

VICTIM RIGHTS AND EXPUNGEMENT IN MINNESOTA

What is expungement?

An expungement is when a person's criminal record related to an offense is sealed. The person seeking the expungement must go through a court process or make an agreement with the prosecutor to get an expungement order. Not all convictions can be expunged, however.

- **Not automatic:** The law does not guarantee a person expungement. An expungement petition must meet certain legal standards, and a court must make specific findings to support granting or denying the petition.
- **Eligibility:** The expungement statutes specify which offenses are eligible for expungement and timeframes for when a person may seek an expungement, depending on the type of offense. For example, a person can request to have a misdemeanor record expunged sooner than a felony conviction. (Minn. Stat. § 609A.02, subd.3(b))
- **Sex offenders:** Convictions that require a person to register as a predatory offender are not eligible for expungement.
- **Still accessible:** Although an expunged record is not available to the public, criminal justice agencies have the authority, after obtaining an *ex parte* court order, to re-open, use, and exchange expunged records for investigation, prosecution, sentencing, or probation or other correctional purposes. (Minn. Stat. § 609A.03, subd. 7(a))

How does a record get expunged?

There are two ways that a person can get a criminal record expunged:

Petition: A person can seek an expungement by filing a petition with court. In their petition they must demonstrate that they meet the eligibility requirements and explain why their situation warrants an expungement. The person must serve the petition on certain interested parties, like the prosecutor. (Minn. Stat. § 609A.02, subd. 3)

Agreement: A prosecutor can make an agreement with the person for expungement of their record without a petition or a court hearing. (Minn. Stat. § 609A.025)

How can victims get notified of efforts to have a record expunged?

Victims have a right to get notified of expungements in both types of expungement processes:

Petition: To get notified of a petition for expungement, a victim must make a written request to the prosecutor. There is no time requirement for when this request should be made, although most victims do so at the time of their case disposition. (Minn. Stat. § 611A.06)

Agreement: For expungements, the prosecutor is required to make a good faith effort to notify any identifiable victims of the offense of the intended agreement and the opportunity to object to the agreement. No action on the part of the victim to request notification is necessary. (Minnesota Statutes section 609A.025)

How are victims notified of a petition for expungement?

Prosecutors are required to notify the victim by mail of the expungement action. This notice must include:

- 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.

Again, this notice will only be provided to victims who have requested that they be notified. (Minn. Stat. § § 609A.03, subds. 3(b) and 3(c); 611A.06)

Rights during the expungement hearing

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 expungement should be granted or denied. The judge must consider the victim's statement when making a decision. (Minn. Stat. § 609A.03, subd. 4)

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))

Rights in expungement by agreement process

In an expungement by agreement, there is no hearing scheduled. Victims of the offense have the right to raise their objections to the expungement to the prosecutor. (Minn. Stat. § 609A.025) While not specifically included in this statutory provision, victims who disagree with the expungement agreement may choose to write a letter to the judge prior to the granting of the expungement to voice their objection.

How do I know if a record got expunged?

If an expungement proceeding is scheduled, the victim can attend it and hear any ruling that is made at that time. In addition, the victim can always request that the prosecutor notify them of the outcome of the expungement request regardless of whether a hearing occurs or the request follows the agreement process. After a successful expungement request, a search of court records will not reveal the court record.

Is there a way for a victim to get access to an expunged criminal record?

Yes, in very limited circumstances. The court may order an expunged record opened upon request by the victim of the underlying offense if the court determines that the record is substantially related to a matter for which the victim is before the court. (Minn. Stat. § 609A.03, subd. 6(a)) There is a [court form](#) for victims to request access to sealed or confidential records.

Is there a way for a victim to get their own criminal record expunged?

Yes, in certain circumstances. A person may seek to have a criminal record expunged when the context and circumstances of the underlying crime indicate a connection between the criminal record to be expunged and the person's status as a crime victim. (Minn. Stat. § 609A.03, subd. 7(b)(6)) For information on this process, see [Options for Survivors with Criminal Records: Criminal Expungements](#).

RECOMMENDATIONS FOR VICTIMS

MAKE WRITTEN REQUEST: Victims should make a written request to the office responsible for prosecuting the case. Many prosecutors' offices already send victims a form asking them if they want post-conviction notifications.

KEEP ADDRESS UP-TO-DATE: Victims who want to get notified of expungement petitions or requests and receive other post-conviction notifications should notify the prosecutor's office of any changes in address. Given that a person may file an expungement petition or request many years following conviction, victims should be prepared to update their address whenever they move or risk not receiving these notifications.

CONTACT PROSECUTOR'S OFFICE: Victims who receive notification of the expungement petition or request and have questions should contact the prosecutor's office. In addition, victims may want to contact the prosecutor's office in advance to let them know whether they will be attending any scheduled expungement hearing and/or whether they have a statement to present or submit to the court. Victims who wish to know the outcome of an expungement petition or request should contact the prosecutor's office.

MORE INFORMATION: For more information on expungement, go to the Minnesota Judicial Branch [website](#).