

INFORMATION BRIEF
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Expungement of Criminal Records

This information brief describes Minnesota laws and appellate court decisions on the expungement (sealing, destruction, or return to the subject) of individual criminal records kept by government agencies. The first part explains the scope of expungement remedies under Minnesota Statutes and describes the procedure for obtaining a court expungement order or other legal relief under those laws. The second part discusses the judiciary’s inherent power to expunge criminal records, a power that is separate from and independent of the statutory expungement process. All references to Minnesota Statutes incorporate amendments through the 2015 session.

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Overview of Expungement

Expunging criminal records involves a trade-off between competing interests. On one hand, an individual would like to pursue employment, housing, or other major life activities without the stigma of an arrest or conviction record. On the other hand, society has an interest in maintaining criminal histories for purposes of future crime investigations and in order to make hiring, rental, and other decisions about individuals. Statutes and court cases reflect the tension between these interests.

Criminal records may be expunged by statute or by inherent judicial authority.

By statute, arrest records held by law enforcement must be returned to an arrested individual if proceedings are determined in the individual's favor before specified stages of the criminal justice process. Also by statute, criminal records held by any criminal justice agency will be sealed by court order—but not returned or destroyed—if an individual was (1) convicted in a type of case specified in the applicable statute, or (2) had proceedings resolved in specified ways that fall short of conviction.

Finally, the courts have held that they have the inherent power to require the sealing or destruction of judicial branch criminal records, and to a very limited degree, records held by other branches of state government.

Expungement of Criminal Records Under Minnesota Statutes

What is expungement?

Expungement of a record can mean to seal or destroy it, or return it to the subject of the record. The exact remedy in a given situation depends on statutory provisions or the court's interpretation of its inherent power.

Which laws govern the expungement of records?

Two separate laws cover expunging criminal records or otherwise removing them from the criminal justice information system. The first law, Minnesota Statutes, section 299C.11, governs arrest records that are maintained by law enforcement agencies. The second law, [Minnesota Statutes, chapter 609A](#), applies to all criminal records maintained by agencies within the criminal justice system. As explained below, the remedies available under these two laws differ significantly.

What can an individual do about an arrest record if there was no probable cause finding or indictment?

In some cases an individual may get arrest records destroyed. [Minnesota Statutes, section 299C.11](#), lets the subject of an arrest record request that it be destroyed if proceedings in the criminal justice system ended at an early stage. Specifically,

- the person was not convicted of a felony or gross misdemeanor in the ten years preceding the arrest; and
- all pending criminal proceedings related to the arrest were determined in favor of the arrested person; and either
 - the charges were dismissed before a probable cause determination¹ was made in the case; or
 - the prosecutor declined to file charges and no grand jury indictment was returned in the case.

If the above requirements are met, the law allows the petitioner to (1) seek destruction of records directly from the law enforcement agency, or (2) ask a court to order the records destroyed as part of an order in an expungement proceeding under [chapter 609A](#).

The statute also specifically states that the phrase “determination of all pending criminal . . . proceedings in favor of the arrested person” does *not* include certain other outcomes. Specifically, an individual does not qualify for destruction of arrest records in a matter where:

- the record was sealed under the expungement law;²
- the arrested person successfully completed a diversion program;
- the person completed a sentence and was restored to civil rights under [Minnesota Statutes, section 609.165](#); or
- a pardon was granted.

Besides these express statutory provisions, courts have interpreted the phrase “determination of all . . . proceedings in favor of the arrested person” as *not* including:

- dismissal of charges after a guilty plea or admission of guilt;³ or

¹ *State v. Bragg*, 577 N.W.2d 516 (Minn. Ct. App. 1998) interpreted “probable cause determination” to mean a determination, based on the full record, of whether sufficient probable cause exists to proceed to trial.

² [Minn. Stat. §§ 152.18](#), subd. 1, 242.31, or ch. 609A.

³ *City of St. Paul v. Froyland*, 246 N.W.2d 435 (Minn. 1976); *State v. L.K.*, 359 N.W.2d 305 (Minn. Ct. App. 1984).

- stays of adjudication.⁴

In these situations, an individual would not be able to seek destruction of arrest records but could petition to have records sealed under [chapter 609A](#).

