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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 891

February 16, 2009

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The bill was read for the first time and referred to the Committee on Public Safety Policy and Oversight

March 15, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

A bill for an act

relating to public safety; authorizing the expungement of criminal records for certain individuals who have received stays of adjudication or diversion; authorizing expungements without petitions in certain cases where charges were dismissed against a person upon prosecutorial approval and with victim notification; requiring persons petitioning for an expungement to provide a copy of the criminal complaint or police report; amending Minnesota Statutes 2008, sections 609A.02, subdivision 3; 609A.03, subdivisions 2, 7; proposing coding for new law in Minnesota Statutes, chapter 609A.

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

Section 1. Minnesota Statutes 2008, section 609A.02, subdivision 3, is amended to read:

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:

(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; or

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

2.1 Sec. 2. [609A.025] EXPUNGEMENT WHEN CHARGES ARE DISMISSED; NO
2.2 PETITION REQUIRED WITH PROSECUTOR AGREEMENT AND VICTIM
2.3 NOTIFICATION.

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

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

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

2.13 Sec. 3. Minnesota Statutes 2008, section 609A.03, subdivision 2, is amended to read:

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

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

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

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

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

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

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

2.33 (7) petitioner's criminal conviction record indicating all convictions for
2.34 misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable

3.1 convictions in any other state, federal court, or foreign country, whether the convictions
3.2 occurred before or after the arrest or conviction for which expungement is sought;

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

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

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

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

3.17 Sec. 4. Minnesota Statutes 2008, section 609A.03, subdivision 7, is amended to read:

3.18 Subd. 7. **Limitations of order.** (a) Upon issuance of an expungement order related
3.19 to a charge supported by probable cause, the DNA samples and DNA records held by
3.20 the Bureau of Criminal Apprehension and collected under authority other than section
3.21 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

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

3.23 (1) an expunged record may be opened upon request by law enforcement,
3.24 prosecution, or corrections authorities, for purposes of a criminal investigation,
3.25 prosecution, or sentencing, ~~upon an ex parte~~ without a court order;

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

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

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