

Evaluation of Helpsealmyrecord.org

STATEWIDE EXPUNGEMENT PROGRAM IN

THE OFFICE OF THE MINNESOTA ATTORNEY GENERAL

10/06/2021

Evaluation of "Helpsealmyrecord.org" – Statewide Expungement Program in the Office of the
Minnesota Attorney General
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Acknowledgements

Minnesota Department of Health land acknowledgment

Every community owes its existence and vitality to generations from around the world who contributed their hopes, dreams, and energy to making the history that led to this moment. Some were brought here against their will, some were drawn to leave their distant homes in hope of a better life, and some have lived on this land for more generations than can be counted. Truth and acknowledgment are critical to building mutual respect and connection across all barriers of heritage and difference.

We begin this effort to acknowledge what has been buried by honoring the truth. We are standing on the ancestral lands of the Dakota people. We want to acknowledge the Dakota, the Ojibwe, the Ho Chunk, and the other nations of people who also called this place home. We pay respects to their elders past and present. Please take a moment to consider the treaties made by the Tribal nations that entitle non-Native people to live and work on traditional Native lands. Consider the many legacies of violence, displacement, migration, and settlement that bring us together here today. Please join us in uncovering such truths at any and all public events.*

*This is the acknowledgment given in the USDAC Honor Native Land Guide – edited to reflect this space by Shannon Geshick, MTAG, Executive Director, Minnesota Indian Affairs Council

Minnesota Department of Health acknowledgment of public health harms

The state of Minnesota and the Minnesota Department of Health (MDH) recognize trauma, medical abuse, and discrimination that have happened to our Black, Indigenous, people of color, disability, and LGBTQ+ communities, leading to distrust in medicine and public health. MDH, local public health, medical providers, and other partners are actively working to rebuild trust.

Introduction

Helpsealmyrecord.org was launched in 2019 by county attorneys in Ramsey County and Washington County, later joined by county attorneys in Hennepin County and Winona County. On October 1, 2020, the Minnesota Attorney General's Office (MNAGO), with seed funding from the Safe Harbor Program in the Minnesota Department of Health (MDH) and the Saint Paul & Minnesota Foundation, launched Helpsealmyrecord.org statewide. This service assists eligible applicants to achieve a prosecutor-led expungement. The expungement process seals a criminal record with the goal of increasing personal opportunity. This evaluation report is a review of activities by the MNAGO during the period between October 1, 2020 and September 9, 2021.

Background

A criminal record has long-term consequences for people and their families. It influences the ability to find employment or obtain licensure for certain occupations. Access to housing, public benefits, education, and immigration status are more difficult to attain. Criminal records may also influence family relationships such as child custody or visitation, including potential loss of parental rights. A criminal history also carries stigma that not only affects how society sees the person but also how the person perceives their self-worth. Additionally, public record aggregator websites include criminal history information, which can be difficult to change or remove, even if inaccurate. These long-term consequences, among many others, can negatively affect a person's health and well-being, influence their successful re-entry into society if formerly incarcerated, and increase risk of recidivism long after the public safety relevance of the criminal records. So too, victims of crime may have criminal records related to their victimization which undermine their ability to heal. Expungement, or the sealing of criminal records, increases opportunities in ways that are important and impactful in people's lives once their term of criminal penalty has been served.

Criminal records usually include information on arrests, charges, and convictions. Minnesota state law requires law enforcement to report gross misdemeanors and felonies to the Bureau of Criminal Apprehension (BCA) in the Minnesota Department of Public Safety (DPS). Reporting also includes certain "targeted" (specifically identified, not including all) misdemeanors such as domestic assault, indecent exposure, and fifth degree assault. In addition, law enforcement has discretion to report other misdemeanors including disorderly conduct and some traffic violations. A criminal history records search, such as for a background check related to employment or licensure, includes information from law enforcement, courts, and corrections for the entire state of Minnesota. If the BCA has not received fingerprints for an offense or a period of confinement, that information will not be part of the criminal history record.¹

The expungement process seals a criminal record so it is not publicly available (although it may need to be disclosed in certain instances). Only a judge can seal a criminal record, and it is not destroyed by the expungement process. Expungement prohibits disclosure of criminal records and directs that they can only be

¹ See Minnesota Public Criminal History, https://chs.state.mn.us/Home/Faq#Q8.

opened under judicial or statutory authority (Minn. Stat. § 609A.01). The record can still be seen by law enforcement, prosecutors, courts, probation, and state agencies.

