

**EXPUNGEMENT OF RECORDS OF CONVICTION AND SENTENCE IN TERMS OF THE CHILD
JUSTICE ACT, 2008**

1. Section 87 of the Child Justice Act, 2008, which deals with the expungement of records of conviction and sentences of children reads as follows:

“87 Expungement of records of certain convictions and diversion orders

(1) (a) Where a court has convicted a child of an offence referred to in Schedule 1 or 2, the conviction and sentence in question fall away as a previous conviction and the criminal record of that child must, subject to subsections (2), (3) and (5), on the written application of the child, his or her parent, appropriate adult or guardian (hereafter referred to as the applicant), in the prescribed form, be expunged after a period of-

- (i) five years has elapsed after the date of conviction in the case of an offence referred to in Schedule 1; or
- (ii) 10 years has elapsed after the date of conviction in the case of an offence referred to in Schedule 2,

unless during that period the child is convicted of a similar or more serious offence.

(b) In the case of a dispute or uncertainty as to whether another offence of which a child is convicted during the period is similar to or more serious than the offence in respect of which a record exists, the opinion of the Cabinet member responsible for the administration of justice prevails.

(2) The Director-General: Justice and Constitutional Development must, on receipt of the written application of an applicant referred to in subsection (1), issue a prescribed certificate of expungement, directing that the conviction and sentence of the child be expunged, if the Director-General is satisfied that the child complies with the criteria set out in subsection (1).

(3) Notwithstanding the provisions of subsection (1), the Cabinet member responsible for the administration of justice may, on receipt of an applicant's written application in the prescribed form, issue a prescribed certificate of expungement, directing that the conviction and sentence of the child be expunged, if he or she is satisfied that exceptional circumstances exist which justify expungement, where, in the case of the child-

- (a) the period of five years, referred to in subsection (1) (a) (i); or
- (b) the period of 10 years, referred to in subsection (1) (a) (ii),

has not yet elapsed, if the Cabinet member responsible for the administration of justice is satisfied that the child otherwise complies with the criteria set out in subsection (1).

(4) An applicant to whom a certificate of expungement has been issued as provided for in subsection (2) or (3) must, in the prescribed manner, submit the certificate to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in accordance with subsection (5).

(5) (a) The head of the Criminal Record Centre of the South African Police Service or a senior person or persons at the rank of Director or above, employed at the Centre, who has or have been authorised, in writing, by the head of the Centre to do so, must expunge the criminal record of a

child if he or she is furnished by the applicant with a certificate of expungement as provided for in subsection (2) or (3).

(b) The head of the Criminal Record Centre of the South African Police Service must, on the written request of an applicant, in writing, confirm that the criminal record of the child has been expunged.

(c) Any person who-

(i) without the authority of a certificate of expungement as provided for in this section; or

(ii) intentionally or in a grossly negligent manner,

expunges the criminal record of any child, is guilty of an offence and is, if convicted, liable to a fine or to a sentence of imprisonment for a period not exceeding 10 years or to both a fine and the imprisonment.

(6) The Director-General: Social Development must, in the prescribed manner, expunge the record of any diversion order made in respect of a child in terms of this Act on the date on which that child turns 21 years of age, unless the child has been convicted of any other offence before that date or has failed to comply with the diversion order in question.”

2. Section 87 of the Act must be read with Schedules 1, 2 and 3 of the Act. These Schedules read as follows:

“Schedule 1

(Sections 6 (1) (a), 10 (2) (a) (i), 18 (1), 20 (1), 21 (2) (a) and (b) and (3) (b), 22 (1), 24 (2) (b), 27 (a) (ii), 30 (5) (a), 41 (1), 52 (2), 53 (2) (a), 54 (2) (a), 71 (1) (b), 77 (3) (c), 87 (1) (a) (i), 92 and 99 (2) (a))

- 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 iniuria.*
- 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

(Sections 6 (1) (b), 21 (2) (b) and (3) (b), 24 (2) (b), 27 (a) (ii) and (b), 52 (2), 53 (2) (b), 54 (2) (b), 77 (3) (b), 87 (1) (a) (ii), 92 and 99 (2) (a))

- 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 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 expositionis infantis.
- 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

(Sections 6 (1) (c), 30 (1) (c), (2) and (5) (a), 52 (3) (a), 53 (2) (b), 54 (2) (b), 76 (3), 77 (3) (a) and 99 (2) (a))

- 1 Treason.
- 2 Sedition.
- 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 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 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 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 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 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 101 of 1991).
- 22 Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.”

