A bill for an act

relating to public safety; modifying provisions governing public hearings and public access to juvenile records; authorizing the expungement of certain juvenile records; authorizing the commissioner of human services to grant set asides or variances for certain individuals disqualified from licensure because of an offense committed as a juvenile; amending Minnesota Statutes 2008, sections 260B.163, subdivision 1; 260B.171, subdivisions 4, 5; 609A.02, subdivision 2; 609A.03, subdivisions 1, 2, 4, 5, 5a, 7; Minnesota Statutes 2009 Supplement, section 245C.24, subdivision 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2009 Supplement, section 245C.24, subdivision 2, is amended to read:

Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as otherwise provided in ~~paragraph (b)~~ this subdivision, the commissioner may not set aside the disqualification of any individual disqualified pursuant to this chapter, regardless of how much time has passed, if the individual was disqualified for a crime or conduct listed in section 245C.15, subdivision 1.

(b) For an individual in the chemical dependency or corrections field who was disqualified for a crime or conduct listed under section 245C.15, subdivision 1, and whose disqualification was set aside prior to July 1, 2005, the commissioner must consider granting a variance pursuant to section 245C.30 for the license holder for a program dealing primarily with adults. A request for reconsideration evaluated under this paragraph must include a letter of recommendation from the license holder that was subject to the prior set-aside decision addressing the individual's quality of care to children or vulnerable adults and the circumstances of the individual's departure from that service.

(c) When a licensed foster care provider adopts an individual who had received foster care services from the provider for over six months, and the adopted individual is required to receive a background study under section 245C.03, subdivision 1, paragraph (a), clause (2) or (6), the commissioner may grant a variance to the license holder under section 245C.30 to permit the adopted individual with a permanent disqualification to remain affiliated with the license holder under the conditions of the variance when the variance is recommended by the county of responsibility for each of the remaining individuals in placement in the home and the licensing agency for the home.

(d) The commissioner shall consider granting a set aside under section 245C.22 or a variance under section 245C.30 to an individual who is now 21 years of age or older and who was disqualified for a crime or conduct listed under section 245C.15, subdivision 1, occurring while the individual was under the age of 18. This paragraph does not apply to individuals who were convicted of the disqualifying crime following certification under section 260B.125.

Sec. 2. Minnesota Statutes 2008, section 260B.163, subdivision 1, is amended to read:

Subdivision 1. **General.** (a) Except for hearings arising under section 260B.425, hearings on any matter shall be without a jury and may be conducted in an informal manner, except that a child who is prosecuted as an extended jurisdiction juvenile has the right to a jury trial on the issue of guilt. The rules of evidence promulgated pursuant to section 480.0591 and the law of evidence shall apply in adjudicatory proceedings involving a child alleged to be delinquent, an extended jurisdiction juvenile, or a juvenile petty offender, and hearings conducted pursuant to section 260B.125 except to the extent that the rules themselves provide that they do not apply.

(b) When a continuance or adjournment is ordered in any proceeding, the court may make any interim orders as it deems in the best interests of the minor in accordance with the provisions of sections 260B.001 to 260B.421.

(c) Except as otherwise provided in this paragraph, the court shall exclude the general public from hearings under this chapter and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or in the work of the court. The court shall permit the victim of a child's delinquent act to attend any related delinquency proceeding, except that the court may exclude the victim:

(1) as a witness under the Rules of Criminal Procedure; and

(2) from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public.

The court shall open the hearings to the public in delinquency or extended jurisdiction juvenile proceedings ~~where~~ if the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult ~~and~~, the child was at least 16 years of age at the time of the offense, ~~except that~~ and the court determines that due to the violent and severe nature of the offense, the benefit to public safety of opening the hearing to the public outweighs the potential collateral consequences for the child that may result from a public record. The court may exclude the public from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(d) In all delinquency cases a person named in the charging clause of the petition as a person directly damaged in person or property shall be entitled, upon request, to be notified by the court administrator in writing, at the named person's last known address, of (1) the date of the certification or adjudicatory hearings, and (2) the disposition of the case.

Sec. 3. Minnesota Statutes 2008, section 260B.171, subdivision 4, is amended to read:

Subd. 4. **Public inspection of records.** (a) Legal records arising from proceedings or portions of proceedings that ~~are~~ the court opens to the public under section 260B.163, subdivision 1, are open to public inspection.

