

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

400S0282

## HOUSE JUDICIARY ENGROSSED NO. **SB 31** - 3/2/2011

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

1 FOR AN ACT ENTITLED, An Act to revise 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 amended to read as follows:

5 23A-3-26. ~~Terms~~ The term, expungement, used in §§ 23A-3-27 to 23A-3-33, inclusive,  
6 ~~mean:~~ means

7 ~~—(1)—~~ "Expungement," the sealing of all arrest records on file ~~within any court, detention~~  
8 ~~or correctional facility, law enforcement agency, criminal justice agency, or~~  
9 ~~Department of Public Safety~~ with the Unified Judicial System or Division of  
10 Criminal Investigation concerning a person's ~~detection,~~ apprehension, arrest,  
11 ~~detention,~~ trial, or disposition of an offense within the criminal justice system that  
12 resulted in no accusatory instrument being filed or an acquittal. The term does not  
13 include records concerning a guilty plea, conviction, or suspended imposition of  
14 sentence. Expungement does not imply the physical destruction of records.



1 Section 2. That § 23A-3-30 be amended to read as follows:

2 23A-3-30. The court may enter an order of expungement if satisfied that the ends of justice  
3 and the best interest of the public as well as the defendant or the arrested person will be served  
4 by the entry of the order. The court may only expunge an arrest record if no accusatory  
5 instrument was filed or there was an acquittal. The court may not expunge any record of a guilty  
6 plea, conviction, or suspended imposition of sentence.

7 Section 3. That chapter 23A-3 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 For the purposes of this chapter, the term, accusatory instrument, includes a summons,  
10 complaint, indictment, information, or a uniform traffic ticket.

11 Section 4. That § 23-6-8.1 be amended to read as follows:

12 23-6-8.1. The director of the Bureau of Criminal Statistics may authorize the destruction of  
13 information and records of:

- 14 (1) Persons who are dead;
- 15 (2) Persons seventy-five years of age or older unless a violation has occurred within the  
16 last ten years;
- 17 (3) Incidents that are no longer considered crimes under the laws of the State of South  
18 Dakota;
- 19 (4) Misdemeanor offenses whose final date of disposition occurred at least ~~ten~~ five years  
20 prior to authorized destruction date.

21 However, the provisions of subdivision (4) of this Act do not apply to any misdemeanor  
22 driving under the influence offenses unless the final date of disposition occurred at least ten  
23 years prior to the authorized destruction date.