What statutory remedy is available to an individual who went further in the criminal justice system?

Some individuals do not qualify for destruction of records but may be able to get court records sealed. [Minnesota Statutes, chapter 609A](#), provides a procedure for requesting expungement of criminal records that must be used by an individual who was convicted of certain offenses or by an individual whose case proceeded further then would qualify for destruction of records under [Minnesota Statutes, section 299C.11](#). Finally, an individual who would be eligible to ask law enforcement for destruction of records under section [299C.11](#) may choose to use the [chapter 609A](#) process.

Under [chapter 609A](#), expungement means that the records are sealed and that the agency maintaining the records may not disclose their existence or open them unless otherwise authorized by a court order or statutory authority. [Minnesota Statutes, section 609A.01](#), specifically states that “[n]othing in this chapter authorizes the destruction of records or their return to the subject of the records.”

What are the limits on the [chapter 609A](#) expungement remedy?

[Chapter 609A](#) puts two limits on the scope and effect of expungement orders. First, if the criminal proceedings were supported by a probable cause determination, the law prohibits the sealing, return, or destruction of DNA samples and DNA records held by the Bureau of Criminal Apprehension. Second, the law authorizes records expunged after December 31, 2014, to be opened under the following circumstances:

- any criminal record may be opened upon a court’s *ex parte* order for purposes of a subsequent criminal investigation, prosecution, or sentencing;
- a criminal record may be opened, used, or exchanged between criminal justice agencies without a court order so long as the record was not sealed after an acquittal or dismissal for lack of probable cause, which would then require a court order;
- the court may order an expunged record opened upon request by the victim of the underlying offense if the court determines the record is substantially related to a matter for which the victim is before the court;⁵
- a criminal conviction record may be opened without a court order in order to evaluate a prospective employee of a criminal justice agency; and

⁴ *State v. Davison*, 624 N.W.2d 292 (Minn. Ct. App. 2001) *review denied* (Minn. May 15, 2001). ⁵

[Minn. Stat. § 609A.03](#), subd. 7a.

- a criminal conviction record may be opened to conduct background checks on teaching and human service applicants, unless notice of the expungement was given by the petitioner to the licensing agency.

For records expunged prior to December 31, 2014, the opening and sharing of records is more limited. For example, a court order is required to open an expunged record for use in subsequent criminal matters.⁶ Access to the records is treated differently because the legislature broadened the scope of the statutory expungement remedy beginning January 1, 2015.

The agency maintaining a record expunged prior to January 1, 2015, must inform a law enforcement, prosecution, or correctional agency, on request, that a sealed record on an individual exists and that the agency has a right to obtain access to it as provided by this law.⁷

What records are eligible for the [chapter 609A](#) expungement remedy?

The following individuals are eligible to petition for an expungement order under [chapter 609A](#).

- **Certain controlled substance offenders.** A person who was convicted of unlawful possession of a controlled substance may petition for expungement if the court stayed adjudication of the person's guilt under [Minnesota Statutes, section 152.18](#), and then dismissed the charges after the person's successful completion of probation.
- **Juveniles prosecuted as adults.** A person who was certified to stand trial as an adult under the juvenile code, convicted of the crime, and committed to the custody of the Commissioner of Corrections may petition for expungement if the person was finally discharged by the commissioner or was placed on probation and successfully completed its conditions.
- **Certain criminal proceedings.** A petition may be filed to seal all records relating to an arrest, indictment or information, trial, or verdict if the records are not subject to [Minnesota Statutes, section 299C.11](#), and if:
 - all pending actions or proceedings were resolved in favor of the petitioner;⁸
 - the petitioner has successfully completed the terms of a diversion program or stay of adjudication and has not been charged with a new crime for at least one year since completion of either;⁹

⁶ [Minn. Stat. § 609A.03](#), subd. 7.

⁷ [Minn. Stat. § 609A.03](#), subd. 7.

⁸ [Minn. Stat. § 609A.02](#), subd. 3, para. (a), cl. (1). An individual who completed a diversion program but did not plead guilty or admit guilt before entering the program and charges were dismissed after completion of diversion would be eligible for expungement under this provision. *State v. Horner*, 617 N.W.2d 452 (Minn. Ct. App. 2000). A finding of not guilty by reason of mental illness (NGMI) is not a "resolution in favor of the petitioner." [Minn. Stat. § 609A.02](#), subd. 3, para. (a), cl. (1).