Only certain crimes, including some felonies, qualify for expungement. They are listed in Minnesota Statute section 609A.02. Once an individual has been arrested, charged, and convicted for an eligible crime, waiting periods usually apply before records can be sealed. To qualify, an applicant must be crime-free during the waiting period and in most cases the waiting period starts upon discharge from probation for the offense. A new offense can extend the waiting period or disqualify someone from eligibility for expungement. The statutory waiting periods range from zero to five years, or more. An applicant with a stay of adjudication or participation in a diversion program may be eligible after one year. If the entire felony case was dismissed or there was an acquittal by a Court or jury, there may be no waiting period (Minn. Stat. § 609A.02, subd. 3(1)).

In 2014, several key revisions were made to Minnesota's expungement laws to expand their scope and increase access for more eligible people. These changes also included recognition that crime victims may have a criminal history related to their victimization. For example, in the remedy section of Minnesota Statute section 609A.03, subdivision 5(c)(5), the legislature added language under the 12-factor test for eligibility considering the "context and circumstances of the underlying crime." In addition, subdivision 6a described the effect of the court order "when context and circumstances of the underlying crime indicate a nexus between the criminal record to be expunged and person's status as a crime victim":

If the court finds, under subdivision 5, paragraph (c), clause (5), that the context and circumstances of the underlying crime indicate a nexus between the criminal record to be expunged and the person's status as a crime victim, then the effect of the court order to seal the record of the proceedings shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, or information. The person shall not be guilty of perjury or otherwise of giving a false statement if the person fails to acknowledge the arrest, indictment, information, or trial in response to any inquiry made for any purpose. The court may request a sworn statement from a staff member of a state-funded victim services organization or a licensed health care provider as evidence to support a determination under subdivision 5.²

Legislative testimony in 2014 noted this statutory change could be helpful to victims of sex trafficking who were convicted for prostitution and other related crimes stemming from the trafficking, as well as many other crime victims who engaged in criminal behaviors due to force, threats, coercion, self-defense, or other harms. Notably, this subdivision not only seals the criminal record but restores the person to a pre-arrest status, which is as close to a vacatur remedy (sets aside a judgment) as possible under Minnesota law.

Another significant change in 2014 was the creation of an administrative expungement process that allows the court to seal the criminal record per prosecutor agreement (Minn. Stat. § 609A.025). This is helpful to many people seeking expungement because the petition process can be complex and costly, particularly if someone has records from more than one jurisdiction. Under this section of the law, when the prosecutor files the

² Minn. Stat. § 609A.03, subd. 6a.

expungement there is no court fee for the petitioner and the prosecutor manages the pleadings, service, and filing. Waiting periods before seeking expungement still apply.

Helpsealmyrecord.org

Helpsealmyrecord.org is a website that is mobile phone-friendly to increase accessibility to the administrative expungement process per prosecutor agreement allowed under Minn. Stat. § 609A.025. The MNAGO has one full-time assistant attorney general dedicated to the expungement project housing Helpsealmyrecord.org. The project focuses only on adult cases. Applicants answer yes or no questions in the streamlined online application process. One of the questions asks if the applicant was the victim of a crime or if the crime they are seeking to have expunged was related to a crime against the applicant. Once the application is received, the following steps are undertaken:

- MNAGO requests BCA criminal history
- MNAGO analyzes criminal history for expungement eligibility
- If not eligible, MNAGO sends applicant a decline email and provides information about other possible resources such as the Conviction Review Unit in the MNAGO and the Minnesota Pardons Board
- If a case is eligible, then the MNAGO contacts Prosecutor in the relevant jurisdiction about the expungement application
- If the Prosecutor agrees to a stipulation, then MNAGO emails the Part-2 Questionnaire, 12-factor test to the applicant
- MNAGO uses the initial application, criminal history analysis, and Part-2 questionnaire to draft a stipulation and proposed order
- MNAGO sends the draft stipulation and proposed order to the Prosecutor
- Once the Prosecutor signs the stipulation, the MNAGO serves a copy of the stipulation and the proposed order to the agencies required to receive notice of expungement matters
- Prosecutor files stipulations and proposed orders with the Court
- Court adjudicates administratively on a non-appearance calendar
- All statutory service requirements and timelines apply

