



May 2023 Tip of the Month

How the Disposition of a Case Affects the Burden and Petition in Criminal Expungement Cases

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Dispositions

There are many types of dispositions of criminal cases in Minnesota:

Resolved in favor of:

- **Dismissal** – The ending of a criminal case prior to trial or verdict that stops the proceedings against the defendant.
- **Continuance for dismissal** – An agreement between the prosecutor and the defendant not to move forward with prosecution of a case for a set amount of time. If the defendant follows the terms of the agreement and does not get any new criminal charges within the agreed-upon time, then the case will be dismissed.
- **Acquittal** – The finding, by either a judge or a jury after a trial, of not guilty.

Diversion or stays without convictions:

- **Diversion program** – A program that refers certain defendants before trial to community programs such as job training or education which, if successfully completed, may lead to dismissal of the criminal case.
- **Stay of Adjudication** – Occurs following a guilty plea when the court withholds entering a conviction if the defendant follows certain conditions. If the defendant successfully completes these conditions, the criminal case is dismissed.

Convictions:

- **Petty Misdemeanor** – An act punished by a fine of not more than \$300 that is not considered to be a crime.
- **Misdemeanor** – A crime punished by imprisonment of less than 90 days and/or a fine up to \$1,000.
- **Gross Misdemeanor** – A crime punished by imprisonment for a period between 91 and 365 days, and/or a fine up to \$3,000.
- **Felony** – A serious crime punished by imprisonment of more than one year.
- **Stay of Imposition** – Occurs following a guilty plea to a particular level of offense. If the defendant agrees to follow certain conditions and successfully completes the conditions, the conviction is dropped to a lower level. If the defendant does not successfully complete the conditions, the court can vacate the stay of imposition.

- *Hennepin County only: allows for stays of imposition for misdemeanors, and if the defendant successfully completes the conditions, will vacate and dismiss the case. These are still treated as stays of imposition.*

Burdens

There are two different burdens defined in Minnesota's expungement statute. See 609A.03 subd. 5.

1. (a) Except as otherwise provided by paragraph (b), expungement of a criminal record is an extraordinary remedy to be granted ***only upon clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of:***
 - (1) *sealing the record; and*
 - (2) *burdening the court and public authorities to issue, enforce, and monitor expungement order.*
2. (b) Except as otherwise provided by this paragraph, if the petitioner is petitioning for the sealing of a criminal record under section 609A.02, subdivision 3, paragraph (a), clause (1) or (2), ***the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.***

Put simply, (a) means the burden is on you and your client to show clear and convincing evidence the expungement would benefit them proportionally to any disadvantage to the public or agency.

Section (b) says the presumption is expungement, unless the agency shows clear and convincing evidence the interests of the public and public safety outweigh your client's disadvantages. Under this burden, once client has submitted a petition, the court must grant the expungement unless the agency puts forth clear and convincing evidence.

Here is some caselaw which further defines the agency's burden under 609A.03 subd. 5(b):

- Clear and convincing evidence has been defined by the United States Supreme Court as evidence that shows it is "highly probable." *Colorado v. Mexico*, 467 U.S. 310, 316 (1984).
- Additionally, it is not enough to provide "little more than generalities," nor is it enough to submit affidavits from records-holders which are "unremarkable and generalized, and [which] could be submitted in nearly every expungement case." *State v. R.H.B.*, 821 N.W.2d 817, 822 (Minn. 2012). The objecting party must show there is a unique and particularized harm to the public safety that will come from expunging this specific dismissed case from this specific petitioner's record. *Id.* at 823.
- Possible hypothetical future harm and speculation are also not enough to meet the burden. *State v. D.R.F.*, 878 N.W.2d 33, 34 (Minn. Ct. App. 2016).
- When determining whether the agency has met its burden, reliance upon unproven allegations as fact is error. *State v. A.S.R.*, 906 N.W.2d 526, 532 (Minn. Ct. App. 2017).
- It is error for the court to assume the charged criminal conduct occurred in an acquittal when making a decision on expungement. *State v. A.S.R.*, 906 N.W.2d 526, 532 (Minn. Ct. App. 2017).
- The Minnesota Court of Appeals has stated that the district court should assume that the charged offense did not even occur when there has been an acquittal or other resolution in the client's favor. *State v. R.M.W.*, No. A16-0906, 2016 WL 7438728, slip op. at 15 (Minn. Ct. App. Dec. 27, 2016).

Which dispositions correspond to which burden?

burden is on you and your client to show clear and convincing evidence	the burden is on the agency to show clear and convincing evidence
Petty Misdemeanor convictions	Dismissals
Misdemeanor convictions	Continuance for dismissals
Gross Misdemeanor convictions	Acquittals
Felony convictions	Diversion cases
Stays of Imposition	Stays of Adjudication

Let's take a look at how that is reflected on the petition:

5. I am seeking expungement because (Include whether expungement is sought for employment, housing, or licensure purposes, the statutory or other legal authority under which expungement is sought, and state in detail and with specifics why expungement should be granted). Attach additional pages if necessary:|

Question 5 must be answered when a client has a conviction. Additionally, it is best practice to answer it even if the case has been dismissed, there was a stay of adjudication, or an acquittal. Even though the presumption is expungement with those types of cases, the record-holder can try and put forth clear and convincing evidence the risk to the public outweighs the harm to the client. Therefore, you want to have given the judge information on what hardships exist. It will make it more difficult for a record-holder to overcome the presumption.

10. The details of the offense I want to expunge are: Case # _____
Jurisdiction/City where the offense occurred: Minneapolis
Type of Offense: NO INSURANCE OWNER, Minn. Stat. § 169.797.2
Date of Offense: August 19, 2022
This was a ☐ conviction or a ☒ dismissal. Date of conviction or dismissal: January 4, 2023
Date of discharge from probation/completion of diversion or stay: _____

11. The names of the victims in this case are: _____ Or, _____ there were no identifiable victims.

12. There _____ is not a current or prior order for protection, restraining order or other no-contact order prohibiting me from contacting the victims (include copies of any orders to petition).

When a case has been dismissed without any admissions or the client was acquitted, there will *never* be a 'victim.' This is because without a conviction or admission, a crime has never been proven to have occurred. Without a crime having occurred, there is no victim of a crime. Additionally, question 12 will also be left blank for the same reason.

When a client has a dismissed case due to a stay of adjudication, legally there is no victim because there was never a conviction. This is a gray area, however, since client did admit guilt for a crime. While these two questions do not have to be answered, it is not a 'new admission' if they are.

13. Since conviction of this offense, I have taken the following steps toward personal rehabilitation, including treatment, work, community involvement, or other personal history (Attach additional pages if necessary.): |

Or, ☒ there was no conviction for this offense.

Finally, question 13 should be left blank when there is no conviction. Question 13 is the portion of the burden where the client must show their hardship is commensurate to any risk to the public. Since dismissed cases and acquittals do not have that burden, this question is not necessary to answer.

While a client does not *have to* answer this question, it is ok if they want to discuss how they have worked on themselves in the recent past. That can never hurt their case. However, there should be no admissions to any crime and it should be clear there was no conviction (e.g. “Despite not having been convicted of this case, client has taken the following steps to work on his or herself.”).