

CLC PRACTICE POINT

No. 17

June 15, 2011

Juvenile Delinquency Records and Expungement

By Alexandra Platt, University of Minnesota Law School (J.D. Candidate, 2012) and Linda Foreman, CLC Executive Director
(Also many thanks to Andrew Peters and Theresa Bevilacqua of Dorsey & Whitney for their contribution to this practice point)

A youth age 10 and older can obtain a delinquent record due to an arrest (even if no charges follow), a charge (even if later dismissed), and an adjudication of delinquency (even if the adjudication is stayed). A widespread belief about the juvenile justice system is that few, if any, repercussions exist for minors with a delinquent record. In actuality, a juvenile arrest or conviction can haunt an individual for years after reaching adulthood. Aside from the stigma associated with a juvenile justice record, both arrest and conviction records can frustrate an individual's attempts to enroll in college, find a job, or rent an apartment. These records rarely disappear with age and often are publicly accessible.

Few teenagers understand the profound consequences that a delinquent record can create for them. Thus, it is vital to inform your client of the lasting impact that police and juvenile justice can have in their lives. It is also crucial to recognize when your client may be a candidate for expungement, and set your client on the path to getting his record expunged.

ACCESS TO JUVENILE COURT RECORDS

In Minnesota, juvenile courts must keep a record of any crime committed by a minor when that offense, if committed by an adult, would be classified as a gross misdemeanor or a felony. These records, which the court must maintain until the minor reaches age 28, may be available to various state agencies.¹ For example, Minnesota's Department of Human Services (DHS) has access to these records. DHS reviews records of individuals seeking work in health care, childcare, or other licensed professions.

The public may also access juvenile records in specific circumstances. For example, Minnesota permits public access to court records of persons between the ages of 16 to 18 if that person has been charged with a felony. The ultimate offense the youth pleads to or is convicted of is irrelevant.² As a result, employers, admissions committees, and landlords will be able to access these arrest and charging records.

TIP: If your client has been arrested and/or charged with a juvenile offense, obtain your client's permission and request copies of your client's delinquent court records.

STANDARDS FOR EXPUNGEMENT

Despite legislative efforts for more leniency in expunging juvenile records, the only specific guidance dictates that the court "may expunge adjudication of delinquency at any time that it deems advisable."³ Therefore, juvenile expungement remains subject to the same narrow grounds and heightened standards as general adult criminal expungement.

¹ MINN. STAT. § 260B.171, subd. 1(b) (2009).

² Compare MINN. STAT. § 260B.163, subd. 1(c) (2009) with § 260B.171, subd. 4(a).

³ MINN. STAT. § 260B.198, subd. 6 (2009).

Expungement of Arrest Records Pursuant to Section 299C.11

Law enforcement agencies may keep records of a criminal arrest, even if a prosecutor never formally charges or convicts the individual. Nevertheless, if a qualifying individual makes a request for expungement in writing,⁴ these records can be expunged and identifying parts of the arrest record will be sealed and returned to the individual.⁵

Expungement of Criminal Charges and Convictions Pursuant to Chapter 609A

Chapter 609A lists three types of charges or convictions, commonly referred to as "statutory" requests, which serve as sufficient grounds for expungement.⁶ The burden of proof is on the State to show why the court should not grant expungement. If the court decides to grant expungement, it may order all records sealed; however, law enforcement may re-open the records for limited purposes, such as criminal investigations.

Individuals seeking expungement of a conviction that does not fall into one of the three "statutory" categories have the burden of proving by clear and convincing evidence that any benefits received would outweigh any disadvantages placed on the public and public safety.⁷ In non-statutory cases, a qualifying individual's records may be sealed, but the court may not seal records of the Bureau of Criminal Apprehension or other executive agencies. Further, courts will not expunge the records of those convicted of sex offenses, or any other offenses that require predatory offender registration. Courts are also unlikely to expunge enhanceable convictions or cases that are still open.⁸

Because courts view expungement of criminal records as an extraordinary remedy, it is a costly, time-consuming, and highly technical process. The court may waive the \$322 fee if the criminal record was resolved in the client's favor (the third statutory ground) or if the petitioner is a low-income client, like CLC clients. However, due to a mandatory waiting period, the process takes at least 5 months to complete.

Expungement Pursuant to the Court's Inherent Judicial Power

Minnesota courts also have the inherent power to expunge criminal records in two situations: if retention of the records would seriously infringe an individual's constitutional rights;⁹ or if expungement would yield a benefit to the individual that outweighs the disadvantages to the public and the burden on the court.¹⁰ Again, the petitioner has the burden of proving by clear and convincing evidence that expungement should be granted.¹¹

⁴ Sample letters to various law enforcement agencies are available on the Minnesota Judicial Branch website at <http://www.mncourts.gov/selfhelp/?page=1673>. You may also contact CLC for assistance and samples.

