

# EXPUNGEMENT AND CRIME VICTIMS

## Information for Prosecutors

### Victims and the new expungement law

Minnesota has long had a statutory right for crime victims to get notice of a petition for expungement. The 2014 expungement law, while significantly expanding the types of offenses eligible for an expungement, makes only minor adjustments to this statutory right.

This handout explains the rights of victims to get notice of an expungement petition and to provide input in the expungement process.

### How do victims get notified of the offender's attempt to get a record expunged?

To receive notification, a victim must make a written request to the prosecutor with jurisdiction over the offense to be notified of any expungement petition (Minn. Stat. § 611A.06). The prosecutor's office must make a good faith effort to notify the victim of a petition for expungement. There is no time requirement for when this request should be made.

***Practice tip:** At the conclusion of the case, inform victims of this right by including a notice and request form when sending out your disposition notice. In this notice, stress to victims the need to keep their contact information up-to-date. Sample notice and request forms are available on the OJP website. Because of the challenges of keeping track of those victims who "opt in" to notification, some prosecuting agencies notify all victims of petitions for expungements.*

### How must prosecutors notify the victim of an expungement petition?

Sections 611A.06 and 609A.03 require the notice to be mailed to the requesting victim.

- Under section 611A.06, the prosecutor complies with notification by mailing a copy of an expungement petition to the address the victim has most recently provided in writing.
- Under section 609A.03, the prosecutor must serve by mail the petition for expungement and a proposed expungement order on any victims of the offense.

***Practice tip:** Prosecutors must make a good faith effort to notify the victim of the petition. If a mailed copy to the last known address is returned, then taking the additional step of calling the last known phone number or emailing the last known email address on file is recommended. Some prosecuting agencies do a basic Internet search to see if the victim can be located.*

### What should be included in the notice of the expungement petition to the victim?

The prosecutor is required to provide the victim a copy of the following:

- A copy of the expungement petition,
- The proposed expungement order, and
- The notice of the right to be present and submit an oral or written statement at the expungement hearing.

Minn. Stat. § § 609A.03, subs. 3(b) and 3(c); 611A.06.

## Rights during the expungement hearing

**Make a statement:** A victim of the offense for which expungement is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether the expungement should be granted or denied. The judge must consider the victim's statement when making a decision. (Minn. Stat. § 609A.03, subd. 4.)

**Restitution:** In considering a petition for expungement, a judge must take into consideration the amount of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of the restitution payment after expungement of the record, if granted. (Minn. Stat. § 609A.03, subd. 5(c)(11). )

**Practice tip:** *Be prepared to answer victims' questions about the expungement process and hearing, and provide guidance to victims who wish to submit a statement to the court. If a victim plans to attend the hearing, advise her/him to let you know and explain the process in your jurisdiction for making her/his presence known to the judge on the day of the hearing. Inform the judge of any outstanding restitution.*

## Expungement by agreement

Under section 609A.025, a prosecutor can make an agreement with an offender for expungement of the record without a petition or a court hearing. In these cases, the prosecutor must make a good faith effort to notify any identifiable victims of the offense of an intended expungement agreement and the opportunity to object to the agreement. *This provision does not require the victim to request notification.*

**Practice tip:** *If the agreed-upon expungement is part of a plea agreement, prosecutors should be sure to include this information in the notice to the victim required under Minn. Stat § 611A.03. In addition, because section 609A.025 does not require a victim to make a request to be notified, the prosecutor should make a good faith effort to notify all victims in cases where there is an expungement by agreement.*

## BEST PRACTICES FOR PROSECUTORS

**INFORM VICTIMS:** Inform victims that they must make a written request to your office to request notice of any expungement petition. Many offices inform victims by sending a form along with their disposition notice asking them if they want post-conviction notifications. This form can serve as the victim's written request if return to the prosecutor. Sample notice and request forms are located on the [Professional Resources page](#) of the OJP website. Inform victims of the need to keep their address up-to-date with your office. *Note: Prosecutors should be including notice of this right at the initiation of the case, along with notice of all other crime victim rights, pursuant to Minn. Stat. § 611A.02 subd. 2(c). However, it is important to inform victims again at the conclusion of the case and tell them how they can request to be notified.*

**MANAGE VICTIM INFORMATION:** Establish an ongoing tracking system for victim requests for expungements. Document efforts to provide the victim with notice of the expungement.

**MAKE A GOOD FAITH EFFORT:** If mailing the notice is unsuccessful, try alternate means to contact a victim, such as calling the last known telephone number, emailing the last known email address, or doing a simple Internet search for the victim's contact information (which some offices report does work).

**ASSIST VICTIMS:** Respond to questions from victims who learn of the expungement petition, and provide guidance to them on how they can provide input to the court. Advise victims to let your office know if they will be attending the hearing. If the victim wishes to present or submit a statement to the court at the hearing, explain how they can do that. For those victims who cannot attend the hearing, explain how they can submit their written statement to the court and who they should contact to find out about the outcome of the hearing.

**RESTITUTION:** In determining your response to the petition for expungement, look to see if restitution has been paid. Advise victims that an expungement will likely impact their ability to collect any outstanding restitution from the offender.

**MONITOR:** The new expungement law brings substantive and procedural change to expungement practice, and the interpretation of the law will likely rapidly evolve. Be aware of the court's decisions and practices and how they may impact crime victims.