



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 an adult

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 p. 3.*
- You can apply to expunge apartheid-era records which should have been automatically expunged.

Do you qualify for expungement?

You may apply for expungement if:

- 10 years have lapsed since the date of the conviction of your offence AND
- you have not been convicted of any other offence nor sentenced to a period of imprisonment without the option of a fine AND
- your original sentence was one of the following:
 - corporal punishment
 - postponed
 - caution and discharged
 - a fine of less than R20 000
 - imprisonment with the option of a fine of less than R20 000
 - a whole suspended sentence
 - correctional supervision in terms of section 276(1)(h) of the Criminal Procedure Act and no part served in prison
 - periodical imprisonment in terms of section 276(1)(c) of the Criminal Procedure Act

- imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act where one sixth of the sentence had to be served in prison

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.*

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'.
 - The account is 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 forms are:
 - Form J744E – general convictions
 - Form J745E – race-based convictions
 - Form J746E – apartheid-law convictions.
- The forms are available from magistrates' offices 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 meet the requirements, a certificate of expungement directing that your conviction and sentence be expunged. This 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:

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

National Register for Sex Offenders 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, OR
- 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.

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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.