⁵ Pursuant to Minn. Stat. § 299C.11, subd. 1, in order to have a record expunged the petitioner must meet the following criteria: 1) The individual was not convicted of a felony or gross misdemeanor within 10 years prior to arrest, and 2) All criminal actions and proceedings were determined in favor of the individual, and either all charges were dismissed prior to a determination of probable cause, or the prosecutor did not file any charges and a grand jury did not return an indictment.

⁶ The three categories are as follows: (1) A first time drug offender was found guilty, but the court stayed the finding of guilt and, upon completion of probation, dismissed the charges; (2) A juvenile was convicted as an adult, and then either was discharged from the custody of the Commissioner of Corrections or successfully completed probation, and (3) An individual's records (arrest, indictment, trial, or verdict) show that all pending actions/proceedings were found in the individual's favor. Minn. Stat. § 609A.02.

⁷ MINN. STAT. § 609A.03, subd. 5.

⁸ MINN. STAT. § 609A.02, subd. 4.

⁹ In re R.L.F., 256 N.W.2d 803, 807-08 (Minn. 1977).

¹⁰ State v. C.A., 304 N.W.2d 353, 358 (Minn. 1981).

¹¹ MINN. STAT. § 609A.03, subd. 5.

HOW TO TALK TO YOUR CLIENT ABOUT EXPUNGEMENT

Youth often do not fully understand the consequences of their actions until they are faced with the actual consequences. Therefore, in order to advocate effectively for your clients, inform them of the advantages of expunging their records before they age out of foster care and their CLC representation ends. If your client has a juvenile delinquency record, explore if she or he is a candidate for expungement. The first step in this process is to receive your client's permission to request copies of your client's delinquency court records.

You will also need to discuss with your client the potential benefits and limitations of expunging their juvenile records. Topics for discussion include:

Why would you want to have your records expunged? If you were arrested, charged, or convicted as a juvenile, these records can stay with you long after you enter adulthood. They can make it very difficult to enroll in college, find a job, or rent an apartment. Expungement may remove these obstacles.

What will expungement do? Depending on your record, expungement may allow the court to seal it so that no one (not even colleges, landlords, or employers) can see your criminal record.

How do you know if you can have your records expunged?

- i You might be able to have your records expunged if:
 - o You were arrested but not charged.
 - o You were charged but not convicted (you were found not guilty or the charges were dismissed).
 - o You were convicted, but it was your first drug offense.
 - o You were convicted as an adult when you were a minor.
 - o You can show the judge that the benefit you will receive if your record is sealed is greater than any burden the public may experience if they are no longer able to access your criminal history.
- i You might have trouble getting your records expunged if:
 - o You were convicted but have not yet completed your sentence or probation.
 - o Your case is still open (you were charged and it hasn't been decided if you are guilty).
 - o Your sentence was enhanced.
- i You will not be able to have your records expunged if:
 - o You were required to register as a predatory offender.

Will your record go away forever? Not necessarily. If you get into trouble with the police again, the court might be able to open your records as part of an investigation. However, if you were arrested, but never charged or convicted, your record can be expunged and returned to you so it can never be re-opened.

A disadvantage to expungement through the court's inherent judicial power is that even if the court seals an individual's judicial records, the court may choose not to seal records held by an executive agency (such as a police department).¹² Hence, the public may still access the petitioner's arrest records and law enforcement may open sealed records for limited purposes, such as future criminal investigations.

How long does the process take? The expungement process will take at least 5 months. Clients should be informed of this timeline if they want or expect an expungement to be completed by a set date.

¹² See State v. S.L.H. 755 N.W.2d 271, 278 (Minn. 2008) (noting a constitutional separation of powers issue in the judiciary forcing an executive agency to expunge records in the absence of a constitutional question or other "core judicial function").

After receipt of your client's delinquent records, please contact CLC to discuss connecting with various organizations to help with the expungement process.

CONCLUSION

Unfortunately, too many youth in foster care have been charged with a juvenile offense. As an attorney for a foster youth, it is important that you counsel your client about the negative implications a delinquent record can have and the possible benefits of expunging an existing record, before they leave the foster care system. This will lessen the chance that your client will have to deal independently with the devastating effects of retaining a record or the overwhelming burden of expunging that record.

If you have any questions or require any help with these issues, please call
Children's Law Center of Minnesota at 651.644.4438.