

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH SESSION

S.F. No. 2214

(SENATE AUTHORS: CHAMPION and Petersen, B.)

DATE	D-PG	OFFICIAL STATUS
03/03/2014	5930	Introduction and first reading Referred to Judiciary
03/04/2014	5965	Author added Peterson
03/12/2014		Comm report: To pass as amended and re-refer to Finance

1.1

A bill for an act

1.2

relating to criminal justice; modifying provisions governing expungement of

1.3

criminal records; requiring business screening services to delete expunged

1.4

records; allowing expungement of eviction records in certain cases; amending

1.5

Minnesota Statutes 2012, sections 260B.198, subdivision 6; 332.70, by adding

1.6

a subdivision; 504B.345, subdivision 1; 609A.02, subdivision 3; 609A.03,

1.7

subdivisions 5, 7, 8; proposing coding for new law in Minnesota Statutes,

1.8

chapter 609A.

1.9

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

1.10

Section 1. Minnesota Statutes 2012, section 260B.198, subdivision 6, is amended to

1.11

read:

1.12

Subd. 6. **Expungement.** ~~Except when legal custody is transferred under the~~

1.13

~~provisions of subdivision 1, clause (4),~~ (a) The court may expunge the adjudication of

1.14

all records relating to the arrest and delinquency proceedings at any time ~~that it deems~~

1.15

~~advisable~~ if the court determines that expungement of the record would yield a benefit

1.16

to the subject of the record that outweighs the detriment to the public and public safety

1.17

in sealing the record and the burden on the court and public agencies or jurisdictions in

1.18

issuing, enforcing, and monitoring the order.

1.19

(b) In making a determination under this subdivision, the court shall consider:

1.20

(1) the age, education, experience, and background, including mental and emotional

1.21

development, of the subject of the record at the time of commission of the offense;

1.22

(2) the circumstances and nature and severity of the offense, including any

1.23

aggravating or mitigating factors in the commission of the offense;

1.24

(3) victim and community impact, including age and vulnerability of the victim;

1.25

(4) the level of participation of the subject of the record in the planning and carrying

1.26

out of the offense, including familial or peer influence in the commission of the offense;

- (5) the juvenile delinquency and criminal history of the subject of the record;
- (6) the programming history of the subject of the record, including child welfare, school and community-based, and probation interventions, and the subject's willingness to participate meaningfully in programming, probation, or both;
- (7) any other aggravating or mitigating circumstance bearing on the culpability or potential for rehabilitation of the subject of the record; and
- (8) the benefit that expungement would yield to the subject of the record in pursuing education, employment, housing, or other necessities.
- (c) Notwithstanding paragraph (a), a record that is expunged under this subdivision may be opened or exchanged between criminal justice agencies in the same manner as a criminal record under section 609A.03, subdivision 7, paragraph (b).
- (d) Section 609A.03, subdivision 9, applies to an appeal of an order under this subdivision.

Sec. 2. Minnesota Statutes 2012, section 332.70, is amended by adding a subdivision to read:

Subd. 3a. **Deletion of expunged records.** If a business screening service knows that a criminal record has been sealed, expunged, or is the subject of a pardon, the screening service shall promptly delete the record.

Sec. 3. Minnesota Statutes 2012, section 504B.345, subdivision 1, is amended to read:

Subdivision 1. **General.** (a) If the court or jury finds for the plaintiff, the court shall immediately enter judgment that the plaintiff shall have recovery of the premises, and shall tax the costs against the defendant. The court shall issue execution in favor of the plaintiff for the costs and also immediately issue a writ of recovery of premises and order to vacate.

(b) The court shall give priority in issuing a writ of recovery of premises and order to vacate for an eviction action brought under section 504B.171 or on the basis that the tenant is causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property.

(c) If the court or jury finds for the defendant;

(1) the court shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution in favor of the defendant; and

(2) the court may expunge the records relating to the action at the time judgment is entered or after that time.

(d) Except in actions brought: (1) under section 504B.291 as required by section 609.5317, subdivision 1; (2) under section 504B.171; or (3) on the basis that the tenant is

causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property, upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant's family, the court shall stay the writ of recovery of premises and order to vacate for a reasonable period, not to exceed seven days.

Sec. 4. Minnesota Statutes 2012, section 609A.02, subdivision 3, is amended to read:

Subd. 3. **Certain criminal proceedings not resulting in conviction.** (a) Subject to paragraph (c), 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), and if:

(1) all pending actions or proceedings were resolved in favor of the petitioner.
For purposes of this chapter, a verdict of not guilty by reason of mental illness is not a resolution in favor of the petitioner;

(2) the 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 diversion program or stay of adjudication;

(3) the petitioner was convicted of or received a stayed sentence for a petty misdemeanor, misdemeanor, or gross misdemeanor and has not been convicted of a new crime for at least three years since discharge of the sentence for the crime; or

(4) the 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 for the crime.

