

Volunteer Lawyers Network

Criminal Expungement in Minnesota – Quick Reference Guide

As criminal records become easier to access by the public, more clients need criminal expungement to secure housing or employment. In 2015, the Minnesota Legislature expanded the expungement law to include more types of criminal cases that qualify for expungement. Now that more cases qualify for criminal expungement, it is important to know if, when, and how those cases qualify.

This tip will outline what types of cases qualify for expungement, when those cases qualify, and the burden required for proving a case. This “Quick Reference Guide” is aimed at volunteer attorneys assisting clients at clinics and it is by no means exhaustive of Minnesota Criminal Expungement law. If you have further questions about expungement of Minnesota Criminal Records, please contact Yaima Couso, VLN’s Criminal Expungement Program Manager and Resource Attorney, at yaima@vlmn.org or 612-752-6634.

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Disclaimer: This document is intended for general information only and it is not a substitute for legal advice. The information contained within it is by no means exhaustive and could change without notice. Legal professionals should familiarize themselves with the relevant law and should not rely on this document alone.

Grounds	Case Type	Description	Considerations	Waiting Period ¹	Burden of Proof
M.S. 299C.11	Arrest only— return/destruction of records	<ul style="list-style-type: none"> No criminal case filed with the courts (no MNCIS/court record)—arrest only. If DHS has disqualified, go through regular expungement process. 	<ul style="list-style-type: none"> The client must have <u>no</u> felony or gross misdemeanor convictions (within or outside the state) in the 10 years prior to the arrest. 	None	If conditions are met, the bureau or agency shall, upon demand, destroy the arrested person's identification data.
M.S. 609A.02, subd. 1	Certain controlled substance offenses	<ul style="list-style-type: none"> Certain first-time drug possession offenses; successful completion of probation/diversion/treatment; guilty plea vacated and dismissed (<u>i.e. drug diversion cases</u>). 	<ul style="list-style-type: none"> Basically, charges prosecuted and dismissed under: 152.024, subdivision 2; 152.025, subdivision 2; or 152.027, subdivision 2, 3, 4, or 6, paragraph (d). 	None , upon dismissal/discharge of proceedings.	On Petitioner ² —clear and convincing evidence that <i>benefit to the petitioner is commensurate with the disadvantages to the public and public safety...different than other dismissed cases</i> .
M.S. 609A.02, subd. 2	Juveniles prosecuted as adults	<ul style="list-style-type: none"> Juvenile at the time of committing the offense; Juvenile Court formally certified the client to be prosecuted in adult criminal proceedings; the (adult) criminal proceedings have been discharged. 	<ul style="list-style-type: none"> NOT: committed an offense as a juvenile and was prosecuted in adult court without formal certification proceedings in juvenile court. NOT: Juvenile adjudications/delinquency cases (M.S. 260B.198, subd. 6). 	None	On Petitioner —clear and convincing evidence that <i>benefit to the petitioner is commensurate with the disadvantages to the public and public safety...</i>
M.S. 609A.02, subd. 3 (1)	Resolved in favor (No filing fee)	<ul style="list-style-type: none"> Dismissals, continuance for dismissal/continuance without a plea (ultimately dismissed), some continuances for diversion (ultimately dismissed), and acquittals. Also arrest-only cases ineligible for 299C.11. 	<ul style="list-style-type: none"> NOT: stays of adjudication, stays of imposition with a vacation and dismissal, verdict of not guilty by reason of mental illness, or cases resulting in a conviction. NOT: cases where a guilty plea was entered. 	None , qualify once case is dismissed.	On the State ³ — <i>presumption in favor of expungement unless clear and convincing evidence that the interests of the public/public safety outweigh benefits of sealing.</i>

¹ This refers to the amount of time a petitioner must remain law-abiding before expungement may be granted. Most courts take a “look-back” approach, meaning petitioner must not have been convicted of a new crime for at least two, four, or five years immediately preceding the filing of the expungement petition. See *State v. C.W.N.*, 906 N.W.2d 549 (Minn. Ct. App. 2018).

² Minn. Stat. § 609A.03, subd. 5 (a).

³ Minn. Stat. § 609A.03, subd. 5 (b).

