

HF2023 - 0 - The Clean Slate Act

Chief Author: **Jamie Long**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **3/16/2023 9:18:41 AM**
 Lead Agency: **Supreme Court**
 Other Agencies:
 Human Services Dept Prof Educator Licensing Std Bd
 Public Safety Dept

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Human Services Dept					
General Fund	-	1,284	1,365	1,365	1,365
Public Safety Dept					
General Fund	-	3,737	190	190	190
Trunk Highway	-	1,086	1,086	1,086	1,086
State Total					
General Fund	-	5,021	1,555	1,555	1,555
Trunk Highway	-	1,086	1,086	1,086	1,086
Total	-	6,107	2,641	2,641	2,641
Biennial Total			8,748		5,282

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Human Services Dept					
General Fund	-	13	13	13	13
Public Safety Dept					
General Fund	-	2	2	2	2
Trunk Highway	-	10	10	10	10
Total	-	25	25	25	25

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Alyssa Holterman Rosas **Date:** 3/16/2023 9:18:41 AM
Phone: 651-284-6439 **Email:** alyssa.holterman.rosas@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Human Services Dept						
General Fund	-	1,284	1,365	1,365	1,365	1,365
Public Safety Dept						
General Fund	-	3,737	190	190	190	190
Trunk Highway	-	1,086	1,086	1,086	1,086	1,086
Total	-	6,107	2,641	2,641	2,641	2,641
	Biennial Total		8,748			5,282
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Human Services Dept						
General Fund	-	1,284	1,365	1,365	1,365	1,365
Public Safety Dept						
General Fund	-	3,737	190	190	190	190
Trunk Highway	-	1,086	1,086	1,086	1,086	1,086
Total	-	6,107	2,641	2,641	2,641	2,641
	Biennial Total		8,748			5,282
2 - Revenues, Transfers In*						
Human Services Dept						
General Fund	-	-	-	-	-	-
Public Safety Dept						
General Fund	-	-	-	-	-	-
Trunk Highway	-	-	-	-	-	-
Total	-	-	-	-	-	-
	Biennial Total		-			-

HF2023 - 0 - The Clean Slate Act

Chief Author: **Jamie Long**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **3/16/2023 9:18:41 AM**
 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Dollars in Thousands					
Total	-	-	-	-	-
Biennial Total			-		-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

The Supreme Court anticipates the proposed legislation may have a fiscal impact including reduced filing fee revenue, and reduced expungement petitions and subsequent hearings. Any reduction in revenue and judge or staff time may be offset by the time spent reviewing and monitoring the cases eligible for automatic expungement. These potential impacts either involve factors that cannot be measured or for which data does not exist. Therefore, the fiscal impact of these provisions is not included in the fiscal note.

LBO Signature: Karen McKey **Date:** 3/15/2023 4:10:58 PM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

State Cost (Savings) Calculation Details

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*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total		-	-	-	-	-
Biennial Total				-		-
2 - Revenues, Transfers In*						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

HF2023, the Clean Slate Act, in Article 1 adds a new Minn. Stat. § 609A.015, which establishes criteria for expungement of criminal and juvenile delinquency records without the filing of a petition: 1) if the person was arrested and all charges were dismissed unless dismissal was based on a finding the defendant was incompetent to proceed; 2) upon dismissal and discharge under section 152.18 for certain controlled substance possession offenses; 3) if all proceedings were resolved in the person’s favor, which includes if the person received an exoneration order under section 590.11 and does not include being found not guilty by reason of mental illness; 4) if the person successfully completed the terms of a diversion or stay or adjudication for a non-felony qualifying offense and has not been charged with a new offense other than a petty misdemeanor for one year immediately following completion; 5) if the person receives a pardon extraordinary under chapter 638; or 6) if the person was convicted of a qualifying offense, has not been convicted of a new offense other than a petty misdemeanor during the applicable waiting period, and is not charged with an offense in Minnesota at the end of the waiting period. Qualifying offenses include any petty misdemeanor other than a traffic offense or a violation of section 152.027, subdivision 4, and certain misdemeanor, gross misdemeanor, and felony offenses.

The bill requires that the court notify a person who may become eligible for an expungement under this section of that eligibility at any hearing where the court dismisses and discharges 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; concludes that all pending actions or proceedings were resolved in the person’s favor; grants a person’s placement into a diversion program; or sentences a person or otherwise imposes a consequence for a qualifying offense. The required notice must include that:

- margin-left:.5in'>(1) an expunged record of a conviction may be opened for purposes of a background study by the Department of Human Services under section 245C.08 and for purposes of a background check by the Professional Educator Licensing and Standards Board as required under section 122A.18, subdivision 8; and
- margin-left:.5in'>(2) the person can file a petition to expunge the record and request that it be directed to the commissioner of human services and the Professional Educator Licensing and Standards Board.

The bill requires that the Bureau of Criminal Apprehension (BCA) identify records that qualify for expungement under these provisions; grant expungement relief to qualifying persons and seal its own records without requiring an application, petition, or motion 60 days after notice is sent to the judicial branch unless an order of the judicial branch prohibits sealing the records or additional information establishes that the records are ineligible for expungement; identify the expunged criminal records it maintains as such; and inform the judicial branch of all cases for which expungement relief was granted under this section. The bill provides that upon receipt of the notice, the judicial branch shall seal its records and issue any order deemed necessary to achieve this purpose.

