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## GOVERNMENT NOTICE

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### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 513

6 May 2009

#### REGULATIONS UNDER THE CRIMINAL PROCEDURE ACT, 1977 (ACT NO. 51 OF 1977)

The Minister of Justice and Constitutional Development has under section 271E of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), made the regulations in the Schedule.

#### SCHEDULE

##### Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act bears that meaning and, unless the context otherwise indicates –
- "applicant"** means the person who applies for the expungement of his or her criminal record as is intended in section 271B and 271C of the Act;
- "Director-General"** means the Director-General: Justice and Constitutional Development;
- "Minister"** means the Minister of Justice and Constitutional Development; and
- "the Act"** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

##### Application for expungement of criminal record

2. (1) An application referred to in section 271B(1)(a) of the Act, must be in the form of Part II and Part III of Form A of the Annexure.
- (2) An application referred to in section 271C(2)(a) of the Act, must be in the form of Part II and Part III of Form B of the Annexure.
- (3) An application referred to in section 271C(2)(b) of the Act, must be in the form of Part II and Part III of Form C of the Annexure.
- (4) An official of the Department of Justice and Constitutional Development who is assigned to deal with the expungement of criminal records may request further information from the applicant, if the information in Forms A, B or C, as the case may be, is inadequate or not clear.

**Certificate of expungement**

3. (1) The certificate of expungement issued by the Director-General in terms of sections 271B(2) or 271C(3) of the Act must be in the form of Form D of the Annexure.

(2) The certificate of expungement issued by the Minister in terms of section 271C(5)(b) of the Act must be in the form of Form E of the Annexure.

(3) The Director-General must, within 14 working days after the certificate of expungement has been issued in terms of sections 271B(2) or 271C(3) or 271C(5), submit that certificate, together with a copy of Part III of the relevant application form to the Criminal Record Centre of the South African Police Service.

(4) The Director-General must, within 14 working days after the applicant's application is declined by the Director-General or the Minister, inform him or her by post, in writing, of such decision, together with the reasons for the refusal.

**Expungement of criminal records by Criminal Record Centre**

4. The head of the Criminal Record Centre of the South African Police Service must, within 21 working days after receipt of the certificate of expungement and Part III of the application form, inform the applicant by post in writing that his or her criminal record in respect of the specific offence or conviction is expunged and attach a copy of the certificate of expungement to that communication.

**FORM A****[Regulation 2(1)]****APPLICATION FOR EXPUNGEMENT OF A CRIMINAL RECORD****[SECTION 271B (1) OF THE CRIMINAL PROCEDURE ACT, 1977****(ACT NO. 51 OF 1977)]**

*(To be completed by a person who has a criminal record older than 10 years and upon whom a fine of not more than R20 000 was imposed and has not been sentenced to a period of imprisonment)*

**PART I****GENERAL INFORMATION**

**Who may apply for the expungement of a criminal record:**

- **A person may apply if:**
  - 10 Years has lapsed after the date of the conviction for that offence.
  - The person has not been convicted of any other offence and sentenced to a period of imprisonment without the option of a fine during those 10 years.
  - The person was sentenced to any of the sentences set out in Part II of this Form.
- **A person will not qualify if:**
  - He or she was convicted of a sexual offence against a child or a person who is mentally disabled or of an offence, where he or she was found to be unsuitable to work with children.
  - His or her name is included in the National Register for Sex Offenders or the National Child Protection Register but may qualify if his or her name has been removed from the National Register for Sex Offenders or the National Child Protection Register.

**Note:**

- Before submitting the application for expungement of a conviction, a clearance certificate showing that a period of 10 years has lapsed after the conviction(s) and sentence(s), must be obtained from the Criminal Record Centre of the South African Police Service. The clearance certificate must be attached to the application.
- If the person's name has been included in the National Register for Sex Offenders, a confirmation must be obtained from the Registrar that his or her name has been removed from the Register. The confirmation or a certified true copy of the confirmation must be attached to the application.
- If the person's name has been included in the National Child Protection Register, a confirmation must be obtained from the Director-General: Social Development that his or her name has been removed from the Register. The confirmation or a certified true copy of the confirmation must be attached to the application.

**Process:**

- The completed application form (Part II and Part III), together with the attachments must be posted or delivered by hand to the Director-General: Justice and Constitutional Development:
  - Postal Address: Private Bag X 81 Pretoria 0001
  - Street Address: Momentum Centre, 329 Pretorius Street (corner of Pretorius and Prinsloo streets), Pretoria 0001
- If the Director-General is satisfied that a person meets the requirements set out in section 271B(1) of the Act, he or she will issue a certificate of expungement directing that the conviction(s) and sentence(s) of the person be expunged.
- The certificate of expungement issued by the Director-General will be submitted to the head of the Criminal Record Centre of the South African Police Service within 14 working days.
- If the application for expungement is refused, the person will be informed by post of this decision and reasons for the decision.
- The head of the Criminal Record Centre of the South African Police Service will, within 21 working, days confirm to the person in writing that the conviction(s) and sentence(s) in question has/have been expunged.

**Note:** Failure to complete the form in full or to attach the required documents may cause the application for expungement to be delayed.

**APPLICATION FOR EXPUNGEMENT OF A CRIMINAL RECORD IN TERMS OF SECTION  
271B OF THE CRIMINAL PROCEDURE ACT, 1977 (ACT NO. 51 OF 1977)**

(i) I, .....  
(full name and surname of applicant),  
ID Number: .....  
or Passport number: .....  
or Date of birth: .....

OFFENCE	DATE

- ☐ The passing of the sentence was postponed.
- ☐ Cautioned and discharged.
- ☐ Fine imposed did not exceed R 20 000. The fine imposed was R .....
- ☐ Corporal punishment (lashes).
- ☐ Imprisonment of ..... with the option of a fine not exceeding the amount of R20 000. The fine was R .....
- ☐ Sentence of imprisonment was wholly suspended.
- ☐ Correctional supervision.
- ☐ Periodical imprisonment.

(iii) ☐ I have not been convicted during the 10 year period of any other offence and been