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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 1858

March 18, 2009
Authored by Lesch
The bill was read for the first time and referred to the Committee on Public Safety Policy and Oversight

- 1.1

A bill for an act
- 1.2

relating to public safety; recodifying and restructuring the law on expungements
- 1.3

of criminal records; expanding eligibility for expungements; proposing coding
- 1.4

for new law as Minnesota Statutes, chapter 609C; repealing Minnesota Statutes
- 1.5

2008, sections 609A.01; 609A.02; 609A.03.
- 1.6

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.7

Section 1. **[609C.01] CRIMINAL RECORDS EXPUNGEMENT.**
- 1.8

This chapter provides the grounds and procedures for expungement of criminal
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records under section 13.82; 152.18, subdivision 1; 299C.11, where a petition is authorized
- 1.10

under section 609C.02; or other applicable law. The remedy available is limited to a court
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order sealing the records and prohibiting the disclosure of their existence or their opening
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except under court order or statutory authority. Nothing in this chapter authorizes the
- 1.13

destruction of records or their return to the subject of the records.
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EFFECTIVE DATE. This section is effective August 1, 2009, and applies to
- 1.15

expungement petitions filed on or after that date.
- 1.16

Sec. 2. **[609C.02] GROUNDS FOR ORDER.**
- 1.17

A person may petition under section 609C.03 for the sealing of all records relating
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to the person's arrest, citation, indictment or information, complaint, trial, guilty plea, or
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verdict regardless of whether the proceedings were resolved in the person's favor.
- 1.20

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to
- 1.21

expungement petitions filed on or after that date.
- 1.22

Sec. 3. **[609C.03] PETITION TO EXPUNGE CRIMINAL RECORDS.**

2.1 Subdivision 1. **Petition; filing fee.** An individual who is the subject of a criminal
2.2 record who is seeking the expungement of the record shall file a petition under this section
2.3 and pay a filing fee in the amount required under section 357.021, subdivision 2, clause
2.4 (1). The filing fee may be waived if the actions or proceedings that resulted in the criminal
2.5 record were resolved in favor of the petitioner.

2.6 Subd. 2. **Contents of petition.** (a) A petition for expungement shall be signed under
2.7 oath by the petitioner and shall state the following:

2.8 (1) the petitioner's full name and all other legal names or aliases by which the
2.9 petitioner has been known at any time;

2.10 (2) the petitioner's date of birth;

2.11 (3) all of the petitioner's addresses from the date of the offense or alleged offense in
2.12 connection with which an expungement order is sought, to the date of the petition;

2.13 (4) why expungement is sought, if it is for employment or licensure purposes, the
2.14 statutory or other legal authority under which it is sought, and why it should be granted;

2.15 (5) the details of the offense or arrest for which expungement is sought, including
2.16 the date and jurisdiction of the occurrence; either the names of any victims or that there
2.17 were no identifiable victims; whether there is a current order for protection, restraining
2.18 order, or other no-contact order prohibiting the petitioner from contacting the victims; or
2.19 whether there has ever been a prior order for protection or restraining order prohibiting the
2.20 petitioner from contacting the victims; the court file number; and the date of conviction
2.21 or of dismissal;

2.22 (6) in the case of a conviction, what steps the petitioner has taken since the time of
2.23 the offense toward personal rehabilitation, including treatment, work, or other personal
2.24 history that demonstrates rehabilitation;

2.25 (7) the petitioner's criminal conviction record indicating all convictions for
2.26 misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable
2.27 convictions in any other state, federal court, or foreign country, whether the convictions
2.28 occurred before or after the arrest or conviction for which expungement is sought;

2.29 (8) the petitioner's criminal charges record indicating all prior and pending criminal
2.30 charges against the petitioner in this state or another jurisdiction, including all criminal
2.31 charges that have been continued for dismissal or stayed for adjudication, or have been the
2.32 subject of pretrial diversion; and

2.33 (9) all prior requests by the petitioner, whether for the present offense or for any
2.34 other offenses, in this state or any other state or federal court, for pardon, return of arrest
2.35 records, or expungement or sealing of a criminal record, whether granted or not, and all
2.36 stays of adjudication or imposition of sentence involving the petitioner.

