

Subject Creating an automatic expungement process and amending provisions related to expungement by petition

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Overview

Under current law, a person must file a petition to receive an expungement unless a prosecutor agrees to the expungement. This bill creates a process for automatic grants of expungement issued by the Bureau of Criminal Apprehension (BCA) and provides for orders of expungement issued by the judicial branch. The bill also makes changes to the existing petition process for expungements and makes conforming changes.

Article 1: Expungement Without Petition

This article establishes a process for the automatic expungement of certain criminal records.

Section Description – Article 1: Expungement Without Petition

1 Automatic expungement of records.

Subd. 1. Eligibility; dismissal; exoneration. Provides that people are eligible for automatic expungement relief if charges were dismissed based on a finding that the person was incompetent to proceed, the proceedings were dismissed pursuant to section 152.18 (certain drug offenses), or all pending charges were resolved in favor of the person.

Subd. 2. Eligibility; diversion and stay of adjudication. Provides that a person who successfully completes a diversion program or the term of probation for a stay of adjudication is eligible for expungement if the person is not convicted of a new offense, other than a petty misdemeanor, for a period of one year immediately following completion of the diversion program.

Subd. 3. Eligibility; pardon. Provides that a person who receives a pardon extraordinary is eligible for an automatic expungement.

Subd. 4. Eligibility; certain criminal proceedings. Establishes that a person is eligible for a grant of expungement if the person was convicted of a qualifying offense, has not been convicted of any other offense in Minnesota during the

Section Description – Article 1: Expungement Without Petition

applicable waiting period, and is not charged with an offense at the time of the review. Establishes that qualifying offenses include:

- petty misdemeanors, other than traffic and parking offenses;
- misdemeanors, other than listed offenses including DWI and offenses related to domestic violence;
- gross misdemeanors, other than listed offenses including DWI and offenses related to domestic violence; and
- felonies that are eligible for expungement through the petition process.

Establishes waiting periods for eligibility during which the person cannot have committed a new offense. The periods are:

- for a misdemeanor, two years;
- for a gross misdemeanor, three years;
- for a 5th degree controlled substance felony, four years; and
- for any other eligible felony, five years.

Subd. 5. Notice. Requires the court to notify a defendant of eligibility for automatic expungement when dismissing charges. Requires prosecutors, defense attorneys, supervising agents, and coordinators or supervisors of a diversion program to notify individuals who will be eligible for automatic expungement when providing notice is feasible. Directs that the notice should include information about certain background studies and background checks.

Subd. 6. Bureau of Criminal Apprehension to identify eligible persons and grant expungement relief. Directs the BCA to identify individuals who are eligible for expungement under this section. Requires the BCA to rely on available information, including relying on the name and date of birth of the person when finger and thumb prints are not available. Requires the BCA to seal its own records 60 days after notifying the judicial branch that a record is eligible for expungement. Requires nonpublic records to indicate that the record has been granted expungement. Directs the BCA to notify the courts of records that are eligible for expungement and directs the courts to issue an order sealing the records. Requires the BCA to notify every agency with relevant records of the expungement and require that records be sealed. Classifies the data on expungement in a manner consistent with classification of data in an expungement based on a petition. Requires prosecutors to notify victims when a case is eligible for automatic expungement. Requires the BCA to update a system to provide criminal justice agencies uniform access to records sealed by expungement.

Section Description – Article 1: Expungement Without Petition

Subd. 7. Immunity. Establishes that employees of the BCA are immune for acts or omissions occurring within the scope of performance of their duties under this section.

Article 2: Expungement by Petition

This article amends the process related to expungement of criminal records by petition.

Section Description – Article 2: Expungement by Petition

1 Certain criminal proceedings.

Reduces the waiting period for filing a petition for expungement of a gross misdemeanor conviction from four years to three years. Establishes a waiting period of four years for felony convictions for 5th degree controlled substance offenses. Establishes that a person convicted of an offense that is a felony is eligible for expungement relief after five years if the offense is sentenced as a gross misdemeanor or misdemeanor, or if the person receives a stay of imposition and successfully completes probation. Amends the list of felony offenses that are eligible for expungement relief to add clarity around which theft offenses are eligible for expungement, and include the crimes of possession of shoplifting gear and possession of burglary or theft tools.

Article 3: Conforming Changes

This article makes various conforming changes related to the changes in expungement law.

Section Description – Article 3: Conforming Changes

1 Expungement petitions.

Makes a conforming change related to the classification of data related to an automatic expungement.

2 Deferring prosecution for certain first time drug offenders.

Makes a conforming change related to the automatic expungement of certain criminal records related to sentences under section 152.18 (certain drug offenses).

Section Description – Article 3: Conforming Changes

- 3 Database for identifying individuals eligible for expungement.**
Directs the BCA to establish a database for petty misdemeanor offenses and misdemeanor offenses that may become eligible for expungement and for which no fingerprints are collected.
- 4 Required fingerprinting.**
Amends the list of “targeted misdemeanors” for which fingerprinting is required to include obscene or harassing telephone calls.
- 5 Suspense file reporting.**
Makes a conforming change related to the BCA’s maintenance of certain disposition data that cannot be connected to an arrest record.
- 6 Report by court administrator.**
Makes a conforming change related to the information that court administration must transmit to the BCA.
- 7 Expungement of criminal records.**
Makes a conforming change to reference automatic expungements as a form of expungement.
- 8 Nature of remedy; standard.**
Establishes that the nature of the remedy for an expungement based on a petition does not apply to an automatic expungement.
- 9 Limitations of order effective January 1, 2015, and later.**
Clarifies that prosecutors may obtain records of convictions that were expunged and the subject of an expunged record may obtain a copy of the record.
- 10 Stay of order; appeal.**
Establishes that the waiting period following the grant of an expungement based on a petition does not apply to other expungements.
- 11 Plea agreement; notification of victim.**
Requires prosecutors to make a reasonable and good faith effort to notify a victim if a conviction is eligible for automatic expungement.

Article 4: Appropriation

This article appropriates money to the supreme court for the purposes of granting orders of expungement.

Section	Description – Article 4: Appropriation
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| 1 | <p>Supreme court; appropriation.</p> <p>Appropriates an unspecified amount in fiscal years 2024 and 2025 for the courts to issue orders of expungement in cases eligible for automatic expungement.</p> |
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