

**DAKOTA COUNTY ATTORNEY
GUIDELINES FOR THE EXPUNGEMENT
OF CRIMINAL RECORDS**

DATE: November 1, 2019

TO: Criminal Division Attorneys in the Dakota County Attorney's Office

FROM: James C. Backstrom, County Attorney *JCB*

SUBJECT: Expungement Guidelines

EFFECTIVE DATE: November 1, 2019

REPLACES POLICY DATED: January 1, 2015

The purpose of these guidelines is to outline under what circumstances prosecutors may consent to an order for expungement in light of several amendments to Minn. Stat. Ch. 609A that will become effective January 1, 2015. If a petition for expungement does not meet the criteria delineated below, the prosecutor may not consent to an order for expungement and must contest the petition for expungement unless a deviation is obtained as set forth in Section E below.

A. AUTOMATIC EXPUNGEMENTS

1. Pending Actions or Proceedings Resolved in Favor of the Petitioner. If a person seeks to seal a criminal record pursuant to Minn. Stat. § 609A.02, Subd. 3(a)(1), the prosecutor may consent to an order for expungement if the following criteria exist:
 - a. A verdict of not guilty was returned on all charges set out in the charging instrument; or
 - b. Charges are dismissed and at least one year has elapsed since the charges were dismissed.

NOTE:

- (1) A verdict of not guilty by reason of mental illness is not a resolution in favor of the petitioner. (See Minn. Stat. § 609A.02, Subd. 3(a)(1)).

(2) An action or proceeding is resolved in favor of the petitioner if the petitioner received an order under Minn. Stat. § 590.11 determining that the petitioner is eligible for compensation based on exoneration. (See Minn. Stat. § 609A.02, Subd. 3(a)(1)).

2. Completed Terms of Diversion Program or Stay of Adjudication. If a person seeks to seal a criminal record pursuant to Minn. Stat. § 609A.02, Subd. 3(a)(2), the prosecutor may consent to an order for expungement if the following criteria exist:

- a. All conditions, including the payment of restitution, have been met; and
- b. The petitioner has not been charged with a new crime for at least one year since the satisfactory completion of the diversion program or stay of adjudication.

B. STAYS OF ADJUDICATION UNDER MINN. STAT. § 152.18

If a person seeks to seal a criminal record pursuant to Minn. Stat. § 609A.02, Subd. 1, the prosecutor may consent to an order for expungement if the following criteria exist:

1. The petitioner was found guilty of a violation of Minn. Stat. §§ 152.024, Subd. 2, 152.025, Subd. 2, or 152.027 for possession of a controlled substance;
2. The stay of adjudication was granted with the consent of the prosecutor;
3. All conditions of probation have been met; and
4. The petitioner has not been charged with a new crime for at least one year since the satisfactory completion of probation.

C. ELIGIBILITY FOR CERTAIN CONVICTIONS

1. Petty Misdemeanor or Misdemeanor Convictions. If a person seeks to seal a misdemeanor or petty misdemeanor criminal record pursuant to Minn. Stat. § 609A.02, Subd. 3(a)(3), the prosecutor may consent to an order for expungement if the following criteria exist:

- a. The petitioner has not been convicted of a new crime for at least two years since discharge of the sentence for the crime;
- b. The petitioner received a stayed sentence;