(b) If there is a current order for protection, restraining order, or other no-contact order prohibiting the petitioner from contacting the victims, or there has ever been a prior order for protection or restraining order prohibiting the petitioner from contacting the victims, the petitioner shall attach a copy of the order to the petition.

Subd. 3. Service of petition and proposed order. (a) The petitioner shall serve by mail the petition for expungement and a proposed expungement order on the prosecutorial office that had jurisdiction over the offense for which expungement is sought and all other state and local government agencies and jurisdictions whose records would be affected by the proposed order. The petitioner shall also serve by mail the attorney for each agency and jurisdiction.

(b) The prosecutorial office that had jurisdiction over the offense for which expungement is sought shall serve by mail the petition for expungement and a proposed expungement order on any victims of the offense for which expungement is sought who have requested notice of expungement pursuant to section 611A.06. Service under this paragraph does not constitute a violation of an existing order for protection, restraining order, or other no-contact order.

(c) The prosecutorial office's notice to victims of the offense under this subdivision must specifically inform the victims of the victims' right to be present and to submit an oral or written statement at the expungement hearing described in subdivision 4.

Subd. 4. Hearing. A hearing on the petition shall be held no sooner than 60 days after service of the petition. A victim of the offense for which expungement is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether expungement should be granted or denied. The judge shall consider the victim's statement when making a decision.

Subd. 5. Maintenance of records. If the court issues an expungement order it may require that the criminal record be sealed and the record not be opened except as provided under subdivision 8. An expungement order or a record of the existence of an expunged record must not be disclosed, except as provided under subdivision 8. Records must not be destroyed or returned to the subject of the record.

Subd. 6. Order concerning crimes of violence. An order expunging the record of a conviction for a crime of violence as defined in section 624.712, subdivision 5, must provide that the person is not entitled to ship, transport, possess, or receive a firearm for the remainder of the person's lifetime. Any person whose record of conviction is expunged under this section and who thereafter receives a relief of disability under United States

Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d, is not subject to the restriction in this subdivision.

Subd. 7. **Effect of order.** If the court orders an expungement under this section, the effect of the order shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, citation, indictment or information, complaint, trial, guilty plea, or verdict. The person shall not be held guilty of perjury or otherwise of giving a false statement if the person fails to acknowledge any of these events in response to any inquiry made for any purpose.

Subd. 8. **Limitations of order.** (a) Upon issuance of an expungement order related to a charge supported by probable cause, the DNA samples and DNA records held by the Bureau of Criminal Apprehension and collected under authority other than section 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

(b) Notwithstanding the issuance of an expungement order:

(1) an expunged record may be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order;

(2) the fact that an expunged record exists may be made available to law enforcement authorities acting within the scope of official duties;

(3) an expunged record of a conviction may be opened for purposes of evaluating a prospective employee in a criminal justice agency without a court order; and

(4) an expunged record of a conviction may be opened for purposes of a statutorily required background study without a court order if the subject of the record has been given notice before the study that expunged records may be opened.

Upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of an expunged record and of the right to obtain access to it as provided by this paragraph. For purposes of this section, a "criminal justice agency" means courts or a government agency that performs the administration of criminal justice under statutory authority.

Subd. 9. **Distribution of expungement orders.** The court administrator shall send a copy of an expungement order to each agency and jurisdiction whose records are affected by the terms of the order.

Subd. 10. **Stay of order; appeal.** An expungement order shall be stayed automatically for 60 days after the order is filed and, if the order is appealed, during the appeal period. A person or an agency or jurisdiction whose records would be affected by the order may appeal the order within 60 days of service of notice of filing of the order. An agency or jurisdiction or its officials or employees need not file a cost bond or supersedeas bond in order to further stay the proceedings or file an appeal.