3. The Regulations, made under the Act, further regulate the expungement procedure. The appropriate regulations read as follows:

“49 Application for expungement of conviction and sentence

(1) An application in terms of-

- (a) section 87(1)(a) of the Act to the Director-General: Justice and Constitutional Development; or
- (b) section 87(3) of the Act to the Cabinet member responsible for the administration of justice,

for the expungement of a conviction and sentence must correspond substantially with Form 13 of the Annexure.

(2) (a) Form 13 must be available at every magistrate's office and on the website of the Department of Justice and Constitutional Development.

(b) Copies of section 87 and Schedules 1, 2 and 3 of the Act must be made available to every applicant who requests an application form.

(3) The applicant must attach to Form 13 a certified copy of his or her criminal record obtained from the Criminal Record Centre of the South African Police Service, indicating the date of the conviction and the sentence, and the type of offence convicted of.

(4) The applicant must submit a completed Form 13 to the Department of Justice and Constitutional Development-

- (a) by post to Private Bag X 81, Pretoria, 0001; or
- (b) by handing it in at the National Office of the Department of Justice and Constitutional Development.

50 Consideration of application for expungement by Director-General

(1) An official of the Department of Justice and Constitutional Development who has been designated to deal with applications relating to the expungement of convictions and sentences in terms of the Act may, if the information in Form 13 is inadequate or not clear, request further information from the applicant or any organ of state.

(2) The Cabinet member responsible for the administration of justice must express his or her opinion in terms of section 87(1)(b) of the Act in writing and record his or her reasons for the opinion.

(3) The Director-General: Justice and Constitutional Development must, if he or she intends to refuse the application on the basis that the application does not meet the requirements of section 87(2) of the Act, notify the applicant in writing of-

- (a) his or her intention; and
- (b) the requirements which have not been met and why not,

and specify a date on or before which the applicant may respond to the Director-General on the information submitted.

(4) The Director-General must, after expiry of the date specified in the notice, consider the response by the applicant, if any, and make a decision regarding the application for expungement.

(5) The Director-General must, if an application has been refused, within 15 working days thereafter inform the applicant in writing-

- (a) of the decision;
- (b) of the reasons for the refusal of the application;
- (c) of the remedies available to the applicant in terms of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

(6) The Director-General must, if he or she is satisfied that the child complies with the criteria set out in section 87(1) of the Act, issue a certificate of expungement which corresponds substantially with Form 14 of the Annexure.

(7) An applicant to whom a certificate of expungement has been issued in terms of section 87(2) of the Act must hand, or submit by registered post, the certificate to the Head of the Criminal Record Centre of the South African Police Service.

51 Consideration of application for expungement by Cabinet member

(1) Regulation 50(1), (4), (5) and (7) applies in respect of the consideration of an application by the Cabinet member responsible for the administration of justice in terms of this regulation, with the necessary changes required by the context.

(2) The Cabinet member responsible for the administration of justice must, if he or she intends to refuse the application on the basis that there are no exceptional circumstances justifying the expungement of the conviction and sentence as referred to in section 87(3) of the Act or that the child does not otherwise comply with the criteria in section 87(1) of the Act, notify the applicant in writing of-

- (a) his or her intention; and
- (b) the requirements which have not been met and why not,

and specify a date on or before which the applicant may respond to the Cabinet member on the information submitted.

(3) The Cabinet member responsible for the administration of justice must, if he or she is satisfied that the child complies with the criteria set out in section 87(1) and (3) of the Act, issue a certificate of expungement which corresponds substantially with Form 15 of the Annexure.”

4. The regulations prescribe a form, Form 13 (J763), to be used when applying for expungement.

Click here to view the form : J763

Note: The Department of Social Development is responsible for the expungement of diversion orders, for further details on this, please contact them directly on 012 312 7653 or go to www.dsd.gov.za .