

A bill for an act

relating to criminal justice; modifying provisions governing expungement of criminal records; requiring business screening services to delete expunged records; allowing expungement of eviction records in certain cases; amending Minnesota Statutes 2012, sections 260B.198, subdivision 6; 332.70, by adding a subdivision; 504B.345, subdivision 1; 609A.02, subdivision 3; 609A.03, subdivisions 5, 7, 8; proposing coding for new law in Minnesota Statutes, chapter 609A.

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

Section 1. Minnesota Statutes 2012, section 260B.198, subdivision 6, is amended to
ad:

Subd. 6. Expungement. Except when legal custody is transferred under the provisions of subdivision 1, clause (4), the court may expunge the adjudication of all records relating to the arrest and delinquency proceedings at any time that it deems advisable if the court determines that expungement of the record would yield a benefit to the subject of the record in pursuing education, employment, housing, or other necessities that outweighs the detriment to the public and public safety in sealing the record and the burden on the court and public agencies or jurisdictions in issuing, enforcing, and monitoring the order.

Sec. 2. Minnesota Statutes 2012, section 332.70, is amended by adding a subdivision to read:

Subd. 3a. **Deletion of expunged records.** If a business screening service knows that a criminal record has been sealed, expunged, or is the subject of a pardon, the screening service shall promptly delete the record.

1.24 Sec. 3. Minnesota Statutes 2012, section 504B.345, subdivision 1, is amended to read:

2.1 Subdivision 1. **General.** (a) If the court or jury finds for the plaintiff, the court shall
2.2 immediately enter judgment that the plaintiff shall have recovery of the premises, and shall
2.3 tax the costs against the defendant. The court shall issue execution in favor of the plaintiff
2.4 for the costs and also immediately issue a writ of recovery of premises and order to vacate.

2.5 (b) The court shall give priority in issuing a writ of recovery of premises and order
2.6 to vacate for an eviction action brought under section 504B.171 or on the basis that the
2.7 tenant is causing a nuisance or seriously endangers the safety of other residents, their
2.8 property, or the landlord's property.

2.9 (c) If the court or jury finds for the defendant,:

2.10 (1) the court shall enter judgment for the defendant, tax the costs against the plaintiff,
2.11 and issue execution in favor of the defendant; and

2.12 (2) the court may expunge the records relating to the action.

2.13 (d) Except in actions brought: (1) under section 504B.291 as required by section
2.14 609.5317, subdivision 1; (2) under section 504B.171; or (3) on the basis that the tenant is
2.15 causing a nuisance or seriously endangers the safety of other residents, their property, or
2.16 the landlord's property, upon a showing by the defendant that immediate restitution of the
2.17 premises would work a substantial hardship upon the defendant or the defendant's family,
2.18 the court shall stay the writ of recovery of premises and order to vacate for a reasonable
2.19 period, not to exceed seven days.

2.20 Sec. 4. Minnesota Statutes 2012, section 609A.02, subdivision 3, is amended to read:

2.21 Subd. 3. **Certain criminal proceedings not resulting in conviction.** (a) Subject to
2.22 paragraph (b), a petition may be filed under section 609A.03 to seal all records relating
2.23 to an arrest, indictment or information, trial, or verdict if the records are not subject to
2.24 section 299C.11, subdivision 1, paragraph (b), and if:

2.25 (1) all pending actions or proceedings were resolved in favor of the petitioner.

2.26 For purposes of this chapter, a verdict of not guilty by reason of mental illness is not a
2.27 resolution in favor of the petitioner;

2.28 (2) the petitioner has successfully completed the terms of a diversion program or
2.29 stay of adjudication and has not been charged with a new crime for at least one year since
2.30 completion of the diversion program or stay of adjudication;

2.31 (3) the petitioner was convicted of or received a stayed sentence for a petty
2.32 misdemeanor, misdemeanor, or gross misdemeanor and has not been convicted of a new
2.33 crime for at least three years since discharge of the sentence for the crime; or

3.1 (4) the petitioner was convicted of or received a stayed sentence for a severity level
3.2 1 or 2 felony under the Sentencing Guidelines and has not been convicted of a new crime
3.3 for at least five years since discharge of the sentence for the crime.

3.4 (b) Paragraph (a), clauses (2) to (4), do not apply if the crime involved domestic abuse,
3.5 as defined in section 518B.01, subdivision 2, or to violation of an order for protection under
3.6 section 518B.01, subdivision 14, a harassment restraining order under section 609.748,
3.7 subdivision 6, or a violation of section 609.748. Clause (4) does not apply to crimes of
3.8 violence as defined in section 624.712, subdivision 5, that are codified in chapter 609.

