

## CHAPTER 609A

### EXPUNGEMENT

<p>609A.01 EXPUNGEMENT OF CRIMINAL RECORDS.</p> <p>609A.02 GROUNDS FOR ORDER.</p> <p>609A.025 NO PETITION REQUIRED IN CERTAIN CASES WITH PROSECUTOR AGREEMENT AND NOTIFICATION.</p>	<p>609A.03 PETITION TO EXPUNGE CRIMINAL RECORDS.</p> <p>609A.04 REMEDY.</p>
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#### 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.** (a) 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. For the purposes of this chapter, an action or proceeding is resolved in favor of the petitioner, if the petitioner received an order under section 590.11 determining that the petitioner is eligible for compensation based on exoneration;

(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 or misdemeanor and has not been convicted of a new crime for at least two years since discharge of the sentence for the crime;

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

(5) 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 (5), 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); 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 (2) (accident resulting in 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);

(9) section 296A.23, subdivision 2 (willful evasion of fuel tax);

(10) section 297D.09, subdivision 1 (failure to affix stamp on scheduled substances);

(11) section 297G.19 (liquor taxation); or 340A.701 (unlawful acts involving liquor);

(12) section 325F.743 (precious metal dealers); or 325F.755, subdivision 7 (prize notices and solicitations);

(13) section 346.155, subdivision 10 (failure to control regulated animal);

(14) section 349.2127; or 349.22 (gambling regulations);

(15) section 588.20 (contempt);

(16) section 609.27, subdivision 1, clauses (2) to (5) (coercion);

(17) section 609.31 (leaving state to evade establishment of paternity);

(18) section 609.485, subdivision 4, paragraph (a), clause (2) or (4) (escape from civil commitment for mental illness);

(19) section 609.49 (failure to appear in court);

(20) section 609.52, subdivision 3, clause (3)(a) (theft of \$5,000 or less), or other theft offense that is sentenced under this provision; or 609.52, subdivision 3a, clause (1) (theft of \$1,000 or less with risk of bodily harm);

(21) section 609.525 (bringing stolen goods into state);

- (22) section 609.526, subdivision 2, clause (2) (metal dealer receiving stolen goods);
- (23) section 609.527, subdivision 5b (possession or use of scanning device or reencoder); 609.528, subdivision 3, clause (3) (possession or sale of stolen or counterfeit check); or 609.529 (mail theft);
- (24) section 609.53 (receiving stolen goods);
- (25) section 609.535, subdivision 2a, paragraph (a), clause (1) (dishonored check over \$500);
- (26) section 609.54, clause (1) (embezzlement of public funds \$2,500 or less);
- (27) section 609.551 (rustling and livestock theft);
- (28) section 609.5641, subdivision 1a, paragraph (a) (wildfire arson);
- (29) section 609.576, subdivision 1, clause (3), item (iii) (negligent fires);
- (30) section 609.595, subdivision 1, clauses (2) to (4), and subdivision 1a, paragraph (a) (criminal damage to property);
- (31) section 609.597, subdivision 3, clause (3) (assaulting or harming police horse);
- (32) 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);
- (33) section 609.65, clause (1) (false certification by notary); or 609.651, subdivision 4, paragraph (a) (lottery fraud);
- (34) section 609.652 (fraudulent driver's license and identification card);
- (35) section 609.66, subdivision 1a, paragraph (a) (discharge of firearm; silencer); or 609.66, subdivision 1b (furnishing firearm to minor);
- (36) section 609.662, subdivision 2, paragraph (b) (duty to render aid);
- (37) section 609.686, subdivision 2 (tampering with fire alarm);
- (38) section 609.746, subdivision 1, paragraph (e) (interference with privacy; subsequent violation or minor victim);
- (39) section 609.80, subdivision 2 (interference with cable communications system);
- (40) section 609.821, subdivision 2 (financial transaction card fraud);
- (41) section 609.822 (residential mortgage fraud);
- (42) section 609.825, subdivision 2 (bribery of participant or official in contest);
- (43) section 609.855, subdivision 2, paragraph (c), clause (1) (interference with transit operator);
- (44) section 609.88 (computer damage); or 609.89 (computer theft);
- (45) section 609.893, subdivision 2 (telecommunications and information services fraud);
- (46) section 609.894, subdivision 3 or 4 (cellular counterfeiting);

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

(48) section 609.896 (movie pirating);

(49) 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

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

(c) Paragraph (a), clause (3) or (4), does not apply if the crime involved domestic abuse or sexual assault, as defined in section 518B.01, subdivision 2, or to violation of an order for protection under section 518B.01, subdivision 14, a harassment restraining order under section 609.748, subdivision 6, a violation of section 609.749, or a violation of section 629.75. This paragraph expires on July 15, 2015.