Safe Harbor and expungement

The <u>Safe Harbor Program (https://www.health.state.mn.us/communities/safeharbor/index.html)</u> is housed in the Violence Prevention Programs Unit, within the Injury and Violence Prevention Section, Health Promotion and Chronic Disease Division of MDH. Safe Harbor, through state and federal support, provides funding, technical assistance, training, and evaluation support to improve the statewide response to human trafficking, with a specific focus on sexual exploitation of youth through age 24 (Minn. Stat. § 145.4716, subd. 3).

In August 2020, the Safe Harbor Program executed a one-year inter-agency agreement with the Minnesota Attorney General's Office for \$40,000 to support development and implementation of its statewide expungement program.

Minnesota Statute section 609.3241 as amended during the 2021 Minnesota Legislature session sets forth penalty assessment by the courts. In addition, Minnesota Statute section 609.5315, directs disposition of forfeited property. A portion of these assessments and proceeds are distributed to MDH for distribution to services supporting sexually exploited youth. In addition, these funds are distributed to DPS to support the law enforcement and prosecution response to sexual exploitation of youth.

Safe Harbor utilizes qualitative and quantitative data to inform short- and long-term funding strategies. This inter-agency agreement was seen as an investment in a stated need for sex trafficking survivors supported by findings shared in the 2018 <u>Safe Harbor for All: Results from a Strategic Planning Process in Minnesota</u> (https://uroc.umn.edu/research/safe-harbor-all-strategic-planning-process) report submitted to MDH by The Robert J. Jones Urban Research and Outreach Engagement Center at the University of Minnesota, The Advocates for Human Rights, and Rainbow Research. MDH reported on these findings to the Minnesota legislature in January 2019 through the <u>Safe Harbor for All: Statewide Trafficking Victim/Survivor Statewide Strategic Plan (https://www.health.state.mn.us/communities/safeharbor/response/safeharborforall.html">https://www.health.state.mn.us/communities/safeharbor/response/safeharborforall.html).</u>

The Safe Harbor for All report noted that survivors of sex trafficking need assistance with expungement because the process is too expensive and complex to complete on their own. Sometimes the survivor's criminal history is directly related to their victimization in trafficking; sometimes the criminal history is not, but nonetheless it may still be an obstacle to recovery and stability for the survivor. According to the report:

A criminal record for prostitution bars people from housing and employment. Again, this was a nearly unanimous consensus across stakeholder groups. Many landlords, public housing, and transitional housing will not rent or provide housing to people with a prostitution record. Many jobs that could be skill appropriate, with living wage hourly pay and benefits are not available to people with a criminal record, specifically prostitution, such as childcare, healthcare, social work, criminal justice, hotels and hospitality, and some retail positions. The criminal record blocks recovery and exit from transactional sex and sex trafficking, locking people in a cycle of involvement and exploitation. It also opens the door to discrimination, harassment and abuse from landlords and employers who can use the charge to solicit sex or commit labor exploitation.³

When multiple counties are involved, the process becomes even more unwieldy, and many survivors do not have the expertise, support, funds, or time to file several petitions.

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³ Martin, L., Melander, C., Fritz Fogel, K., Saito, B, McKenzie, M., Park, R. <u>Safe Harbor for All: Results from a Statewide Strategic Planning Process in Minnesota (https://uroc.umn.edu/sites/uroc.umn.edu/files/2019-11/SH4ALL-Findings-and-recommendations-1.13.19.pdf)</u>, 40 (2018).

