

Expungement Update

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Petition for expungement can be filed if...

All pending actions/proceedings were
resolved in favor of Petitioner.

(Burden on State)

Petitioner has completed **diversion
program** or **stay of adjudication** and
1 year without charges.

(Burden on State)

Certain **convictions**:
(Burden on Petitioner)

At any time for records of **juvenile
delinquency**.

(Burden on Petitioner)

THREE RULES TO REMEMBER:

1. Time tolls upon discharge of sentence/completion of probation.
2. No petition required with prosecutor agreement.
3. All records (judicial and executive) can be expunged.

PMD or MSD and **2 years** without convictions.

GMD and **4 years** without convictions.

Specified FEL and **5 years** without convictions.

Appellate Court Interpretation of January 1, 2015 Expungement Law

State v. C.H.T.

Minn. Ct. App. July 20, 2015

“A petition for expungement shall be signed under oath by the petitioner and shall state” statutorily-specified information. Minn. Stat. 609A.03, subd. 2(a).

- C.H.T. submitted signed, notarized affidavit in support of his petition, which included the specified information. State appealed expungement order arguing the petition failed to meet statutory requirements.
- Affirmed. “C.H.T.’s failure to strictly comply with section 609A.03, subd. 2(a) is not an incurable defect that prevented the district court from exercising its jurisdiction.”

State v. S.A.M.

Minn. March 15, 2017

“A petition may be filed...if the petitioner was convicted of or received a stayed sentence for a...misdemeanor and has not been convicted of a new crime for at least two years since discharge of the sentence for the crime.” Minn. Stat. 609A.02, subd. 3(a)(3).

- At sentencing, a judge stayed imposition of S.A.M.’s felony sentence. Upon discharge from probation, his conviction was deemed a misdemeanor. S.A.M. petitioned for expungement of a misdemeanor conviction. He appealed denial of his petition arguing his conviction should be treated as a misdemeanor for expungement purposes.
- Affirmed. “By using the phrase ‘was convicted,’ the plain text of the statute instructs us to analyze S.A.M.’s conviction at the time he ‘was convicted,’ – that is, at the time of the conviction.”

State v. D.R.F.

Minn. Ct. App. April 25, 2016

When a matter is resolved in favor of the petitioner, “the court shall grant the petition...unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public...outweigh the disadvantages to the petitioner...” Minn. Stat. 609A.03, subd. 5(b).

- D.R.F. was acquitted of third degree criminal sexual conduct. The district court denied his petition for expungement due to D.R.F.’s failure to appear at first trial setting, concluding that this information would be important for bail-setting if he is charged with a future offense.
- Reversed. The state failed to show, by clear and convincing evidence, that the interests of the public and public safety outweighed the disadvantages to appellant by not sealing the record.

State v. J.E.H.

Minn. Ct. App. July 11, 2016

When a conviction qualifies for expungement, the petitioner must prove by “clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public.” Minn. Stat. 609A.03, subd. 5(a).

- The district court denied J.E.H.’s petition to expunge his DWI conviction record. J.E.H. appealed in part due to the court’s ruling that disadvantages to the public will occur because prior DWI convictions may be used for enhancement purposes.
- Reversed and remanded. As Minnesota law allows agencies to use expunged records for criminal prosecution purposes, accessibility by prosecuting agencies is not an issue.

State v. J.L.D.

Minn. Ct. App. June 12, 2017

When a conviction qualifies for expungement, the petitioner must prove by “clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public.” Minn. Stat. 609A.03, subd. 5(a).

- J.L.D. appealed denial of his expungement petition on the grounds that his DANCO violation conviction was still within the ten-year period for enhancement.
- Reversed and remanded. Whether a conviction can be used to enhance a future offense is not a factor for the court to consider under the expungement statute.

Other not-so-obvious reminders...

- ▣ Properly serve all parties – including DHS!
- ▣ The district court must make individualized, factual findings.
- ▣ Records of convictions which require registration cannot be expunged.