⁹ [Minn. Stat. § 609A.02](#), subd. 3, para. (a), cl. (2).

- the petitioner was convicted of or received a stayed sentence for a petty misdemeanor or misdemeanor and has not been convicted of a new crime for at least two years since discharge;¹⁰
- the petitioner was convicted of or received a stayed sentence for a gross misdemeanor and has not been convicted of a new crime for at least four years since discharge from the sentence;¹¹ or
- the petitioner was convicted of or received a stayed sentence for a listed felony violation and has not been convicted of a new crime for at least five years since discharge.¹²

If a person fits under any of the categories described above they may seek to seal their criminal record without petitioning the court. If the prosecutor agrees to the sealing of a criminal record, the court shall seal it if:

- the disadvantages to the subject of the record in not sealing it outweighs the interests of the public and public safety in keeping the record public; and
- the prosecutor makes a good faith effort to notify any identifiable victims of the offense and give them the opportunity to object.¹³

The statutory grounds for seeking the sealing of criminal records are broader than the grounds for seeking the destruction of arrest records. The rationale for this difference is that the expungement remedy does not result in the permanent loss or destruction of criminal history information and, therefore, can be applied more broadly without harming future criminal investigations.

Are any individuals barred from seeking expungement?

Individuals convicted of predatory offenses may not have their records expunged. Conviction records relating to an offense for which registration under the predatory offender registration act is required may not be expunged.¹⁴ These offenses include murder while committing forcible criminal sexual conduct, kidnapping, felony-level criminal sexual conduct, and a variety of other predatory offenses.¹⁵

¹⁰ [Minn. Stat. § 609A.02](#), subd. 3, para. (a), cl. (3).

¹¹ [Minn. Stat. § 609A.02](#), subd. 3, para. (a), cl. (4).

¹² [Minn. Stat. § 609A.02](#), subd. 3, paras. (a), cl. (5), and (b). Courts are struggling to determine how to interpret and apply the crime-free periods required under [Minnesota Statutes, section 609A.02](#), subdivision 3. There is an ambiguity in the language that may severely limit the expungement remedy for persons with multiple offenses. Appellate courts have yet to interpret the language.

¹³ [Minn. Stat. § 609A.025](#).

¹⁴ [Minn. Stat. § 609A.02](#), subd. 4.

¹⁵ The registration law also covers other crimes against the person when committed by someone who has a prior record of a sex offense.

What are the steps in the statutory expungement process?

Expungement petition. The statutory expungement process begins by filing a petition with the district court. The petition must state, among other things:

- why expungement is sought (e.g., for employment or licensure purposes), the statutory or other legal authority under which it is sought, and why it should be granted;
- the details of the offense or arrest for which expungement is sought, including information about any victim and any current or prior order for protection;
- in the case of a conviction, what steps the petitioner has taken toward personal rehabilitation;
- the petitioner's criminal conviction record in this state and in other states, regardless of whether the conviction occurred before or after the arrest or offense for which expungement is sought;
- the petitioner's criminal charges record in all prior and pending cases, including charges continued for dismissal or stayed for adjudication, or charges that were the subject of diversion; and
- all prior requests made by the petitioner for a pardon, return of arrest records, or expungement for this or any other offense, whether granted or not, and all stays of adjudication or imposition of sentence involving the petitioner.¹⁶

Notice to prosecutor and victim. The petition and proposed expungement order must be served by mail on (1) the prosecutorial office that had jurisdiction over the offense sought to be expunged, and (2) all other state and local government agencies and jurisdictions whose records would be affected by an expungement order, as well as on the attorney who serves each agency or jurisdiction.¹⁷

The prosecutorial office with jurisdiction over the offense must mail the petition and proposed order to any victims who have requested notice under Minnesota Statutes, section 611A.06, subdivision 1a. The notice must inform the victim of the right to be present and to submit an oral or written statement at the expungement hearing.