5.1 **Subd. 11. Factors to be considered; extent of order.** (a) When deciding whether to
5.2 issue an expungement order under this section, the court shall consider:

5.3 (1) the nature and severity of the underlying crime whose record is the subject of
5.4 the expungement petition;

5.5 (2) the danger, if any, the petitioner poses to any individuals or society;

5.6 (3) the length of time since the crime occurred;

5.7 (4) the steps taken by the petitioner towards rehabilitation following the crime;

5.8 (5) extenuating or mitigating factors relating to the underlying crime, including, but
5.9 not limited to, the petitioner's level of participation, claims of innocence, and irregularities
5.10 in the trial;

5.11 (6) the reasons for the expungement, including, but not limited to, the petitioner's
5.12 attempts to obtain employment, housing, or other necessities;

5.13 (7) the petitioner's criminal record;

5.14 (8) the petitioner's record of employment and community involvement;

5.15 (9) the recommendations of interested law enforcement, prosecutorial, and
5.16 corrections officials;

5.17 (10) the recommendations of any victims of the underlying crime; and

5.18 (11) any other factor deemed relevant by the court.

5.19 (b) A court's decision on whether to issue an expungement order is completely
5.20 discretionary. If the court grants the expungement petition, it shall specify what records
5.21 are to be affected by the order. The order may affect judicial branch records, executive
5.22 branch records, and any other government records deemed appropriate by the court.

5.23 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to
5.24 expungement petitions filed on or after that date.

5.25 **Sec. 4. [609C.04] BUSINESS SCREENING SERVICES; REMOVAL OF DATA**
5.26 **ON EXPUNGED RECORDS; CORRECTIONS.**

5.27 **Subdivision 1. Definition.** For purposes of this section, "business screening service"
5.28 means a person engaged in the business of gathering, storing, or disseminating background
5.29 information on individuals that includes records of arrests, citations, criminal proceedings,
5.30 or convictions involving the individual. Business screening service does not include a
5.31 residential screening service under sections 504B.235 to 504B.245.

5.32 **Subd. 2. Deletion of expunged records.** If a business screening service knows that
5.33 records of an arrest, citation, criminal proceeding, or conviction involving an individual
5.34 have been expunged under this chapter or other law, the screening service shall delete any

6.1 reference to those records in information maintained or disseminated by the screening
6.2 service.

6.3 Subd. 3. **Corrections.** If the completeness or accuracy of a record involving an
6.4 arrest, citation, criminal proceeding, or conviction maintained by a business screening
6.5 service is disputed by the individual who is the subject of the record, the screening
6.6 service must reinvestigate and document the current status of the record. If the record is
6.7 found to be inaccurate or can no longer be verified, the screening service must correct
6.8 the inaccuracy or delete any reference to that record in information maintained or
6.9 disseminated by the screening service. At the request of the individual, the screening
6.10 service must give notification of the correction or deletion to persons who have received
6.11 the record within the past six months.

6.12 Subd. 4. **Remedy.** A business screening service that violates this section is liable
6.13 to the individual who is the subject of the record for a penalty of \$10,000 or actual
6.14 damages caused by the violation, whichever is greater, plus costs and disbursements and
6.15 reasonable attorney fees.

6.16 **EFFECTIVE DATE.** This section is effective August 1, 2009.

6.17 **Sec. 5. [609C.05] NO DUTY TO DISCOVER EXPUNGED RECORDS.**

6.18 An employer or prospective employer does not have a duty to discover or use a
6.19 record that has been expunged under this chapter or other law for purposes of making
6.20 an employment decision.

6.21 **EFFECTIVE DATE.** This section is effective August 1, 2009.

6.22 **Sec. 6. REVISOR'S INSTRUCTION.**

6.23 The revisor of statutes shall replace all statutory references to Minnesota Statutes,
6.24 sections 609A.01 to 609A.03, with references to the appropriate successor sections in
6.25 chapter 609C.