(b) Except as otherwise provided by this section, none of the records of the juvenile court and none of the records relating to an appeal from a nonpublic juvenile court proceeding, except the written appellate opinion, shall be open to public inspection or their contents disclosed except:

(1) by order of a court; or

(2) as required by chapter 245C or sections 245A.04, 611A.03, 611A.04, 611A.06, and 629.73.

(c) The victim of any alleged delinquent act may, upon the victim's request, obtain the following information, unless it reasonably appears that the request is prompted by a desire on the part of the requester to engage in unlawful activities:

(1) the name and age of the juvenile;

(2) the act for which the juvenile was petitioned and date of the offense; and

(3) the disposition, including, but not limited to, dismissal of the petition, diversion, probation and conditions of probation, detention, fines, or restitution.

(d) The records of juvenile probation officers and county home schools are records of the court for the purposes of this subdivision. Court services data relating to delinquent acts that are contained in records of the juvenile court may be released as allowed under section 13.84, subdivision 6. This subdivision applies to all proceedings under this

chapter, including appeals from orders of the juvenile court, except that this subdivision does not apply to proceedings under section 260B.335 or 260B.425 when the proceeding involves an adult defendant. The court shall maintain the confidentiality of adoption files and records in accordance with the provisions of laws relating to adoptions. In juvenile court proceedings any report or social history furnished to the court shall be open to inspection by the attorneys of record and the guardian ad litem a reasonable time before it is used in connection with any proceeding before the court.

(e) When a judge of a juvenile court, or duly authorized agent of the court, determines under a proceeding under this chapter that a child has violated a state or local law, ordinance, or regulation pertaining to the operation of a motor vehicle on streets and highways, except parking violations, the judge or agent shall immediately report the violation to the commissioner of public safety. The report must be made on a form provided by the Department of Public Safety and must contain the information required under section 169.95.

(f) A county attorney may give a law enforcement agency that referred a delinquency matter to the county attorney a summary of the results of that referral, including the details of any juvenile court disposition.

Sec. 4. Minnesota Statutes 2008, section 260B.171, subdivision 5, is amended to read:

Subd. 5. **Peace officer records of children.** (a) Except for records relating to an offense where the court opens the proceedings ~~are~~ to the public under section 260B.163, subdivision 1, Peace officers' records of children who are or may be delinquent or who may be engaged in criminal acts shall be kept separate from records of persons 18 years of age or older and are private data but shall be disseminated: (1) by order of the juvenile court, (2) as required by section 121A.28, (3) as authorized under section 13.82, subdivision 2, (4) to the child or the child's parent or guardian unless disclosure of a record would interfere with an ongoing investigation, (5) to the Minnesota crime victims reparations board as required by section 611A.56, subdivision 2, clause (6), for the purpose of processing claims for crime victims reparations, or (6) as otherwise provided in this subdivision. Except as provided in paragraph (c), no photographs of a child taken into custody may be taken without the consent of the juvenile court unless the child is alleged to have violated section 169A.20. Peace officers' records containing data about children who are victims of crimes or witnesses to crimes must be administered consistent with section 13.82, subdivisions 2, 3, 6, and 17. Any person violating any of the provisions of this subdivision shall be guilty of a misdemeanor.

In the case of computerized records maintained about juveniles by peace officers, the requirement of this subdivision that records about juveniles must be kept separate from adult records does not mean that a law enforcement agency must keep its records concerning juveniles on a separate computer system. Law enforcement agencies may keep juvenile records on the same computer as adult records and may use a common index to access both juvenile and adult records so long as the agency has in place procedures that keep juvenile records in a separate place in computer storage and that comply with the special data retention and other requirements associated with protecting data on juveniles.

(b) Nothing in this subdivision prohibits the exchange of information by law enforcement agencies if the exchanged information is pertinent and necessary for law enforcement purposes.

(c) A photograph may be taken of a child taken into custody pursuant to section 260B.175, subdivision 1, clause (b), provided that the photograph must be destroyed when the child reaches the age of 19 years. The commissioner of corrections may photograph juveniles whose legal custody is transferred to the commissioner. Photographs of juveniles authorized by this paragraph may be used only for institution management purposes, case supervision by parole agents, and to assist law enforcement agencies to apprehend juvenile offenders. The commissioner shall maintain photographs of juveniles in the same manner as juvenile court records and names under this section.