M.S. 609A.02, subd. 3 (2)	<i>Diversion/stay of adjudication (with admission of guilt)</i>	<ul style="list-style-type: none"> • Successful completion of diversion or stay of adjudication (after pleading guilty). • No new charges for at least 1 year after completion of court monitoring or probation. 	<ul style="list-style-type: none"> • Must be ‘off paper’ (i.e., discharged from all forms of court monitoring and/or probation) for all cases. • New charges will restart the waiting period. 	1 year with no new charges.	On the State — <i>presumption in favor of expungement unless clear and convincing evidence that the interests of the public/public safety outweigh benefits of sealing.</i>
M.S. 609A.02, subd. 3 (3)	<i>Convicted of/stayed sentence for a Petty Misd. or Misd.</i>	<ul style="list-style-type: none"> • Convicted; sentence has been discharged. • Waiting period starts when petitioner’s last case, even if unrelated, is closed (probation discharged). 	<ul style="list-style-type: none"> • Must be ‘off paper’ (i.e., discharged from all forms of court monitoring and/or probation) for all cases. • New convictions (including misdemeanor traffic offenses) will restart the waiting period. 	2 years with no new convictions.	On Petitioner –clear and convincing evidence that <i>benefit to the petitioner is commensurate with the disadvantages to the public and public safety...</i>
M.S. 609A.02, subd. 3 (4)	<i>Convicted of/stayed sentence for a Gross Misd.</i>	<ul style="list-style-type: none"> • Convicted; sentence has been discharged. • Waiting period starts when petitioner’s last case, even if unrelated, is closed (probation discharged). 	<ul style="list-style-type: none"> • Must be ‘off paper’ (i.e., discharged from all forms of court monitoring and/or probation) for all cases. • New convictions (including misdemeanor traffic offenses) will restart the waiting period. 	4 years with no new convictions.	On Petitioner –clear and convincing evidence that <i>benefit to the petitioner is commensurate with the disadvantages to the public and public safety...</i>
M.S. 609A.02, subd. 3 (5)	<i>Convicted of/stayed sentence for a Felony **including a stay of imposition (State v. S.A.M)⁴</i>	<ul style="list-style-type: none"> • Convicted; sentence has been discharged. • Qualifying felony (see list below). • Waiting period starts when petitioner’s last case, even if unrelated, is closed (probation discharged). 	<ul style="list-style-type: none"> • Must be ‘off paper’ (i.e., discharged from all forms of court monitoring and/or probation) for all cases. • For a list of qualifying felonies, please see below (mainly non-violent felonies). • New convictions (including misdemeanor traffic offenses) will restart the waiting period. 	5 years with no new convictions.	On Petitioner –clear and convincing evidence that <i>benefit to the petitioner is commensurate with the disadvantages to the public and public safety...</i>
M.S. 260B.198, subd. 6	<i>Juvenile Expungement</i>	<ul style="list-style-type: none"> • Any record relating to delinquency. 	<ul style="list-style-type: none"> • The court will consider different factors than those listed in Chapter 609A. Please see Minn. Stat 260B.198, subd. 6 for the list of factors. 	None	On Petitioner –benefit to the subject of the record outweighs the detriment to the public and public safety.
Inherent Authority ⁵	<i>Most anything not otherwise statutorily expungeable</i>	<ul style="list-style-type: none"> • Expungement of <u>court records ONLY</u> (except constitutional violation, abuse of discretion in executive branch). 	<ul style="list-style-type: none"> • Statutory prohibitions still apply. • Factors considered are similar to those outlined by statute. 	None	Difficult to grant. On petitioner.

⁴ Felony stays of imposition resulting in a misdemeanor conviction are treated as felony convictions for purposes of expungement. See *State v. S.A.M.*, 891 N.W.2d 602 (Minn. 2017).

⁵ See *State v. M.D.T.*, 831 N.W.2d 276 (Minn. 2013); *State v. H.A.*, 716 N.W.2d 360 (Minn. 2006), and *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981).

Other things to keep in mind:

- Recommended: No open cases, no pending fines/restitution, no warrants.
- Expungement is prohibited if petitioner had to register as a predatory offender because of the case (M.S. 609a.02, subd. 4).
- Traffic cases are difficult to expunge.
- There's a ~\$300 filing fee per case, unless waived or case is fully resolved in petitioner's favor.

Factors Considered by the Court:

Minn. Stat. § 609A.03 subd. 5(c)

- (1) the nature and severity of the underlying crime, the record of which would be sealed;
- (2) the risk, if any, the petitioner poses to individuals or society;
- (3) the length of time since the crime occurred;
- (4) the steps taken by the petitioner toward rehabilitation following the crime;
- (5) aggravating or mitigating factors relating to the underlying crime, including the petitioner's level of participation and context and circumstances of the underlying crime;
- (6) the reasons for the expungement, including the petitioner's attempts to obtain employment, housing, or other necessities;
- (7) the petitioner's criminal record;
- (8) the petitioner's record of employment and community involvement;
- (9) the recommendations of interested law enforcement, prosecutorial, and corrections officials;
- (10) the recommendations of victims or whether victims of the underlying crime were minors;
- (11) the amount, if any, of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of restitution payment after expungement of the record if granted; and
- (12) other factors deemed relevant by the court.

