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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1503**

State of Minnesota,  
Commissioner of Human Services,  
Appellant,

vs.

S. M. Q.,  
Respondent.

**Filed June 1, 2010  
Reversed and remanded  
Kalitowski, Judge**

Crow Wing County District Court  
File No. 18-CR-08-1165

Lori Swanson, Attorney General, Cara Hawkinson, Assistant Attorney General, St. Paul,  
Minnesota (for appellant)

S.M.Q., Brainerd, Minnesota (pro se respondent)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and  
Harten, Judge.\*

**UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

Appellant Commissioner of Human Services challenges the district court's  
expungement order directing appellant to seal respondent S.M.Q.'s criminal records.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

Appellant argues that the order must be reversed because respondent failed to serve appellant with the petition for expungement, depriving appellant of the opportunity to challenge the petition. We reverse and remand.

## **DECISION**

In March 2008, the state charged respondent with two counts of first-degree criminal sexual conduct, but dismissed the charges without prejudice in September 2008, citing insufficient evidence. Respondent filed a petition for expungement of the dismissed charges under Minn. Stat. § 609A.02, subd. 3 (2008). Respondent served the petition on the Crow Wing County Attorney, the Bureau of Criminal Apprehension (BCA), the Minnesota Attorney General's Office, the Crow Wing County Sheriff, and Crow Wing County Family Services. No party objected, but an assistant attorney general responded to the notice sent to the Minnesota Attorney General's Office and informed the district court by letter that the BCA declined to take a position in the matter.

Following a hearing, the district court issued an order granting respondent's petition and ordering the entities served with the petition to seal respondent's criminal records. Pursuant to respondent's request, on June 16, 2009, the district court issued a second expungement order, directing appellant to seal respondent's criminal records.

Appellant argues that the district court's June 16, 2009 expungement order must be reversed because respondent failed to serve appellant with the petition for expungement. We agree.

We review a district court's order granting or denying expungement of criminal records for an abuse of discretion. *State v. K.M.M.*, 721 N.W.2d 330, 332-33 (Minn. App. 2006).

Respondent petitioned for expungement under Minn. Stat. § 609A.02, subd. 3 (2008), on the ground that the criminal sexual conduct proceedings were resolved in her favor. *See* Minn. Stat. § 609A.02, subd. 3 (providing that a petition may be filed under Minn. Stat. § 609A.03 if “all pending actions or proceedings were resolved in favor of the petitioner”); *K.M.M.*, 721 N.W.2d at 333 (stating that dismissal of charges is a determination in petitioner's favor). Section 609A.03 sets forth the substantive and procedural requirements of petitioning for expungement. In pertinent part, subdivision 3 provides that the petitioner shall serve by mail the petition and proposed order on the prosecutorial office, on “all other state and local government agencies and jurisdictions whose records would be affected by the proposed order,” and on the attorney for each agency and jurisdiction. Minn. Stat. § 609A.03, subd. 3 (2008).

Here, respondent failed to satisfy the service requirements set forth in section 609A.03 because respondent did not serve the petition and proposed order on appellant. The record indicates that appellant was not aware of the expungement proceedings until after the district court had ordered appellant to seal respondent's records. And because section 609A.03 expressly provides that the petitioner is to serve the petition on both the agency and the agency's attorney, service on the Attorney General, who responded on behalf of the BCA, is not sufficient to satisfy the statute with regard to appellant. *See*

*State v. Wagner*, 555 N.W.2d 752, 754 (Minn. App. 1992) (stating that a statute is to be construed in a manner that gives effect to all its provisions).

We conclude that the district court abused its discretion in issuing the June 16, 2008 expungement order. We reverse and remand to allow proper service of the petition and to provide appellant the opportunity to challenge the expungement as directed against appellant.

**Reversed and remanded.**