6.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.27 **Sec. 7. REPEALER.**

6.28 Minnesota Statutes 2008, sections 609A.01; 609A.02; 609A.03, are repealed.

6.29 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to
6.30 expungement petitions filed on or after that date.

609A.01 EXPUNGEMENT OF CRIMINAL RECORDS.

This chapter provides the grounds and procedures for expungement of criminal records under section 13.82; 152.18, subdivision 1; 299C.11, where a petition is authorized under section 609A.02, subdivision 3; or other applicable law. The remedy available is limited to a court order sealing the records and prohibiting the disclosure of their existence or their opening except under court order or statutory authority. Nothing in this chapter authorizes the destruction of records or their return to the subject of the records.

609A.02 GROUNDS FOR ORDER.

Subdivision 1. **Certain controlled substance offenses.** Upon the dismissal and discharge of proceedings against a person under section 152.18, subdivision 1, for violation of section 152.024, 152.025, or 152.027 for possession of a controlled substance, the person may petition under section 609A.03 for the sealing of all records relating to the arrest, indictment or information, trial, and dismissal and discharge.

Subd. 2. **Juveniles prosecuted as adults.** A petition for the sealing of a conviction record may be filed under section 609A.03 by a person who has been committed to the custody of the commissioner of corrections upon conviction of a crime following certification to district court under section 260B.125, if the person:

- (1) is finally discharged by the commissioner; or
- (2) has been placed on probation by the court under section 609.135 and has been discharged from probation after satisfactory fulfillment of it.

Subd. 3. **Certain criminal proceedings not resulting in conviction.** A petition may be filed under section 609A.03 to seal all records relating to an arrest, indictment or information, trial, or verdict if the records are not subject to section 299C.11, subdivision 1, paragraph (b), and if all pending actions or proceedings were resolved in favor of the petitioner. For purposes of this chapter, a verdict of not guilty by reason of mental illness is not a resolution in favor of the petitioner.

Subd. 4. **Expungement prohibited.** Records of a conviction of an offense for which registration is required under section 243.166 may not be expunged.

609A.03 PETITION TO EXPUNGE CRIMINAL RECORDS.

Subdivision 1. **Petition; filing fee.** An individual who is the subject of a criminal record who is seeking the expungement of the record shall file a petition under this section and pay a filing fee in the amount required under section 357.021, subdivision 2, clause (1). The filing fee may be waived in cases of indigency and shall be waived in the cases described in section 609A.02, subdivision 3.

Subd. 2. **Contents of petition.** (a) A petition for expungement shall be signed under oath by the petitioner and shall state the following:

- (1) the petitioner's full name and all other legal names or aliases by which the petitioner has been known at any time;
- (2) the petitioner's date of birth;
- (3) all of the petitioner's addresses from the date of the offense or alleged offense in connection with which an expungement order is sought, to the date of the petition;
- (4) why expungement is sought, if it is for employment or licensure purposes, the statutory or other legal authority under which it is sought, and why it should be granted;
- (5) the details of the offense or arrest for which expungement is sought, including the date and jurisdiction of the occurrence, either the names of any victims or that there were no identifiable victims, whether there is a current order for protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for protection or restraining order prohibiting the petitioner from contacting the victims, the court file number, and the date of conviction or of dismissal;
- (6) in the case of a conviction, what steps the petitioner has taken since the time of the offense toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation;
- (7) petitioner's criminal conviction record indicating all convictions for misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable convictions in any other state, federal court, or foreign country, whether the convictions occurred before or after the arrest or conviction for which expungement is sought;

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(8) petitioner's criminal charges record indicating all prior and pending criminal charges against the petitioner in this state or another jurisdiction, including all criminal charges that have been continued for dismissal or stayed for adjudication, or have been the subject of pretrial diversion; and

(9) all prior requests by the petitioner, whether for the present offense or for any other offenses, in this state or any other state or federal court, for pardon, return of arrest records, or expungement or sealing of a criminal record, whether granted or not, and all stays of adjudication or imposition of sentence involving the petitioner.