3.9 **Sec. 5. [609A.025] NO PETITION REQUIRED IN CERTAIN CASES WITH**
3.10 **PROSECUTOR AGREEMENT AND NOTIFICATION.**

3.11 (a) If the prosecutor agrees to the sealing of a criminal record, the court shall seal the
3.12 criminal record for a person described in section 609A.02, subdivision 3, without the filing
3.13 of a petition unless it determines that the interests of the public and public safety in keeping
3.14 the record public outweigh the disadvantages to the subject of the record in not sealing it.

3.15 (b) Before agreeing to the sealing of a record under this section, the prosecutor shall
3.16 notify the agency or jurisdiction whose records would be affected, and make a good faith
3.17 effort to notify any identifiable victims of the offense, of the intended agreement and
3.18 the opportunity to object to the agreement.

3.19 (c) Subject to paragraph (b), the agreement of the prosecutor to the sealing of records
3.20 for a person described in section 609A.02, subdivision 3, clause (2), may occur before or
3.21 after the criminal charges are dismissed.

3.22 Sec. 6. Minnesota Statutes 2012, section 609A.03, subdivision 5, is amended to read:

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

3.27 (1) sealing the record; and

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

3.30 (b) Except as otherwise provided by this paragraph, if the petitioner is petitioning
3.31 for the sealing of a criminal record under section 609A.02, subdivision 3, clause (1) or
3.32 (2), the court shall grant the petition to seal the record unless the agency or jurisdiction
3.33 whose records would be affected establishes by clear and convincing evidence that the

4.1 interests of the public and public safety outweigh the disadvantages to the petitioner
4.2 of not sealing the record.

4.3 (c) In making a determination under this subdivision, the court shall consider:

4.4 (1) the nature and severity of the underlying crime the record of which would be
4.5 sealed;

4.6 (2) the risk, if any, the petitioner poses to individuals or society;

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

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

4.9 (5) extenuating or mitigating factors relating to the underlying crime, including the
4.10 petitioner's level of participation, claims of innocence, and irregularities in the trial;

4.11 (6) the reasons for the expungement, including the petitioner's attempts to obtain
4.12 employment, housing, or other necessities;

4.13 (7) the petitioner's criminal record;

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

4.15 (9) the recommendations of interested law enforcement, prosecutorial, and
4.16 corrections officials;

4.17 (10) the recommendations of victims of the underlying crime; and

4.18 (11) other factors deemed relevant by the court.

4.19 (e) (d) Notwithstanding section 13.82, 13.87, or any other law to the contrary, if the
4.20 court issues an expungement order it may require that the criminal record be sealed, the
4.21 existence of the record not be revealed, and the record not be opened except as required
4.22 under subdivision 7. Records must not be destroyed or returned to the subject of the record.

4.23 Sec. 7. Minnesota Statutes 2012, section 609A.03, subdivision 7, is amended to read:

4.24 Subd. 7. **Limitations of order.** (a) Upon issuance of an expungement order related
4.25 to a charge supported by probable cause, the DNA samples and DNA records held by
4.26 the Bureau of Criminal Apprehension and collected under authority other than section
4.27 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

4.28 (b) Notwithstanding the issuance of an expungement order:

4.29 (1) an expunged record may be opened for purposes of a criminal investigation,
4.30 prosecution, or sentencing, upon an ex parte court order exchanged between criminal
4.31 justice agencies without a court order if the record is pertinent in initiating, furthering, or
4.32 completing an investigation or prosecution or providing probation or other correctional
4.33 services;

4.34 (2) an expunged record may be opened for a prosecutor or probation officer for
4.35 sentencing purposes without a court order;

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

5.3 (3) (4) an expunged record of a conviction may be opened for purposes of a
5.4 background study under section 245C.08 unless the court order for expungement is
5.5 directed specifically to the commissioner of human services.

5.6 (c) Upon request by ~~law enforcement, prosecution, or corrections authorities a~~
5.7 ~~criminal justice agency~~, an agency or jurisdiction subject to an expungement order shall
5.8 inform the requester of the existence of a sealed record and of the right to ~~obtain access to~~
5.9 ~~it as provided by this paragraph~~ request that the record be exchanged under paragraph (b),
5.10 clause (1). An agency or jurisdiction subject to an expungement order shall maintain the
5.11 record in a manner that provides access to the record by a prosecutor or probation officer
5.12 under paragraph (b), clause (2), but notifies the recipient that the record has been sealed.

5.13 (d) For purposes of this section, a "criminal justice agency" means courts or a
5.14 government agency that performs the administration of criminal justice under statutory
5.15 authority.

5.16 Sec. 8. Minnesota Statutes 2012, section 609A.03, subdivision 8, is amended to read:

5.17 Subd. 8. **Distribution and confirmation of expungement orders.** (a) The court
5.18 administrator shall send a copy of an expungement order to each agency and jurisdiction
5.19 whose records are affected by the terms of the order and send a letter to the petitioner
5.20 identifying each agency that received the order.

5.21 (b) The court and each agency and jurisdiction receiving the order must send a letter
5.22 to the petitioner confirming that the record has been expunged.