

# **Frequently Asked Questions (FAQs) about Expungements and Pardons in South Carolina Courts**

**WARNING:** You are strongly encouraged to seek the advice of an attorney in any legal matter. If you move forward without an attorney, it may negatively affect your legal rights. If you have questions about your legal rights or the law that affects your case, please talk with an attorney.

**DISCLAIMER:** The general information provided in these FAQs is not legal advice, cannot be cited as legal authority, and cannot replace the advice of an attorney licensed in South Carolina. The information in these FAQs is accurate as of the date of publication. If you decide to bring a lawsuit in a South Carolina court without an attorney, you are responsible for researching the law on your own. Please note that the presiding judge in each case decides what law applies in that case.

## **Expungement and Pardon Questions:**

### **What is an expungement?**

An expungement is a court order that removes something from your criminal record. It is also called an Order for Destruction of Arrest Records. Expungement works only for minor or first-time offenses. Major offenses cannot be expunged. [See S.C. Code Ann. § 17-22-910](#) for the full text of the Uniform Expungement of Criminal Records Act.

### **What is eligible for expungement?**

- **Non-Conviction.** Non-convictions include not guilty verdicts, charges the judge dismisses, and charges the Solicitor does not prosecute (called “not prosecuted”). There are no fees for this type of expungement.
  - **NOTE:** An expungement after a non-conviction in Magistrate or Municipal Court is different from any other type of expungement listed in this guide. After June 2,

2009, these courts are required to expunge certain non-convictions automatically.

According to state law, these courts are not required to expunge non-convictions if the defendant was not fingerprinted at the time of arrest, or if the defendant was charged with a violation of Title 50 (Fish, Game and Watercraft), Title 56 (traffic), or a county or municipal ordinance. See [S.C. Code Ann. § 17-1-40\(c\)](#).

To get an expungement for a non-conviction in Magistrate or Municipal Court that occurred before June 2, 2009, apply directly to the court. There is no fee for this expungement. See [S.C. Code Ann. § 17-22-950](#).

- Pre-Trial Intervention. Charges the Solicitor dismisses after successful completion of a Pre-trial Intervention Program (“PTI”). PTI is a program that offers some first-time nonviolent offenders a second chance. Instead of going trial, offenders get supervised rehabilitative treatment and make restitution, take drug tests, and perform community service.
- Alcohol Education Program. Charges the Solicitor dismisses after successful completion of an Alcohol Education Program.
- Traffic Education Program. Charges the Solicitor dismisses after successful completion of a Traffic Education Program.
- First Offense Misdemeanor Conviction under the Fraudulent Check Law. This conviction is eligible for expungement when the defendant has had no other conviction for more than 1 year.
- First Offense Simple Possession of Marijuana or certain other illegal drugs. This conviction is eligible only when the defendant received a conditional discharge and successfully completed any sentencing requirements. A conditional discharge means that the court offered the defendant certain conditions, such as treatment and rehabilitation, instead of

being found guilty. Eligible drug offenses are listed at [S.C. Code Ann. § 44-53-370\(c\)-\(d\)](#) and [§ 44-53-375\(A\)](#).

- First Offense Conviction for a Crime Carrying a Penalty of not more than 30 Days Imprisonment or a Fine of \$500, or both.
  - This conviction is eligible when:
    - It is a first offense.
    - The penalty for the crime is no more than 30 days imprisonment or a \$500 fine, or both. If the penalty is higher, the conviction is not eligible.
    - There were no other convictions for 3 years. This period is 5 years for a first offense Criminal Domestic Violence conviction.
  - Traffic offenses, motor vehicle offenses, and wildlife and game offenses cannot be expunged.
- First Offense Conviction for Failure to Stop When Signaled by a Law Enforcement Vehicle.
  - This conviction is eligible when:
    - It is a first offense.
    - The offense did not involve bodily injury.
    - The defendant had no other conviction for 3 years.
    - The defendant successfully completed all sentencing requirements.
- First Offense Conviction as a Youthful Offender.
  - This conviction is eligible when:

- It is a first offense.
  - The defendant was 17 to 24 years old at the time of conviction.
  - The defendant had no other conviction for 5 years after completion of the sentence. Completion of the sentence includes the end of any probation or parole period.
  - The original offense was non-violent and classified as one of the following:
    - Misdemeanor.
    - Class D, E, or F felony.
    - Felony with a maximum term of 15 years imprisonment.
- Juvenile Offenses.
    - These convictions are eligible when:
      - The offense was non-violent.
      - The defendant is currently 18 or older.
      - The defendant completed any sentence and has no additional conviction after the juvenile offense.
      - The defendant has no prior conviction for an offense that would carry a maximum sentence of 5 years imprisonment or more if committed by an adult.

## **Can a traffic offense, such as a DUI, be expunged?**

The only type of traffic offense that can be expunged is a first offense conviction for failure to stop when signaled by a law enforcement

vehicle. Other types of traffic offenses, including convictions for driving under the influence, are not eligible for expungement.

## **How do I get an expungement?**

Solicitors' offices handle all expungements except for non-convictions in Magistrate or Municipal court. If you are seeking an expungement of a non-conviction in Magistrate or Municipal Court, you need to contact the clerk's staff in that court. They will provide you with the necessary paperwork and will process the expungement.

In all other situations, the first step is to contact the Solicitor's office in the judicial circuit where the charge originated. Each office has an employee who is in charge of the expungement process. This person will be able to tell you what you need to do to get an expungement in that circuit.

There are 16 judicial circuits in South Carolina. Each one contains several counties. This [website](#) has the 16 offices listed by county and provides contact information for each office.