The bill provides that unless an order issued by the judicial branch notifies the law enforcement agency that made the arrest or issued the citation, the BCA shall inform each arresting or citing agency whose records are affected by the grant of expungement relief and each agency shall seal all records.

The bill provides that in any subsequent prosecution of a person granted expungement, the expunged record may be

pleaded and has the same effect as if the relief had not been granted. The BCA is granted immunity from civil liability.

The provisions in this section are effective January 1, 2025 and apply retroactively to all records that met the qualifications before that date.

In Article 2 the bill amends chapter 609A (Expungement), including an amendment to section 609A.02, subdivision 3 to eliminate redundant phrases, modify the waiting period from 4 to 3 years for gross misdemeanor convictions and from 5 to 4 years for felony offense, add new provisions governing felony offenses, and to modify the list of included felony offenses.

In Article 3 the bill makes conforming changes including amendments to section 13.871 regarding expungement data classification; an amendment to section 152.18 requiring that upon receipt of notice the proceedings were dismissed, the BCA must notify the arresting or citing agency when that agency is to seal its records; the addition of a new statute, section 299C.097, requiring the BCA to maintain a computerized system relating to petty misdemeanor and misdemeanor offenses that may become eligible for expungement which do not require fingerprinting under section 299C.10 and are not linked to an arrest record in the criminal history system; an amendment to section 299C.10 to add section 609.749 (obscene or harassing telephone calls) to the list of targeted misdemeanors; an amendment to section 299C.111 governing suspense file reporting; an amendment to section 299C.17 requiring the court administrator to electronically transmit to the BCA a report on all misdemeanors and petty misdemeanors; an amendment to section 609A.01 to add a reference to section 609A.015; and an amendment to section 609A.03, subdivision 7a, to provide that a prosecutor or the subject of the records may request, and the district court shall provide, certified or uncertified records of conviction for a record expunged pursuant to sections 609A.015, 609A.02, and 609A.025, and that the certified records of conviction may be disclosed and introduced in criminal court proceedings as provided by the rules of court and applicable law.

In Article 4 the bill appropriates an unspecified amount to the Supreme Court to seal records under section 609A.015 and issue any orders deemed necessary.

Assumptions

It is assumed that the provisions requiring the judicial branch to expunge certain case records without judicial review and a court order would require Supreme Court review and approval. The Legislature has long acknowledged that access to judicial-branch records “is governed by rules adopted by the Supreme Court.” Minn. Stat. § 13.90, subd. 2.

It is assumed that if the judicial branch implements the provisions of this bill, the judicial branch would need to establish a policy and/or process to identify whether and which cases would be reviewed by a judge when a BCA notice of expungement is received, and a process for issuance of a court order for reviewed cases where the judge determines expungement is not appropriate. It is unknown whether the policy of the judicial branch would be to review none of the cases, some of the cases, or all of the cases.

It is assumed that the provisions of the bill may require the court to implement expungement processes in coordination with the BCA. To the extent there are qualifying criteria in the bill that are not clear, the court and the BCA would have to agree regarding the resolution of the issues in order to ensure full and consistent implementation of the expungement relief. It is assumed that because the court already has the capability to electronically send case disposition data to the BCA on every case, no development or project work by the judicial branch will be needed to comply with the court administrator reporting requirements. It is assumed that the BCA will work with the judicial branch to identify a mutually agreeable method for the BCA to notify the court of cases identified for expungement. It is assumed that any solution agreed to by the BCA and the judicial branch will not require a judicial branch project and that any implementation work will be absorbed.

It is assumed that the provisions of this bill could reduce the number of expungement petitions filed with the district courts. However, it is assumed that the provision authorizing the court to issue an order regarding a case the BCA identified for automatic expungement could result in additional time being spent reviewing eligibility in the high number of cases. It is unknown how many expungements are filed specifically to obtain professional licensing, so it is unknown whether the limitations on expungement as it relates to certain licensing boards will impact the number of expungement petitions that continue to be filed. Consequently, the impact on expungement filing fee revenue is also unknown.

It is assumed that even if a case has been expunged by the BCA and the judicial branch under the provisions of this bill, a petition for expungement may still be filed in order to address the licensing board issues, and the court would need to hear and determine the matter.

In light of all of the above, is unknown whether the provisions of this bill will result in an overall increase or decrease in the judge and court staff time spent on expungement issues.

Expenditure and/or Revenue Formula

Based on 6 years of judicial branch filing data, an average of 2,453 cases statewide per year have a petition for expungement filed. Although the provisions of the bill may reduce the number of expungement petitions filed, significant court staff and judge time may be required to establish and monitor the process for reviewing cases identified for expungement by the BCA, the processing of petitions for expungement filed into cases already expunged under the provisions of the bill, and the review of requests to access expunged cases for copies of court records. It is unknown whether over time this bill would result in an overall increase or decrease in the amount of judicial branch resources and judge time required for criminal expungement matters.

