
THE MINNESOTA
COUNTY ATTORNEYS
ASSOCIATION

MCAA EXPUNGEMENT PRINCIPLES

The Minnesota County Attorneys Associations believes that maintaining criminal records is a critical public safety function. The information contained in these records is essential for future crime investigations and prosecutions, and for the administration of justice. Any expungement of criminal records must be governed by an orderly and predictable process, with involvement by all parties affected and due consideration to the needs of law enforcement, prosecutors, and the public. To that end, the Association has adopted the following principles.

PRINCIPLES

1. Arrest and conviction data are public for good policy reasons. A public court and criminal justice system are important protections against tyranny and injustice, and society has important interests in knowing who has been charged with or convicted of crimes.
2. Expungement affects many others beyond the offender. For example, if a dangerous offender is hired as a child care worker, that could affect the employer, employees, children, and vulnerable adults. If a person convicted of a swindle or fraud is hired, business owners, employees, and customers all may be affected.
3. Society should not minimize convictions or be too ready to expunge them without well-articulated reasons.
4. Where expungement is appropriate, the records should be sealed, not destroyed, as they may be needed for future investigations or prosecutions. Even where there is no conviction, records of the incidents should be preserved, since they may be valuable to law enforcement and prosecutors for investigatory and Spreigl purposes.
5. When expungement is sought, the courts and all affected agencies must have all relevant information available to them, such as the offender's full record, other efforts to seek an expungement or pardon, and the offender's full identifying information, including other names, aliases, and addresses.

6. Even when expungement is granted, prosecutors, law enforcement and social services must continue to have access to arrest and conviction data at all times, without the necessity of petitioning the court.

7. The Legislature should also grant access to arrest and conviction data to certain hiring or licensing authorities for highly responsible jobs or professions.

8. If the Legislature does amend the current law on expungement, county attorneys support additional criteria for the court to consider in granting expungement that would require a showing by an individual seeking expungement that their criminal record has been clean for at least five years, they have successfully completed chemical dependency treatment and aftercare, where applicable, they have made full payment of ordered restitution, and they have taken other actions that demonstrate a significant change in their life. These criteria would also at a minimum prohibit granting an expungement until 5 years following either discharge from a criminal conviction, or the enhancement period, whichever is longer.

9. Data practices laws may have to be modified to allow individuals to correct their criminal justice records, or in the alternative, the court should utilize clarifying orders to correct or clarify the record.

10. Any change in expungement law should limit persons from seeking expungement if the Pardon Board has denied them relief.

11. The developing of a DNA database and existing fingerprint and photo databanks must always be protected.

12. Liability for release of expunged records should be limited by law.

13. The proponents' primary rationale for amending the expungement law appears to relate to employment and housing issues. Since expungement has only limited effectiveness once data has been public, the Legislature may want to consider other alternatives than closing public records to address the proponents' concerns.

Adopted by the MCAA Board of Directors January 20, 2006

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The Minnesota County Attorneys Association supports the following changes to Minnesota law which relate to the expungement of criminal records:

1. Recommendation – Automatic expungement for arrests and dismissed charges

For non-person crimes: (a) when an arrest does not result in charges, an expungement will be automatically triggered one year after the arrest, and (b) when charges are dismissed, an expungement will automatically be triggered one year after the charges are dismissed.

- If a charge is filed after the expungement, the expunged record is unsealed.
- The expungement applies to records of the executive and judicial branches.
- The expunged record remains available to the courts, prosecutors, law enforcement, and probation, without a court order.
- The expunged record remains available to government agencies to conduct background checks if the agency provides for a review process including the right to administrative or judicial review to correct an error in the record.

2. Recommendation – Automatic expungement for continuances for dismissal and stays of adjudication

- Automatic expungement by the court administrator for continuances for dismissal where the prosecutor agreed to the continuance for dismissal, and the conditions, including restitution, have been met. Applies to judicial and executive branch records.
- Automatic expungement by the court administrator for stays of adjudication where the prosecutor agreed to the stay of adjudication, and the conditions, including restitution, have been met. Applies to judicial and executive branch records.
- The expunged record remains available to the courts, prosecutors, law enforcement, and probation, without a court order.
- The expunged record remains available to government agencies to conduct background checks if the agency provides for a review process including the right to administrative or judicial review to correct an error in the record.
- This section applies to stays of adjudication under Minn. Stat. § 152.18 and supersedes any inconsistent language in that statute.

3. Recommendation – Automatic expungement for diversion

Automatic expungement by the court administrator upon successful completion of diversion where the prosecutor agreed to the diversion, and all conditions, including restitution, have been met. Applies to judicial and executive branch records.

- The court will notify affected public agencies if the diversion is post-plea, and the prosecutor will notify affected agencies if the diversion is pre-plea.
- This will not change current law as to gun laws or sex offender registration.
- The expunged record remains available to the courts, prosecutors, law enforcement and probation, without a court order.
- The expunged record remains available to government agencies to conduct background checks if the agency provides for a review process including the right to administrative or judicial review to correct an error in the record.