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; 2014 c 246 s 6; 2014 c 269 s 2

#### **609A.025 NO PETITION REQUIRED IN CERTAIN CASES WITH PROSECUTOR AGREEMENT AND NOTIFICATION.**

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

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

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

**History:** 2014 c 246 s 7

#### **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, paragraph (a), clause (1).

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.

(d) An agency or jurisdiction that is served with a petition under this subdivision may submit to the court private or confidential data on the petitioner that the agency or jurisdiction determines is necessary to respond to the petition. As part of the submission, the agency or jurisdiction shall inform the court and the petitioner that the submission contains private or confidential data that may become accessible to the public as part of the expungement proceeding. The petitioner may, at the time of filing the petition or after that time, file a request with the court to seal the private or confidential data that are submitted by the agency or jurisdiction.

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, paragraph (a), 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.

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

- (1) the nature and severity of the underlying crime, the record of which would be sealed;
- (2) the risk, if any, the petitioner poses to individuals or society;
- (3) the length of time since the crime occurred;
- (4) the steps taken by the petitioner toward rehabilitation following the crime;
- (5) aggravating or mitigating factors relating to the underlying crime, including the petitioner's level of participation and context and circumstances of the underlying crime;
- (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 or whether victims of the underlying crime were minors;

(11) the amount, if any, of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of restitution payment after expungement of the record if granted; and

(12) other factors deemed relevant by the court.

(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.

(e) Information relating to a criminal history record of an employee, former employee, or tenant that has been expunged before the occurrence of the act giving rise to the civil action may not be introduced as evidence in a civil action against a private employer or landlord or its employees or agents that is based on the conduct of the employee, former employee, or tenant.

**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. 6a. Order when context and circumstances of the underlying crime indicate a nexus between the criminal record to be expunged and person's status as a crime victim.** If the court finds, under subdivision 5, paragraph (c), clause (5), that the context and circumstances of the underlying crime indicate a nexus between the criminal record to be expunged and the person's status as a crime victim, then the effect of the court order to seal the record of the proceedings 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 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. The court may request a sworn statement from a staff member of a state-funded victim services organization or a licensed health care provider as evidence to support a determination under subdivision 5.

**Subd. 7. Limitations of order effective before January 1, 2015.** (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.

(c) This subdivision applies to expungement orders subject to its limitations and effective before January 1, 2015.

Subd. 7a. **Limitations of order effective January 1, 2015, and later.** (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) except as provided in clause (2), an expunged record may be opened, used, or exchanged between criminal justice agencies without a court order for the purposes of initiating, furthering, or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correctional services;

(2) when a criminal justice agency seeks access to a record that was sealed under section 609A.02, subdivision 3, paragraph (a), clause (1), after an acquittal or a court order dismissing for lack of probable cause, for purposes of a criminal investigation, prosecution, or sentencing, the requesting agency must obtain an ex parte court order after stating a good-faith basis to believe that opening the record may lead to relevant information;

(3) 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;

(4) an expunged record of a conviction may be opened for purposes of a background study under section 245C.08 unless the commissioner had been properly served with notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner of human services;

(5) an expunged record of a conviction may be opened for purposes of a background check required under section 122A.18, subdivision 8, unless the court order for expungement is directed specifically to the Board of Teaching or the licensing division of the Department of Education; and

(6) the court may order an expunged record opened upon request by the victim of the underlying offense if the court determines that the record is substantially related to a matter for which the victim is before the court.

(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) or (2), but notifies the recipient that the record has been sealed. The Bureau of Criminal Apprehension shall notify the commissioner of human services, the Board of Teaching, or the licensing division of the Department of Education of the existence of a sealed record and of the right to obtain access under paragraph (b), clause (4) or (5). Upon request, the agency or jurisdiction subject to the expungement order shall provide access



to the record to the commissioner of human services, the Board of Teaching, or the licensing division of the Department of Education under paragraph (b), clause (4) or (5).

(d) An expunged record that is opened or exchanged under this subdivision remains subject to the expungement order in the hands of the person receiving the record.

(e) A criminal justice agency that receives an expunged record under paragraph (b), clause (1) or (2), must maintain and store the record in a manner that restricts the use of the record to the investigation, prosecution, or sentencing for which it was obtained.

(f) For purposes of this section, a "criminal justice agency" means a court or government agency that performs the administration of criminal justice under statutory authority.

(g) This subdivision applies to expungement orders subject to its limitations and effective on or after January 1, 2015.

**Subd. 8. Distribution and confirmation of expungement orders.** (a) 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 and send a letter to the petitioner identifying each agency that received the order.

(b) If requested in the petition, each agency and jurisdiction receiving the order must send a letter to the petitioner at an address provided in the petition confirming the receipt of the expungement order and that the record has been expunged.

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

**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; 2014 c 246 s 8-14

#### **609A.04 REMEDY.**

An individual whose record is expunged under this chapter or other law may bring an action under section 13.08 against a government entity that knowingly opens or exchanges the expunged record in a manner not authorized by law.

**History:** 2014 c 246 s 15