Although it is possible that expungement filing fee revenue may be reduced, it is unknown whether that will occur and if so by how much. Based on 6 years of judicial branch data, an average of \$261,820 in filing fee revenue is generated annually from the filing of expungement petitions

Long-Term Fiscal Considerations

None

Local Fiscal Impact

None

References/Sources

Agency Contact:

Agency Fiscal Note Coordinator Signature: Janet Marshall

Phone: 651-297-7579

Date: 3/14/2023 6:33:40 PM

Email: Janet.marshall@courts.state.mn.us

HF2023 - 0 - The Clean Slate Act

Chief Author: **Jamie Long**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **3/16/2023 9:18:41 AM**
 Agency: **Human Services Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact		
		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	1,284	1,365	1,365	1,365	1,365
Total	-	1,284	1,365	1,365	1,365	1,365
Biennial Total			2,649			2,730

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	13	13	13	13
Total	-	13	13	13	13

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Steve McDaniel **Date:** 3/16/2023 8:55:56 AM
Phone: 651-284-6437 **Email:** steve.mcdaniel@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027	
General Fund	-	1,284	1,365	1,365	1,365	1,365
Total	-	1,284	1,365	1,365	1,365	1,365
			2,649			2,730
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	1,284	1,365	1,365	1,365	1,365
Total	-	1,284	1,365	1,365	1,365	1,365
			2,649			2,730
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
			-			-

Bill Description

The proposed bill provides for an automatic expungement process for certain offenders, modifies the waiting periods for expungements that require a petition, amends the offenses that are eligible for expungement, and modifies the records received and retained by the Bureau of Criminal Apprehension (BCA).

Article 1 Expungement without petition. This section is effective January 1, 2025, and applies to offenses that meet the eligibility criteria on or after that date and retroactively to offenses that met those qualifications before January 1, 2025, and are stored in the Bureau of Criminal Apprehension's criminal history system as of January 1, 2025.

Subdivision 1 Establishes that a person who is the subject of a criminal record or delinquency record is eligible for a grant of expungement relief without the filing of a petition in cases of dismissal or exoneration, with limitations.

Subdivision 2 Establishes a person is eligible for a grant of expungement relief if the person has successfully completed the terms of a diversion program or stay of adjudication for a qualifying offense that is not a felony and has not been petitioned or charged with a new offense, other than an offense that would be a petty misdemeanor, for one year immediately following completion of the diversion program or stay of adjudication.

Subdivision 3 A person is eligible for a grant of expungement relief if the person receives a pardon extraordinary

Subdivision 4 A person is eligible for a grant of expungement relief if the person 1) was convicted of a qualifying offense; 2) has not been convicted of a new offense, other than an offense that would be a petty misdemeanor in Minnesota according to time limits set forth in the bill. Specific "qualifying offenses" are described in the bill.

Subdivision 5 Establishes that the court shall notify a person who may become eligible for an automatic expungement under this section of that eligibility at any hearing conditions set forth in preceding subdivisions are met. Also establishes the expectation that to the extent possible, prosecutors, defense counsel, supervising agents, and coordinators or supervisors of a diversions program shall notify a person of eligibility. Includes what notification of eligibility shall include: (1) an expunged record of a conviction may be opened for purposes of a DHS background study and for purposes of a background check by the Professional Educator Licensing and Standards Board (PELSB), and (2) the eligible person can file a petition to expunge the record and request that it be directed to the commissioner of DHS or PELSB.

Subdivision 6 Requires the Bureau of Criminal Apprehension to identify eligible persons and grant expungement relief pursuant to the subdivisions in this Article. Includes timelines to make determinations, requirement to use fingerprints where available to identify individuals, and requirements on sealing and maintaining records. It also establishes notification

requirements to the judicial branch and arresting or citing law enforcement agency, along with data requirements and direction to provide criminal justice agencies with uniform statewide access to criminal records sealed by expungements.

Subdivision 7 Establishes immunity from civil liability for BCA employees in the exercise of this act.

Article 2 Expungement by petition. Amends existing MN statutes to modify eligibility criteria for filing a petition. This section is effective July 1, 2023, and applies to all offenses that meet the eligibility criteria on or after that date.

Article 3 Conforming changes. Amends existing MN statutes to align with bill requirements and timelines.

Requires BCA to maintain a computerized data system relating to petty misdemeanor and misdemeanor offenses that may become eligible for expungement and which do not require fingerprinting and are not linked to an arrest record in the criminal history system.

Article 4 Appropriation. Provides appropriation to the MN Supreme Court to seal records of any case in which expungement relief was granted and to issue any order deemed necessary.

Assumptions

Assumes that the Office of Inspector General (OIG) will be required to process all of the petitions and orders from individuals seeking to seal DHS records and will need to determine whether or not to object to the petition. Data from the Court Services Division of the Minnesota Judicial Branch indicate that the three-year, pre-pandemic (2017-2019) average of offenses that are disqualifying or potentially disqualifying under 245C and eligible for expungement under this bill is 21,800 per year. Assumes that DHS would receive petitions for 20% of those instances, for 4,360 petitions and orders per year (the OIG legal division) currently processes approximately 1,000 orders per year). This pre-pandemic data provides the best basis for what would be expected moving forward.