(b) If there is a current order for protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or there has ever been a prior order for protection or restraining order prohibiting the petitioner from contacting the victims, the petitioner shall attach a copy of the order to the petition.

Subd. 3. Service of petition and proposed order. (a) The petitioner shall serve by mail the petition for expungement and a proposed expungement order on the prosecutorial office that had jurisdiction over the offense for which expungement is sought and all other state and local government agencies and jurisdictions whose records would be affected by the proposed order. The petitioner shall also serve by mail the attorney for each agency and jurisdiction.

(b) The prosecutorial office that had jurisdiction over the offense for which expungement is sought shall serve by mail the petition for expungement and a proposed expungement order on any victims of the offense for which expungement is sought who have requested notice of expungement pursuant to section 611A.06. Service under this paragraph does not constitute a violation of an existing order for protection, restraining order, or other no contact order.

(c) The prosecutorial office's notice to victims of the offense under this subdivision must specifically inform the victims of the victims' right to be present and to submit an oral or written statement at the expungement hearing described in subdivision 4.

Subd. 4. Hearing. A hearing on the petition shall be held no sooner than 60 days after service of the petition. A victim of the offense for which expungement is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether expungement should be granted or denied. The judge shall consider the victim's statement when making a decision.

Subd. 5. Nature of remedy; standard; firearms restriction. (a) Except as otherwise provided by paragraph (b), expungement of a criminal record is an extraordinary remedy to be granted only upon clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of:

(1) sealing the record; and

(2) burdening the court and public authorities to issue, enforce, and monitor an expungement order.

(b) Except as otherwise provided by this paragraph, if the petitioner is petitioning for the sealing of a criminal record under section 609A.02, subdivision 3, the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.

(c) If the court issues an expungement order it may require that the criminal record be sealed, the existence of the record not be revealed, and the record not be opened except as required under subdivision 7. Records must not be destroyed or returned to the subject of the record.

Subd. 5a. Order concerning crimes of violence. An order expunging the record of a conviction for a crime of violence as defined in section 624.712, subdivision 5, must provide that the person is not entitled to ship, transport, possess, or receive a firearm for the remainder of the person's lifetime. Any person whose record of conviction is expunged under this section and who thereafter receives a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d, is not subject to the restriction in this subdivision.

Subd. 6. Order concerning controlled substance offenses. If the court orders the sealing of the record of proceedings under section 152.18, the effect of the order 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 held 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.

Subd. 7. Limitations of order. (a) Upon issuance of an expungement order related to a charge supported by probable cause, the DNA samples and DNA records held by the Bureau

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of Criminal Apprehension and collected under authority other than section 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

(b) Notwithstanding the issuance of an expungement order:

(1) an expunged record may be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order;

(2) an expunged record of a conviction may be opened for purposes of evaluating a prospective employee in a criminal justice agency without a court order; and

(3) an expunged record of a conviction may be opened for purposes of a background study under section 245C.08 unless the court order for expungement is directed specifically to the commissioner of human services.

Upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph. For purposes of this section, a "criminal justice agency" means courts or a government agency that performs the administration of criminal justice under statutory authority.

Subd. 8. **Distribution of expungement orders.** The court administrator shall send a copy of an expungement order to each agency and jurisdiction whose records are affected by the terms of the order.

Subd. 9. **Stay of order; appeal.** An expungement order shall be stayed automatically for 60 days after the order is filed and, if the order is appealed, during the appeal period. A person or an agency or jurisdiction whose records would be affected by the order may appeal the order within 60 days of service of notice of filing of the order. An agency or jurisdiction or its officials or employees need not file a cost bond or supersedeas bond in order to further stay the proceedings or file an appeal.