## **What information do I need?**

The Solicitor's office will require you to fill out an application for expungement. Different circuits require different information. Some require that you provide copies of court documents related to your charges.

## **What fees do I pay for an expungement?**

You must pay a \$250.00 administrative fee to the Solicitor's office, a \$25.00 fee to the South Carolina Law Enforcement Division ("SLED"), and \$35.00 filing fee to the Clerk of Court. You pay the fees with separate money orders when you apply to your Solicitor's office. There is no refund if the charge or conviction is not eligible for expungement.

Certain charges are exempt from these fees. If there was not a plea deal and the Solicitor dismissed or did not prosecute (“nol prossed”) the charges, there are no fees for expungement.

## **How long does it take?**

Expungements are a time-consuming process. All Solicitors’ offices go through the same steps after your apply for an expungement. First, the office checks your eligibility for expungement. Then the office has SLED check your eligibility. If SLED approves, the Solicitor’s office gets the approval of the Solicitor and a Circuit Court judge. If the judge approves, he or she orders the destruction of records related to the charge.

## **What happens after I get an expungement?**

State law requires that the Solicitor provide you a completed copy of the expungement order. After you get the expungement order, wait 1 or 2 months and get a copy of your record from SLED to make sure the expungement worked.

SLED charges a \$25 fee to get an electronic copy or to get a paper copy of your record through the mail. Follow this [link](#) to get your record.

## **What if I receive a SLED background check and the arrest or conviction is not associated with me?**

SLED has a procedure for challenging the accuracy of an arrest, charge, or conviction that appears on an official copy of your criminal record. Fingerprints are the basis of this procedure. SLED will compare your fingerprints with those in the record to determine if the record is associated with the correct individual.

**NOTE:** This procedure concerns challenges to SLED records alone. It does not apply to records maintained by third-party background check companies.

Follow these steps to challenge the accuracy of your official criminal record:

- Contact SLED at 803-896-7005 and request a challenge packet. SLED will mail the packet to you.
- Complete the application. The application contains a fingerprint card. Take the card to a local law enforcement agency for fingerprinting.
- Make a copy of your picture ID.
- If you do not have a copy of your official record, get a \$25 money order payable to SLED.
- Put the application, fingerprint card, and copy of your photo ID into an envelope. Include either a copy of the record in question or a \$25 money order. Mail the materials to the address provided in the packet.

## **Am I required to tell people about old charges and convictions after they were expunged?**

After completion of pretrial intervention or after conditional discharge from simple possession, the law says you do not have to acknowledge the charges. See [S.C. Code Ann. § 17-22-150\(a\)](#). The law is not clear about other types of expungements.

## **What is a pardon?**

A pardon is a grant by the state that excuses a person convicted of a crime from its legal consequences. It does not erase a conviction, it just ends the penalty.

## **What does a pardon do?**

A pardon ends the penalties and punishments that resulted from a criminal conviction. It also restores the civil rights of someone convicted of a crime. These rights include the right to vote, the right to serve on a jury, the right to hold most public offices, the right to resume a licensed profession, and the right to testify in court without having evidence presented about the conviction.

## **How is a pardon different from an expungement?**

An expungement can wipe clean a criminal record. It removes any reference to the original charge or conviction.

A pardon is different. The original conviction remains on a criminal record after a pardon. After receiving a pardon, an individual must still acknowledge their conviction. A pardon does not affect sex offender status.

## **How do I get a pardon?**

To get a pardon, apply to the Probation, Parole, and Pardon Services Board. This board grants most types of pardons. To be eligible you must fully pay the restitution and fees associated with your conviction. For more information, see the Department of Probation, Parole, and Pardon Services' [website](#).

## **When can I apply for a pardon?**

There are certain requirements for different situations:

- Probationers: apply after your discharge from supervision.
- Parolees: apply after completing 5 years under supervision. If the maximum parole period is less than 5 years, apply after you complete the parole period.



- Discharged from a sentence: apply after your discharge.
- An inmate with terminal illness is eligible when life expectancy is less than 1 year.

## **How do I apply for a pardon?**

Submit the application, written letters of reference, and a \$100 fee to the Probation, Parole, and Pardon Services Board. The letters of reference must specifically support your application for a pardon. The [application](#) is available online.

The Board will review your application, perform an investigation, and schedule a hearing. This process usually takes 7 to 9 months.

## **What are my chances of getting a pardon?**

There is no guarantee that you will get a pardon. The board can grant or deny any pardon at its discretion. Generally, it grants a pardon only when the applicant demonstrates that he or she is a changed person.

## **Resources**

- If you do not understand the information in these FAQs, you may want to contact an attorney.
- To find an attorney who practices law in this area, please contact the South Carolina Bar's Lawyer Referral Service (LRS) at 1-800-868-2284 (toll free). LRS offers a referral by location and type of law. The lawyers who sign up with LRS are in good standing with the South Carolina Bar and must maintain malpractice insurance coverage. The lawyers also agree to a 30-minute consultation for no more than \$50. After the 30-minute consultation, the fees will be the lawyers' normal fees. Once you receive a referral, you will be expected to contact the lawyer by telephone to make an appointment.
- If you cannot afford an attorney, you may contact the South Carolina Legal Aid Telephone Intake Service (LATIS) at 1-888-346-5592 (toll free) or 803-744-9430 (Columbia area). Eligibility for assistance will depend on your income and assets and the type of problem you have. The income limit to be eligible for Legal Services is 125% of the federal poverty level, which changes every year in April. There is also an asset limit (example of assets include money in bank accounts, property, etc.). Additionally, the problem you have must be within the list of problems with which Legal Services can help.