- c. The conviction petitioner is seeking to expunge is not an offense that can be used to enhance a future offense;
 - d. The offense was not a crime against a person (i.e., defendant's underlying conduct in committing the offense posed a special danger to human life.);
 - e. The offense did not involve domestic abuse or sexual assault as defined in Minn. Stat. § 518B.01, Subd. 2, a violation of an order for protection under Minn. Stat. § 518B.01, Subd. 14, a violation of a harassment restraining order under Minn. Stat. § 609.748, Subd. 6, a violation of Minn. Stat. § 609.749 (Stalking), or a violation of Minn. Stat. § 629.75 (Domestic Abuse – No Contact Orders);
 - f. The petitioner is not required to register as a predatory offender under Minn. Stat. § 243.166 as a result of the conviction; and
 - g. The petitioner has no prior felony convictions. The prosecutor may seek a deviation for this criterion under Section E below if a period of more than 10 years has elapsed since the date of the felony conviction or of the release of the petitioner from confinement imposed for the conviction, whichever is the later date.
2. Gross Misdemeanor Convictions. If a person seeks to seal a gross misdemeanor criminal record pursuant to Minn. Stat. § 609A.02, Subd. 3(a)(4), the prosecutor may consent to an order for expungement if the following criteria exist:
- a. The petitioner has not been convicted of a new crime for at least four years since discharge of the sentence for the crime;
 - b. The petitioner received a stayed sentence;
 - c. The conviction petitioner is seeking to expunge is not an offense that can be used to enhance a future offense;
 - d. The offense was not a crime against a person (i.e., Defendant's underlying conduct in committing the offense posed a special danger to human life.);
 - e. The offense did not involve domestic abuse or sexual assault as defined in Minn. Stat. § 518B.01, Subd. 2, a violation of an order for protection under Minn. Stat. § 518B.01, Subd. 14, a violation of a harassment restraining order under Minn. Stat. § 609.748, Subd. 6, a violation of Minn. Stat. § 609.749 (Stalking), or a violation of Minn. Stat. § 629.75 (Domestic Abuse – No Contact Orders);

- f. The petitioner is not required to register as a predatory offender under Minn. Stat. § 243.166 as a result of the conviction; and
 - g. The petitioner has no prior felony convictions. The prosecutor may seek a deviation for this criterion under Section E below if a period of more than ten years has elapsed since the date of the felony conviction or of the release of the petitioner from confinement imposed for the conviction, whichever is the later date.
3. Felony Convictions. If a person seeks to seal a felony criminal record pursuant to Minn. Stat. § 609A.02, Subd. 3(a)(5), the prosecutor may consent to an order for expungement if the following criteria exist:
- a. The petitioner has not been convicted of a new crime for at least five years since discharge of the sentence for the crime;
 - b. The conviction was for an offense enumerated in Minn. Stat. § 609A.02, Subd. 3(b);
 - c. The petitioner received a stayed sentence;
 - d. The conviction petitioner is seeking to expunge is not an offense that can be used to enhance a future offense;
 - e. The petitioner is not required to register as a predatory offender under Minn. Stat. § 243.166 as a result of the conviction; and
 - f. The petitioner has no prior felony convictions. The prosecutor may seek a deviation for this criterion under Section E below if a period of more than ten years has elapsed since the date of the felony conviction or of the release of the petitioner from confinement imposed for the conviction, whichever is the later date.

D. NOTICE TO VICTIMS

1. Petition for Expungement Filed. In those cases in which a petition for expungement is filed, the prosecutor must serve by mail the petition for expungement and the proposed expungement order on any victims of the offense for which expungement is sought who have requested notice of expungement pursuant to Minn. Stat. § 611A.06. The notice to the victim must specifically inform the victim of the victim's right to be present and to submit an oral or written statement at the expungement hearing. (See Minn. Stat. § 609A.03, Subd. 3(b)(c)).

2. Consent of Prosecutor under Minn. Stat. § 609A.025. Before a prosecutor may consent to the sealing of a criminal record under Minn. Stat. § 609A.025, the prosecutor must make a good faith effort to notify any identifiable victims of the offense of the intended agreement and the opportunity to object to the agreement. (See Minn. Stat. § 609A.025, (b)).

E. DEVIATIONS

Deviations from these guidelines may be warranted when circumstances exist that are deemed to be in the interests of justice and will effectuate the effective administration of the criminal justice system. In order to create a record of the reasoning behind a deviation, the following procedures must be utilized when a deviation from these guidelines is sought:

1. Authorized deviations require approval by the Criminal Division Head or Chief Deputy. The prosecutor shall discuss the proposed deviation with the Criminal Division Head/Chief Deputy before agreeing to the proposed deviation.
2. The prosecutor shall fill out a written deviation form explaining how the procedure or recommendation deviates from the guidelines and the reasons for the deviation. The deviation form shall be signed by the Criminal Division Head/Chief Deputy and returned to the prosecutor to be placed in the case file.
3. If the Criminal Division Head/Chief Deputy cannot be reached to approve the deviation, the prosecutor shall obtain approval for the deviation from the Dakota County Attorney.