

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

856R0431

HOUSE BILL NO. 1105

Introduced by: Representatives Cutler, Deadrick, Engels, Feinstein, Gosch, Kirkeby, McLaughlin, Rave, Romkema, and Turbiville and Senators Nelson, Abdallah, Gray, Maher, Tieszen, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to permit the record of a person's conviction or arrest to be
2 expunged.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Expungement," the sealing of all records on file within any court, detention or
6 correctional facility, law enforcement agency, criminal justice agency, or Department
7 of Public Safety concerning a person's detection, apprehension, arrest, detention, trial
8 or disposition of an offense within the criminal justice system. Expungement does
9 not imply the physical destruction of records;

10 (2) "Victim," a victim, as defined in § 23A-27-1.1, of a crime for which a person was
11 convicted.

12 Section 2. Any defendant, who has not previously been convicted of a crime which at the
13 time of conviction would constitute a felony in this state and who has fully complied with and
14 performed the sentence of the court, may apply, by motion to the court where the conviction was



1 entered, for entry of an order expunging the conviction after two years from the date of a
2 judgment of conviction.

3 An arrested person may apply to the court that would have jurisdiction over the crime for
4 which the person was arrested, for entry of an order expunging the record of the arrest after one
5 hundred eighty days from the date of any arrest, if no accusatory instrument was filed, or at any
6 time after an acquittal or a dismissal of the charge.

7 Section 3. At least fourteen days before any hearing on a motion for expungement, a copy
8 of the motion shall be served upon the office of the prosecuting attorney who prosecuted the
9 crime or violation, or who had authority to prosecute the charge if there was no accusatory
10 instrument filed. The prosecuting attorney may contest the motion in writing and at the hearing
11 on the motion.

12 When a prosecuting attorney is served with a copy of a motion to expunge a conviction
13 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the
14 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the
15 victim's last known address.

16 When a defendant or arrested person makes a motion under this section, the defendant or
17 arrested person shall pay to the clerk of courts in the county where the motion is filed a fee equal
18 to the filing fee for a civil action. If the defendant or arrested person establishes to the court's
19 satisfaction that the person is indigent and unable to pay the fee, the court may waive the filing
20 fee.

21 Section 4. The court shall fix a time and place for a hearing on the motion unless waived by
22 the defendant, arrested person, prosecuting attorney, and victim. The court may require the filing
23 of such affidavits and may require the taking of such evidence as it deems proper.

24 Upon request to the court by a victim and before entering an order of expungement, the

1 victim, in the discretion of the court, may address the court concerning the emotional, physical,
2 and monetary impact of the crime upon the victim and may comment upon the proposed
3 expungement. The defendant may respond to the victim's statements orally or by presentation
4 of evidence and may be granted a reasonable continuance to refute any inaccurate or false
5 charges or statements.

6 Section 5. The court may enter an order of expungement if satisfied that the ends of justice
7 and the best interest of the public as well as the defendant or the arrested person will be served
8 by the entry of the order.

9 Section 6. Any order of expungement shall be reported to the Division of Criminal
10 Investigation pursuant to chapters 23-5 and 23-6. The court shall forward a nonpublic record of
11 disposition to the Division of Criminal Investigation which shall be retained solely for use by
12 law enforcement agencies, prosecuting attorneys, and courts in sentencing the defendant or
13 arrested person for subsequent offenses.

14 As part of any order of expungement, the court shall order that all official records, other than
15 the nonpublic records to be retained by the Division of Criminal Investigation, be sealed along
16 with all records relating to the defendant or arrested person's arrest, detention, indictment or
17 information, trial, and disposition.

18 Section 7. The effect of an order of expungement is to restore the defendant or arrested
19 person, in the contemplation of the law, to the status the person occupied before the person's
20 arrest or indictment or information. No person as to whom an order of expungement has been
21 entered shall be held thereafter under any provision of any law to be guilty of perjury or of
22 giving a false statement by reason of the person's failure to recite or acknowledge the person's
23 arrest, indictment or information, or trial in response to any inquiry made of the person for any
24 purpose.

1 For the sole purposes of consideration of the sentence of a defendant for subsequent offenses
2 or the determination of whether the defendant is an habitual offender under chapter 22-7, any
3 conviction which has been expunged under this Act shall be considered a prior conviction.

4 Section 8. A court may issue an order of expungement for convictions and arrests that
5 occurred before, as well as those that occurred after, the effective date of this Act. There is no
6 statute of limitation for making an application.