

**Petitioner’s Instructions for Expungement
(Sealing) of Criminal Records
(Minn. Stat. § 609A.01 - .03)**

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.

- **A Motion to Expunge is a complicated procedure.**
- **If you have any questions or are in need of more assistance, you should contact an attorney.**
- **The court administrator’s office cannot give you legal advice.**

You may also want to view the “What is Criminal Expungement” video, as well as the tutorial on how to complete the expungement forms. These materials are available on the Minnesota Judicial Branch website at www.mncourts.gov under Self-Help / Criminal Expungement.

EXPUNGEMENT OR SEALING OF A RECORD – WHAT IT MEANS

Minn. Stat. § 609A states that the expungement of criminal records 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 law authorizes destruction of records or their return to you. A judge of the District Court must decide this petition.

Once sealed/expunged, a record will not be available to the general public. However, for orders issued before January 1, 2015, 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, or for certain social services licensing purposes. For orders issued on or after January 1, 2015, Minn. Stat. § 609A.03, subd. 7a, states the limitations of an expungement order and provides authority for certain agencies to access and share expunged records under certain circumstances.

YOU MAY QUALIFY FOR AN EXPUNGEMENT UNDER MINNESOTA STATUTE § 609A IF:

- The charges were dismissed, you were found not guilty, or the case did not otherwise result in a guilty plea or finding, or a conviction.
- You successfully completed the terms of a diversion or stay of adjudication, or were convicted of a crime that qualifies for expungement under Minn. Stat. § 609A.02, subd. 3, and the required amount of time has passed.
- You were charged with a controlled substance offense - 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.

In the situations listed above, the court can order all records of that criminal case kept in Minnesota to be sealed. If there is no court file (the prosecutor did not file formal charges or the grand jury did not file an indictment) and you have not been convicted of any felony or gross misdemeanor in any state for the preceding 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, subd. 1(b)).

If you were convicted in any other situation, your case does not meet the criteria under Minn. Stat. ch. 609A. Expungement of a conviction not meeting the 609A criteria is possible, but rare and can only be granted for the court's records. Records of your arrest and prosecution held by the police, sheriff's office, prosecutors and the BCA would not be affected by such an expungement order. Certain crimes can be expunged only if you can convince the court that you have made changes in your life that demonstrate you are very unlikely to commit another crime, and that the benefit to you from an expungement outweighs the burden of sealing the records.

To request expungement of a conviction not meeting the 609A criteria, check the last box of item #9 of the Petition which states "I was convicted of an offense that does not qualify for expungement under Minn. Stat. § 609A.02, subd. 3, but I have rehabilitated myself. The benefit to me outweighs the disadvantage to the public and the burden on the court." An order expunging a conviction under these circumstances may provide only for expungement of the record held by state courts and may not expunge records held by state or local law enforcement and prosecution agencies.

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp> . For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

PROCEDURES FOR EXPUNGEMENTS

A. COMPLETELY FILL OUT A SEPARATE PETITION AND ORDER 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. IT IS MANDATORY that you list all prior and pending criminal charges in this or any other state on this petition as well as any stays of adjudication, continuances for dismissal, or pretrial diversions in any jurisdiction. If you are unsure about your court records, all Minnesota counties have public access terminals where you may look up your case information. The Minnesota Bureau of Criminal Apprehension (BCA) will provide a printed record for a fee. You may contact the BCA at 651-793-2400 for more information.

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 complete a separate order for each case that you want expunged. There are three types of orders (court form EXP105, court form EXP106, or court form EXP107). Use the one appropriate to your situation, as indicated on the petition (court form EXP102).

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

If you are not requesting expungement of an action or proceeding that was resolved in your favor, and you will be seeking waiver of the filing fee, additional papers need to be completed. See section D to see if you qualify for fee waiver. You will need to ask for a waiver form (IFP) specifically. Fee waiver forms are available at www.mncourts.gov/forms. 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.

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 Notice of Hearing and Petition and unsigned proposed expungement order on ALL state and local agencies and their attorneys that might have a record of the offense you want to expunge. Most people need to serve **at least 6 agencies**; for example, the Minnesota Bureau of Criminal Apprehension, the Attorney General's Office, the local police department, the prosecuting attorney, the sheriff's department, county attorney, and county department of corrections (probation).

Items to copy and serve:

1. Notice of Hearing and Petition(with the scheduled hearing date completed)
2. The unsigned proposed Order you are seeking to have the judge issue.

IMPORTANT! Get legal advice about serving **OTHER** agencies such as the MN Dept. of Human Services (regulates employment in health care, education, day care, foster care, etc.) or licensing agencies (for teaching, nursing, real estate, etc.) Depending on your situation, serving those agencies may or may not be in your best interest.

C. PROCESS FOR SERVICE

You are responsible to see that service is done properly. Court staff cannot serve the documents for you. Service needs to be done by a disinterested third party (someone not related to the case) who is 18 years or older. That person must mail a copy of all required documents and complete the Proof of Service. Service must be complete at least 63 days before the scheduled hearing date.

1. Fill out your part of the *Proof of Service* form.

Get a **separate Proof of Service** form for **each court case** you want to expunge.

Example: If you want to expunge 3 different court cases, you must prepare a separate *Proof of Service* form for each case, for a total of 3 service forms.

YOU must fill in the blanks for the **government agency addresses** on the *Proof of Service* form. Write the County name and the City name where the offense happened (or where you were arrested), and write the address for each local government agency related to that case. If you decide to serve the MN Dept. of Human Services and/or Dept. of Health, check the box next to their address listed on the form. If you are serving other agencies, write their names and addresses in the extra spaces on the form and check those boxes.

