

Subject Automatic expungement process for certain offenses

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## Overview

Under current Minnesota law, a person seeking expungement of criminal records must file a petition with the court seeking an order expunging records. This bill establishes an automatic expungement process for certain offenses.

## Article 1: Expungement Without Petition

Establishes an automatic expungement process for certain petty misdemeanor, misdemeanor, and gross misdemeanor offenses.

### Section Description – Article 1: Expungement Without Petition

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#### 1 Automatic expungement of records.

**Subd. 1. Eligibility; dismissal; exoneration.** Establishes that a criminal record is eligible for dismissal without the filing of a petition if the person was arrested and all charges were dismissed or if all pending actions were resolved in the person's favor. Establishes an exception if dismissal is based on a determination that the person is incompetent or if the action was resolved in the person's favor under the theory that the person is not guilty by reason of mental illness.

**Subd. 2. Eligibility; diversion and stay of adjudication.** Establishes that a person is eligible for expungement if the person completes the terms of a diversion or stay of adjudication for an offense other than a felony and is not convicted of, or charged with, a new offense for one year.

**Subd. 3. Eligibility; certain criminal and delinquency proceedings.** Provides that a person is eligible for expungement relief if the underlying offense is a listed qualifying offense, the person has not been convicted of a new offense in Minnesota during the applicable waiting period, and the person is not charged with a new offense in Minnesota at the end of the waiting period. Defines qualifying offense to include any petty misdemeanor other than a traffic or parking violation; misdemeanors other than specified offenses including assault, domestic violence offenses, and DWI; and gross misdemeanors other than specified offenses including assault, burglary, domestic violence offenses, and

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DWI. Defines “applicable waiting period” as two years for an eligible petty misdemeanor or misdemeanor and four years for an eligible gross misdemeanor. Provides that felony offenses and gross misdemeanor offenses that are deemed to be lesser charges based on the sentence imposed do not become eligible for automatic expungement because of the sentence imposed.

**Subd. 4. Notice.** Requires the court to notify a defendant that an offense is eligible for automatic expungement at the time a case is dismissed or resolved in the person’s favor, or when the court sentences a person to a qualifying offense. Directs prosecutors, defense attorneys, supervising agents, and diversion supervisors or coordinators to notify individuals of their eligibility to the extent possible. Notice must inform the person that an expunged record may be used for background studies performed by the Department of Human Services and background checks performed by the Professional Educator Licensing and Standards Board, and that the person may file for a statutory expungement to request that the records not be usable for those purposes.

**Subd. 5. Bureau of Criminal Apprehension (BCA) to identify eligible persons and grant expungement relief.** Directs the BCA to identify individuals who may be eligible for a grant of expungement relief. Directs the BCA to use finger and thumbprints to identify individuals when those prints are available. Directs the BCA to use an individual’s name and date of birth when prints are not available. Establishes a presumption that records with the same names and dates of birth identify the same individual unless other evidence demonstrates, by a preponderance of the evidence, that the two are not the same. Provides that the BCA does not need to review additional information when making this determination. Directs the BCA to identify records eligible for expungement and to seal those records 60 days after sending notice to the judicial branch unless an order or additional information informs the BCA that the records should not be sealed. Requires nonpublic copies of the record to indicate that they were expunged pursuant to this section. Requires the BCA to inform the judicial branch of records that have been identified and directs the judicial branch to seal those records and issue any other necessary order. Directs the BCA to notify the law enforcement agency that cited or arrested an individual that records must be sealed unless an order of the court previously notified the agency. Establishes that data on the expunged offense, including any notice sent by the BCA, is private data on individuals. Directs the prosecutor to notify any victim of an offense of the expungement. Permits expunged offenses to be used in a later criminal action against the person. Directs the BCA to develop or expand a system to provide criminal justice agencies with uniform access to records that have been expunged.

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**Subd. 6. Immunity from civil liability.** Establishes that the BCA and its employees are immune from civil suits based on the exercise or failure to exercise the powers and duties under this section.

**Effective date.** Establishes that the new section is effective January 1, 2024, and applies retroactively to offenses that are stored in the BCA’s criminal history system on that date.

## **Article 2: Conforming Changes**

This article makes changes necessary to implement the automatic expungement process and makes technical changes to conform existing law to the new policy.

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**Section Description – Article 2: Conforming Changes**

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**1 Expungement.**

Makes a conforming change in chapter 13 clarifying that certain data related to automatic expungements is classified in Minnesota Statutes, sections 609A.015 and 299C.007.

**2 Deferring prosecution for certain first-time offenders.**

Directs the BCA to provide notice to the arresting or citing local law enforcement agency when a case is discharged and dismissed pursuant to Minnesota Statutes, section 152.18. The notice must direct the local law enforcement agency to seal its records.

**3 Database for identifying individuals eligible for expungement.**

Directs the BCA to store data on petty misdemeanor and misdemeanor offenses that may become eligible for expungement, do not require fingerprinting, and are not currently stored in the criminal history system. Classifies the data as private data on individuals.

**4 Required fingerprinting.**

Adds a violation of Minnesota Statutes, section 609.749, (obscene or harassing telephone calls) to the definition of “targeted misdemeanor” which is a misdemeanor for which fingerprinting is required.

**5 Suspense file reporting.**

Makes a conforming change to clarify that fingerprints are not required for records other than those related to a felony, gross misdemeanor, or petty misdemeanor.

**Section Description – Article 2: Conforming Changes**

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- 6 Report by court administrator.**  
Expands the list of offenses for which court administrators must send a disposition report to the BCA to include all misdemeanors and petty misdemeanors.
- 7 Expungement of criminal records.**  
Makes a conforming change to reference the new automatic expungement provisions.
- 8 Nature of remedy; standard.**  
Makes a conforming change in the section of law related to petitions for expungement to clarify that orders issued under the section do not apply to orders issued based on an automatic expungement.
- 9 Limitations of order effective January 1, 2015, and later.**  
Provides that prosecutors may request and obtain a certified copy of a record of expungement and may introduce the record in criminal proceedings. Establishes that the subject of expunged records may request and obtain certified or uncertified copies of an expunged record. Makes a conforming change to clarify that the subdivision applies to records expunged under the automatic expungement process.
- 10 Stay of order; appeal.**  
Makes a conforming change to clarify that this section applies to orders issued under the statutory expungement section, not the automatic expungement section.
- 11 Plea agreements; notification of victims.**  
Makes a conforming change requiring that prosecutors notify victims when an offense is eligible for automatic expungement.



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