

**Senate Counsel, Research,
and Fiscal Analysis**

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX (651) 296-7747
THOMAS S. BOTTERN
DIRECTOR

Senate

State of Minnesota

TO: Senator Bobby Joe Champion

FROM: Kathleen Pontius, Senate Counsel (651/296-4394) *K.P.*

DATE: February 7, 2014

RE: Summary of Expungement Bill Draft (SC9530-3)

Section 1 amends the juvenile records expungement statute to give courts authority to expunge all records relating to the arrest and delinquency proceedings, rather than just the adjudication of delinquency. This is in response to the decision of the Minnesota Supreme Court in the *J.J.P.* case, 831 N.W.2d 260 (Minn. 2013), in which it interpreted the statute as applicable only to the adjudication record and not additional documents, such as arrest and investigative records. The most significant effect of this amendment would be to give courts authority to expunge these delinquency records when held by executive branch entities. In addition, the standard to be applied by the court is more clearly delineated, based on the balancing test adopted by the Minnesota Supreme Court in the *J.J.P.* case and the statutory standard under Minnesota Statutes, section 609A.03, subdivision 5.

Section 2 amends the law governing business screening services to require a business screening service that knows a criminal record has been sealed, expunged, or is the subject of a pardon to promptly delete the record. While this may be implied under current law, it is not explicitly stated (in contrast, there is specific language in Minnesota Statutes, section 504B.241, subdivision 4, governing residential tenant screening services).

Section 3 amends the eviction law to explicitly give the court authority to expunge records relating to an action in cases where the defendant prevailed without the filing of a separate petition.

Section 4 amends the general law governing the circumstances under which criminal records may be expunged. Under current law, an expungement petition may be brought only when authorized under law. The grounds for an order under Minnesota Statutes, section 609A.02, include certain controlled substance offenses, juveniles prosecuted as adults, and criminal



proceedings resolved in favor of the petitioner. Under paragraph (a), three new categories of criminal proceedings or convictions are added:

- petitioner has successfully completed the terms of a diversion program or stay of adjudication and has not been charged with a new crime for at least *one* year since completion of the program or stay of adjudication;
- petitioner was convicted of or received a stayed sentence for a petty misdemeanor, misdemeanor, or gross misdemeanor and has not been convicted of a new crime for at least *three* years since discharge of the sentence; or
- petitioner was convicted of or received a stayed sentence for a severity level 1 or 2 felony under the Sentencing Guidelines and has not been convicted of a new crime for at least *five* years since discharge of the sentence.

Paragraph (b) contains limitations on these new categories. Crimes involving domestic abuse, violation of an order for protection or harassment restraining order, or stalking are excluded. Low-level felony offenses that are crimes of violence for purposes of permit to carry disqualifications and codified in chapter 609 would not be eligible for statutory expungement.

Section 5 provides for automatic expungement without the filing of a petition in certain cases where the prosecutor agrees to the sealing of a criminal record, unless the court determines that the interests of public safety in keeping the record outweigh the disadvantages to the subject. It would apply to the categories of persons authorized to seek an expungement under Minnesota Statutes, section 609A.02, subdivision 3 (see **section 4**). Notification requirements are included.

Section 6 amends the law governing the standards for granting an expungement. The general rule under current law is that the petitioner has the burden of proving by clear and convincing evidence that expungement would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of sealing the record and burdening the court and other authorities. However, in cases where the proceedings were resolved in favor of the petitioner, the burden of proof switches to the agency or jurisdiction whose records would be affected. This amendment would add cases where the petitioner has successfully completed the terms of a diversion program or stay of adjudication to the situations where the agency has the burden of proof. For the other new categories in **section 4**, the petitioner would continue to have the burden of proof. This section also includes additional factors to be considered by the court in making its determination. New language clarifies that an expungement order seals a record, regardless of whether it would otherwise be public law enforcement or criminal history data or public under other law.

Section 7 amends the law governing access to expunged records. New language allows the exchange of expunged records between criminal justice agencies, similar to the current authority for the exchange of law enforcement data under Minnesota Statutes, section 13.82, subdivision 24. This replaces and expands current law, which authorizes opening an expunged record for a criminal investigation, prosecution, or sentencing but requires an ex parte court order.

A prosecutor or probation officer would have access to a record for sentencing purposes without a court order. Note that current law does not explicitly state that expunged records may be used for purposes of computing the criminal history score or the related question of their use for enhancement. However, in 2013, the comments to the Sentencing Guidelines were amended to specifically add a reference to the law authorizing access to an expunged record for certain purposes. In addition, the 2014 Sentencing Guidelines Commission Report to the Legislature states that although the guidelines do not address whether an expunged conviction may be used for future criminal history, the statute is clear on the process and the comment was added to direct practitioners to the law.

Under current law, if law enforcement, prosecution, or corrections authorities request access to a record subject to an expungement order, they must be informed of the existence of the record and the right to obtain access to it with a court order. This language is modified, consistent with the new provisions allowing the exchange of expunged records and access for sentencing purposes.

Section 8 expands the current requirements related to distribution of expungement orders to require court administrators to notify petitioners of the entities that received the order and to require those entities to send a letter to the petitioner confirming that the record is expunged.

KP/rdr/rer

Enclosure: SC9530-3