4. Recommendation – Eligibility for certain convictions

Persons who are not convicted of a violent crime (including attempts) as defined below¹ are eligible to petition for expungement after a specified number of years following successful completion of the terms of sentencing. Years shown are *from* the date of successful completion

¹ For purposes of expungement, "crime of violence" means: felony convictions of the following offenses: sections 609.165 Subd 1a (certain convicted felons ineligible to possess firearms); 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.21 Subd. 1 and 3 (criminal vehicular homicide); 609.215 (aiding suicide and aiding attempted suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.229 (crimes committed for the benefit of a gang); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third degree); 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter of an unborn child in the second degree); 609.267 (assault of an unborn child in the first degree); 609.2671 (assault of an unborn child in the second degree); 609.2672 (assault of an unborn child in the third degree); 609.268 (death or injury to an unborn child in the commission of a crime); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.3453 (criminal sexual predatory conduct); 609.3455 (dangerous sex offenders-life sentence); 609.352 (solicitation of children to engage in sexual conduct); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.498 Subd.1 (tampering with a witness); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.582, subdivision 1, 2, or 3 (burglary in the first through third degrees); 609.66, subdivision 1e (drive-by shooting); 609.67 (unlawfully owning, possessing, operating a machine gun or short-barreled shotgun); 609.687 (adulteration); 609.71 (riot); 609.712 (real and simulated weapons of mass destruction); 609.713 (terroristic threats); 609.749 (harassment and stalking); 609.714 (crimes committed in furtherance of terrorism) 609.855, subdivision 5 (shooting at a public transit vehicle or facility); 624.713 Subd. 1(b) (possession of a pistol by a person convicted of a crime of violence); and an attempt or conspiracy to commit any of these offenses.

of all sentencing conditions *to* the date of first eligibility to petition for the expungement of convictions under statute.

Convictions	Felony	Gross Misdemeanor	Misdemeanor	Petty Misdemeanor
Person crime	15 years	10 years	7 years	3 years
Other crimes (property, drug)	5 years	3 years	2 years	1 year

- Persons with certain convictions are eligible to petition for an expungement.
- If granted, the expungement is effective on judicial and executive branch records.
- The new language would supplement (not replace) current law concerning eligibility to petition for expungement of a criminal record.
- All sentencing conditions must have been satisfactorily completed.
- If there is a conviction subsequent to the crime sought to be expunged and that subsequent conviction is for a felony, gross misdemeanor, or targeted misdemeanor, then the “clock starts over” – that is, the eligibility date to petition for expungement for the earlier crime is reset to the date of satisfactory accomplishment of all sentencing conditions for the later conviction.
- Convictions for certain crimes are ineligible under this scheme: (1) registration crimes, as in current law (2) traffic offenses, for example, DWI, speeding, (3) one of two charge counts that stemmed from the same set of facts, but the person pleads to the lower level offense.

5. Recommendation – Eligibility contingent upon successful completion of probation

As to any proposed expungement, whether automatic or by motion, a person is not eligible for expungement if the person has not successfully completed the conditions of probation or of a stay, including restitution, payment of fines, and completion of treatment. A person on probation is not eligible until completion of probation.

6. Recommendation – Eligibility for certain juveniles

Eligibility for expungements will be equally available to juveniles with respect to juvenile adjudication and extended jurisdiction juvenile conviction records *that are public* (delinquency or extended jurisdiction juvenile cases where the child is alleged to have committed a felony and was 16 or 17 at the time of the offense).

7. Recommendation – Access to records for government agency background checks

If expungement is granted, the record is available to government agencies to conduct background checks if the agency provides for a review process including the right to administrative or judicial review to correct an error in the record.

8. Recommendation – Access to expunged records, generally

Expunged records shall be accessible to the courts, law enforcement, prosecutors, probation officers, and corrections officers without a court order. Data may be transmitted between and among these agencies.

9. Recommendation - -Restoration language expanded to include all expungement orders including orders including those for convictions

609A.03, subd. 6 is amended to read as follows: “Effect of expungement order. If the court issues an order for expungement under this chapter, the effect of the order shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, information, or conviction, except as otherwise provided by law.”

10. Recommendation – Expunged convictions for purposes of certain other laws

An expunged conviction is still a conviction for purposes of gun laws, sex offender registration, expungement proceedings, sentencing (including the Minnesota Sentencing Guidelines), subsequent prosecution, other crimes evidence, impeachment, probation, and background checks by government agencies.

11. Recommendation – District Court authority

The District Court has no authority to order the expungement of executive branch records relating to criminal activity, except as provided in these provisions.

12. Recommendation – Attachments to petition

The petitioner shall attach a copy of the complaint or the police reports for the offense to the petition.

13. Recommendation –Liability Limitation

No government agency or individuals employed by a government agency in the judicial branch or executive branch shall have civil or criminal liability for the unintentional, inadvertent, or mistaken disclosure of an expunged criminal conviction or for the unintentional, inadvertent, or mistaken failure to expunge any aspect of a criminal conviction to which expungement is required under these provisions or a court order.

Adopted by Minnesota County Attorneys Association Board of Directors

February 16, 2007