

## CURRENT MINNESOTA CRIMINAL EXPUNGEMENT LAW

By Lindsay Shaw, Staff Attorney at Southern Minnesota Regional Legal Services

[Lindsay.shaw@smrls.org](mailto:Lindsay.shaw@smrls.org)

### I. WHAT IS AN EXPUNGEMENT?

### II. WHY SHOULD I CARE?

### III. THREE FORMS OF ADULT CRIMINAL EXPUNGEMENT

#### A. Sealing Arrest Records Minn. Stat. §299C.11 (You were arrested or ticketed, but never went to court)

Bureau of Criminal Apprehension and other state agencies can seal your arrest record with a simple request if:

- You have not been convicted of a felony or gross misdemeanor within 10 years before the arrest; &
- Either
  - A. All charges were dismissed prior to a determination of probable cause, or
  - B. Prosecuting authority declined to file any charges and a grand jury did not return an indictment. (I.e., you never went to court because they dropped the charges)
- Only applies to Minnesota arrests.

#### B. Statutory Expungement (Beyond Probable Cause, But No Conviction) Minn. Stat. §609A.02

- First-Time Controlled Substance Offenses (§152.18) Allowed upon dismissal and discharge of sentence when there was a stay of adjudication. This does not apply if you got a stay of execution or stay of imposition or if you lost your stay of adjudication.
  - Must also show clear and convincing evidence that it would yield a benefit to you equal to the disadvantages to the public and public safety.
- Juveniles Prosecuted as Adults (certified adult)
  - Must also show clear and convincing evidence that it would yield a benefit to you equal to the disadvantages to the public and public safety.
- Proceedings “Not Resulting in Conviction”
  - Restricted by recent appellate case law; after established, affected agency must prove by clear and convincing evidence that interests of public & public safety outweigh benefit to petitioner.

#### Resolved in Petitioner’s Favor:

- Dismissal of grand jury indictment. *State v. K.M.M.*
- Dismissed, separate incidents/charges of a plea agreement in which petitioner plead guilty to other separate incidents/charges . *State v. JRA.*

- Continued for dismissal after period of probation. *State v. C.P.H.*
- Never ever pleading guilty, admitting guilt, or being found guilty by judge or jury.

Not Resolved in Petitioner's Favor:

- Being found guilty or pleading guilty. §609A.02, Subd. 3
- Being found not guilty by reason of insanity. 609A.02, Subd. 3; *State v. Ambaye*
- Vacate and dismiss disposition after pleading guilty & completing probation. *State v. Froysland.*
- Stay of adjudication (non-drug related). *State v. Davisson.*
- Pleading guilty—even if not accepted by the court. *State v. A.C.H.*
- Admissions of guilt as a pre-requisite to diversionary programs & deferred guilty pleas. *State v. J.Y.M.*
- Alford plea (petitioner maintains innocence, but admits that there is sufficient evidence against them to find guilt) *State v. Henkensiefken*
- Dismissed, separate counts of a plea agreement in which petitioner plead guilty to other counts stemming from the same incident . *State v. JRA.*

**C. Inherent Authority Expungement (All Other Convictions)**

- When the proceedings were not resolved in your favor. See above.
- Need to show that your constitutional rights may be seriously infringed. *State v. Ambaye*
- When constitutional rights are not involved, “when expungement will yield a benefit to petitioner commensurate with the disadvantage to the public from the elimination of the record and the burden on the court on issuing, enforcing, and monitoring an expungement order.” *State v. C.A.*
- Include an analysis of housing & employment problems stemming from records; seriousness of offense; potential risks that petitioner poses; additional offenses or rehabilitative efforts since the offense; evidence of hardship. *State v. H.A.*
- The current question: Which records can a judge seal? *State v. S.L.H.* and *State v. V.A.J.* Check back after the Supreme Court decides on May 6, 2008!

**IV. PRACTICAL CONSIDERATIONS**

**Explicitly Prohibited Offenses, Minn. Stat. §609A.02, Subd. 4. Regardless of how much it hurts you, you cannot seal the following convictions:**

- Murder
- Kidnapping
- Criminal Sexual Conduct (1-5°)
- Indecent Exposure
- Sex Crimes Involving Minors
- Note: these are for convictions only, not dismissed offenses.

