

Subject Automatic expungement; prosecutor initiated expungement

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## Overview

This bill amends Minnesota's expungement law by creating an automatic expungement procedure and a prosecutor initiated expungement procedure.

## Summary

Section	Description
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1	<b>Expungement of criminal records.</b>
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Makes a conforming change to reference the automatic expungement procedure established in section 2.

2	<b>Automatic expungement of records.</b>
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**Subd. 1. Eligibility; dismissal, exoneration.** Provides that a person is eligible to have records expunged if: (1) charges against the person were dismissed and discharged pursuant to section 152.18 for violations involving possession of a controlled substance; (2) the person was arrested and charges were dismissed before a determination of probable cause; or (3) all pending actions were resolved in favor of the person.

**Subd. 2. Eligibility; diversion and stay of adjudication.** Provides that a person is eligible to have records expunged if the person successfully completed the terms of diversion or a stay of adjudication and the person was not charged with a new crime for one year immediately following successful completion.

**Subd. 3. Eligibility; waiting period.** Provides that a person is eligible to have records expunged if the person: (1) was convicted of any petty misdemeanor, misdemeanor, or gross misdemeanor that could not be used to enhance a later offense, or was convicted of a felony listed in section 609A.02, subdivision 3, paragraph (b) that could not be used to enhance a later offense; (2) was not convicted of a new crime during the applicable waiting period immediately following discharge of the sentence; and (3) is not incarcerated or charged with a new offense at the end of the waiting period. Provides that the applicable

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waiting periods are two years for a misdemeanor, four years for a gross misdemeanor, and five years for a listed felony.

**Subd. 4. Eligibility; enhanceable offenses.** Provides that a person is eligible to have records expunged if the person: (1) was convicted of a crime that could be used to enhance a later offense; (2) was not convicted of a new crime during the applicable waiting period immediately following discharge of the sentence; and (3) is not incarcerated or charged with a new offense at the end of the ten-year waiting period.

**Subd. 5. Bureau of Criminal Apprehension to identify eligible individuals.** Directs the Bureau of Criminal Apprehension (BCA) to identify individuals who are eligible for an automatic expungement, provide notice to the judicial branch, make a reasonable effort to notify the person whose records are eligible for expungement, and make a reasonable effort to notify any identifiable victims.

**Subd. 6. Order of expungement.** Directs a court that receives notice from the BCA stating that a person is eligible for an order of expungement under this section to issue an order. Provides that the limitations on expungements issued pursuant to a petition under section 609A.03 apply to an order under this section. Specifically states that an order under this section shall not be sealed for the purposes of a human services background study or a background check required by the Professional Educator Licensing and Standards Board and the Board of School Administrators. Directs the court administrator to send a copy of the order to relevant agencies. Directs the prosecutorial office with jurisdiction over the offense to provide any notice to victims required under section 611A.06. Classifies data of a person whose records are expunged consistent with the classification of data for expunged records under section 609A.03.

3 **Expungement of arrest.**

Permits a person to petition for an expungement of arrest records when the prosecuting authority has declined to file charges or the statute of limitations has expired and no charges were filed. Under current law in section 299C.11, a person may contact the BCA and any other applicable agencies to request that records be destroyed if all charges were dismissed prior to a determination of probable cause or when the prosecuting authority declined to file any charges.

4 **Certain criminal proceedings.**

Makes a conforming change by striking a provision that permitted a person to petition for expungement when all actions or proceedings were resolved in favor of the person. Under section 2, expungement of those records would be automatic and not need a petition.

Section	Description
5	<p><b>No petition required in certain cases with prosecutor agreement and notification.</b></p> <p>Directs prosecutors to inform a court when the prosecutor agrees to an expungement without requiring a petition and there is a connection between the underlying crime and the person's status as a crime victim. The court can then make appropriate findings to grant the relief described in section 609A.03, subdivision 6a which allows the person to be restored to the status the person occupied before the arrest, including the right to truthfully fail to acknowledge the arrest, indictment, information, or trial. Further directs prosecutors to agree to an expungement without a petition if the prosecuting authority has declined to file charges or the statute of limitations has expired and no charges were filed.</p>
6	<p><b>Prosecutor initiated expungement.</b></p> <p><b>Subd. 1. Determination of eligibility.</b> Permits a prosecutor to initiate a petition to expunge a person's records if the person meets the eligibility requirements under section 609A.02, subdivision 3, or the person was convicted of, or received a stayed sentence for, a felony offense other than one for which predatory registration is required.</p> <p><b>Subd. 2. Petition; contents; fee.</b> Requires a petition in a prosecutor initiated expungement to include relevant information substantially similar to the information required by any other petition. Waives the filing fee for a petition brought by a prosecutor.</p> <p><b>Subd. 3. Service of petition and proposed order.</b> Requires a prosecutor to serve the person whose records may be expunged, any victims who requested notice under section 611A.06, and all agencies whose records might be affected by the order. Permits agencies to submit relevant records.</p> <p><b>Subd. 4. Hearing.</b> Directs the court to hold a hearing if there were identifiable victims of the offense, or an agency, subject of the petition, or prosecutor requests a hearing. Permits the court to enter an order without a hearing if a hearing is not otherwise required.</p> <p><b>Subd. 5. Nature of remedy; standard.</b> Requires the court to issue an order of expungement unless the court determines that the interests of the public and public safety outweigh the disadvantages to the person. Provides that the effect and limitations of an expungement under this section are identical to an order issued under section 609A.03.</p>
7	<p><b>Petition; filing fee.</b></p> <p>Makes a conforming change.</p>

Section	Description
8	<b>Nature of remedy; standard.</b> Makes a conforming change clarifying that expungement pursuant to a petition initiated by an offender is an extraordinary remedy, but that orders under either the new automatic expungement section or prosecutor initiated expungement section are not.
9	<b>Limitations of order effective January 1, 2015, and later.</b> Makes a conforming change.
10	<b>Stay of order; appeal.</b> Provides that only an order issued under section 609A.03 shall be stayed for 60 days.



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