The scope of work includes processing a petition, determining if DHS will object to a petition and preparing any resulting objection requires the following effort by OIG legal staff. Staffing requirements assume that DHS will receive orders for 100% of the petitions, regardless of objection status. Assumes the 11.0 FTE are required within the OIG Chief Legal Counsel division to process 4,360 petitions and orders per year:

- 2 FTE to supervise new background studies legal teams

 - 1 Staff Attorney Supervisor (MMA 27K)

 - 1 Human Services Supervisor 3 (MMA 21K)

- 2 FTE Attorneys (MAPE 19L)

- 5 FTE Senior Legal Process Coordinators (MAPE 11L)

- 2 FTE Legal Process Coordinators (MAPE 8L)

Assumes that two Management Analyst 4 (MAPE 15L) within the OIG Background Studies division are needed to coordinate systems development and maintenance (total of 2 FTE).

FTEs are assumed to begin October 2023, and require an up-front administrative cost of \$17,744, and ongoing monthly administrative costs of \$2,228. Fringe benefits are estimated using the most recent union contracts.

IT systems changes would be required to implement this change in the NETStudy 2.0 system. The large increase in order processing requires a more robust tracking system that notifies DHS when new information is received on an individual. Systems changes would enable importing of existing, historical expungement information and updating new expungement information in real time. These systems changes are estimated to cost a total of \$152,000 and require approximately 8 months to complete. Admin FFP is assumed at 32%. This estimate includes the following assumptions:

- Changes to the NETStudy 2.0 system will be completed by DHS's external vendor.

The estimated duration assumes the work is prioritized relative to other legislative and ongoing IT work. If enacted, the completion date of the proposed project(s) will be dependent on the totality of enacted legislative IT work and ongoing IT work.

The total hours assumed in this fiscal note include the projected time required to complete systems work and a 20% contingency assumption to account for unforeseen business requirements in the development and implementation process.

Expenditure and/or Revenue Formula

Fiscal Tracking Summary (\$000's)						
Fund	BACT	Description	FY2022	FY2023	FY2024	FY2025
GF	11	OIG Admin FTE (13,13,13,13)	1,736	2,007	2,007	2,007
GF	11	P/T Vendor Contracts for NETStudy 2.0	152	0	0	0
GF	REV1	Admin FFP (32%)	(604)	(642)	(642)	(642)
		Total Net Fiscal Impact	1,284	1,365	1,365	1,365
		Full Time Equivalentents	13.0	13.0	13.0	13.0

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact:

Agency Fiscal Note Coordinator Signature: Chris Zempel

Phone: 651-247-3698

Date: 3/16/2023 8:50:40 AM

Email: christopher.zempel@state.mn.us

HF2023 - 0 - The Clean Slate Act

Chief Author: **Jamie Long**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **3/16/2023 9:18:41 AM**
 Agency: **Prof Educator Licensing Std Bd**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Alyssa Holterman Rosas **Date:** 3/9/2023 8:49:42 AM
Phone: 651-284-6439 **Email:** alyssa.holterman.rosas@lbo.mn.gov

State Cost (Savings) Calculation Details

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*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
	Total	-	-	-	-	-
	Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
	Total	-	-	-	-	-
	Biennial Total			-		-
2 - Revenues, Transfers In*						
	Total	-	-	-	-	-
	Biennial Total			-		-

Bill Description

Related to PELSB, this bill discusses how expungements will be processed and identify for PELSB’s teacher ethics work.

Assumptions

This would not require any additional time for our teacher ethics specialist so therefore has no fiscal impact on the agency.

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact: Alex Liuzzi (651-539-4180)

Agency Fiscal Note Coordinator Signature: Yelena Bailey

Phone: 651-539-4196

Date: 3/9/2023 8:47:51 AM

Email: yelena.bailey@state.mn.us

HF2023 - 0 - The Clean Slate Act

Chief Author: **Jamie Long**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **3/16/2023 9:18:41 AM**
 Agency: **Public Safety Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact	X	

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	3,737	190	190	190	190
Trunk Highway	-	1,086	1,086	1,086	1,086	1,086
Total	-	4,823	1,276	1,276	1,276	1,276
Biennial Total			6,099			2,552

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	2	2	2	2
Trunk Highway	-	10	10	10	10
Total	-	12	12	12	12

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Laura Cecko **Date:** 3/15/2023 9:00:50 PM
Phone: 651-284-6543 **Email:** laura.cecko@lbo.mn.gov

State Cost (Savings) Calculation Details

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Total	-	4,823	1,276	1,276	1,276	1,276
	Biennial Total		6,099		2,552	
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	3,737	190	190	190	190
Trunk Highway	-	1,086	1,086	1,086	1,086	1,086
Total	-	4,823	1,276	1,276	1,276	1,276
	Biennial Total		6,099		2,552	
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Trunk Highway	-	-	-	-	-	-
Total	-	-	-	-	-	-
	Biennial Total		-		-	

Bill Description

Section 1: Allows for the automated expungement of criminal records under Minn. Stat. 609A.01 via Minn. Stat. 609A.015, subdivision 1.