An agency or jurisdiction that is served with a petition may submit to the court private or confidential data on the petitioner that the agency or jurisdiction determines is necessary to respond to the petition. The agency or jurisdiction shall inform the court and the petitioner that such a submission contains private or confidential data that may be accessible to the public as part of the expungement proceeding. The petitioner may then file a request with the court to seal the private or confidential data that are submitted by the agency or jurisdiction.¹⁸

¹⁶ [Minn. Stat. § 609A.03](#), subd. 2.

¹⁷ [Minn. Stat. § 609A.03](#), subd. 3, para. (a).

¹⁸ [Minn. Stat. § 609A.03](#), subd. 3, para. (d).

Hearing. The hearing must be held not sooner than 60 days after service of the petition. If a victim submits a statement describing the harm she or he suffered and recommending whether to grant or deny expungement, the court must consider the victim's statement when making its decision.¹⁹

Expungement order; burden of proof. The statute specifically states that expungement is an extraordinary remedy. The law allows granting it only upon proof, by clear and convincing evidence, that expungement would yield a benefit to the petitioner that equals or exceeds the disadvantages to the public of sealing the record and burdening the court and public agencies with the responsibility of issuing, enforcing, and monitoring the expungement order.²⁰

The statute places the burden of proof differently in the expungement of convictions compared to the expungement of records when proceedings were resolved in the petitioner's favor. To obtain expungement of a controlled substance conviction, a conviction in a certified juvenile matter (see page 5), or another conviction for which expungement is authorized, the petitioner has the burden of proving by clear and convincing evidence, that the benefits to the petitioner outweigh the disadvantages to the public. In contrast, if proceedings were resolved in favor of the petitioner, the public agency has the burden of proof concerning expungement. When the government bears the burden of proof, the court must issue the expungement order unless the affected agency or jurisdiction establishes, by clear and convincing evidence, that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.²¹

The statute lays out the factors the court must consider when deciding if an expungement is appropriate such as:

- the nature and severity of the underlying crime;
- the risk, if any, the petitioner poses to individuals or society;
- the steps taken by the petitioner toward rehabilitation; and
- the recommendations of victims or whether victims of the underlying crime were minors, etc.²²

¹⁹ [Minn. Stat. § 609A.03](#), subd. 4.

²⁰ [Minn. Stat. § 609A.03](#), subd. 5.

²¹ [Minn. Stat. § 609A.03](#), subd. 3.

²² [Minn. Stat. § 609A.03](#), subd. 5, para. (c).

Expungement of specific conviction records. If an order expunges a conviction for a crime of violence, it must specify that the petitioner is prohibited from possessing or dealing in firearms for the rest of the person's life, unless a court grants a petition to restore the ability to possess or deal in arms.²³

Effect of expungement order on controlled substance offenses. If an order expunges a controlled substance conviction, it restores the person to the legal status the person occupied before the arrest or charge. This means that the person will not be guilty of perjury or giving a false statement for not acknowledging the fact of the arrest or conviction.²⁴

Appeal of expungement order. An expungement order is automatically stayed for 60 days after it is filed to permit an appeal by the agency or jurisdiction whose records are affected. If appealed, the order is stayed pending appeal.²⁵

Distribution of orders. The court administrator must send a copy of an expungement order to each agency and jurisdiction whose records are affected by it and send a letter to the petitioner identifying each agency that received the order.²⁶

Juvenile record expungement. In 2014, the legislature amended the juvenile records expungement statute to give courts authority to expunge all records relating to the arrest and delinquency proceedings, rather than just the adjudication of delinquency. This is in response to the decision of the Minnesota Supreme Court in the *J.J.P.* case, 831 N.W.2d 260 (Minn. 2013), in which the court interpreted the statute as applicable only to the adjudication record and not additional documents, such as arrest and investigative records. Courts now have the authority to expunge delinquency records when held by executive branch entities. The statute now clearly delineates the standard to be applied by the court and provides a list of factors for the court to consider in judging the merits of a juvenile record expungement petition.²⁷

Juvenile records expunged prior to January 1, 2015, may not be shared or exchanged. For juvenile records expunged after January 1, 2015, sharing of records between criminal justice agencies is authorized, consistent with the provisions governing adult records.²⁸ The statute governing appeals of adult expungements applies.²⁹ Agencies are permitted to submit private or confidential data to a court in response to the sharing of a juvenile petition for expungement.³⁰

²³ Minn. Stat. § 609A.03, subd. 5a. This firearms disability arises under [Minnesota Statutes, section 624.713](#).