Additional support for survivors

Aside from the Safe Harbor All report and subsequent strategic plan, other sources have also responded to the need for trafficking survivor assistance with the expungement process. Support from the Center for Urban and Regional Affairs (CURA) at the University of Minnesota helped the Minnesota Clean Slate Alliance (https://www.cura.umn.edu/project/minnesota-clean-slate-alliance) (MCSA) develop the expungement policy tool (https://www.cura.umn.edu/project/minnesota-clean-slate-alliance) that gives an overview of criminal expungement, and acknowledges cost and time estimates, system barriers, and potential points of retraumatization for trafficking survivors that may occur from contact with different parts of the criminal justice system. MCSA also created a fact sheet, "Criminal Expungement for Sexually Exploited Individuals (https://www.cura.umn.edu/sites/cura.umn.edu/files/2021-08/Factsheet-Expungement.pdf)" to help advocates and people increase their knowledge about Minn. Stat. § 609A.03, subd. 6a and how to use it.

Helpsealmyrecord.org outcomes

Between October 1, 2020 and September 9, 2021, the statewide expungement program received 2,353 applications. The program receives five to eight new applications daily. The program has worked with and trained law students to analyze application case details for eligibility. A group of students completed around 200 cases per semester with 550 applications reviewed in the evaluation period. Of the applications reviewed, 344 were eligible for filing and 223 were categorized as non-eligible. Forty-four counties and 107 cities across the state participated in the expungement program through the Office of the Minnesota Attorney General. (See Appendix for county and city lists.)

Of the 344 that were eligible for filing, 115 applicants went on to file for expungement; of these, 95 were approved. There were no objections to the filings, although sometimes the subject of the petition needed to resolve an unpaid fine or wait for 60 days for final approval from the court. The types of expunged cases were primarily misdemeanor or gross misdemeanor, with some eligible felonies. The most common cases for expungement included various types of theft, possession of a controlled substance, disorderly conduct, various driving violations, and domestic assault. (See the Appendix for a complete list.) One applicant had a misdemeanor theft history and had been denied for 13 jobs as well as housing. Another had a domestic assault misdemeanor and could not pursue a career in nursing; in addition, they were denied housing. The narratives collected from program participants exemplify the barriers that a criminal record presents to opportunities and resources for productive life circumstances.

Systems education

The Safe Harbor Director and the Assistant Attorney General presented to the Office of Justice Programs Conference in May 2021. There were 52 responses to the post-program survey, with victim services providers from community-based programs and prosecutors' offices were the primary attendees, followed by prosecutors and probation officers. One participant stated in the post-program survey that "the session increased my knowledge of some of the barriers victims of [intimate partner violence/domestic violence] and sex trafficking [encounter]. It would be wonderful if the courts would look at each individual case so that more victims can have their records expunged, so that those individuals can have better access to state benefits and housing."

Additional trainings by the Assistant Attorney General include presentations for the American Immigration Lawyers Association (Minnesota/Dakotas chapter), the 2021 Criminal Justice Institute, and a presentation organized by the Minnesota Attorney General's Office and the Minnesota Coalition of Bar Associations of Color.

Limitations

The high volume of applicants with only one full-time assistant attorney general assisted by law students and other staff has created a substantial backlog of cases for review and action; however, the students have helped manage the backlog and prevent it from growing to an insurmountable level. In addition, not every prosecutor office in the state is participating. Some have declined or not responded to a request for a participation, which creates a gap for some applicants.

In addition, MNAGO staff noted anecdotally that many applicants are white, and more effort is needed to encourage participation from people of color. Currently the MNAGO does not request race/ethnicity data from applicants.

To date, no "nexus" cases under Minnesota Statute section 609A.03, subdivision 6a have been received in the statewide program for people who identify as survivors of human trafficking; however, jurisdictions such as Ramsey and Hennepin have handled these cases separately with positive results for the subjects of the petitions. Two cases involving (non-felony) domestic violence were approved. It is possible, but not known, that some applicants may have a background of trafficking victimization but did not disclose it or did not see it as relevant to the case. MNAGO staff noted it was difficult to provide documentation regarding applicants' "nexus" to the crime as required under the statute.

Conclusion and recommendations

Given the steady stream and high volume of applications, along with the findings that most applications that have been reviewed are deemed eligible, there is a clear need for the program. Overall, the statewide Helpsealmyrecord.org has been a success in terms of completed expungements and providing better opportunities to program participants for housing, education, employment, family reunification, and many other social determinants that support public health and public safety. Sustainable funding from the legislature and other sources is needed to keep the program going.

