

TABLE OF CONTENTS
SOUTHERN UTE INDIAN TRIBAL CODE
Title 28

EXPUNGEMENT CODE

<u>Section</u>	<u>Page Number</u>
28-1-101. Legislative declaration.....	2
28-1-102. Definitions.....	2
28-1-103. Expungement procedure.	2
28-1-104. Eligibility to expunge Southern Ute criminal records of offenses without convictions.	2
28-1-105. Eligibility to expunge Southern Ute criminal records of offenses with convictions.	3
28-1-106. Contents of petition.....	4
28-1-107. Service of petition.	5
28-1-108. Objections, responses, and setting.	5
28-1-109. Hearing.....	6
28-1-110. Effects of expungement order.....	7
28-1-111. Distribution of expungement order and prohibition on further disclosure of expungements.	7

TITLE 28

SOUTHERN UTE INDIAN TRIBAL CODE

EXPUNGEMENT CODE

28-1-101. Legislative declaration. This Code provides the grounds and procedures to expunge Southern Ute criminal records where a petition is authorized under this Code. This Code's purpose is to provide an opportunity for people who rehabilitate themselves, and who now live their lives in a manner consistent with our community's standards, to have a second chance to live without the stigma and legal disabilities from a criminal record.

28-1-102. Definitions.

(1) **Expungement.** Sealing an official record and releasing the petitioner from all penalties and disabilities resulting from the offense that had been charged or convicted.

(2) **Disability.** A revoked legal right or privilege from a criminal conviction or other governmental action, as when a person's driver's license is revoked as a result of a Driving Under the Influence (DUI) conviction.

(3) **Petitioner.** The person seeking to expunge a Southern Ute criminal record, or his attorney, if represented.

(4) **Tribal Court.** The Southern Ute Indian Tribal Court.

(5) **Tribal Prosecutor.** The Southern Ute Indian Tribal Prosecutor.

28-1-103. Expungement procedure. The procedure to expunge Southern Ute records for an arrest, investigation, detention, or conviction is as follows:

(1) The petitioner shall file a petition for expungement in Tribal Court.

(2) The petitioner shall serve a copy of the petition to the Tribal Prosecutor's office.

(3) The Tribal Court shall set a hearing and notify the petitioner, Tribal Prosecutor, and victim, if any, of the hearing date.

28-1-104. Eligibility to expunge Southern Ute criminal records of offenses without convictions. A person who has been arrested or formally charged with a criminal offense, but never convicted of the charged offense, may petition to expunge the record of arrest and any investigation made in a case, subject to the following conditions:

(1) There are no criminal proceedings pending against the petitioner and one of the

following occurred:

- (a) The case was dismissed with prejudice;
 - (b) The person was acquitted at trial on all of the offenses charged in the case;
- or
- (c) Any applicable statutes of limitation have expired on all offenses charged in the case.

28-1-105. Eligibility to expunge Southern Ute criminal records of offenses with convictions.

- (1) **Ineligible record.** A petitioner's record is not eligible for expungement:
 - (a) If a criminal case punishable by imprisonment, except minor traffic or petty offenses, is pending in any jurisdiction against the petitioner;
 - (b) If the petitioner's criminal record contains three or more criminal convictions, except minor traffic or petty offenses, arising from separate incidents in any jurisdiction;
 - (c) If the petitioner has filed another expungement petition under this Code within the past two years;
 - (d) If the petitioner has been convicted in any court of a new offense, except minor traffic or petty offenses, within five years before filing the petition for expungement;or
 - (e) If the petitioner is the restrained party under a protection order in any jurisdiction; and
 - (f) Until all of the following have occurred:
 - i. Ten years have passed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge;
 - ii. All criminal fines, fees, and restitution ordered by the court have been paid in full; and
 - iii. Any restitution ordered by the Tribal Court has been paid in full.
- (2) **Ineligible offenses.** The following offenses are not eligible for expungement:
 - (a) Homicide or related offenses, and any attempt, conspiracy, or solicitation of such an offense;
 - (b) Abduction or related offenses, and any attempt, conspiracy, or solicitation of such an offense;

- (c) Sexual offenses, or any attempt, conspiracy, or solicitation of such an offense;
- (d) Fraud and related offenses;
- (e) Crimes of dishonesty, including but not limited to:
 - i. Theft
 - ii. Robbery
 - iii. Burglary
 - iv. Embezzlement, Theft of Property Lawfully Obtained
 - v. Forgery
 - vi. Bribery
 - vii. Perjury
 - viii. Criminal impersonation
- (f) Assault and Battery on a Peace Officer;
- (g) Offenses involving a deadly weapon, serious bodily injury, or strangulation;
- (h) Domestic Violence offenses involving a deadly weapon, serious bodily injury, or strangulation; and
- (i) Alcohol and drug-related driving offenses.