Subdivision 1: Denotes that a person who is the subject of a criminal or delinquency record is eligible for expungement, sans petition, if they meet the following criteria:

- 1) if the person was arrested and all charges were dismissed after a case was filed unless dismissal was based on a finding that the defendant was incompetent to proceed; or
- 2) upon dismissal and discharge of proceedings against a person under section 152.18, subdivision 1, for a violation of 152.024, 152.025, or 152.027 for possession of a controlled substance; or
- 3) if all pending actions or proceedings were resolved in favor of the person.

For purposes of this chapter, a verdict of not guilty by reason of mental illness is not a resolution in favor of the person. For purposes of this chapter, an action or proceeding is resolved in favor of the person if the petitioner received an order under section 590.11 determining that the person is eligible for compensation based on exoneration.

Subdivision 2: Also denotes that a person is eligible for a grant of expungement relief if the person has successfully completed the terms of a diversion program or stay of adjudication and has not been petitioned or charged with a new offense, other than an offense that would be a petty misdemeanor, for one year immediately following that completion.

Subdivision 3: States that a person is eligible for a grant of expungement relief if the person received a pardon extraordinary under Chapter 638.

Subdivision 4: States that a person is eligible for a grant of expungement relief if the individual:

- 1) was convicted of a qualifying offense
- 2) has not been convicted of a new offense, other than an offense that would be a petty misdemeanor, in Minnesota

- a. during the requisite waiting period immediately after discharge of the disposition or sentence for the crime; or
- b. for a consecutive period of time immediately preceding a subsequent review performed pursuant to subdivision 7, paragraph (a), that is equal to or greater than the applicable waiting period; and
- 3) is not charged with an offense in Minnesota at the time the person reaches the end of the applicable waiting period or at a time of subsequent review.

Also notes that the term “qualifying offense,” as used in this subdivision, is defined as a conviction for:

- 1) any petty misdemeanor offense other than a violation of a traffic regulation relating to the operation or parking of motor vehicles or a violation of section 152.027, subdivision 4;
- 2) any misdemeanor offense other than:
 - a. 152.027, subdivision 3 or 4
 - b. section 169A.20 under the terms described in section 169A.27 (fourth-degree driving while impaired);
 - c. section 518B.01, subdivision 14 (violation of an order for protection);
 - d. section 609.224 (assault in the fifth degree);
 - e. section 609.2242 (domestic assault);
 - f. section 609.748 (violation of a harassment restraining order);
 - g. section 609.78 (interference with emergency call);
 - h. section 609.79 (obscene or harassing phone calls);
 - i. section 617.23 (indecent exposure);
 - j. section 609.746 (interference with privacy) or
 - k. section 629.75 (violation of domestic abuse no contact order);
- 3) any gross misdemeanor offense other than:
 - a. section 169A.25 (second-degree driving while impaired);
 - b. section 169A.26 (third-degree driving while impaired);
 - c. section 518B.01, subdivision 14 (violation of an order for protection);
 - d. section 609.2113, subdivision 3 (criminal vehicular operation)
 - e. section 609.2231 (assault in the fourth degree);
 - f. section 609.224 (assault in the fifth degree);
 - g. section 609.2242 (domestic assault);
 - h. section 609.233 (criminal neglect);
 - i. section 609.3451 (criminal sexual conduct in the fifth degree);
 - j. section 609.377 (malicious punishment of child);
 - k. section 609.485 (escape from custody);
 - l. section 609.498 (tampering with witness);
 - m. section 609.582, subdivision 4 (burglary in the fourth degree);

- n. section 609.746 (interference with privacy);
- o. section 609.748 (violation of a harassment restraining order);
- p. section 609.749 (harassment; stalking);
- q. section 609.78 (interference with emergency call);
- r. section 617.23 (indecent exposure);
- s. section 617.261 (nonconsensual dissemination of private sexual images); or
- t. section 629.75 (violation of domestic abuse no contact order)

4) Any felony offense listed in section 609A.02, subdivision 3, paragraph (b)

Under this subdivision, the "applicable waiting period" means:

- 1) if the offense was a petty misdemeanor, two years since discharge of the sentence;
 - 2) if the offense was a misdemeanor, two years since discharge of the sentence for the crime
 - 3) if the offense was a gross misdemeanor, three years since discharge of the sentence for the crime
 - 4) if the offense was a felony violation of section 152.025, four years since the discharge of the sentence for the crime;
- and
- 5) if the offense was any other felony, five years since discharge of the sentence for the crime

Felony offenses deemed to be a gross misdemeanor or misdemeanor pursuant to section 609.13, subdivision 1 remain ineligible for expungement under this section. Gross misdemeanor offenses that are ineligible for a grant of expungement will remain ineligible if deemed to be for a misdemeanor under Minn. Stat. 609.13, subdivision 2.

Subdivision 5: The Judicial branch is directed to notify a person who may become eligible for an automatic expungement under this section of that eligibility at any hearing where the court dismisses and discharges proceedings against a person under section 152.18, subdivision 1, for violation of section 152.024, 152.025 or 152.027; concludes that all pending actions or proceedings were resolved in favor of the person; grants a person's placement into a diversion program or sentences a person or otherwise imposes a consequence for a qualifying offense.