While it is disappointing that survivors of human trafficking are not reflected yet in the program data, there are logical explanations for their absence. The statewide expungement service is still new, and several factors may influence participation, including either a lack of disclosure or a hesitancy to disclose by applicants or an uncertainty about whether this sort of personal history is relevant to the process. MDH is encouraged by the many benefits of the program thus far in terms of creating new pathways for stability, all of which contribute to individual and public health, as well as preventing exploitation and trafficking. MDH is hopeful that a combination of launching additional expungement programs, including one in Blue Earth County, increased outreach and education, coupled with potential legislative action, and additional evaluation, may increase participation.

There is no doubt that this service is beneficial to survivors of human trafficking, and other crimes, who may have criminal records related to their victimization. So too, even when the "nexus" with victimization cannot be proven, this program still presents a pathway for survivors to seal their criminal records and access more opportunities that will assist in their recovery and stability. For example, several of the expunged cases involve controlled substances; survivors of human trafficking and other violence may struggle with substance use.

With the Minnesota Attorney General's expungement program at its one-year mark in operation, below are recommendations to help expand the program's reach to more victims of crime with criminal records and, specifically from Safe Harbor's perspective, to more survivors of human trafficking.

Recommendations	Responsibility	Actions	Expected Outcomes
Enhanced and Targeted Outreach	Minnesota Attorney General's Office MDH Safe Harbor Program and other related MDH programs	Continue outreach with a specific focus on partnering with programs serving communities of color; this may include "expungement days" at courthouses or in the community as well as advertising. Continue promotion of Helpsealmyrecord.org to Safe Harbor grantee programs and other services programs for survivors of human trafficking and other harms.	Increased applications from people of color. Increased applications from people whose criminal records were a result of their victimization. Further engagement with other MDH programs including substance use prevention and mental health teams to raise awareness of expungement opportunities.

Recommendations	Responsibility	Actions	Expected Outcomes
Systems Education	Minnesota Attorney General's Office	Increase education for systems partners including the courts, prosecutors, public defenders, probation, law enforcement, legal services, and other partners to ensure individuals are aware of Helpsealmyrecord.org and to increase the use of prosecutor-led expungement processes. Identify prosecutor officers that are not participating and determine what barriers need to be addressed; target efforts to engage their leaders in participation.	More referrals through system partners and increased responsiveness by all prosecutors' offices in taking expungement cases.
Statutory	Minnesota State Legislature	Working with the Minnesota Attorney General's office, identify statutory changes to remove barriers to use of Minn. Stat. § 609A.03, subd. 6a based on examples from Helpsealmyrecord.org. Review community efforts such as the Minnesota Clean Slate Alliance to address statutory changes.	The "nexus" relationship in the statute will not be as difficult to prove and will ensure that people with criminal records resulting from their victimization have a better chance at expungement under subdivision 6a, which not only seals their records but restores the victim to a pre-arrest status.

Recommendations	Responsibility	Actions	Expected Outcomes
Ongoing Evaluation	Minnesota Attorney General's Office	Ongoing evaluation is crucial to understanding the impact of Helpsealmyrecord.org. The Minnesota Attorney General's office could consider yearly evaluation to review progress and outcomes. To ensure objectivity, an external evaluator should be sought, if resources allow. Program evaluation should also include standalone county expungement programs in Ramsey, Hennepin, Washington, and Winona counties.	Ongoing evaluation will not only increase understanding of types of cases sought for expungement as well as the experiences of those seeking expungement but also allow for quality assurance and program improvement. Evaluation results can also be used in all branches of state government to inform and influence criminal justice system response.

