

1.1 A bill for an act

1.2 relating to public safety; modifying provisions related to certain juvenile
1.3 records; authorizing the expungement of certain juvenile records; authorizing
1.4 the commissioner of human services to grant set asides or variances for certain
1.5 individuals disqualified from licensure because of an offense committed as
1.6 a juvenile; requiring chemical use screen of juvenile offenders; requiring
1.7 the revisor of statutes to publish a table in Minnesota Statutes containing
1.8 cross-references to collateral sanctions imposed on juveniles as a result of an
1.9 adjudication of delinquency; amending Minnesota Statutes 2008, sections
1.10 260B.157, subdivision 1; 260B.176, subdivision 2; 609A.02, subdivisions 2, 3;
1.11 609A.03, subdivisions 1, 2, 4, 5, 5a, 7; Minnesota Statutes 2009 Supplement,
1.12 section 245C.24, subdivision 2; proposing coding for new law in Minnesota
1.13 Statutes, chapter 609A.

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

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

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

1.22 (b) For an individual in the chemical dependency or corrections field who was
1.23 disqualified for a crime or conduct listed under section 245C.15, subdivision 1, and whose
1.24 disqualification was set aside prior to July 1, 2005, the commissioner must consider
1.25 granting a variance pursuant to section 245C.30 for the license holder for a program
1.26 dealing primarily with adults. A request for reconsideration evaluated under this paragraph
1.27 must include a letter of recommendation from the license holder that was subject to the

2.1 prior set-aside decision addressing the individual's quality of care to children or vulnerable
2.2 adults and the circumstances of the individual's departure from that service.

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

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

2.17 Sec. 2. Minnesota Statutes 2008, section 260B.157, subdivision 1, is amended to read:

2.18 Subdivision 1. **Investigation.** Upon request of the court the local social services
2.19 agency or probation officer shall investigate the personal and family history and
2.20 environment of any minor coming within the jurisdiction of the court under section
2.21 260B.101 and shall report its findings to the court. The court may order any minor coming
2.22 within its jurisdiction to be examined by a duly qualified physician, psychiatrist, or
2.23 psychologist appointed by the court.

2.24 The court shall order a chemical use assessment conducted when a child is (1) found
2.25 to be delinquent for violating a provision of chapter 152, or for committing a felony-level
2.26 violation of a provision of chapter 609 if the probation officer determines that alcohol or
2.27 drug use was a contributing factor in the commission of the offense, or (2) alleged to be
2.28 delinquent for violating a provision of chapter 152, if the child is being held in custody
2.29 under a detention order. The assessor's qualifications and the assessment criteria shall
2.30 comply with Minnesota Rules, parts 9530.6600 to 9530.6655. If funds under chapter
2.31 254B are to be used to pay for the recommended treatment, the assessment and placement
2.32 must comply with all provisions of Minnesota Rules, parts 9530.6600 to 9530.6655 and
2.33 9530.7000 to 9530.7030. The commissioner of human services shall reimburse the court
2.34 for the cost of the chemical use assessment, up to a maximum of \$100.

3.1 The court shall order a children's mental health screening and a chemical use
3.2 screening conducted when a child is found to be delinquent. The screening shall be
3.3 conducted with a screening instrument approved by the commissioner of human services
3.4 and shall be conducted by a mental health practitioner as defined in section 245.4871,
3.5 subdivision 26, or a probation officer who is trained in the use of the screening instrument.
3.6 If the approved instrument includes screening for mental health and chemical use, a single
3.7 screening fulfills both requirements. If the screening indicates a need for a mental health
3.8 assessment, the local social services agency, in consultation with the child's family, shall
3.9 have a diagnostic assessment conducted, including a functional assessment, as defined
3.10 in section 245.4871. If the screening indicates a need for a chemical use assessment,
3.11 a referral must be made, in consultation with the child's family, for a chemical use
3.12 assessment, as defined in section 254A.03, subdivision 3.