## Expungement Requests are Usually Denied for These Reasons

- Traffic, Civil, and Family Offenses (speeding, orders for protection, judgments)
- “Enhanceables”
  - DWI (mandatory minimum penalties for 2<sup>nd</sup> – 5<sup>th</sup> offense within 10 years)
  - Domestic Assault (stiffer penalties for repeat offenders with same victim within 10 years after crime)
- Violent Crimes (assaults 1-4, attempted murder, etc)
- Recent Crimes. The expungement needs to be for a one-time mistake that happened years ago, and you need to prove that you will never catch another case again.
  - Probation: no judge will grant an expungement if you are still on probation for any offense. You need to wait several years after discharge from probation to file your request.
  - Criminal History Score (15 years after *discharge* for felonies; 10 years after *discharge* for gross misdemeanors and misdemeanors)
  - Rehabilitation (rule of thumb is 5 years after misdemeanor resolution; 7 years after gross misdemeanor; 10+ after felony)
- Outstanding Fines: The court won’t let you file if you have outstanding fines on your record. Check with the court fines office to make sure you are all paid up.
- Outstanding warrants: You can’t file for an expungement if you have outstanding warrants. Check with the sheriff before you file.
- Subsequent crimes: A judge won’t grant an expungement if you keep catching cases.
- Note: domestic assault convictions ARE crimes and they count against you in an expungement court.
- Didn’t Report Full Criminal History: Forgot to tell the judge about a felony in another county or state when you filed for an expungement.

## What Records Does an Expungement Seal?

- All of these remedies only apply to Minnesota offenses. If you have a case in another state, you have to go back to the county where that offense occurred and figure out the expungement law in that state.
- Sealing Arrest Records seals all records relating to arrest, but you have to make a demand on each agency. §299C.11
- Statutory Expungements seal all records at all agencies §609A.02.
- Inherent authority expungements: Supreme Court will decide on May 6, 2008. Hopefully all state agency records, but potentially just court records.
- Cannot seal records of parties not notified and served with the original petition (DHS). If you file an expungement, notify all government agencies, not just the ones the court tells you to notify.
- Probably cannot seal non-litigation parties unless constitutional rights infringed (Board of Chiropractic Examiners) *State v. Pflepsen*.

- Watch out for private reporting agencies not updating their files even if you get a successful expungement. Use Fair Credit Reporting Act to enforce accurate reporting after an expungement.

### **What about Pardons?**

- Pardons are hard to obtain. The Board of Pardons only grants 10-15 per year. Additionally, they do not seal your criminal records—they merely reflect that you have been forgiven. The crime still shows up. Pardons involve waiting periods of 5-10 years after discharge from sentence/probation.
- Pardons are an effective tool for individuals who want to pass a Department of Human Services Background Check.

## **V. JUVENILE EXPUNGEMENTS**

### **A. Why do we care about expunging juvenile records? Juvenile records do not simply disappear when a child turns 18.**

- See Minn. Stat. §260B.171, which explains how private juvenile records are retained and made available to certain government agencies, schools, and victims; used to enhance subsequent adult criminal sentences; used to disqualify adults from working at any job or volunteer opportunity involving vulnerable adults, patients, or children; restrict access to firearms; and prevent access to public housing.
- If a juvenile is 16 or older and commits a felony, the public can attend all court hearings (except certification) and access the resulting criminal information. Minn. Stat. §260B.163, subd. 1 (c) & §260B.171, subd. 4.

### **B. Juvenile Expungement Remedies Depend on the Case Disposition**

#### **1. Certified Adult**

- The juvenile is treated like an adult in all respects.
- All records are public.
- After discharge of sentence, they can petition the court for a statutory expungement under the adult expungement statute, Minn. Stat. §609A.02, subd. 2. All adult expungement laws and norms apply.

#### **2. Extended Juvenile Jurisdiction**

- Last chance to be treated as a juvenile. Hybrid between certified adult and juvenile delinquent.
- Juvenile is given two sentences, a juvenile sentence and an adult sentence. If the juvenile violates their juvenile sentence, the judge can execute their adult sentence.
- High likelihood that records are public.
- Expungements are in a legal gray area. No statutory or case law guidance for an expungement. Presumably, the child can petition the court under its inherent authority, but do the adult restrictions apply?

#### **3. Juvenile Delinquency Adjudication**

- Most common form of juvenile criminal disposition.
- No risk of executing an adult sentence.
- Lower risk that records are public.
- Statutory basis for an expungement is found in the juvenile delinquency statute, §260B.198, subd. 6: "...the court may expunge the adjudication of delinquency at any time that it deems advisable." Presumably, the statutory authority gives the judge the authority to seal all agency records, but this is up in the air, as well.

#### **4. Withheld Juvenile Delinquency Adjudication**

- Intent is to benefit the child by withholding a guilty plea.
- No risk of executing an adult sentence.
- Low risk that records are public.
- No statutory or case law guidance for an expungement. Default is petitioning under the court's inherent authority with questions about whether the judge has the authority to seal the judicial records.