

VICTIM RIGHTS AND EXPUNGEMENT IN MINNESOTA

What is expungement?

An expungement is when a person's criminal record related to an offense is sealed. The person seeking the expungement must go through a court process to request it, and not all convictions can be expunged.

- **Not automatic:** The law does not guarantee a person expungement. An expungement petition must meet certain legal standards, and a court must make specific findings to support granting or denying the petition.
- **Eligibility:** The expungement statutes specify which offenses are eligible for expungement and timeframes for when a person may petition for expungement, depending on the type of offense. For example, a person can request to have a misdemeanor record expunged sooner than a felony conviction. (Minn. Stat. §§ 609A.02, subd.3(b).)
- **Sex offenders:** Convictions that require an offender to register as a predatory offender are not eligible for expungement.
- **Still accessible:** Criminal justice agencies have the authority, after obtaining an *ex parte* court order, to re-open, use, and exchange expunged records for investigation, prosecution, sentencing, or probation or other correctional purposes. (Minn. Stat. § 609A.03, subd. 7(a).)

How can victims get notified of the offender's effort to get a record expunged?

The prosecutor's office with jurisdiction over the offense must make a good faith effort to notify the victim of a petition for expungement. *This notification, however, is not automatic. The victim must request to be notified!*

Under Minnesota Statutes section 611A.06, a victim must make a written request to the prosecutor to be notified of any expungement petition. There is no time requirement for when this request should be made.

How are victims notified of a petition for expungement?

Sections 611A.06 and 609A.03 require the notice to be mailed to the requesting victim.

- Under section 611A.06, the prosecutor complies with notification by mailing a copy of an expungement petition to the address the victim has most recently provided in writing.
- Under section 609A.03, the prosecutor must serve by mail the petition for expungement and a proposed expungement order on any victims of the offense.

Contents of the notice of the expungement petition to the victim

The prosecutor is required to provide the victim a copy of the following:

- A copy of the expungement petition,
- The proposed expungement order, and
- The notice of the right to be present and submit an oral or written statement at the expungement hearing.

Minn. Stat. § § 609A.03, subds. 3(b) and 3(c); 611A.06.

Rights during the expungement hearing

A victim of the offense for which expungement is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether expungement should be granted or denied. The judge must consider the victim's statement when making a decision. (Minn. Stat. § 609A.03, subd. 4.)

In considering a petition for expungement, a judge must take into consideration the amount of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of the restitution payment after expungement of the record, if granted. (Minn. Stat. § 609A.03, subd. 5(c)(11).)

Expungement by agreement

Under section 609A.025, a prosecutor can make an agreement with an offender for expungement of the record without a petition or a court hearing. In these cases, the prosecutor must make a good faith effort to notify any identifiable victims of the offense of an intended expungement agreement and the opportunity to object to the agreement. *This provision does not require the victim to request notification.*

Practice tip: If the agreed-upon expungement is part of a plea agreement, prosecutors should be sure to include this information in the notice to the victim required under Minn. Stat § 611A.03.

How can victims get access to expunged criminal records?

The court may order an expunged record opened upon request by the victim of the underlying offense if the court determines that the record is substantially related to a matter for which the victim is before the court. (2014 Minn. Stat. § 609A.03, subd. 7(b)(6). There is a [court form](#) for victims to request access to sealed or confidential records.

RECOMMENDATIONS FOR VICTIMS

MAKE WRITTEN REQUEST: Victims should make a written request to the office responsible for prosecuting the offender. Many offices already send victims a form asking them if they want post-conviction notifications.

KEEP ADDRESS UP-TO-DATE: Victims who want to get notified of expungement petitions and receive other post-conviction notifications should notify the prosecutor's office of any changes in address. Given that an offender may file an expungement petition many years following conviction, victims should be prepared to update their address whenever they move or risk not receiving these notifications.

CONTACT PROSECUTOR'S OFFICE: Victims who receive notification of the expungement petition and have questions should contact the prosecutor's office. In addition, victims may want to contact the prosecutor's office in advance to let them know whether they will be attending the hearing and/or whether they have a statement to present or submit to the court. . Victims who cannot attend the hearing, but wish to know the outcome, should contact the prosecutor's office following the hearing.

MORE INFORMATION: For more information on expungement, go to the Minnesota Judicial Branch [website](#).

Please note: Under Minnesota Statutes section 611A.0385, the court is required to provide a notice of release and expungement form to the victim at sentencing or disposition, however, in practice, this is not routinely done. The [court form](#) tells victims to submit a request directly to the prosecutor, however, if a jail or custodial institution does receive one of these forms from a victim, they are to forward it to the appropriate prosecutor. Given the likelihood of misdirection or delay, using this court form is not recommended.