28-1-106. Contents of petition. A petition for expungement shall be signed under oath by the petitioner and shall include the following:

(1) **Name and personal information.** Petitioner's full name, all other legal names or aliases ever used by petitioner, petitioner's date of birth, and social security number.

(2) **Addresses.** All of the petitioner's physical addresses from the date of the offense or alleged offense, in connection with which an expungement order is sought, to the date of the petition.

(3) **Criminal history record or proof that none exist.** An FBI Identity History Summary or proof that one does not exist. If any physical address provided under subsection (2) above is located on an Indian reservation, for each such reservation address, a certified criminal history record from the Tribal Court or the law enforcement agency having criminal jurisdiction over the petitioner and over the territory where the physical address is located, or proof that such a record does not exist.

(4) **Reason to expunge.** The reason(s) for which the petitioner requests expungement, if it is for employment, licensure, or other purposes, and why it should be granted.

(5) **Statement of eligibility.** A statement that the petitioner meets the eligibility requirements in this Code.

(6) **Details of offense or arrest.** Details of the offense or arrest for which expungement is sought, including the date of the occurrence, the court file number, and the date of conviction; either the names of any victims or that there were no identifiable victims; whether there is a current order for protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for protection or restraining order prohibiting the petitioner from contacting the victims.

(7) **For convictions, statement of rehabilitation.** For expungement of convictions, a statement on what steps the petitioner has taken since the time of the offense toward personal rehabilitation, including treatment, classes, employment, or other personal history that demonstrates rehabilitation.

(8) **Criminal conviction record.** Petitioner's criminal conviction record indicating all convictions under the laws of the Southern Ute Indian Tribe; all convictions in any state court, federal court, tribal court, or foreign country; and whether the convictions occurred before or after the arrest or conviction for which expungement is sought.

(9) **Criminal history.** Petitioner's criminal history, indicating all prior and pending criminal charges against the petitioner under any state court, federal court, tribal court, or foreign country, including all criminal charges that have been continued for dismissal or stayed for adjudication, or have been the subject of pretrial diversion; and

(10) **Prior requests.** All prior requests by the petitioner, whether for the present offense or for any other offenses, in the Tribal Court or any other tribal, state, or federal court, for pardon, return of arrest records, or expungement or sealing of a criminal record, whether granted or not, and all stays of adjudication or imposition of sentence involving the petitioner.

28-1-107. Service of petition.

(1) **Prosecutor.** The petitioner shall serve the petition for expungement on the Tribal Prosecutor.

(2) **Any victim.** If the case for which expungement is sought involved a victim, the Tribal Prosecutor shall make reasonable efforts to serve the victim with a copy of the petition for expungement and notify the victim of the right to respond to the petition by filing a recommendation, an objection, or statement with the Tribal Court and the right to testify at the hearing.

28-1-108. Objections, responses, and setting. When a petition for expungement is filed, the Tribal Court shall set a date for a hearing on the petition and shall give notice to the petitioner, or his attorney if represented, the Tribal Prosecutor, and the victim, if applicable.

(1) **Prosecutor consent or objection.** Within 21 days after receipt of the petition, the Tribal Prosecutor shall file a consent or objection to the petition and serve copies on the petitioner or his attorney, if represented.

(2) **Victim response.** The victim, if applicable, may respond to the petition by filing a recommendation or objection with the Tribal Court at least seven days before the hearing on the petition.

(3) **Hearing date.** A hearing shall be set within 45 days of service of the petition upon the Tribal Prosecutor.

28-1-109. Hearing.

(1) **Right to be heard.** At the hearing, the parties shall be afforded an opportunity to be heard.

(2) **Testimony.** Any person who may have relevant information about the petitioner may testify at the hearing.