To the extent possible, prosecutors, defense counsel, supervising agents, and coordinators or supervisors of a diversion program shall notify a person who may become eligible for automatic expungement under this section of that eligibility.

If any party gives notification under this subdivision, the notification shall inform the individual that the Department of Human Services (DHS) and Public Educators Licensing Standards Board (PELSB) may still open and view the record for the purposes of background checks, and that the individual may petition the record be expunged and direct the order to be sent to the commissioner of human services or PELSB.

Subdivision 6: The Bureau of Criminal Apprehension (BCA) is directed to identify records that qualify for a grant of expungement relief pursuant to this subdivision or subdivision 1, 2, 3, or 4. The BCA must make an initial determination of eligibility within 30 days of the end of the applicable waiting period. If the record is not eligible for a grant of expungement at the time of the initial determination, the BCA is to make subsequent eligibility determinations annually until the record is eligible.

In making the determination, the BCA is to identify individuals who are the subject of relevant records through the use of finger and thumb prints where finger and thumb prints are available and names and date of birth where finger and thumb prints are not. Records containing the same name and date of birth are presumed to refer to the same individual unless other evidence establishes, by a preponderance of the evidence that they do not refer to the same individual. The BCA is not required to review any other evidence in making its determination.

The BCA shall grant expungement relief to qualifying persons and seal its own records, without requiring an application, petition, or motion, and records shall be sealed 60 days after notice is sent to the judicial branch, unless an order from the judicial branch prohibits it or additional information establishes that the records are not eligible.

Nonpublic criminal records maintained by the BCA and subject to a grant of relief shall display a notation stating "expungement relief granted pursuant to section 609A.015."

The BCA shall inform the judicial branch of all cases for which expungement relief was granted. Upon receipt of notice, the judicial branch shall seal all records relating to an arrest, indictment or information, trial, verdict, or dismissal and discharge for any case in which expungement relief was granted and shall issue any order deemed necessary to achieve this purpose.

Unless an order issued notifies the law enforcement agency that made the arrest or issued the citation, the BCA shall inform those agencies (arresting or citing law enforcement agencies) whose records are affected by the grant of expungement relief that expungement has been granted. Each notified law enforcement agency shall seal all records relating to an arrest, indictment or information, trial, verdict or dismissal and discharge for any case in which expungement relief was granted.

Data expunged is private data under Minn. Stat. 13.02, subdivision 12.

The prosecuting attorney must notify the victim of the offense that the offense qualifies for expungement.

In any subsequent prosecution of a person granted relief, the expunged record may be pleaded and has the same effect as if the expungement had not been granted.

Further, the BCA is directed to develop a system to provide criminal justice agencies with uniform statewide access to criminal records sealed by expungement.

Subdivision 7: Employees of the BCA are given immunity from civil liability as it relates to the powers granted by the section.

The section is effective January 1, 2025 and applies to offenses that meet the eligibility criteria on or after that date and retroactively to offenses that met those qualifications before January 1, 2025 and are stored in the BCA's criminal history system as of January 1, 2025.

Article 2: Expungement by Petition

Adds to those items for which 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).

(5) the petitioner was convicted of a felony violation of section 152.025 and has not been convicted of a new crime for at least four years since discharge of the sentence for the crime;

(6) the petitioner was convicted of a felony that is deemed to be for a gross misdemeanor or misdemeanor pursuant to section 609.13, subdivision 1, and has not been convicted of a new crime for at least five years since discharge of the sentence for the crime;

And modifies some of the waiting periods.

These are effective July 1, 2023.

Article 3: Conforming Changes

Section 1: Makes conforming changes to 13.871, subdivision 14.

Section 2: Makes conforming change to 152.18, subdivision 1 and requires the BCA to notify the arresting or citing law enforcement agency and direct that agency to seal its records related to the charge

Section 3: Requires that the Superintendent of the BCA to maintain a computerized data system related to petty misdemeanor and misdemeanor offenses that may become eligible for expungement but do not require fingerprinting and are not linked to an arrest record in the criminal history system. The data is private data on individuals under 13.02, subdivision 12. Effective January 1, 2024.

Section 4: Adds obscene or harassing telephone calls to those crimes considered targeted misdemeanors under 299C.10, requiring fingerprints.

Section 5: Provides offense levels for the disposition records in suspense that require notifications.

Section 6: Requires the court administrator to provide the BCA with requisite data on felonies, gross misdemeanors, misdemeanors, or petty misdemeanors.

Section 7: Notes expungement is automatic under section 609A.015 in 609A.01.

Section 8: Adds a phrase acknowledging applicability.

Section 9: This section adds a cross reference as well as language acknowledging that a prosecutor may request (and the court must provide) certified records of conviction for a record expunged under 609A and the certified records may be disclosed and introduced in criminal court proceedings as provided by the rules of the court and applicable law.

Further, the subject of an expunged record may request, and the court shall provide, certified and uncertified records of conviction for a record that is expunged.

Section 10: Adds a phrase acknowledging applicability.

Section 11: Adds automatic expungement pursuant to a section 609A.015 to the notification of victim for plea agreements statute.

