

## CHAPTER 13

## RECORDS OF CONVICTION AND SENTENCE (s 87)

[doja75y2008s87]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.

(7) Where the Director-General: Justice and Constitutional Development, in terms of subsection (2), or the Minister, in terms of subsection (3), has issued a certificate of expungement and it subsequently appears that the applicant did not qualify for the

expungement of his or her criminal record, the Director-General must-

(a) inform the applicant in writing of the information that has come to his or her attention and that he or she or the Minister intends to revoke the certificate of expungement;

(b) afford the applicant an opportunity to furnish compelling written reasons to him or her or the Minister within 90 working days after he or she is informed of the intention to revoke, why his or her record should remain expunged;

(c) inform the applicant in writing within 30 working days after a decision is made of-

(i) his or her or the Minister's decision; and

(ii) the reasons for revoking the certificate of expungement; and

(d) inform the head of the Criminal Record Centre of the South African Police Service, in writing within 14 working days after the decision was made, to revoke the certificate of expungement and to reinstate the convictions and sentences in question.

[Sub-s. (7) added by s. 40 of Act 42 of 2013.]

(8) If the applicant fails to furnish compelling reasons contemplated in subsection (1)

(b), the Director-General or Minister, as the case may be, may, subject to the Promotion of Administrative Justice Act, 2000 (Act 2 of 2000), revoke the certificate of expungement.

[Sub-s. (8) added by s. 40 of Act 42 of 2013.]

(9) (a) The Director-General: Justice and Constitutional Development may delegate any power or assign any duty conferred upon or assigned to him or her in terms of subsection (2) to an appropriately qualified official in the employ of the Department of Justice and Constitutional Development at the rank of Deputy Director-General.

(b) A delegation or assignment in terms of paragraph (a)-

(i) is subject to any limitation, condition and direction which the Director-General may impose;

(ii) must be in writing; and

(iii) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

(c) The Director-General may-

(i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this subsection, subject to any rights that may have accrued to a person as a result of the decision; and

(ii) at any time, in writing, withdraw a delegation or assignment.

[Sub-s. (9) added by s. 40 of Act 42 of 2013.]