(d) Traffic investigation reports are open to inspection by a person who has sustained physical harm or economic loss as a result of the traffic accident. Identifying information on juveniles who are parties to traffic accidents may be disclosed as authorized under section 13.82, subdivision 6, and accident reports required under section 169.09 may be released under section 169.09, subdivision 13, unless the information would identify a juvenile who was taken into custody or who is suspected of committing an offense that would be a crime if committed by an adult, or would associate a juvenile with the offense, and the offense is not an adult court traffic offense under section 260B.225.

(e) The head of a law enforcement agency or a person specifically given the duty by the head of the law enforcement agency shall notify the superintendent or chief administrative officer of a juvenile's school of an incident occurring within the agency's jurisdiction if:

(1) the agency has probable cause to believe that the juvenile has committed an offense that would be a crime if committed as an adult, that the victim of the offense is a student or staff member of the school, and that notice to the school is reasonably necessary for the protection of the victim; or

(2) the agency has probable cause to believe that the juvenile has committed an offense described in subdivision 3, paragraph (a), clauses (1) to (3), that would be a crime if committed by an adult, regardless of whether the victim is a student or staff member of the school.

A law enforcement agency is not required to notify the school under this paragraph if the agency determines that notice would jeopardize an ongoing investigation. For purposes of this paragraph, "school" means a public or private elementary, middle, secondary, or charter school.

(f) In any county in which the county attorney operates or authorizes the operation of a juvenile prepetition or pretrial diversion program, a law enforcement agency or county attorney's office may provide the juvenile diversion program with data concerning a juvenile who is a participant in or is being considered for participation in the program.

(g) Upon request of a local social services agency, peace officer records of children who are or may be delinquent or who may be engaged in criminal acts may be disseminated to the agency to promote the best interests of the subject of the data.

(h) Upon written request, the prosecuting authority shall release investigative data collected by a law enforcement agency to the victim of a criminal act or alleged criminal act or to the victim's legal representative, except as otherwise provided by this paragraph. Data shall not be released if:

(1) the release to the individual subject of the data would be prohibited under section 13.821; or

(2) the prosecuting authority reasonably believes:

(i) that the release of that data will interfere with the investigation; or

(ii) that the request is prompted by a desire on the part of the requester to engage in unlawful activities.

(i) A consent to the release of a peace officer record governed by this subdivision from the individual who is the subject of the record is not effective and a law enforcement agency must not release the record or release information in a manner that reveals the existence of the record.

Sec. 5. Minnesota Statutes 2008, section 609A.02, subdivision 2, is amended to read:

Subd. 2. **Offenses committed by juveniles ~~prosecuted as adults.~~** A petition for the sealing of ~~a conviction record~~ any type of delinquency or criminal record relating to a juvenile matter may be filed under section 609A.03 by a person who has ~~been committed to the custody of the commissioner of corrections upon conviction of a crime following certification to district court under section 260B.125, if the person~~ successfully completed

the terms of the person's disposition or sentence and who is no longer under correctional supervision for the offense, if:

(1) ~~is finally discharged by the commissioner; or~~ the matter was resolved under section 260B.198, regardless of whether the person was adjudicated delinquent;

(2) ~~has been placed on probation by the court under section 609.135 and has been discharged from probation after satisfactory fulfillment of it~~ the matter was designated an extended jurisdiction juvenile prosecution under section 260B.130 and the person's adult sentence was never executed;

(3) the matter was designated an extended jurisdiction juvenile prosecution under section 260B.130 and the person's adult sentence was subsequently executed; or

(4) the matter was certified for adult prosecution under section 260B.125.

Sec. 6. Minnesota Statutes 2008, section 609A.03, subdivision 1, is amended to read:

Subdivision 1. **Petition; filing fee.** An individual who is the subject of a criminal record who is seeking the expungement of the record shall file a petition under this section and pay a filing fee in the amount required under section 357.021, subdivision 2, clause (1). The filing fee may be waived in cases of indigency and shall be waived in the cases described in section 609A.02, subdivision 2, clause (1) or (2), and subdivision 3.

