

# House Research Act Summary

**CHAPTER:** 246

**SESSION:** 2014 Regular Session

**TOPIC:** Expungement

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## Overview

This act contains a variety of reforms to the state's expungement laws. The act: amends laws governing disclosure of background study results by the commissioner of human services; expands judicial expungement authority over juvenile expungements; requires business screening records to keep their criminal records current; allows for eviction records to be expunged at the time of judgment; expands the scope of statutory expungement in chapter 609A; creates a path to expungement without petitioning the court; amends the factors for a court to consider in granting a statutory expungement; amends the law governing access to expunged records; and creates additional notice requirements for expungement orders.

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- 1 Classification of certain data.** Keeps an expunged record private if the commissioner of human services disqualifies an applicant based on the expunged record.
- 2 Disqualification that is rescinded or set aside.** Limits the disclosure of information by the commissioner of human services when the commissioner sets aside a disqualification based on an expunged record.
- 3 Expungement.** 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 and a list of

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factors to be considered is included.

Juvenile records expunged prior to the effective date of this act may not be shared or exchanged. For juvenile records expunged after the effective date of this act, sharing of records between criminal justice agencies is authorized, consistent with the new provisions governing adult records in section 12, and the statute governing appeals of adult expungements would apply.

Permits agencies to submit private or confidential data to a court in response to a petition for expungement.

- 4**     **Deletion of expunged records.** 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).
- 5**     **Evictions.** Amends the eviction law to explicitly give the court authority to expunge records relating to the action at the time judgment is entered or after that time in cases where the defendant prevailed. The effect of this amendment is to allow the defendant to move for an expungement as part of the eviction proceeding, rather than bringing a separate petition or motion under Minnesota Statutes, section 484.014, which is the general law governing expungement of eviction records.
- 6**     **Statutory expungement.** 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), four 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 or misdemeanor and has not been convicted of a new crime for at least *two* years since discharge of the sentence;
  - petitioner was convicted of or received a stayed sentence for a gross misdemeanor and has not been convicted of a new crime for at least *four* years since discharge of the sentence; or
  - petitioner was convicted of or received a stayed sentence for a felony violation of an offense listed in paragraph (b) and has not been convicted of a new crime for at least *five* years since discharge of the sentence.

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Paragraph (b) lists the felonies that would be eligible for expungement. It includes most offenses that are a severity level 1 or 2 under the Sentencing Guidelines, other than (1) certain person offenses and (2) those that are crimes of violence for purposes of permit to carry disqualifications and codified in chapter 609.

Until July 15, 2015, paragraph (c) prohibits the expungement of stayed sentences in cases of sexual or domestic abuse, stalking, and harassment.

- 7**     **Petitionless expungement.** Provides for 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 6). A victim notification requirement is included.
- 8**     **Petition; filing fee.** Clarifies that the expungement petition filing fee waiver is not extended to the new categories of offenses eligible for expungement.
- 9**     **Service of petition and proposed order.** Authorizes agencies to submit private or confidential data to a court in response to an expungement petition.
- 10**    **Nature of remedy; standard.** 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 to the situations where the agency has the burden of proof. For the other new categories in section 6, 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 a court may order an expunged record sealed, regardless of whether it would otherwise be public law enforcement or criminal history data or public under other law.
- Prohibits expunged records from being introduced in civil litigation against an employer or landlord for alleged misconduct of an employee or tenant, if the records were expunged before the occurrence giving rise to the civil action.
- 11**    **Order when context and circumstances of the underlying crime indicate a nexus between the criminal record to be expunged and person's status as a crime victim.** Creates special protections for persons who have a record expunged and the person is deemed a crime victim and there is a nexus between the expunged record and the person's status as a crime victim.
- 12**    **Limitations of statutory expungement.** Establishes that current standards for accessing expunged records apply to records expunged prior to January 1, 2015.

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- 13**      **Limitations on statutory expungement (*prospective*).** Amends the law governing access to records expunged on or after January 1, 2015.
- Para (a)** treats DNA records the same way as they currently are treated (see section 12).
- Para (b)** allows, except for in certain cases where a person was found not guilty, the exchange of expunged records between criminal justice agencies without a court order. 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. Continues to require a court order for access to expunged records in matters that were resolved in the subject's favor. Continues to allow access to expunged records as part of human services background studies and for evaluating a person for employment in a criminal justice agency. Allows for access to expunged records as part of background checks performed on educators. Authorizes crime victims to seek a court order to open expunged records in certain situations.
- Para (c)** establishes requirements for maintaining expunged records for purposes of sharing or distribution as provided for in paragraph (b). If a request is made by the commissioner of human services, the Board of Teaching, or the Department of Education, the entity must be notified of the existence of an expungement record and of the right to obtain access to it.
- Para (d)** requires that an expunged record remains subject to the expungement order in the hands of the person receiving it.
- Para (e)** requires an agency receiving an expunged record to use the record solely for the purpose for which it was sought.
- Para (f)** defines "criminal justice agency."
- Para (g)** specifies the application date of this section.
- Effective date.** Applies to records expunged on or after January 1, 2015.
- 14**      **Distribution and confirmation of expungement order.** 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, if requested by the petitioner, to require those entities to send a letter to the petitioner confirming that the record is expunged. Data on the petitioners mentioned in these letters is classified as private data.
- 15**      **Data practices remedy.** Allows data practices civil remedies against a government entity that "knowingly" opens or exchanges an expunged record in a manner not authorized by law.