Appendix

Participating Counties (44)

Anoka, Aitkin, Benton, Blue Earth, Brown, Carlton, Carver, Chisago, Crow Wing, Dakota, Freeborn, Goodhue, Houston, Isanti, Jackson, Kanabec, Kandiyohi, Lac Qui Parle, Lake, Le Sueur, Lyon, Marshall, McLeod, Meeker, Mille Lacs, Morrison, Mower, Nicollet, Nobles, Olmsted, Otter Tail, Pine, Renville, Rice, Scott, Sherburne, Sibley, St. Louis, Stearns, Steele, Todd, Waseca, Wright, Yellow Medicine

Participating Cities (107)

Alexandria, Andover, Annandale, Apple Valley, Arden Hills, Austin, Battle Lake, Baudette, Becker, Belle Plaine, Beltrami, Bethel, Bloomington, Braham, Brainerd, Brooklyn Center, Brooklyn Park, Buffalo, Burnsville, Cambridge, Champlin, Chanhassen, Cloquet, Cokato, Columbus, Columbia Heights, Coon Rapids, Cottage Grove, Cottonwood, Crystal, Duluth, Eagan, East Grand Forks, Eden Prairie, Elk River, Faribault, Farmington, Fergus Falls, Franklin, Fridley, Golden Valley, Ham Lake, Hastings, Henning, Hopkins, Independence, Inver Grove Heights, Isanti, Kenyon, Lake City, Lake Elmo, Lakeville, Lauderdale, Mankato, Mantorville, Maplewood, Marshall, McGrath, Medina, Mendota Heights, Minneapolis, Minnetrista, Monticello, Mora, Mound, Mounds View, Nerstrand, New Brighton, New Prague, New York Mills, Oak Grove, Oakdale, Olivia, Osseo, Parkers Prairie, Pelican Rapids, Perham, Pine Island, Plymouth, Randolph, Redwood Falls, Rice, Richfield, Robbinsdale, Rochester, Rosemount, Roseau, Roseville, Sauk Rapids, St. Francis, St. Paul Park, Sandstone, Sartell, Shakopee, South St. Paul, St. Cloud, Stillwater, Tonka Bay, Vermillion, Victoria, Wahkon, Warroad, Watson, West Concord, West St. Paul, Willmar, Woodland

Expunged Case Types

Offense	County (numbers indicate if a county has more than one case)
Assault Including fifth degree fear of bodily harm/death and fourth degree assault of a police officer	Mower, Cottonwood, Carver, Roseau
Theft Including movable property, theft by check, mail theft	Olmsted (2), Pine, Polk, Anoka (7), Dakota, Benton, Crow Wing, Wright (5), Jackson, Stearns, Blue Earth, Pine, Todd
Driving Violations Including third and fourth degree driving while intoxicated	St. Louis, Benton, Crow Wing, Dakota (8), Anoka (5), Sibley, Olmsted, Carver (3), Wright, Renville

Offense	County (numbers indicate if a county has more than one case)
Failure to display license plates and failure to yield right of way to an emergency vehicle	
Driving after cancellation, driving without valid license, violating limited driver's license conditions, driving after revocation, or driving without license	
Fleeing police in a motor vehicle	
Unauthorized use of a motor vehicle	
Careless driving	
Failure to produce proof of insurance	
Disorderly Conduct and Related Crimes Disorderly conduct	Anoka (3), Dakota (2), St. Louis, Stearns, Olmsted, Wright, Roseau, Carlton, Renville (2), Steele, Blue Earth, McLeod
Public nuisance	
Criminal property damage	
Controlled Substances	Becker, St. Louis, Watonwan, St. Louis, Anoka (5), Benton, Steele, Kandiyohi
Fifth degree controlled substance	benton, steele, kandiyoni
Attempted possession with intent	
Domestic Assault, Sexual Assault, and Protective Orders	Watonwan, Anoka (2) Carver (2), Dakota, Morrison, Norman, Isanti
Domestic Assault	
Violation of harassment restraining order or violation of order for protection	
Criminal sexual conduct in first degree and criminal sexual conduct in fifth degree*	
*Case dismissed by the Court	

Offense	County (numbers indicate if a county has more than one case)
Financial/Fraud Issuance of dishonored checks over \$500 Financial transaction card fraud or other misuse of credit card to secure services False medical card Forgery	Carver (1), Anoka (4), Scott, Cottonwood, Wright (2), Dakota (2), St. Louis, Renville
Alcohol Consuming alcohol under age 21 Possession of an open bottle	Dakota (2)
Contempt of Court Order	Steele
Giving Police Officer False Name	Benton
Prostitution	Olmsted
Terroristic Threats	Carlton, Aitkin
Interference with 911 Call	Carver
False Crime Report/False Fire Alarm Tampering	Carlton