

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

400S0283

SENATE BILL NO. 30

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding the expungement of
2 arrest records.

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

4 Section 1. That § 23A-3-26 be repealed.

5 ~~23A-3-26. Terms used in §§ 23A-3-27 to 23A-3-33, inclusive, mean:~~

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

11 Section 2. That § 23A-3-27 be repealed.

12 ~~23A-3-27. An arrested person may apply to the court that would have jurisdiction over the~~
13 ~~crime for which the person was arrested, for entry of an order expunging the record of the arrest~~
14 ~~after one year from the date of any arrest, if no accusatory instrument was filed, or at any time~~
15 ~~after an acquittal.~~



1 Section 3. That § 23A-3-28 be repealed.

2 ~~—23A-3-28. At least fourteen days before any hearing on a motion for expungement, a copy~~
3 ~~of the motion shall be served upon the office of the prosecuting attorney who prosecuted the~~
4 ~~crime or violation, or who had authority to prosecute the charge if there was no accusatory~~
5 ~~instrument filed. The prosecuting attorney may contest the motion in writing and at the hearing~~
6 ~~on the motion.~~

7 ~~—When a defendant or arrested person makes a motion under this section, the defendant or~~
8 ~~arrested person shall pay to the clerk of courts in the county where the motion is filed a fee equal~~
9 ~~to the filing fee for a civil action. If the defendant or arrested person establishes to the court's~~
10 ~~satisfaction that the person is indigent and unable to pay the fee, the court may waive the filing~~
11 ~~fee.~~

12 Section 4. That § 23A-3-29 be repealed.

13 ~~—23A-3-29. The court may fix a time and place for a hearing on the motion unless waived by~~
14 ~~the defendant, arrested person, prosecuting attorney, and victim. The court may require the filing~~
15 ~~of such affidavits and may require the taking of such evidence as it deems proper.~~

16 Section 5. That § 23A-3-30 be repealed.

17 ~~—23A-3-30. The court may enter an order of expungement if satisfied that the ends of justice~~
18 ~~and the best interest of the public as well as the defendant or the arrested person will be served~~
19 ~~by the entry of the order.~~

20 Section 6. That § 23A-3-31 be repealed.

21 ~~—23A-3-31. Any order of expungement shall be reported to the Division of Criminal~~
22 ~~Investigation pursuant to chapters 23-5 and 23-6. The court shall forward a nonpublic record of~~
23 ~~disposition to the Division of Criminal Investigation which shall be retained solely for use by~~
24 ~~law enforcement agencies, prosecuting attorneys, and courts in sentencing the defendant or~~

1 ~~arrested person for subsequent offenses:~~

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

6 Section 7. That § 23A-3-32 be repealed.

7 ~~—23A-3-32. The effect of an order of expungement is to restore the defendant or arrested~~
8 ~~person, in the contemplation of the law, to the status the person occupied before the person's~~
9 ~~arrest or indictment or information. No person as to whom an order of expungement has been~~
10 ~~entered shall be held thereafter under any provision of any law to be guilty of perjury or of~~
11 ~~giving a false statement by reason of the person's failure to recite or acknowledge the person's~~
12 ~~arrest, indictment or information, or trial in response to any inquiry made of the person for any~~
13 ~~purpose.~~

14 Section 8. That § 23A-3-33 be repealed.

15 ~~—23A-3-33. A court may issue an order of expungement for arrests that occurred before, as~~
16 ~~well as those that occurred after, July 1, 2010. There is no statute of limitation for making an~~
17 ~~application.~~