

Overview of Expungement

Expunging criminal records involves a trade-off between competing interests. 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 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 kind of case covered by the statute or (2) had proceedings resolved in specified ways that fall short of conviction.

Finally, the courts have held that they have the power to require the sealing or destruction of judicial branch criminal records, and to a more 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 remedy available under these two laws differs 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 returned to him or her. [Minnesota Statutes, section 299C.11](#), lets the subject of an arrest record request that it be returned 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 return of records directly from the law enforcement agency or (2) ask a court to order the records returned as part of an order in an expungement proceeding under [chapter 609A](#).

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

- the record was sealed under the expungement law;
- 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, cases 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;² or
- stay of adjudication.³

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

¹ *State v. Bragg*, 577 N.W.2d 516 (Minn. 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 *City of St. Paul v. Froyland*, 310 Minn. 268, 246 N.W.2d 435 (1976); *State v. L.K.*, 359 N.W.2d 305 (Minn. App. 1984).

³ *State v. Davisson*, 624 N.W.2d 292 (Minn. App. 2001) review denied 2001.

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

Some individuals do not qualify for return 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 than would qualify for return of records under [Minnesota Statutes, section 299C.11](#). Finally, an individual who would be eligible to ask law enforcement for return 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 expunged records to be opened under either of 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; and
- a criminal conviction record may be opened without a court order in order to evaluate a prospective employee of a criminal justice agency.

The agency maintaining the expunged records 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.⁴

What convictions 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.

⁴ [Minn. Stat. § 609A.03](#), subd. 7.

- **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.

What proceedings short of conviction are eligible for the [Chapter 609A](#) expungement remedy?

As noted above, if a matter is resolved in an individual's favor in any of the circumstances specified under [section 299C.11](#), the individual may request return of arrest records without filing a court petition. In cases where proceedings went further than the situations listed on [pages 2 and 3](#) but stopped short of conviction, the individual may file a court petition for expungement (having the records sealed but not returned). These would include the following circumstances:

- the individual was convicted of a felony or gross misdemeanor within the ten years before the arrest he or she wants expunged
- a probable cause determination was made in the case
- the prosecutor filed charges or a grand jury indictment was returned
- the individual was acquitted after trial
- the individual completed a diversion program but did not plead guilty or admit guilt before the program and charges were dismissed after completion of diversion⁵

For a brief period, a finding of not guilty by reason of mental illness was considered a disposition in favor of the petitioner.⁶ This is no longer the law.

The statutory grounds for seeking the sealing of criminal records are broader than the grounds for seeking the return 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.

⁵ *State v. Horner*, 617 N.W.2d 452 (Minn. App. 2000).

⁶ The Minnesota Court of Appeals ruled that a finding of not guilty by reason of mental illness (NGMI) was a "resolution in favor of the petitioner" within the meaning of the expungement statute. *State v. Ambaye*, 596 N.W.2d 668 (Minn. App. 1999). The legislature accepted this interpretation but in response amended the statute in 2000 to give the public agency a lesser burden of proof in resisting expungement petitions in NGMI cases. After the legislature adjourned, the Minnesota Supreme Court reversed the appellate court's ruling and held that NGMI verdicts do not fall within the meaning of the phrase "resolution in favor of the petitioner." Therefore, these individuals may not petition for the expungement of records relating to the case. *State v. Ambaye*, 616 N.W.2d 256 (Minn. 2000). To be consistent with the supreme court decision, the legislature amended [chapter 609A](#) to state expressly that a NGMI finding is not a resolution in favor of the petitioner. [Laws 2001, ch. 209](#), § 1.

Are any individuals barred from seeking expungement?

Individuals convicted of sex offenses may not have the records expunged. Conviction records relating to an offense for which registration under the predatory offender registration act is required may not be expunged.⁷ These offenses include murder while committing forcible criminal sexual conduct, kidnapping, felony-level criminal sexual conduct, and a variety of other sex-related offenses.⁸

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.⁹

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.¹⁰

⁷ [Minn. Stat. § 609A.02](#), subd. 4.

