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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. **1084**

01/30/2023 Authored by Frazier, Xiong and Curran  
The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy  
02/16/2023 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law  
03/13/2023 Adoption of Report: Placed on the General Register as Amended  
Read for the Second Time

1.1 A bill for an act  
1.2 relating to public safety; authorizing sealing of criminal records upon granting a  
1.3 pardon extraordinary; making conforming changes in human services background  
1.4 studies for expungement orders; amending Minnesota Statutes 2022, sections  
1.5 245C.08, subdivisions 1, 2; 609A.03, subdivision 7a; 638.02, subdivisions 2, 3;  
1.6 proposing coding for new law in Minnesota Statutes, chapter 609A.

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

1.8 Section 1. Minnesota Statutes 2022, section 245C.08, subdivision 1, is amended to read:

1.9 Subdivision 1. **Background studies conducted by Department of Human Services.** (a)

1.10 For a background study conducted by the Department of Human Services, the commissioner  
1.11 shall review:

1.12 (1) information related to names of substantiated perpetrators of maltreatment of  
1.13 vulnerable adults that has been received by the commissioner as required under section  
1.14 626.557, subdivision 9c, paragraph (j);

1.15 (2) the commissioner's records relating to the maltreatment of minors in licensed  
1.16 programs, and from findings of maltreatment of minors as indicated through the social  
1.17 service information system;

1.18 (3) information from juvenile courts as required in subdivision 4 for individuals listed  
1.19 in section 245C.03, subdivision 1, paragraph (a), when there is reasonable cause;

1.20 (4) information from the Bureau of Criminal Apprehension, including information  
1.21 regarding a background study subject's registration in Minnesota as a predatory offender  
1.22 under section 243.166;

2.1 (5) except as provided in clause (6), information received as a result of submission of  
2.2 fingerprints for a national criminal history record check, as defined in section 245C.02,  
2.3 subdivision 13c, when the commissioner has reasonable cause for a national criminal history  
2.4 record check as defined under section 245C.02, subdivision 15a, or as required under section  
2.5 144.057, subdivision 1, clause (2);

2.6 (6) for a background study related to a child foster family setting application for licensure,  
2.7 foster residence settings, children's residential facilities, a transfer of permanent legal and  
2.8 physical custody of a child under sections 260C.503 to 260C.515, or adoptions, and for a  
2.9 background study required for family child care, certified license-exempt child care, child  
2.10 care centers, and legal nonlicensed child care authorized under chapter 119B, the  
2.11 commissioner shall also review:

2.12 (i) information from the child abuse and neglect registry for any state in which the  
2.13 background study subject has resided for the past five years;

2.14 (ii) when the background study subject is 18 years of age or older, or a minor under  
2.15 section 245C.05, subdivision 5a, paragraph (c), information received following submission  
2.16 of fingerprints for a national criminal history record check; and

2.17 (iii) when the background study subject is 18 years of age or older or a minor under  
2.18 section 245C.05, subdivision 5a, paragraph (d), for licensed family child care, certified  
2.19 license-exempt child care, licensed child care centers, and legal nonlicensed child care  
2.20 authorized under chapter 119B, information obtained using non-fingerprint-based data  
2.21 including information from the criminal and sex offender registries for any state in which  
2.22 the background study subject resided for the past five years and information from the national  
2.23 crime information database and the national sex offender registry; and

2.24 (7) for a background study required for family child care, certified license-exempt child  
2.25 care centers, licensed child care centers, and legal nonlicensed child care authorized under  
2.26 chapter 119B, the background study shall also include, to the extent practicable, a name  
2.27 and date-of-birth search of the National Sex Offender Public website.

2.28 (b) Notwithstanding expungement by a court, the commissioner may consider information  
2.29 obtained under paragraph (a), clauses (3) and (4), unless:

2.30 (1) the commissioner received notice of the petition for expungement and the court order  
2.31 for expungement is directed specifically to the commissioner; or

2.32 (2) the commissioner received notice of the expungement order under section 609A.025  
2.33 or 609A.035, and the order for expungement is directed specifically to the commissioner.

3.1 (c) The commissioner shall also review criminal case information received according  
3.2 to section 245C.04, subdivision 4a, from the Minnesota court information system that relates  
3.3 to individuals who have already been studied under this chapter and who remain affiliated  
3.4 with the agency that initiated the background study.

3.5 (d) When the commissioner has reasonable cause to believe that the identity of a  
3.6 background study subject is uncertain, the commissioner may require the subject to provide  
3.7 a set of classifiable fingerprints for purposes of completing a fingerprint-based record check  
3.8 with the Bureau of Criminal Apprehension. Fingerprints collected under this paragraph  
3.9 shall not be saved by the commissioner after they have been used to verify the identity of  
3.10 the background study subject against the particular criminal record in question.

3.11 (e) The commissioner may inform the entity that initiated a background study under  
3.12 NETStudy 2.0 of the status of processing of the subject's fingerprints.

3.13 Sec. 2. Minnesota Statutes 2022, section 245C.08, subdivision 2, is amended to read:

3.14 Subd. 2. **Background studies conducted by a county agency for family child care.** (a)  
3.15 Before the implementation of NETStudy 2.0, for a background study conducted by a county  
3.16 agency for family child care services, the commissioner shall review:

3.17 (1) information from the county agency's record of substantiated maltreatment of adults  
3.18 and the maltreatment of minors;

3.19 (2) information from juvenile courts as required in subdivision 4 for:

3.20 (i) individuals listed in section 245C.03, subdivision 1, paragraph (a), who are ages 13  
3.21 through 23 living in the household where the licensed services will be provided; and

3.22 (ii) any other individual listed under section 245C.03, subdivision 1, when there is  
3.23 reasonable cause; and

3.24 (3) information from the Bureau of Criminal Apprehension.