List of Felony Offenses:

(b) Paragraph (a), clause (5), applies to the following offenses:

- (1) section 35.824 (altering livestock certificate);
- (2) section 62A.41 (insurance regulations);
- (3) section 86B.865, subdivision 1 (certification for title on watercraft);
- (4) section 152.025 (controlled substance in the fifth degree); or 152.097 (sale of simulated controlled substance);
- (5) section 168A.30, subdivision 1 (certificate of title false information); or 169.09, subdivision 14, paragraph (a), clause (2) (accident resulting in great bodily harm);
- (6) chapter 201; 203B; or 204C (voting violations);
- (7) section 228.45; 228.47; 228.49; 228.50; or 228.51 (false bill of lading);
- (8) section 256.984 (false declaration in assistance application);
- (9) section 296A.23, subdivision 2 (willful evasion of fuel tax);
- (10) section 297D.09, subdivision 1 (failure to affix stamp on scheduled substances);
- (11) section 297G.19 (liquor taxation); or 340A.701 (unlawful acts involving liquor);
- (12) section 325F.743 (precious metal dealers); or 325F.755, subdivision 7 (prize notices and solicitations);
- (13) section 346.155, subdivision 10 (failure to control regulated animal);

- (14) section 349.2127; or 349.22 (gambling regulations);
- (15) section 588.20 (contempt);
- (16) section 609.27, subdivision 1, clauses (2) to (5) (coercion);
- (17) section 609.31 (leaving state to evade establishment of paternity);
- (18) section 609.485, subdivision 4, paragraph (a), clause (2) or (4) (escape from civil commitment for mental illness);
- (19) section 609.49 (failure to appear in court);
- (20) section 609.52, subdivision 3, clause (3)(a) (theft of \$5,000 or less), or other theft offense that is sentenced under this provision;
or 609.52, subdivision 3a, clause (1) (theft of \$1,000 or less with risk of bodily harm);
- (21) section 609.525 (bringing stolen goods into state);
- (22) section 609.526, subdivision 2, clause (2) (metal dealer receiving stolen goods);
- (23) section 609.527, subdivision 5b (possession or use of scanning device or reencoder); 609.528, subdivision 3, clause (3) (possession or sale of
stolen or counterfeit check); or 609.529 (mail theft);
- (24) section 609.53 (receiving stolen goods);
- (25) section 609.535, subdivision 2a, paragraph (a), clause (1) (dishonored check over \$500);
- (26) section 609.54, clause (1) (embezzlement of public funds \$2,500 or less);
- (27) section 609.551 (rustling and livestock theft);
- (28) section 609.5641, subdivision 1a, paragraph (a) (wildfire arson);
- (29) section 609.576, subdivision 1, clause (3), item (iii) (negligent fires);
- (30) section 609.595, subdivision 1, clauses (2) to (4), and subdivision 1a, paragraph (a) (criminal damage to property);
- (31) section 609.597, subdivision 3, clause (3) (assaulting or harming police horse);
- (32) section 609.625 (aggravated forgery); 609.63 (forgery); 609.631, subdivision 4, clause (3)(a) (check forgery \$2,500 or less);
609.635 (obtaining signature by false pretense); 609.64 (recording, filing forged instrument); or 609.645 (fraudulent statements);
- (33) section 609.65, clause (1) (false certification by notary); or 609.651, subdivision 4, paragraph (a) (lottery fraud);
- (34) section 609.652 (fraudulent driver's license and identification card);
- (35) section 609.66, subdivision 1a, paragraph (a) (discharge of firearm; silencer); or 609.66, subdivision 1b (furnishing firearm to minor);
- (36) section 609.662, subdivision 2, paragraph (b) (duty to render aid);
- (37) section 609.686, subdivision 2 (tampering with fire alarm);
- (38) section 609.746, subdivision 1, paragraph (e) (interference with privacy; subsequent violation or minor victim);
- (39) section 609.80, subdivision 2 (interference with cable communications system);
- (40) section 609.821, subdivision 2 (financial transaction card fraud);
- (41) section 609.822 (residential mortgage fraud);
- (42) section 609.825, subdivision 2 (bribery of participant or official in contest);
- (43) section 609.855, subdivision 2, paragraph (c), clause (1) (interference with transit operator);
- (44) section 609.88 (computer damage); or 609.89 (computer theft);
- (45) section 609.893, subdivision 2 (telecommunications and information services fraud);
- (46) section 609.894, subdivision 3 or 4 (cellular counterfeiting);
- (47) section 609.895, subdivision 3, paragraph (a) or (b) (counterfeited intellectual property);
- (48) section 609.896 (movie pirating);
- (49) section 624.7132, subdivision 15, paragraph (b) (transfer pistol to minor); 624.714, subdivision 1a (pistol without permit; subsequent violation);
or 624.7141, subdivision 2 (transfer of pistol to ineligible person); or
- (50) section 624.7181 (rifle or shotgun in public by minor).