



Tip of the Month November 2011

Criminal Expungement – Advice and Referral

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General Information on Criminal Expungement

Expungements of criminal records can be difficult to get, and they are not a cure-all for clients who have had difficulty finding employment or housing due to a criminal record. Managing client expectations is a critical part of your service to clients in the criminal expungement area. The likelihood of obtaining an expungement depends on many factors, including:

- Whether or not the case fits under the statute (Minn. Stat. 609A). There is a huge difference between cases in which a person was found guilty or pled guilty, called “inherent authority” cases, and “statutory cases” (see the three criteria under Chapter 609A). In statutory cases, the court has the authority to order expungement of most government-held records (including executive branch records like Bureau of Criminal Apprehension (“BCA”) and police records). **In inherent authority cases, the court’s authority generally will be limited to ordering only court records expunged, leaving the BCA records unaffected.** This means that employers and landlords will still be able to find the records. There are good reasons for some people to pursue inherent authority expungement, but it is a limited remedy.
- The details of the case (how long ago the probationary period ended, how serious the offense was, etc.). The petitioner needs to convince the judge that the petitioner will never commit another offense. The statutes and caselaw do not set any timelines for how long to wait to seek expungement, so VLN follows some general guidelines. For any serious charge, the person should generally be able to show a minimum of five years of crime-free living since getting off probation plus other evidence of rehabilitation. For crimes of violence, an even longer period of crime-free living is usually recommended.
- How many total cases (and what types of cases) are on the person’s record, in Minnesota and elsewhere. More cases will trigger closer scrutiny by the court, and require greater evidence of rehabilitation.
- Whether the person still owes court fines or is on probation for any case (even for traffic offenses). Generally, if a person has any obligations outstanding in any type of criminal or traffic case, he should wait to seek expungement of any record until all obligations have been fulfilled.
- If the person was found guilty, whether she can show that she has rehabilitated since getting off probation. Specific evidence such as successful completion of chemical

dependency treatment or anger management classes, volunteer work, and other positive involvement in the community will strengthen a petitioner's case.

- How the criminal record is having a negative effect on the person's life. Specific examples of difficulty finding employment or housing should be included in the petition, as well as other examples of how the client is still suffering negative effects from the criminal record.

When evaluating a case, an attorney should look at the complete MNCIS court records (only incomplete records are available via remote access) and the complete BCA private records (only some records are available online). A client at a walk-in clinic probably will not bring complete records. Complete MNCIS records can be obtained by going to a courthouse and using a courthouse-view terminal. Complete private BCA records can be obtained by the client by mail or in person at the BCA, for an \$8.00 fee.

Resources for Attorneys

Projusticemn.org/criminalexpungement: "Criminal Expungement From A to Z Handbook" created for the October 2011 Pro Bono Week CLE.

Projusticemn.org, Civil Law, Library, Criminal Expungement, CLE: Criminal Expungement Basics - Including Automated Pleadings (April 20, 2011): Recorded webinar and resource materials.

Lawhelpmn.org, Work, Criminal Expungement for Service Providers: "Criminal Records in the Hiring Process" and "Expungement Worksheets: Preparing for a Criminal Record Expungement" created for employment counselors, housing specialists and others who work with people with criminal records.

Referrals: VLN and CCJ Services on Criminal Expungements

The **Council on Crime and Justice** (CCJ) offers a monthly three-hour educational seminar about the expungement process and which types of records can be expunged. Attendees should bring their complete MNCIS and BCA records to the seminar. All persons seeking VLN legal services for criminal expungement must first attend the CCJ seminar. Persons interested in attending the seminar should call CCJ at 612-353-3024 to find out how to get complete records to bring to the seminar.

An attorney at the seminar will review the person's records to see whether **Volunteer Lawyers Network** volunteer attorneys can assist with criminal expungement. If a case is deemed to have merit based on our screening criteria, the seminar attorney will refer the case to VLN for either full representation (in the metro area only) or brief services (statewide). Brief services include an attorney completing the petition for the client and serving the petition on all agencies, but not going to court.