Assumptions

Minnesota State Patrol

The State Patrol conducts approximately 350,000 traffic stops each year for a multitude of violations. It is impossible to know how many of those who are cited or arrested will be eligible for automatic expungement. While the bill specifies the specific statutes that are eligible, it is impossible to know what prosecutors may allow for stays of adjudication or diversion, or how many offenders will complete the required waiting period without re-offending. Until the judicial process is completed and the court records are fed to the BCA, the State Patrol cannot know how many expungements to anticipate. All motor vehicle registration-related misdemeanor offenses are eligible for expungement, and the State Patrol enforces registration violations.

Expungements are a manual, labor-intensive process. Each expungement request received by the State Patrol today takes a support person approximately two hours to process: ensuring our citation, reporting and computer-aided dispatch (CAD) record databases are purged while then archiving the records so they are preserved if needed for statutorily authorized purposes. The State Patrol has a single CAD SQL database administrator (DBA) that must process any expungements against the CAD database. Again, this is a manual, labor-intensive process. The DBA must search for the event, find the specified person, and remove that person's data from the database so it cannot be discovered in any historical event search. Care must be taken to remove only that person's data, even if multiple persons were involved in the event (e.g. driver with passengers, etc.). Our current, and only, DBA is fully taxed supporting our CAD database for the State Patrol, the Department of Natural Resources, the Department of Transportation, and the Department of Corrections (multiple agencies utilize our CAD system). Our single CAD database administrator is responsible for our entire statewide dispatching system. It can take up to 30 minutes for the DBA to expunge CAD records. The additional work cannot be accomplished with a single DBA who is fully taxed today. In order to support the volume of expungements, the State Patrol must hire a second DBA, or hold trooper positions vacant to hire an additional DBA.

Body camera and squad camera video also must be expunged, yet retained for disclosure under criteria specified in law.

The State Patrol will need to hire a programmer to develop an application to track the high volume of expungements that will occur. This application must contain information on when the expungement order was received, when it was processed, who processed it, and copies of the original sealed documents. This application will need ongoing support.

The expungements specified in the bill are an important legal obligation for the agency that brings risk to the State Patrol and the individual seeking the expungement if not done correctly. Because of the legal complexity, the State Patrol must hire a staff attorney to oversee expungements and to respond to data requests that will occur.

Additional FTEs are required for dedicated staff to manually process expungements versus adding it to the workload for

current staff (impossible given the volume). Essentially, the agency would be forced to hold trooper positions vacant to hire expungement staff.

The State Patrol assumes that 2% of the traffic stops will result in an expungement. This is likely conservative, and the actual number may be much higher.

Bureau of Criminal Apprehension

The Criminal History System (CHS) is Minnesota's repository for data on subjects arrested for felony, gross misdemeanor, targeted misdemeanor, and some misdemeanor offenses. The BCA receives records from law enforcement agencies about adults booked for targeted misdemeanors, gross misdemeanors and felonies as required by Minn. Stat. § 299C.10. These records do not include all petty misdemeanors and misdemeanors.

For all changes applicable to BCA systems, this bill requires that July 1, 2023, January 1, 2024, or January 1, 2025 as an effective date. The BCA would utilize the time between passage and the effective date for the technical development of each element needed to implement the provisions of the bill.

Automation of Grants of Expungement (January 1, 2025 Effective Date)

To create the business rules and make the programmatic changes to the CHS to implement automated expungements (planning, analysis, development, and testing) and to create and begin collecting petty misdemeanors and misdemeanors in a separate database, there would be one-time costs of approximately \$1,950,000.00 over the course of 18 months. The storage for the petty misdemeanors costs \$60,000.

It is assumed that the current CHS complies with the request made in 609A.015, subdivision 6(j) of the bill to provide criminal justice agencies with uniform statewide access to sealed records and is done pursuant to Minn. Stat. 609A.03.

Rechecks for Eligibility, Grants of Expungement, & Requisite Court Notifications (January 1, 2025 Effective Date)

Continuous re-checks to determine eligibility annually add a significant level of complexity to the process, especially when that eligibility is contingent upon other records. The systems will require development to access both the CHS and the misdemeanor database. This language adds a second notification to the judicial branch. The first is within 30 days of the eligibility of a record for expungement providing the judicial branch the opportunity to order it remain unsealed. The second notification is 60 days thereafter to notify the judicial branch that the record has been sealed.

The planning, analysis, development, and testing to complete the system work will take place over the course of 18 months and will require an estimated 2000 hours of expert development costs by the vendor of the state's Criminal History System at a specialized rate of \$175.00 per hour in addition to 4500 professional/technical hours at a rate of \$125.00 per hour.

Bifurcated Access to Sealed Records

The National Crime Prevention and Privacy Compact (Compact), which Minnesota is a member of, requires a court order before records may be sealed from view by other states. Thus BCA would need to bifurcate access to sealed records. Records "automatically" sealed would not be available in state (except to authorized entities), but would be available to out of state requestors, until BCA receives a court order.

BCA assumes that the list of eligible identified candidates will be provided to the courts electronically. BCA assumes that the courts will support this process.