²⁴ Minn. Stat. § 609A.03, subd. 6.

²⁵ Minn. Stat. § 609A.03, subd. 9.

²⁶ Minn. Stat. § 609A.03, subd. 8.

²⁷ Minn. Stat. § 260B.198, subd. 6.

²⁸ Minn. Stat. §§ 260B.198, subd. 6, paras. (c) and (d); 609A.03, subd. 7a, para. (b).

²⁹ Minn. Stat. § 609A.03, subd. 9.

³⁰ Minn. Stat. § 260B.198, subd. 6.

Expungement of Criminal Records Under the Court's Inherent Judicial Power

Records that may not be expunged by statute may be eligible for expungement under the court's inherent authority to grant relief when necessary to the performance of its unique judicial functions.³¹

The court's inherent judicial authority to expunge criminal records predates the statutory expungement law.³² It is based on the constitutional separation of powers doctrine and affects only that which is essential to the existence, dignity, and function of a court.³³ The courts have ruled that the judicial power to expunge records is to be exercised sparingly and with due respect for the unique constitutional functions of other branches of government whose records may be affected by an order.³⁴ As the Minnesota Court of Appeals stated, courts:

“must tailor the exercise of their inherent powers to accommodate legislative mandates regarding access to governmental records and to avoid encroaching on executive functions.”³⁵

When the court's inherent expungement power is based on a violation of the petitioner's constitutional rights or the abuse of discretion by a criminal justice agency, the expungement order may cover records maintained either by a court or by an executive branch agency, such as a law enforcement agency. The court's intrusion on the functions of a separate branch of government is warranted in these cases because of the judiciary's fundamental function of protecting an individual's constitutional rights.³⁶

However, when the court's inherent expungement power is based on balancing the advantages to the petitioner against the disadvantages to the public, absent a unique judicial function, the Minnesota Supreme Court stated in 2013 that the expungement order may only affect records created and maintained by the judiciary.³⁷ It may not affect records maintained by either of the other two branches of government, nor may it affect records created by executive branch agencies that are used during a judicial proceeding. A court can only expunge executive branch records for the reasons discussed above or if given explicit statutory authority to do so.³⁸ According to the case law, this limitation recognizes that such a judicial intrusion into the

³¹ *State v. T.M.B.*, 590 N.W.2d 809, 811 (Minn. Ct. App. 1999), *review denied* 1999.

³² *See e.g., State v. C.A.*, 304 N.W.2d 353 (Minn. 1981).

³³ *In re Clerk of Lyon County Courts' Compensation*, 241 N.W.2d 781, 784 (Minn. 1976).

³⁴ *State v. Ambaye*, 616 N.W.2d 256 (Minn. 2000).

³⁵ *State v. T.M.B.*, *supra* note 30, at 811.

³⁶ *State v. T.M.B.*, *supra* note 30, at 812.

³⁷ *State v. M.D.T.*, 831 N.W.2d 276 (Minn. 2013).

³⁸ *Id.* at 282.

essential functions of the other branches of government would violate the constitutional separation of powers doctrine.³⁹

The standard applied by courts to determine if an inherent authority expungement should be granted is if expungement will yield a benefit to the petitioner commensurate with (1) the disadvantages to the public from the elimination of the record and (2) the burden on the court in issuing, enforcing, and monitoring an expungement order.⁴⁰

Once an expungement has occurred, the person benefiting from the order may, thereafter, swear truthfully that the expunged criminal record does not exist.

For more information about criminal issues, visit the criminal justice area of our website, www.house.mn/hrd/.

Reader's Note: If you need to know how to expunge your criminal record, contact the Minnesota Courts Self Help Center at 651-259-3888 or visit the criminal expungement page on the Minnesota Judicial Branch website: <http://www.mncourts.gov/Help-Topics/Criminal-Expungement.aspx> . Or contact your private attorney. The House Research Department cannot provide legal advice.

³⁹ *State v. T.M.B.*, *supra* note 30, at 812. *See State v. Schultz*, 676 N.W.2d 337 (Minn. App. 2004).

⁴⁰ *State v. C.A.*, *supra* note 31, at 358. The balancing test used under the statutory expungement process is modeled on this judicial process.