Sec. 7. Minnesota Statutes 2008, section 609A.03, subdivision 2, is amended to read:

Subd. 2. **Contents of petition.** (a) A petition for expungement shall be signed under oath by the petitioner and shall state the following:

(1) the petitioner's full name and all other legal names or aliases by which the petitioner has been known at any time;

(2) the petitioner's date of birth;

(3) all of the petitioner's addresses from the date of the offense or alleged offense in connection with which an expungement order is sought, to the date of the petition;

(4) why expungement is sought, if it is for employment or licensure purposes, the statutory or other legal authority under which it is sought, and why it should be granted;

(5) the details of the offense or arrest for which expungement is sought, including the date and jurisdiction of the occurrence, either the names of any victims or that there were no identifiable victims, whether there is a current order for protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for protection or restraining order prohibiting the petitioner from contacting the victims, the court file number, and the date of conviction or of dismissal;

(6) in the case of a conviction or adjudication, what steps the petitioner has taken since the time of the offense toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation;

(7) petitioner's criminal conviction and adjudication record indicating all convictions and adjudications for misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable convictions and adjudications in any other state, federal court, or foreign country, whether the convictions or adjudications occurred before or after the arrest ~~or~~, conviction, or adjudication for which expungement is sought;

(8) petitioner's criminal charges record indicating all prior and pending criminal charges against the petitioner in this state or another jurisdiction, including all criminal charges that have been continued for dismissal or stayed for adjudication, or have been the subject of pretrial diversion; and

(9) all prior requests by the petitioner, whether for the present offense or for any other offenses, in this state or any other state or federal court, for pardon, return of arrest records, or expungement or sealing of a criminal record, whether granted or not, and all stays of adjudication or imposition of sentence involving the petitioner.

(b) If there is a current order for protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or there has ever been a prior order for protection or restraining order prohibiting the petitioner from contacting the victims, the petitioner shall attach a copy of the order to the petition.

Sec. 8. Minnesota Statutes 2008, section 609A.03, subdivision 4, is amended to read:

Subd. 4. **Hearing.** (a) A hearing on the petition shall be held no sooner than 60 days after service of the petition. A victim of the offense for which expungement is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether expungement should be granted or denied. The judge shall consider the victim's statement when making a decision.

(b) The court shall exclude the general public from a hearing on a petition to expunge a record relating to a juvenile matter under section 609A.02, subdivision 2, and may admit only persons who the court determines have a direct interest in the case, unless the hearing on the underlying offense for which expungement is sought was open to the public under section 260B.163, subdivision 1, paragraph (c), or other law.

Sec. 9. Minnesota Statutes 2008, section 609A.03, subdivision 5, is amended to read:

Subd. 5. **Nature of remedy; standard~~; firearms restriction~~.** (a) Except as otherwise provided by paragraph (b) or (c), expungement of a criminal record is an extraordinary remedy to be granted only upon clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of:

(1) sealing the record; and

(2) burdening the court and public authorities to issue, enforce, and monitor an expungement order.

(b) Except as otherwise provided by this paragraph, If the petitioner is petitioning for the sealing of a criminal record under section 609A.02, subdivision 3, the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.

(c) If the petitioner is petitioning for the sealing of a criminal record under section 609A.02, subdivision 2, clause (1) or (2), the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.

(d) If the court issues an expungement order it may require that the criminal record be sealed, the existence of the record not be revealed, and the record not be opened except as required under subdivision 7. Records must not be destroyed or returned to the subject of the record.

Sec. 10. Minnesota Statutes 2008, section 609A.03, subdivision 5a, is amended to read:

Subd. 5a. **Order concerning crimes of violence.** An order expunging the record of a conviction or adjudication for a crime of violence as defined in section 624.712, subdivision 5, must provide that the person is not entitled to ship, transport, possess, or receive a firearm for the remainder of the person's lifetime. Any person whose record of conviction or adjudication is expunged under this section and who thereafter receives a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d, is not subject to the restriction in this subdivision.

Sec. 11. Minnesota Statutes 2008, section 609A.03, subdivision 7, is amended to read:

Subd. 7. **Limitations of order.** (a) Upon issuance of an expungement order related to a charge supported by probable cause, the DNA samples and DNA records held by

the Bureau of Criminal Apprehension and collected under authority other than section 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

(b) Notwithstanding the issuance of an expungement order:

(1) an expunged record may be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order;

(2) an expunged record of a conviction or adjudication may be opened for purposes of evaluating a prospective employee in a criminal justice agency without a court order; and

(3) an expunged record of a conviction or adjudication may be opened for purposes of a background study under section 245C.08 unless the court order for expungement is directed specifically to the commissioner of human services.

Upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph. For purposes of this section, a "criminal justice agency" means courts or a government agency that performs the administration of criminal justice under statutory authority.