(3) **Victim's statement and recommendation.** A victim of the offense for which expungement is sought has a right to submit a written statement to the Tribal Court or testify at the time of the hearing, including the victim's recommendation on whether expungement should be granted or denied.

(4) **Order within 30 days.** Following the hearing, the Tribal Court shall enter an order granting or denying the petition within 30 days.

(5) **Order issuing expungement.** The Tribal Court shall issue an order of expungement if it finds by clear and convincing evidence that:

(a) The petition and petitioner's eligibility are sufficient under the provisions of this Code;

(b) The record for which expungement is sought is the type eligible for expungement under the provisions of this Code; and

(c) Expungement of the record is not contrary to the interests of public safety.

(6) **Grant of expungement.** If the Tribal Court grants the petition for expungement, the Tribal Court shall enter an order directing expungement that includes the following language:

This expungement order releases the petitioner from all penalties and disabilities resulting from the offense with which petitioner had been charged or convicted and removes those disabilities that otherwise would be imposed under applicable law.

Any entity in possession of the criminal records expunged by this order shall physically seal and conspicuously indicate on the face of the record, or at the beginning of the computerized file of the record, that the record has been ordered expunged. Access to or disclosure of the contents of an expunged file is allowed only by Tribal Court order.

(7) **Expungement denied.** If the Tribal Court denies the petition for expungement, the Tribal Court shall enter an order denying the petition and stating the reasons for the denial.

(8) **Order appealable.** The granting or denying a petition is an appealable final order.

28-1-110. Effects of expungement order.

(1) **Sealing or noting record expunged.** Expungement shall be effectuated by physically sealing and conspicuously indicating on the face of the record or at the beginning of the computerized file of the record that the record has been designated as expunged. Access to an expunged file is allowed only by Tribal Court order.

(2) **Release of penalties and disabilities.** An expungement granted by the Tribal Court regarding a conviction releases the petitioner from all penalties and disabilities resulting from the offense for which petitioner had been charged or convicted and removes those disabilities that otherwise would be imposed under applicable law.

(3) **Excluded from criminal history.** The fact that the person has been charged with or convicted of the expunged offense shall not be included in the person's criminal history.

(4) **Responses to questions.** For all purposes, including responding to questions on any application for employment, license, civil right or privilege, or any question when testifying as a witness, a person whose conviction of an offense has been expunged under this Code may state that such person has never been convicted of such offense.

28-1-111. Distribution of expungement order and prohibition on further disclosure of expungements.

(1) **Distributing order.** A petitioner who is granted an expungement order under this Code shall be responsible for delivering a certified court copy of the expungement order to all affected agencies and officials, including the Southern Ute Police Department and the Southern Ute Detention Center.

(2) **Submitting order to FBI.** Within 15 calendar days of granting an expungement order, the Tribal Court shall submit a certified copy of the expungement order to the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division to ensure that the criminal history records with the National Crime Information System and related databases are expunged.

(3) **Expunge information.** Every Southern Ute Indian Tribal entity that receives the expungement order shall expunge the petitioner's identifying information contained in records in its possession relating to the incident for which expungement is ordered.

(4) **No dissemination of record.** Once the Tribal Court grants an expungement, Southern Ute Indian Tribal entities are prohibited from disseminating or disclosing that record.

**RESOLUTION
OF THE
COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE
March 14, 2017**

WHEREAS, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe, and approved November 4, 1936, and amended October 1, 1975, and August 27, 1991, to act for the Southern Ute Indian Tribe; and

WHEREAS, in Article III, Section 1(e) of the Tribe's Constitution, Tribal Council may enact codes "to protect the peace, safety, property, health and general welfare of [Tribal members] and to govern the administration of justice through the tribal courts [and] prescribe the powers, rules and procedures of the tribal courts in the adjudication of cases . . . "; and

WHEREAS, Tribal Council finds it necessary to provide an opportunity to expunge Southern Ute criminal records for people who rehabilitate themselves, and who now live their lives in a manner consistent with the community's standards, to have a second chance to live without the stigma and legal disabilities from a criminal record; and

WHEREAS, Tribal Council, with the support of a drafting committee, drafted an Expungement Code to allow people who qualify to file a petition to expunge Southern Ute criminal records; and

WHEREAS, tribal members had the opportunity to review and comment on the Expungement Code; and

WHEREAS, Tribal Council determines that it is in the best interest of the Tribe to adopt the Expungement Code.

