



**VIOLENCE FREE**  
**MINNESOTA**

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## **MISDEMEANOR DOMESTIC ABUSE EXPUNGEMENT IN MINNESOTA AN ADVOCATE'S GUIDE**

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### **BACKGROUND**

- In 2014, there was bipartisan action taken to broaden the class of crimes for which a person could request expungement (record sealing) to include misdemeanors, gross misdemeanors and certain low level felonies after certain time periods with no new charges/convictions. The movement to expand expungement was driven by the impact that criminal records were having on many people's ability to get housing and employment.
- Misdemeanor domestic abuse was not included in the expungement bill until the 2014 session started.
- As soon as domestic abuse was included in the bill, Violence Free MN polled membership to get input on what our position should be. Membership was very split – some Violence Free MN members supported and other members opposed the ability for misdemeanor domestic abuse to be expunged.
- Without sufficient time to thoroughly explore the issue during the short legislative session, and with split membership, Violence Free MN negotiated a delayed enactment to allow time to consider what protections and access should be built into the expungement law for domestic abuse misdemeanor offenses.
- Violence Free MN membership voted at the 2014 Annual Meeting for Violence Free MN to convene a workgroup to further explore the issue and to have Violence Free MN Board of Directors decide the best course of action.
- Violence Free MN researched expungement, interviewed criminal justice system stakeholders, convened a workgroup, and also conferred with Violence Free MN's DV Law Committee and Legislative Advisory Committee.

- Ultimately, Violence Free MN's Board of Directors voted that Violence Free MN should monitor the implementation of the law without taking legislative action in 2015, which meant that misdemeanor domestic abuse would be eligible for expungement.
- On July 15, 2015, misdemeanor domestic abuse records will be eligible for expungement. Expungement is not automatic and there are safeguards built into the statute so that those seeking expungement have to prove that the need to have their record sealed outweighs any public safety concerns before their expungement petition is granted.
- Violence Free MN along with advocates will monitor the law to assess if future policy action is needed.

#### **FREQUENTLY ASKED QUESTIONS ABOUT THE NEW EXPUNGEMENT LAW**

- **What did the law say about expungement before it changed?** Many types of criminal records (including domestic abuse related records) from cases which resolved in favor of the alleged perpetrator (e.g., found not guilty, case dismissed) could be either destroyed or sealed upon request/petition (2012 Minn. Stat. 299C.11 and 609A.03, subd. 3)
- **Where are criminal records stored?** They are stored in the form of police reports and investigative data at the local law enforcement level and at the Bureau of Criminal Apprehension (BCA) if fingerprints are taken. If criminal charges are brought, there are also court records.
- **What does expungement do to the criminal records?** Expungement makes non-public the records held by law enforcement, the BCA and the courts. This means there will still be a sealed record. So, if a public person (e.g., landlord, employer) asks if there is a criminal record, they will be told there is no record. If law enforcement searches for a record, they can access the information without a court order for the purposes of investigation, prosecution, sentencing, probation or corrections (2014 Minn. Stat. 609A.03, subd. 7a).
- **What misdemeanor domestic abuse related crimes will be eligible for expungement on July 15, 2015?** Misdemeanor and gross misdemeanor domestic abuse, stalking, and violations of Orders for Protection, Domestic Abuse No Contact Orders and Harassment Restraining Orders (hereinafter "domestic abuse") are eligible for expungement as of July 15, 2015 (2014 Minn. Stat. 609A.02, subd. 3).<sup>1</sup>
- **What are the waiting periods before an expungement petition can be filed?** Under the new law passed in 2014, cases with the following dispositions are eligible for expungement petitioning only after the corresponding waiting period (2014 Minn. Stat. 609A.02, subd. 3):
  - The case resulted in diversion or stay of adjudication; 1 year after completion of diversion/stay with no new criminal charges;

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<sup>1</sup> If a felony is pled down to misdemeanor or gross misdemeanor domestic abuse, it is eligible for expungement.

