

Petitioner's Instructions for Expungement (Sealing) of Criminal Records

Please read all instructions before filling out paperwork. You will need to make additional copies if you are seeking to expunge more than one file.

EXPUNGEMENT

This statutory expungement remedy is limited to a court order sealing records and prohibiting disclosure of their existence or their opening except under court order or statutory authority; nothing in the statutes authorize destruction of records or their return to the subject. A Judge of the District Court must hear this petition.

EXPUNGEMENT OR SEALING OF A RECORD-WHAT IT MEANS

Once sealed, a record will not be available to the general public. However, Minn. Stat. §609A.03, subd. 7, states that law enforcement agencies, prosecution or correctional authorities may seek an order signed by a judge to re-open a sealed case for the purpose of a criminal investigation, prosecution or sentencing. The records may be opened for the purposes of evaluating a prospective employee of a criminal justice agency, without a court order, pursuant to Minn. Stat. §609A.03, subd. 7.

YOU MAY QUALIFY FOR AN EXPUNGEMENT IF:

- The charges were dismissed, you were found not guilty, or the case did not otherwise result in a conviction.
- You were charged with a controlled substance offense and the proceedings have been dismissed and discharged.
- You were a juvenile prosecuted as an adult;
- The Board of Pardons has granted you a pardon extraordinary;

If there is no court file (the prosecutor did not file formal charges or the grand jury did not file an indictment) and you've had a clean record for the past 10 years, a petition to the court is not necessary to expunge your arrest record. You should contact the arresting agency and/or the BCA (Minn. Stat. §299C.11(b)).

PROCEDURES FOR EXPUNGEMENTS

A. COMPLETELY FILL OUT ALL THE PAPERWORK FOR EACH CASE YOU WANT EXPUNGED:

1. NOTICE OF HEARING AND PETITION FOR EXPUNGEMENT

You must fill out this document completely and sign your name in front of a notary public (or deputy court administrator). IT IS MANDATORY that you list all pending criminal charges on this petition as well as any stays of adjudication, continuances for dismissal, or pretrial diversions in any jurisdiction. Obtain a hearing date from the court administrator's office to be inserted in the notice. This date must be more than 60 days from the date

notice is mailed plus 3 days for mailing.

2. PROPOSED ORDER TO EXPUNGE CRIMINAL RECORDS

You must fill out a separate order for each petition for each case that is being expunged. There are two types of orders, Order Sealing Record/Conviction (if you were convicted of the offense) or Order Concerning Sealing of Records/No Conviction.

3. REQUEST FOR WAIVER OF FILING FEE—IN FORMA PAUPERIS (IFP)

If you will be seeking waiver of the filing fee, additional papers need to be completed. You will have to provide financial information to have the court determine whether you qualify to have the fee waived. The fee or the order waiving the fee must be submitted when the petition is filed. You will need to ask for a waiver form (IFP) specifically.

B. MAKE COPIES OF THE COMPLETED FORMS YOU WILL NEED FOR SERVICE ON EACH AGENCY AND THEIR ATTORNEYS. Minn. Stat. §609A.03, subd. 3 requires that a petition must be served on ALL state and local agencies and their attorneys whose records would be affected by the proposed order; for example, the Minnesota Bureau of Criminal Apprehension, the local police department, the prosecuting attorney, the sheriff's department, county attorney, department of corrections (probation).

1. Notice of Hearing and Petition
2. The unsigned proposed Order

C. PROCESS FOR SERVICE

Service needs to be done by a disinterested adult third party (someone not related to the case). That person must mail a copy of all required documents and complete the Affidavit of Service and sign in front of a notary or a deputy court administrator.

D. FILING THE PAPERWORK WITH DISTRICT COURT

After you have served all agencies with these forms, the "Original" Notice of Hearing and Petition for Expungement and proposed order along with written proof (Affidavit of Service) that all agencies have been served must be filed with the court administrator's office. File your papers at least five days prior to the date set for hearing.

A civil filing fee is required when filing the documents (check with the county you are filing in for correct fee) unless you are unable to pay and obtain an order from the court waiving the fee (you must complete and file an Affidavit for Proceeding In Forma Pauperis). No filing fee is required if you were not convicted in the case. Inform court personnel that you were not convicted and the fee is waived by statute (Minn. Stat. §609.03, subd. 1).

E.

THE COURT HEARING

You must appear at the hearing. Bring your copies of the documents along with you to court for your own reference.

At the hearing, the Judge will review your petition and any attachments you have submitted. The Judge will also consider any information presented by the prosecutor, any of the various law enforcement agencies and the victim. The Judge may or may not grant the expungement. The Judge may sign the proposed order that you have provided (granting or denying your request), or may prepare his or her own order.

The Judge may deny expungement if your request does not meet the requisite qualifications even if no one objects.

When the order is signed, the court administrator's office will send a copy of the order to all the agencies named in the order to receive notice. If your request was granted, these agencies have 60 days to appeal the order. Your record remains public during this period and while any appeal is pending. If no appeal is filed, the record will be sealed 60 days after the filing of the order. It is a good idea to obtain a certified copy of this order for your own records. A certified copy fee will be charged unless you have an in forma pauperis (IFP) order.

A motion to expunge is a complicated procedure.

If you have any questions or are in need of more detailed assistance, you should contact an attorney for advice.

The court administrator's office cannot give you legal advice.