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Council hereby adopts the Expungement Code, subject to approval of the Code by the Bureau of Indian Affairs, a copy of the Expungement Code is attached and incorporated into this resolution by reference.

BE IT FURTHER RESOLVED, that the Expungement Code's effective date will be the date that the Bureau of Indian Affairs approves it.

BE IT FURTHER RESOLVED, that the Chairman of the Southern Ute Indian Tribal Council or, in his absence, the Vice Chairman, or, in the absence of both the Chairman and the Vice Chairman, a duly appointed Acting Chairman is hereby authorized to sign the necessary documents and take all necessary actions to carry out the intentions of this resolution.

RESOLUTION NO. 2017-39

Page 2

March 14, 2017

This resolution was duly adopted on the 14th day of March, 2017.



Mr. Clement J. Frost, Chairman
Southern Ute Indian Tribal Council

C E R T I F I C A T I O N

This is to certify that there were (5) of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting, at which (4) voted for, and (0) against, it being a quorum and the above resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.



Ms. Felisa M. Calderon, Recording Secretary
Southern Ute Indian Tribal Council



United States of Department of the Interior
BUREAU OF INDIAN AFFAIRS
SOUTHWEST REGION
1001 Indian School Road, NW
Albuquerque, New Mexico 87104



TAKE PRID

IN REPLY REFER TO:
360 – Tribal Government

AUG 02 2017



The Honorable Clement J. Frost
Chairman, Southern Ute Tribe
356 Ouray Drive
P.O. Box 737
Ignacio, Colorado 81137

Dear Chairman Frost:

We are in receipt of a request from the Southern Ute Tribal Council to review and approve the modifications to the Southern Ute Expungement Code. The code was sent to us from your legal counsel along with Resolution No. 2017-39 signed and adopted by the Tribal Council.

After review and consideration, we do not find any outstanding issues, and therefore approve the Expungement Code.

We do, however, have a few suggested comments for the Tribe's consideration.

1. Section 28-1-102(1) – The definition of “Expungement” – We suggest that this definition clarify that expungement applies specifically to the sealing of an “official Southern Ute Tribe criminal record.”
2. Section 28-1-102(3) – The definition of “Petitioner” – We suggest this definition be amended to reflect that the Petitioner is the person seeking to expunge “his or her own” criminal record. This suggestion assumes that only the person who was accused of or who was convicted of the crime can be a Petitioner. If this is not the case, please ignore this suggestion.
3. Section 28-1-105(1)(b) – Consider adding “criminal convictions from any jurisdiction” to make this section consistent with subsection (a).
4. Section 28-1-105(1), Subsections (a), (b), and (d) – Consider defining what is meant by “minor traffic or petty offenses.”
5. Section 28-1-105(1), Subsections (f)(ii) and (iii) – these appear to be redundant as both concern full payment of restitution ordered by a court. The Tribe should consider amending Subsection (f) (ii) to read “All criminal fines, fees, and restitution order by the court of any jurisdiction have been paid in full” and then eliminating Subsection (f) (iii), which now reads “[a]ny restitution ordered by the Tribal Court has been paid in full.”

6. Section 28-1-105(2), Subsections (a), (b), and (d) – The Tribe should consider defining “related offenses,” or that the Tribe cite to specific provisions within its criminal code to those crimes that are not eligible for expungement. Adding such definition would allow individuals to know whether they might be eligible to apply for expungement. Moreover, a definition provides clear guidance to the Tribal Court for when it reviews applications.
7. Section 28-1-105(2)(c) – The Tribe should consider defining “sexual offenses” or the Tribe cite to specific provision within its criminal code for those crimes of a sexual nature that are not eligible for expungement. Adding such definition would allow individuals to know whether they might be eligible to apply for expungement. Moreover, a definition provides clear guidance to the Tribal Court for when it reviews applications.

These comments and suggestions made are solely for the consideration of the Tribe. As stated before, we find the Code to be legally sufficient and therefore approved.

If you have any further questions or issues, please contact Patricia Mattingly, Tribal Government Officer, at (505) 563-3446.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. R. Hall", with a long horizontal flourish extending to the right.

Regional Director

cc: Southern Ute Agency Superintendent