

## CHAPTER 609A

### EXPUNGEMENT

609A.01 EXPUNGEMENT OF CRIMINAL RECORDS.

609A.03 PETITION TO EXPUNGE CRIMINAL RECORDS.

609A.02 GROUNDS FOR ORDER.

#### 609A.01 EXPUNGEMENT OF CRIMINAL RECORDS.

This chapter provides the grounds and procedures for expungement of criminal records under section 13.82; 152.18, subdivision 1; 299C.11, where a petition is authorized under section 609A.02, subdivision 3; or other applicable law. The remedy available is limited to a court order sealing the records and prohibiting the disclosure of their existence or their opening except under court order or statutory authority. Nothing in this chapter authorizes the destruction of records or their return to the subject of the records.

**History:** 1996 c 408 art 9 s 7

#### 609A.02 GROUNDS FOR ORDER.

Subdivision 1. **Certain controlled substance offenses.** Upon the dismissal and discharge of proceedings against a person under section 152.18, subdivision 1, for violation of section 152.024, 152.025, or 152.027 for possession of a controlled substance, the person may petition under section 609A.03 for the sealing of all records relating to the arrest, indictment or information, trial, and dismissal and discharge.

Subd. 2. **Juveniles prosecuted as adults.** A petition for the sealing of a conviction record 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:

(1) is finally discharged by the commissioner; or

(2) has been placed on probation by the court under section 609.135 and has been discharged from probation after satisfactory fulfillment of it.

Subd. 3. **Certain criminal proceedings not resulting in conviction.** 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 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.

Subd. 4. **Expungement prohibited.** Records of a conviction of an offense for which registration is required under section 243.166 may not be expunged.

**History:** 1996 c 408 art 9 s 8; 1999 c 139 art 4 s 2; 2001 c 209 s 1; 2005 c 136 art 12 s 10

#### 609A.03 PETITION TO EXPUNGE CRIMINAL RECORDS.

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 3.

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, 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 record indicating all convictions for misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable convictions in any other state, federal court, or foreign country, whether the convictions occurred before or after the arrest or conviction 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.

Subd. 3. **Service of petition and proposed order.** (a) The petitioner shall serve by mail the petition for expungement and a proposed expungement order on the prosecutorial office that had jurisdiction over the offense for which expungement is sought and all other state and local government agencies and jurisdictions whose records would be affected by the proposed order. The petitioner shall also serve by mail the attorney for each agency and jurisdiction.

(b) The prosecutorial office that had jurisdiction over the offense for which expungement is sought shall serve by mail the petition for expungement and a proposed expungement order on any victims of the offense for which expungement is sought who have requested notice of

expungement pursuant to section 611A.06. Service under this paragraph does not constitute a violation of an existing order for protection, restraining order, or other no contact order.

(c) The prosecutorial office's notice to victims of the offense under this subdivision must specifically inform the victims of the victims' right to be present and to submit an oral or written statement at the expungement hearing described in subdivision 4.

Subd. 4. **Hearing.** 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.

Subd. 5. **Nature of remedy; standard.** (a) Except as otherwise provided by paragraph (b), 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 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.

Subd. 5a. **Order concerning crimes of violence; firearms restriction.** An order expunging the record of a conviction 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 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.

Subd. 6. **Order concerning controlled substance offenses.** If the court orders the sealing of the record of proceedings under section 152.18, the effect of the order shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, or information. The person shall not be held guilty of perjury or otherwise of giving a false statement if the person fails to acknowledge the arrest, indictment, information, or trial in response to any inquiry made for any purpose.

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 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. 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.

Subd. 8. **Distribution of expungement orders.** The court administrator shall send a copy of an expungement order to each agency and jurisdiction whose records are affected by the terms of the order.

Subd. 9. **Stay of order; appeal.** An expungement order shall be stayed automatically for 60 days after the order is filed and, if the order is appealed, during the appeal period. A person or an agency or jurisdiction whose records would be affected by the order may appeal the order within 60 days of service of notice of filing of the order. An agency or jurisdiction or its officials or employees need not file a cost bond or supersedeas bond in order to further stay the proceedings or file an appeal.

**History:** 1996 c 408 art 9 s 9; 1998 c 367 art 11 s 19; 2000 c 311 art 4 s 8; 2001 c 209 s 2-5; 2003 c 28 art 3 s 6; 2005 c 83 s 1; 2005 c 136 art 12 s 11; 1Sp2005 c 4 art 1 s 53