BCA also assumes that there will be processes and infrastructure at the courts to provide the court orders in an electronic format as opposed to paper.

The planning, analysis, development, and testing to complete the system work will take place over the course of 18 months and will require an estimated 2000 hours of expert development costs by the vendor of the state's Criminal History System at a specialized rate of \$175.00 per hour in addition to 2200 professional/technical hours at a rate of \$125.00 per hour.

Additional Petitions Requiring Manual Review

Additional statutes and felony offenses have been added to the list of offenses eligible statutory expungement by petition and court order. As of March 8 2023, the BCA estimates an additional 315,349 records will be eligible for expungement. These expungements will require manual review by BCA Criminal History Analysts (State Program Administrator Technical Specialists). However, given that a number of expungements through petition will be transitioned to automated expungements, BCA assumes that existing Criminal History Analysts will be able to process the majority of these new court orders and only two new Criminal History Analysts would be needed to process these orders and to process expungement-related inquiries.

Additional Considerations

Article 1, Subdivision 4, in section 1 of the bill states “for a consecutive period of time immediately preceding a subsequent review performed pursuant to subdivision 7, paragraph (a), that is equal to or greater than the applicable waiting period.” The BCA assumes that the reference to “subdivision 7” is intended to reference “subdivision 6.”

Expenditure and/or Revenue Formula

Minnesota State Patrol

350,000 traffic stops per year x 2% expungement rate assumption = 7,000 expungements per year.

7,000 expungements per year x 2 hours for a support staff to process = 14,000 support staff hours.

14,000 support staff hours ÷ 2,088 hours per year (not including vacations, etc.) = 6.7 support staff positions, rounded to 7.

7,000 expungements per year x ½ hour for the DBA to process in the CAD database = 3,500 DBA hours.

3,500 DBA hours ÷ 2,088 hours per year (not including vacations, etc.) = 1.67 additional DBA FTEs.

Item Description	Qty	FY24	FY25	FY26	FY27
Staff Attorney to Oversee Expungements	1	145,032	145,032	145,032	145,032
Computer-Aided Dispatch (CAD) SQL DBA Administrator	1	154,282	154,282	154,282	154,282
Computer Programmer to Develop and Maintain Expungement Application Tracking Program	1	154,282	154,282	154,282	154,282
OAS-S w/Fringe for Expungement Processing	7	632,142	632,142	632,142	632,142
Total from the Trunk Highway Fund	10	1,085,738	1,085,738	1,085,738	1,085,738
In thousands		1,086	1,086	1,086	1,086

Bureau of Criminal Apprehension

Automated Expungements, Collection, and Storage of Petty Misdemeanor and Misdemeanor Offenses

To create the business rules and make the programmatic changes to the CHS to implement automated expungements (planning, analysis, development, and testing) and to begin collecting petty misdemeanors and misdemeanors in a separate database, there would be one-time costs of approximately \$1,950,000.00 over the course of 18 months. Due to the work needed to comply with the bill, it was estimated that approximately 15,600 hours would be needed for analysis, development, and testing at a rate of \$125.00 per hour, resulting in the following formula and costs:

15,600 x \$125.00 per hour as professional/technical contractors = \$1,950,000.00

The language also requires that the BCA begin to consistently store misdemeanor and petty misdemeanor offenses. This will require one-time storage costs of \$60,000.00.

Rechecks for Eligibility, Grants of Expungement, & Requisite Court Notifications

For planning, development, analysis, and quality assurance pertaining to the rechecks for eligibility, grants of expungement, and requisite court notifications, a one-time total of \$912,500.00 will be needed, including both 4500 professional technical hours at a rate of \$125.00 as well as 2000 expert development professional technical hours at a rate of \$175.00.

4500 x \$125.00 per hour as professional/technical contractors = \$562,500.00

2000 x \$175.00 per hour as professional/technical contractors = \$350,000.00

Bifurcated Access to Sealed Records

For planning, development, analysis, and quality assurance pertaining to the bifurcation of access to sealed records, a one-time total of \$625,000.00 will be needed, including both 2200 professional technical hours at a rate of \$125.00 as well as 2000 expert development professional technical hours at a rate of \$175.00.

2200 x \$125.00 per hour as professional/technical contractors = \$275,000.00

2000 x \$175.00 per hour as professional/technical contractors = \$350,000.00

Manual Review of Expungements by Petition

The two full-time employees, each of whom would be a State Program Administrator Technical Specialist (Criminal History Analyst), each cost \$94,782.97 per year, totaling \$189,565.94 per year.

Total

Assume funding for work spread across 18 months will be appropriated in FY24 from the general fund and available for use into FY25. It cannot be determined at this time how the work will be spread across the biennium.

Total FY24 from the general fund = \$1,950,000 + \$60,000 + \$350,000 + \$562,500 + \$350,000 + \$275,000 + \$189,566 = \$3,737,066

FY25 and beyond from the general fund = \$189,566

Long-Term Fiscal Considerations

Local Fiscal Impact

Local agencies will be required to seal their records in response to notifications from the BCA and the courts.

References/Sources

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Agency Fiscal Note Coordinator Signature: Dan Boytim

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