- The case resulted in a petty misdemeanor or misdemeanor conviction; 2 years after completion of sentence with no new criminal convictions,
- The case resulted in a gross misdemeanors conviction; 4 years after completion of sentence if no new criminal convictions,
- *Note:* The new law allows that prosecution can agree before sentencing that the court shall seal records without an expungement petition if prosecution makes a good faith effort to notify any identifiable victims of the offense of the intended agreement, and if the victim is given the opportunity to object to the agreement – unless the court determines that the interests of the public and public safety in keeping the record public outweigh the disadvantages to the subject of the record in not sealing it (2014 Minn. Stat. 609A.025).
- **What is the process for the courts to grant expungement?** The expungement process has the following requirements (2014 Minn. Stat. 609A.02 and 609A.03):
  - **Waiting** the time period before being eligible to file;
  - **Filing an expungement petition** with the court making the case that the need to have their record sealed outweighs any public safety concerns in order to have their expungement petition granted;
  - **Notifying** all prosecution and law enforcement agencies as well as victims who have requested notice; (see [here for information on victim notice, which is not automatic and must be requested](#))
  - **Allowing prosecution and victims to file responses** with the courts, (see [here for more information on how victims can file responses to notice of expungement with the court](#))
  - **Holding a hearing** (see [here for victim rights during the hearing](#)) in which the court weighs the following 12 factors before making a determination:
    - (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 (which include the court determining if the context and circumstances of the underlying crime indicate a connection between the criminal record to be expunged and a person's status as a crime victim)

- The **court making a final determination** as to whether the expungement petition should be denied or granted.
- **Records being sealed** at the appropriate criminal justice agencies if expungement is ordered.
- **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. 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.* (verbatim from [OJP Victim Rights and Expungement](#))
- **Will criminal justice agencies have access to expunged records for purposes of enhancements?** Yes, the expungement statute requires criminal justice agencies must have access to records for enhancement purposes (2014 Minn. Stat. 609A.03, subd. 7a).
- **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. 7a).
  - There is a petition for victims to request access to sealed or confidential records [http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/PublicForms/Confidential\\_Information/CON102.doc](http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/PublicForms/Confidential_Information/CON102.doc)
- **Do other states allow misdemeanor domestic abuse to be expunged?** Washington, Michigan, Nevada and California allow misdemeanor domestic violence expungement petitions after certain waiting periods and conditions have been met.

- **Where can I find more information about victims' rights and the expungement process?**
  - OJP Publication: Victim Rights and Expungement  
<https://dps.mn.gov/divisions/ojp/formsdocuments/Documents/Expungement%20and%20Victims.pdf>
  - The court has created instructions for expungement petitions  
[http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/PublicForms/Criminal\\_Expungement/EXP101.pdf](http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/PublicForms/Criminal_Expungement/EXP101.pdf)

### PROCESS FOR MONITORING THE NEW EXPUNGEMENT LAW

- **What can domestic and sexual violence advocates do to provide information to Violence Free MN about positive and negative outcomes from the expungement legislation?**
  - Violence Free MN needs advocates to give us information about the following issues:
  - The *number of misdemeanor and gross misdemeanor domestic abuse expungements* that are *filed*
    - By victims you are working with who are seeking to expunge their own criminal records;
    - By perpetrators seeking to expunge records of crimes against victims you are working with.
  - The *number of misdemeanor and gross misdemeanor domestic abuse expungements* that are *granted or denied*
    - For victims you are working with who are seeking to expunge their own criminal records;
    - For perpetrators seeking to expunge records of crimes against victims you are working with.
  - *Positive and negative outcomes* for victim safety and perpetrator accountability as a result of the change in the law.
  - *Law enforcement and prosecution responses.*
  - Victim ability to *request notification* of filed expungement petitions.
  - Victim ability to *receive notification* of filed expungement petitions.
  - Victim ability to *file responses* with the court when notified of expungement petitions.

- Victim ability to *access expunged records* upon request to the court.