3.13 With the consent of the commissioner of corrections and agreement of the county to
3.14 pay the costs thereof, the court may, by order, place a minor coming within its jurisdiction
3.15 in an institution maintained by the commissioner for the detention, diagnosis, custody and
3.16 treatment of persons adjudicated to be delinquent, in order that the condition of the minor
3.17 be given due consideration in the disposition of the case. Any funds received under the
3.18 provisions of this subdivision shall not cancel until the end of the fiscal year immediately
3.19 following the fiscal year in which the funds were received. The funds are available for
3.20 use by the commissioner of corrections during that period and are hereby appropriated
3.21 annually to the commissioner of corrections as reimbursement of the costs of providing
3.22 these services to the juvenile courts.

3.23 Sec. 3. Minnesota Statutes 2008, section 260B.176, subdivision 2, is amended to read:

3.24 Subd. 2. **Reasons for detention.** (a) If the child is not released as provided in
3.25 subdivision 1, the person taking the child into custody shall notify the court as soon as
3.26 possible of the detention of the child and the reasons for detention.

3.27 (b) No child may be detained in a juvenile secure detention facility or shelter care
3.28 facility longer than 36 hours, excluding Saturdays, Sundays, and holidays, after being
3.29 taken into custody for a delinquent act as defined in section 260B.007, subdivision 6,
3.30 unless a petition has been filed and the judge or referee determines pursuant to section
3.31 260B.178 that the child shall remain in detention.

3.32 (c) No child may be detained in an adult jail or municipal lockup longer than 24
3.33 hours, excluding Saturdays, Sundays, and holidays, or longer than six hours in an adult
3.34 jail or municipal lockup in a standard metropolitan statistical area, after being taken into
3.35 custody for a delinquent act as defined in section 260B.007, subdivision 6, unless:

4.1 (1) a petition has been filed under section 260B.141; and

4.2 (2) a judge or referee has determined under section 260B.178 that the child shall
4.3 remain in detention.

4.4 After August 1, 1991, no child described in this paragraph may be detained in an
4.5 adult jail or municipal lockup longer than 24 hours, excluding Saturdays, Sundays, and
4.6 holidays, or longer than six hours in an adult jail or municipal lockup in a standard
4.7 metropolitan statistical area, unless the requirements of this paragraph have been met and,
4.8 in addition, a motion to refer the child for adult prosecution has been made under section
4.9 260B.125. Notwithstanding this paragraph, continued detention of a child in an adult
4.10 detention facility outside of a standard metropolitan statistical area county is permissible if:

4.11 (i) the facility in which the child is detained is located where conditions of distance
4.12 to be traveled or other ground transportation do not allow for court appearances within 24
4.13 hours. A delay not to exceed 48 hours may be made under this clause; or

4.14 (ii) the facility is located where conditions of safety exist. Time for an appearance
4.15 may be delayed until 24 hours after the time that conditions allow for reasonably safe
4.16 travel. "Conditions of safety" include adverse life-threatening weather conditions that do
4.17 not allow for reasonably safe travel.

4.18 The continued detention of a child under clause (i) or (ii) must be reported to the
4.19 commissioner of corrections.

4.20 (d) If a child described in paragraph (c) is to be detained in a jail beyond 24 hours,
4.21 excluding Saturdays, Sundays, and holidays, the judge or referee, in accordance with
4.22 rules and procedures established by the commissioner of corrections, shall notify the
4.23 commissioner of the place of the detention and the reasons therefor. The commissioner
4.24 shall thereupon assist the court in the relocation of the child in an appropriate juvenile
4.25 secure detention facility or approved jail within the county or elsewhere in the state, or in
4.26 determining suitable alternatives. The commissioner shall direct that a child detained in a
4.27 jail be detained after eight days from and including the date of the original detention order
4.28 in an approved juvenile secure detention facility with the approval of the administrative
4.29 authority of the facility. If the court refers the matter to the prosecuting authority pursuant
4.30 to section 260B.125, notice to the commissioner shall not be required.

4.31 (e) When a child is detained for an alleged delinquent act in a state licensed juvenile
4.32 facility or program, or when a child is detained in an adult jail or municipal lockup as
4.33 provided in paragraph (c), the supervisor of the facility shall, if the child's parent or legal
4.34 guardian consents, have a children's mental health screening conducted with a screening
4.35 instrument approved by the commissioner of human services, unless a screening has been
4.36 performed within the previous 180 days or the child is currently under the care of a mental

5.1 health professional. The screening shall be conducted by a mental health practitioner
5.2 as defined in section 245.4871, subdivision 26, or a probation officer who is trained in
5.3 the use of the screening instrument. The screening shall be conducted after the initial
5.4 detention hearing has been held and the court has ordered the child continued in detention.
5.5 The results of the screening may only be presented to the court at the dispositional phase
5.6 of the court proceedings on the matter unless the parent or legal guardian consents to
5.7 presentation at a different time. If the screening indicates a need for assessment, the
5.8 local social services agency or probation officer, with the approval of the child's parent
5.9 or legal guardian, shall have a diagnostic assessment conducted, including a functional
5.10 assessment, as defined in section 245.4871.