⁸ The registration law also covers other crimes against the person when committed by someone who has a prior record of a sex offense.

⁹ [Minn. Stat. § 609A.03](#), subd. 2.

¹⁰ [Minn. Stat. § 609A.03](#), subd. 3, para. (a).

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. It may be sent to the most recent written address the victim provided to the prosecutorial authority.¹¹

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.¹²

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 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.¹³

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 or a conviction in a certified juvenile matter (see [page 4](#)), the petitioner has the burden of proving 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.

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.¹⁴

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.¹⁵

¹¹ [Minn. Stat. § 609A.03](#), subd. 3, para. (b) and (c).

¹² [Minn. Stat. § 609A.03](#), subd. 4.

¹³ [Minn. Stat. § 609A.03](#), subd. 5.

¹⁴ [Minn. Stat. § 609A.03](#), subd. 5a. This firearms disability arises under [Minnesota Statutes, section 624.713](#).

¹⁵ [Minn. Stat. § 609A.03](#), subd. 6.

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.¹⁶

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.¹⁷

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.¹⁸

The court's inherent judicial authority to expunge criminal records predates the statutory expungement law.¹⁹ 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 because it is a court.²⁰ 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.²¹ 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.²²

In particular, if a statute provides for the use of conviction records for some purpose, such as driver license reinstatement after a DWI conviction, the courts are unlikely to order expungement unless one of the following applies:²³

- the petitioner's constitutional rights may be seriously infringed by retention of the records²⁴ or

¹⁶ Minn. Stat. § 609A.03, subd. 9.

¹⁷ Minn. Stat. § 609A.03, subd. 8.

¹⁸ *State v. T.M.B.*, 590 N.W.2d 809, 811 (Minn. App. 1999), review denied 1999.

¹⁹ See e.g., *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981).

²⁰ *In re Clerk of Lyon County Courts' Compensation*, 308 Minn. 172, 176, 241 N.W.2d 781, 784 (1976).

²¹ *State v. Ambaye*, 616 N.W.2d 256 (Minn. 2000).

²² *State v. T.M.B.*, note 18, *supra*, at 811.

²³ *Schumann v. State, DPS*, 367 N.W.2d 688 (Minn. App. 1985).

²⁴ *In re R.L.F.*, 256 N.W.2d 803, 807-8 (Minn. 1977).

- 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 order²⁵

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.²⁶

However, when the court's inherent expungement power is based on balancing the advantages to the petitioner against the disadvantages to the public, case law indicates that the expungement order may only affect records created and maintained by the judiciary. 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. According to the case law, this limitation recognizes that such a judicial intrusion into the essential functions of the other branches of government would violate the constitutional separation of powers doctrine.²⁷ A contrary argument has been made that [chapter 609A](#) recognizes the existence of inherent judicial authority to expunge criminal records, and this authority is meaningless unless the executive agency records based on judicial records are also expunged.²⁸

If a court exercises its inherent authority to expunge a criminal record, its remedy potentially is broader than the statutory expungement remedy. The case law before and after the enactment of [chapter 609A](#) is clear that "expungement means to erase all evidence of the event as if it never occurred."²⁹ This "erasure" may be accomplished, at the option of the court, by sealing the record, deleting it, obliterating the subject's name from it, or returning it to the subject of the record. Once the 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 web site, www.house.mn/hrd/issinfo/crime.htm.

²⁵ *State v. C.A.*, note 19, *supra*, at 358. The balancing test used under the statutory expungement process is modeled on this judicial process.

²⁶ *State v. T.M.B.*, note 18, *supra*, at 812.

²⁷ *Id.* See *State v. Schultz*, 676 N.W.2d 337 (Minn. App. 2004).

²⁸ Sicoli and Delaney, "Expungement of Criminal Records," 73 *Hennepin Lawyer* 10 (2004).

²⁹ *State v. M.B.M.*, 518 N.W.2d 880, 882 (Minn. App. 1994) (citation and internal quotation omitted). See also "Case Comment, Criminal Procedure: Expungement of Arrest Records," 62 *Minn. L. Rev.* 229, fn. 6 (1978).