(b) Paragraph (a), clause (4), applies to the following offenses:

(1) section 35.824 (altering livestock certificate);

(2) section 62A.41 (insurance regulations);

(3) section 86B.865, subdivision 1 (certification for title on watercraft);

(4) section 152.025 (controlled substance in the fifth degree); 152.027, subdivision 6, paragraph (c) (sale of synthetic cannabinoids); or 152.097 (sale of simulated controlled substance);

(5) section 168A.30, subdivision 1 (certificate of title false information); or 169.09, subdivision 14, paragraph (a), clause (1) or (2) (accident resulting in death or great bodily harm);

(6) chapter 201; 203B; or 204C (voting violations);

(7) section 228.45; 228.47; 228.49; 228.50, or 228.51 (false bill of lading);

(8) section 256.984 (false declaration in assistance application);

4.1 (9) section 296A.23, subdivision 2 (willful evasion of fuel tax);
4.2 (10) section 297D.09, subdivision 1 (failure to affix stamp on scheduled substances);
4.3 (11) section 297G.19 (liquor taxation); or 340A.701 (unlawful acts involving liquor);
4.4 (12) section 325F.743 (precious metal dealers); or 325F.755, subdivision 7 (prize
4.5 notices and solicitations);
4.6 (13) section 346.155, subdivision 10 (failure to control regulated animal);
4.7 (14) section 349.2127; or 349.22 (gambling regulations);
4.8 (15) section 588.20 (contempt);
4.9 (16) section 609.26, subdivision 6, paragraph (a), clause (1) (deprivation of custodial
4.10 or parental rights);
4.11 (17) section 609.27, subdivision 1, clauses (2) to (5) (coercion);
4.12 (18) section 609.31 (leaving state to evade establishment of paternity); or 609.375,
4.13 subdivision 2a (nonsupport of spouse or child);
4.14 (19) section 609.3242, subdivision 2, clause (2) (prostitution crime in school or
4.15 park zone);
4.16 (20) section 609.485, subdivision 4, paragraph (a), clause (2) or (4) (escape from
4.17 civil commitment or mental illness);
4.18 (21) section 609.487, subdivision 3 (fleeing a peace officer);
4.19 (22) section 609.49 (failure to appear in court); or 609.495, subdivision 1 (aiding
4.20 offender to avoid arrest);
4.21 (23) section 609.52, subdivision 3, clause (3)(a) (theft of \$5,000 or less), or other
4.22 theft offense that is sentenced under this provision; or 609.52, subdivision 3a, clause (1)
4.23 (theft of \$1,000 or less with risk of bodily harm);
4.24 (24) section 609.525 (bringing stolen goods into state);
4.25 (25) section 609.526, subdivision 2, clause (2) (metal dealer receiving stolen goods);
4.26 (26) section 609.527, subdivision 3, clause (3), or subdivision 5a (identity theft);
4.27 (27) section 609.527, subdivision 5b (possession or use of scanning device or
4.28 reencoder); 609.528, subdivision 3, clause (3) (possession or sale of stolen or counterfeit
4.29 check); or 609.529 (mail theft);
4.30 (28) section 609.53 (receiving stolen goods);
4.31 (29) section 609.535, subdivision 2a, paragraph (a), clause (1) (dishonored check
4.32 over \$500);
4.33 (30) section 609.54, clause (1) (embezzlement of public funds \$2,500 or less);
4.34 (31) section 609.551 (rustling and livestock theft);
4.35 (32) section 609.5641, subdivision 1a, paragraph (a) (wildfire arson);
4.36 (33) section 609.576, subdivision 1, clause (3), item (iii) (negligent fires);

(34) section 609.595, subdivision 1, clauses (2) to (4), and subdivision 1a, paragraph (a) (criminal damage to property);

(35) section 609.597, subdivision 3, clause (3) (assaulting or harming police horse);

(36) section 609.625 (aggravated forgery); 609.63 (forgery); 609.631, subdivision 4, clause (3)(a) (check forgery \$2,500 or less); 609.635 (obtaining signature by false pretense); 609.64 (recording, filing forged instrument); or 609.645 (fraudulent statements);

(37) section 609.65, clause (1) (false certification by notary); or 609.651, subdivision 4, paragraph (a) (lottery fraud);

(38) section 609.652 (fraudulent driver's license and identification card);

(39) section 609.66, subdivision 1a, paragraph (a) (discharge of firearm; silencer); 609.66, subdivision 1b (furnishing firearm to minor); or 609.66, subdivision 1c (furnishing a dangerous weapon);

(40) section 609.662, subdivision 2, paragraph (b) (duty to render aid);

(41) section 609.667 (removing or altering serial number on firearm); or 609.686, subdivision 2 (tampering with fire alarm);

(42) section 609.746, subdivision 1, paragraph (e) (interference with privacy; subsequent violation or minor victim);

(43) section 609.80, subdivision 2 (interference with cable communications system);

(44) section 609.821, subdivision 2 (financial transaction card fraud);

(45) section 609.822 (residential mortgage fraud);

(46) section 609.825, subdivision 2 (bribery of participant or official in contest);