Using the **same court information** from your criminal case, **YOU** must fill in the blanks at the top of the *Proof of Service* form with the County, Judicial District and Court File Number. **STOP!** The person who serves the documents must fill out the other blanks on the form. See #3 below called “**How your ‘server’ must complete the *Proof of Service* form.**”

2. Get copies of your expungement papers ready to be served.
Your expungement papers can be **served by mail**, but **YOU cannot** be the one who puts the envelopes in a mailbox. Ask a friend or relative who is **18 years old or older** to be your “server.” Copies of the *Proof of Service* do **not** have to be mailed to the government agencies.

STEP 1: Make copies of your completed *Petition* and proposed *Order*.

Make one copy of your completed *Petition* (and any attachments) and proposed *Order* for **each government agency**, and make one copy for yourself. Copies can be double-sided to save on cost. *Example:* If you are serving 8 agencies checked in your *Proof of Service*, you need to make 9 copies of your papers (1 for each agency + 1 for you).

Do not count your ORIGINALS as a “copy” in the total. **Keep the ORIGINAL *Petition* and proposed *Order*** to file with the court as soon as possible after service of your papers is complete.

STEP 2: Address an envelope for each government agency checked on your *Proof of Service* form.

If you want to expunge only one case, a set of copies should fit into a regular business-size envelope. You need larger envelopes to hold expungement papers for two or more cases. Most people need at least **6 envelopes**, or more if they serve a City Attorney and regulatory/licensing agencies. You should write **your return address** on the envelopes.

NOTE: If you want to expunge more than one case in the **same County**, you can put copies for each case into the same envelope addressed to a government office. *Example:* If you are asking to expunge 5 cases, you can put a set of copies for each case into one large envelope addressed to the BCA; then do the same for the other government agencies. **STOP!** If any of the 5 offenses happened in **different cities** within the County, be sure to serve the correct copy of expungement papers on the correct **local** government agencies (police & prosecutor) where each offense happened.

STEP 3: Add enough postage to each envelope to send by 1st class U.S. Mail.

The amount of postage you need depends on the number of pages in each envelope. It's a good idea to weigh your envelopes at a Post Office, and buy the correct postage. You **do not** need to use "certified" or "return receipt" mail. **STOP! Do not** let a Post Office employee put the envelopes in the mailbox!

STEP 4: Ask a friend or family member to be your "server."

YOU cannot be the one who puts the envelopes in a mailbox. Ask someone **over age 18** to be your server. Show your expungement documents to your server and then put them in stamped envelopes. Give the envelopes to your server along with the *Proof of Service* form. The server puts your envelopes in a U.S. mailbox and must follow the instructions below to complete the *Proof of Service* form.

STEP 5: After mailing, your server must complete the *Proof of Service* form.

When the form is completed, your server gives it back to you to file with the court.

3. How your "server" must complete the *Proof of Service* form.

AFTER your server places your envelopes in a U.S. mailbox, **he or she** must fill out the blanks on the *Proof of Service* form as follows:

- write in the name of the **County** where the *Proof of Service* form is **signed** (can be different from where case is filed);
- write **their name** in the blank for the person who mailed the envelopes;
- write the **date** they mailed the envelopes. This date must be **at least 63 days BEFORE** the hearing date;
- write in the name of the **City** where they mailed the envelopes; and
- **sign** the *Proof of Service*.

After completing these steps, your server gives the signed *Proof of Service* form **back to YOU**.

D. FILING THE PAPERWORK WITH DISTRICT COURT

After copies of the documents have been served on all required agencies and their attorneys, the Notice of Hearing and Petition for Expungement, the proposed order along with written proof (Proof of Service) that all agencies have been served must be filed with the court administrator's office. File your documents as soon as you have completed the service process.

- A filing fee is not required for cases that were "resolved in your favor." This means no filing fee is required if you were not convicted, were not found guilty, and did not plead guilty in the case, or you were exonerated under Minn. Stat. § 590.11. If the case was "resolved in your favor," inform court personnel that the filing fee is waived by statute.
- A filing fee is required for cases in which you were convicted or where you were found guilty by the court or entered a guilty plea, even if you were not convicted or the conviction was later vacated.

Check with the court administrator in the county where you are filing for the correct filing fee amount. If you do not qualify for fee waiver under statute, you may ask the court to waive the filing fee by completing a form called “Affidavit for Proceeding In Forma Pauperis” and following the instructions given to you by court personnel.



Write the **court date and time** on your calendar! The court may not send you a reminder. If you don't go to your hearing, you might have to start over from the beginning.

E. AGENCY OPPORTUNITY TO OBJECT

Each agency that you serve with the petition and proposed order has an opportunity to provide information to the court for its consideration of your request. If an agency chooses to provide information to the court, it must send you a copy of what it submits and will use the address you list in the petition.

F. THE COURT HEARING

You must appear at the hearing. Bring your copies of the documents along with you to court for your own reference. The original documents should already be in the court file.

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 government agencies and any victim. A victim has the right to submit an oral or written statement to the court. You may be required to testify and be cross examined by attorneys for any agency or office that opposes your request.

The Judge may not make a decision at the time of the hearing, and 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 necessary 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, while any appeal is pending, and while any financial obligation owed on the case remains unpaid. Any party whose records will be affected by the order may file an appeal to the Minnesota Court of Appeals. If an appeal is filed, you will be responsible for representing yourself or retaining an attorney to represent you. If no appeal is filed, and you do not owe any financial obligation, 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.

REMINDER: CONTACT AN ATTORNEY IF YOU NEED MORE ASSISTANCE.