
THE MINNESOTA
COUNTY ATTORNEYS
ASSOCIATION

MCAA EXPUNGEMENT PRINCIPLES

The Minnesota County Attorneys Associations believes that maintaining criminal records is a critical public safety function. The information contained in these records is essential for future crime investigations and prosecutions, and for the administration of justice. Any expungement of criminal records must be governed by an orderly and predictable process, with involvement by all parties affected and due consideration to the needs of law enforcement, prosecutors, and the public. To that end, the Association has adopted the following principles.

PRINCIPLES

1. Arrest and conviction data are public for good policy reasons. A public court and criminal justice system are important protections against tyranny and injustice, and society has important interests in knowing who has been charged with or convicted of crimes.
2. Expungement affects many others beyond the offender. For example, if a dangerous offender is hired as a child care worker, that could affect the employer, employees, children, and vulnerable adults. If a person convicted of a swindle or fraud is hired, business owners, employees, and customers all may be affected.
3. Society should not minimize convictions or be too ready to expunge them without well-articulated reasons.
4. Where expungement is appropriate, the records should be sealed, not destroyed, as they may be needed for future investigations or prosecutions. Even where there is no conviction, records of the incidents should be preserved, since they may be valuable to law enforcement and prosecutors for investigatory and Spreigl purposes.
5. When expungement is sought, the courts and all affected agencies must have all relevant information available to them, such as the offender's full record, other efforts to seek an expungement or pardon, and the offender's full identifying information, including other names, aliases, and addresses.

6. Even when expungement is granted, prosecutors, law enforcement and social services must continue to have access to arrest and conviction data at all times, without the necessity of petitioning the court.
7. The Legislature should also grant access to arrest and conviction data to certain hiring or licensing authorities for highly responsible jobs or professions.
8. If the Legislature does amend the current law on expungement, county attorneys support additional criteria for the court to consider in granting expungement that would require a showing by an individual seeking expungement that their criminal record has been clean for at least five years, they have successfully completed chemical dependency treatment and aftercare, where applicable, they have made full payment of ordered restitution, and they have taken other actions that demonstrate a significant change in their life. These criteria would also at a minimum prohibit granting an expungement until 5 years following either discharge from a criminal conviction, or the enhancement period, whichever is longer.
9. Data practices laws may have to be modified to allow individuals to correct their criminal justice records, or in the alternative, the court should utilize clarifying orders to correct or clarify the record.
10. Any change in expungement law should limit persons from seeking expungement if the Pardon Board has denied them relief.
11. The developing of a DNA database and existing fingerprint and photo databanks must always be protected.
12. Liability for release of expunged records should be limited by law.
13. The proponents' primary rationale for amending the expungement law appears to relate to employment and housing issues. Since expungement has only limited effectiveness once data has been public, the Legislature may want to consider other alternatives than closing public records to address the proponents' concerns.

Adopted by the MCAA Board of Directors January 20, 2006