5.11 (f) When a child is detained for an alleged delinquent act in a state licensed juvenile
5.12 facility or program, or when a child is detained in an adult jail or municipal lockup as
5.13 provided in paragraph (c), the supervisor of the facility shall, if the child's parent or legal
5.14 guardian consents, have a chemical use screen conducted with a screening instrument
5.15 approved by the commissioner of human services, unless a screening has been performed
5.16 within the previous 180 days or the child is currently under the care of a licensed alcohol
5.17 and drug counselor. The screening shall be conducted by a mental health practitioner as
5.18 defined in section 245.4871, subdivision 26, or a probation officer who is trained in the use
5.19 of the screening instrument. The screening shall be conducted after the initial detention
5.20 hearing has been held and the court has ordered the child continued in detention.

5.21 Sec. 4. Minnesota Statutes 2008, section 609A.02, subdivision 2, is amended to read:

5.22 Subd. 2. **Offenses committed by juveniles prosecuted as adults.** A petition for
5.23 the sealing of ~~a conviction record~~ any type of delinquency or criminal record relating to a
5.24 juvenile matter may be filed under section 609A.03 by a person who has ~~been committed~~
5.25 ~~to the custody of the commissioner of corrections upon conviction of a crime following~~
5.26 ~~certification to district court under section 260B.125, if the person~~ successfully completed
5.27 the terms of the person's disposition or sentence and who is no longer under correctional
5.28 supervision for the offense, if:

5.29 (1) ~~is finally discharged by the commissioner, or the person received a disposition~~
5.30 under section 260B.198, regardless of whether the person was adjudicated delinquent;

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

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

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

6.4 Sec. 5. Minnesota Statutes 2008, section 609A.02, subdivision 3, is amended to read:

6.5 Subd. 3. **Certain criminal proceedings not resulting in conviction.** A petition
6.6 may be filed under section 609A.03 to seal all records relating to an arrest, indictment or
6.7 information, trial, or verdict if the records are not subject to section 299C.11, subdivision
6.8 1, paragraph (b), and if:

6.9 (1) all pending actions or proceedings were resolved in favor of the petitioner.

6.10 For purposes of this chapter, a verdict of not guilty by reason of mental illness is not
6.11 a resolution in favor of the petitioner; or

6.12 (2) the petitioner has successfully completed the terms of a diversion program or
6.13 stay of adjudication that was agreed to by the prosecutor and has not been charged with
6.14 a new crime for at least one year since completion of the diversion program or stay of
6.15 adjudication.

6.16 Sec. 6. **[609A.025] EXPUNGEMENT FOR CASES INVOLVING DIVERSION**
6.17 **AND STAYS OF ADJUDICATION; NO PETITION REQUIRED WITH**
6.18 **PROSECUTOR AGREEMENT AND VICTIM NOTIFICATION.**

6.19 (a) Upon agreement of the prosecutor, the court shall seal the criminal record for
6.20 a person described in section 609A.02, subdivision 3, clause (2), without the filing of a
6.21 petition unless it determines that the interests of the public and public safety in keeping
6.22 the record public outweigh the disadvantages to the subject of the record in not sealing it.

6.23 (b) Before agreeing to the sealing of a record under this section, the prosecutor shall
6.24 make a good-faith effort to inform any identifiable victims of the offense of the intended
6.25 prosecutorial agreement and the opportunity to object to the agreement.

6.26 (c) Subject to paragraph (b), the prosecutor may agree to the sealing of records under
6.27 this section before or after the criminal charges are dismissed.