(47) section 609.855, subdivision 2, paragraph (c), clause (1) (interference with transit operator);

(48) section 609.88 (computer damage); or 609.89 (computer theft);

(49) section 609.893, subdivision 2 (telecommunications and information services fraud);

(50) section 609.894, subdivision 3 or 4 (cellular counterfeiting);

(51) section 609.895, subdivision 3, paragraph (a) or (b) (counterfeited intellectual property);

(52) section 609.896 (movie pirating);

(53) section 624.7132, subdivision 15, paragraph (b) (transfer pistol to minor); 624.714, subdivision 1a (pistol without permit; subsequent violation); or 624.7141, subdivision 2 (transfer of pistol to ineligible person); or

(54) section 624.7181 (rifle or shotgun in public by minor).

6.1 Sec. 5. **[609A.025] NO PETITION REQUIRED IN CERTAIN CASES WITH**
6.2 **PROSECUTOR AGREEMENT AND NOTIFICATION.**

6.3 (a) If the prosecutor agrees to the sealing of a criminal record, the court shall seal the
6.4 criminal record for a person described in section 609A.02, subdivision 3, without the filing
6.5 of a petition unless it determines that the interests of the public and public safety in keeping
6.6 the record public outweigh the disadvantages to the subject of the record in not sealing it.

6.7 (b) Before agreeing to the sealing of a record under this section, the prosecutor shall
6.8 make a good faith effort to notify any identifiable victims of the offense of the intended
6.9 agreement and the opportunity to object to the agreement.

6.10 (c) Subject to paragraph (b), the agreement of the prosecutor to the sealing of records
6.11 for a person described in section 609A.02, subdivision 3, paragraph (a), clause (2), may
6.12 occur before or after the criminal charges are dismissed.

6.13 Sec. 6. Minnesota Statutes 2012, section 609A.03, subdivision 5, is amended to read:

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

6.18 (1) sealing the record; and

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

6.21 (b) Except as otherwise provided by this paragraph, if the petitioner is petitioning
6.22 for the sealing of a criminal record under section 609A.02, subdivision 3, paragraph (a),
6.23 clause (1) or (2), the court shall grant the petition to seal the record unless the agency
6.24 or jurisdiction whose records would be affected establishes by clear and convincing
6.25 evidence that the interests of the public and public safety outweigh the disadvantages
6.26 to the petitioner of not sealing the record.

6.27 (c) In making a determination under this subdivision, the court shall consider:

6.28 (1) the nature and severity of the underlying crime the record of which would be
6.29 sealed;

6.30 (2) the risk, if any, the petitioner poses to individuals or society;

6.31 (3) the length of time since the crime occurred;

6.32 (4) the steps taken by the petitioner towards rehabilitation following the crime;

6.33 (5) aggravating or mitigating factors relating to the underlying crime, including the
6.34 petitioner's level of participation, claims of innocence, and irregularities in the trial;

(6) the reasons for the expungement, including the petitioner's attempts to obtain employment, housing, or other necessities;

(7) the petitioner's criminal record;

(8) the petitioner's record of employment and community involvement;

(9) the recommendations of interested law enforcement, prosecutorial, and corrections officials;

(10) the recommendations of victims of the underlying crime; and

(11) other factors deemed relevant by the court.

~~(e)~~ (d) Notwithstanding section 13.82, 13.87, or any other law to the contrary, 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. 7. Minnesota Statutes 2012, 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~~ or exchanged between criminal justice agencies without a court order if the record is pertinent in initiating, furthering, or completing an investigation or prosecution or for sentencing purposes or providing probation or other correctional services;

(2) an expunged record of a conviction 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 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 (c)~~
An agency or jurisdiction subject to an expungement order shall maintain the record in a manner that provides access to the record by a criminal justice agency under paragraph (b), clause (1), but notifies the recipient that the record has been sealed. Upon request by the commissioner of human services, an agency or jurisdiction subject to an expungement

8.1 order shall inform the commissioner of the existence of the sealed record and of the right
8.2 to obtain access to the record under paragraph (b), clause (3). An expunged record that is
8.3 opened or exchanged under this subdivision remains subject to the expungement order in
8.4 the hands of the person receiving the record.

8.5 (d) For purposes of this section, a "criminal justice agency" means courts or a
8.6 government agency that performs the administration of criminal justice under statutory
8.7 authority.

8.8 Sec. 8. Minnesota Statutes 2012, section 609A.03, subdivision 8, is amended to read:

8.9 Subd. 8. **Distribution and confirmation of expungement orders.** (a) The court
8.10 administrator shall send a copy of an expungement order to each agency and jurisdiction
8.11 whose records are affected by the terms of the order and send a letter to the petitioner
8.12 identifying each agency that received the order.

8.13 (b) Each agency and jurisdiction receiving the order must send a letter to the
8.14 petitioner confirming that the record has been expunged.

8.15 (c) Data on the petitioner in a letter sent under this subdivision are private data
8.16 on individuals as defined in section 13.02.