
6. Public violence.
7. Culpable homicide.
8. Arson.
9. Housebreaking, whether under the common law or a statutory provision, with the intent to commit an offence.
10. Administering poisonous or noxious substance.
11. Crimen expositio infantis (*child abandonment*).
12. Abduction.
13. Sexual assault, compelled sexual assault or compelled self-sexual assault referred to in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), respectively, where grievous bodily harm has not been inflicted.
14. Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation, referred to in section 8 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
15. Exposure or display of or causing exposure or display of child pornography or pornography as referred to in sections 10 or 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
16. Incest and sexual acts with a corpse, referred to in sections 12 and 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
17. Exposure or display of or causing exposure or display of genital organs, anus or female breasts to any person ('flashing'), referred to in sections 9 or 22 of the Criminal

Law (Sexual Offences and Related Matters) Amendment Act, 2007.

18. Violating a dead body or grave.
19. Defeating or obstructing the course of justice.
20. Any offence referred to in section 1 or 1A of the Intimidation Act, 1982 (Act 72 of 1982).
21. Any offence relating to criminal gang activities referred to in Chapter 4 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998).
22. Any contravention of section 2 of the Animals Protection Act, 1962 (Act 71 of 1962).
23. Any offence under any law relating to the illicit possession of dependence producing drugs, other than any offence referred to in Item 24 of this Schedule, where the quantity involved exceeds R500 but does not exceed R5 000 in value.
24. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding three months but less than five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act 101 of 1991).
25. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Schedule 3

1. Treason.
2. Seditious.
3. Murder.
4. Extortion, where there are aggravating circumstances present.
5. Kidnapping.
6. Robbery -
 - (a) where there are aggravating circumstances; or
 - (b) involving the taking of a motor vehicle.
7. Rape or compelled rape referred to in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), respectively.
8. Sexual assault, compelled sexual assault or compelled self-sexual assault referred to in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, involving the infliction of grievous bodily harm.
9. Sexual exploitation of children, sexual grooming of children and using children for or benefiting from child pornography, referred to in sections 17, 18 and 20 of the

Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

10. Exposure or display of or causing exposure or display of child pornography or pornography to children referred to in section 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, if that exposure or display is intended to facilitate or promote—

(a) the sexual exploitation or sexual grooming of a child referred to in section 17 or 18 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or

(b) the use of a child for purposes of child pornography or in order to benefit in any manner from child pornography, as provided for in section 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

11. Compelling or causing children to witness sexual offences, sexual acts or self-masturbation referred to in section 21 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

12. Sexual exploitation of persons who are mentally disabled, sexual grooming of persons who are mentally disabled, exposure or display of or causing exposure or display of child pornography or pornography to persons who are mentally disabled or using persons who are mentally disabled for pornographic purposes or benefiting therefrom, referred to in sections 23, 24, 25, and 26 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

13. Trafficking in persons for sexual purposes referred to in section 71(1) and involvement in trafficking in persons for sexual purposes referred to in section 71(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

14. Any offence referred to in Parts 1, 2 and 3 of Chapter 2 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004).

15. Any offence relating to -

(a) racketeering activities referred to in Chapter 2; or

(b) the proceeds of unlawful activities referred to in Chapter 3, of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

16. The crimes of genocide, crimes against humanity and war crimes referred to in the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002).

17. Any offence under any law relating to—

(a) the dealing in or smuggling of ammunition, firearms, explosives or armament;

(b) the possession of firearms, explosives or armament.

18. Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992).

19. Any offence of a serious nature if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise, acting in the execution or furtherance of a common purpose or conspiracy.

20. Any offence under any law relating to the illicit possession of dependence producing drugs, other than an offence referred to in Item 21 of this Schedule, where the quantity involved exceeds R5 000 in value.

21. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

22. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

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