6.28 Sec. 7. Minnesota Statutes 2008, section 609A.03, subdivision 1, is amended to read:

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

7.1 Sec. 8. Minnesota Statutes 2008, section 609A.03, subdivision 2, is amended to read:

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

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

7.6 (2) the petitioner's date of birth;

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

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

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

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

7.21 (7) petitioner's criminal conviction and delinquency record indicating all convictions
7.22 and findings of delinquency for misdemeanors, gross misdemeanors, or felonies in this
7.23 state, and for all comparable convictions and findings of delinquency in any other state,
7.24 federal court, or foreign country, whether the convictions or findings of delinquency
7.25 occurred before or after the arrest ~~or~~ conviction, or finding of delinquency for which
7.26 expungement is sought;

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

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

7.35 (b) If there is a current order for protection, restraining order, or other no contact
7.36 order prohibiting the petitioner from contacting the victims or there has ever been a prior

8.1 order for protection or restraining order prohibiting the petitioner from contacting the
8.2 victims, the petitioner shall attach a copy of the order to the petition.

8.3 (c) Where practicable, the petitioner shall attach to the petition a copy of the
8.4 complaint or the police report for the offense or offenses for which expungement is sought.

8.5 Sec. 9. Minnesota Statutes 2008, section 609A.03, subdivision 4, is amended to read:

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

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

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

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

8.23 (1) sealing the record; and

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

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

8.32 (c) If the petitioner is petitioning for the sealing of a criminal or delinquency record
8.33 under section 609A.02, subdivision 2, clause (1) or (2), the court shall grant the petition
8.34 to seal the record unless the agency or jurisdiction whose records would be affected

9.1 establishes by clear and convincing evidence that the interests of the public and public
9.2 safety outweigh the disadvantages to the petitioner of not sealing the record.

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

9.7 Sec. 11. Minnesota Statutes 2008, section 609A.03, subdivision 5a, is amended to read:

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

9.16 Sec. 12. Minnesota Statutes 2008, section 609A.03, subdivision 7, is amended to read:

9.17 Subd. 7. **Limitations of order.** (a) Upon issuance of an expungement order related
9.18 to a charge supported by probable cause, the DNA samples and DNA records held by
9.19 the Bureau of Criminal Apprehension and collected under authority other than section
9.20 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

9.21 (b) Notwithstanding the issuance of an expungement order:

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

9.24 (2) an expunged record may be opened upon request by a prosecutor, or a probation
9.25 officer for sentencing purposes, without a court order;

9.26 ~~(2)~~ (3) an expunged record of a conviction or delinquency proceeding may be
9.27 opened for purposes of evaluating a prospective employee in a criminal justice agency
9.28 without a court order; and

9.29 ~~(3)~~ (4) an expunged record of a conviction or delinquency proceeding may be
9.30 opened for purposes of a background study under section 245C.08 unless the court order
9.31 for expungement is directed specifically to the commissioner of human services.

9.32 Upon request by law enforcement, prosecution, or corrections authorities, an agency
9.33 or jurisdiction subject to an expungement order shall inform the requester of the existence
9.34 of a sealed record and of the right to obtain access to it as provided by this paragraph. For

10.1 purposes of this section, a "criminal justice agency" means courts or a government agency
10.2 that performs the administration of criminal justice under statutory authority.

10.3 Sec. 13. **REVISOR INSTRUCTION; TABLE OF JUVENILE COLLATERAL**
10.4 **SANCTIONS.**

10.5 (a) The revisor of statutes shall publish a table in Minnesota Statutes that contains
10.6 cross-references to state laws that are collateral sanctions imposed on a juvenile as a result
10.7 of an adjudication of delinquency. The revisor shall create a structure that categorizes
10.8 these laws in a useful way to users.

10.9 (b) The revisor shall include appropriate cautionary language with the table,
10.10 including, at a minimum, language that notifies users that:

10.11 (1) the list of collateral sanctions laws is intended to be comprehensive but is not
10.12 necessarily complete;

10.13 (2) the inclusion or exclusion of a collateral sanction is not intended to have any
10.14 substantive legal effect; and

10.15 (3) users must consult the language of each cross-referenced law to fully understand
10.16 the scope and effect of the collateral sanction it imposes.

10.17 (c) The revisor shall consult with legislative staff and the chairs of the senate and
10.18 house committees having jurisdiction over criminal justice to identify laws that impose
10.19 collateral sanctions on a juvenile who has been adjudicated delinquent.

10.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.