3.25 (b) If the individual has resided in the county for less than five years, the study shall  
3.26 include the records specified under paragraph (a) for the previous county or counties of  
3.27 residence for the past five years.

3.28 (c) Notwithstanding expungement by a court, the county agency may consider information  
3.29 obtained under paragraph (a), clause (3), unless:

3.30 (1) the commissioner received notice of the petition for expungement and the court order  
3.31 for expungement is directed specifically to the commissioner; or

4.1 (2) the commissioner received notice of the expungement order under section 609A.025  
4.2 or 609A.035, and the order for expungement is directed specifically to the commissioner.

4.3 Sec. 3. Minnesota Statutes 2022, section 609A.03, subdivision 7a, is amended to read:

4.4 Subd. 7a. **Limitations of order effective January 1, 2015, and later.** (a) Upon issuance  
4.5 of an expungement order related to a charge supported by probable cause, the DNA samples  
4.6 and DNA records held by the Bureau of Criminal Apprehension and collected under authority  
4.7 other than section 299C.105 shall not be sealed, returned to the subject of the record, or  
4.8 destroyed.

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

4.10 (1) except as provided in clause (2), an expunged record may be opened, used, or  
4.11 exchanged between criminal justice agencies without a court order for the purposes of  
4.12 initiating, furthering, or completing a criminal investigation or prosecution or for sentencing  
4.13 purposes or providing probation or other correctional services;

4.14 (2) when a criminal justice agency seeks access to a record that was sealed under section  
4.15 609A.02, subdivision 3, paragraph (a), clause (1), after an acquittal or a court order dismissing  
4.16 for lack of probable cause, for purposes of a criminal investigation, prosecution, or  
4.17 sentencing, the requesting agency must obtain an ex parte court order after stating a  
4.18 good-faith basis to believe that opening the record may lead to relevant information;

4.19 (3) an expunged record of a conviction may be opened for purposes of evaluating a  
4.20 prospective employee in a criminal justice agency without a court order;

4.21 (4) an expunged record of a conviction may be opened for purposes of a background  
4.22 study under section 245C.08 unless the commissioner had been properly served with notice  
4.23 of the petition for expungement and the court order for expungement is directed specifically  
4.24 to the commissioner of human services following proper service of a petition, or following  
4.25 proceedings under section 609A.025 or 609A.035 upon service of an order to the  
4.26 commissioner of human services;

4.27 (5) an expunged record of a conviction may be opened for purposes of a background  
4.28 check required under section 122A.18, subdivision 8, unless the court order for expungement  
4.29 is directed specifically to the Professional Educator Licensing and Standards Board; and

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

5.1 (c) An agency or jurisdiction subject to an expungement order shall maintain the record  
5.2 in a manner that provides access to the record by a criminal justice agency under paragraph  
5.3 (b), clause (1) or (2), but notifies the recipient that the record has been sealed. The Bureau  
5.4 of Criminal Apprehension shall notify the commissioner of human services or the  
5.5 Professional Educator Licensing and Standards Board of the existence of a sealed record  
5.6 and of the right to obtain access under paragraph (b), clause (4) or (5). Upon request, the  
5.7 agency or jurisdiction subject to the expungement order shall provide access to the record  
5.8 to the commissioner of human services or the Professional Educator Licensing and Standards  
5.9 Board under paragraph (b), clause (4) or (5).

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

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

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

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

5.19 **Sec. 4. [609A.035] PARDON EXTRAORDINARY; NO PETITION REQUIRED.**

5.20 (a) Notwithstanding section 609A.02, if the Board of Pardons grants a petition for a  
5.21 pardon extraordinary pursuant to section 638.02, subdivision 2, it shall file a copy of the  
5.22 pardon extraordinary with the district court of the county in which the conviction occurred.

5.23 (b) The district court shall issue an expungement order sealing all records wherever held  
5.24 relating to the arrest, indictment or information, trial, verdict, and pardon for the pardoned  
5.25 offense without the filing of a petition and send an expungement order to each government  
5.26 entity whose records are affected.

5.27 **Sec. 5. Minnesota Statutes 2022, section 638.02, subdivision 2, is amended to read:**

5.28 **Subd. 2. Petition; pardon extraordinary.** Any person, convicted of a crime in any  
5.29 court of this state, who has served the sentence imposed by the court and has been discharged  
5.30 of the sentence either by order of court or by operation of law, may petition the Board of  
5.31 Pardons for the granting of a pardon extraordinary. Unless the Board of Pardons expressly

6.1 provides otherwise in writing by unanimous vote, the application for a pardon extraordinary  
6.2 may not be filed until the applicable time period in clause (1) or (2) has elapsed:

6.3 (1) if the person was convicted of a crime of violence as defined in section 624.712,  
6.4 subdivision 5, ten years must have elapsed since the sentence was discharged and during  
6.5 that time the person must not have been convicted of any other crime; and

6.6 (2) if the person was convicted of any crime not included within the definition of crime  
6.7 of violence under section 624.712, subdivision 5, five years must have elapsed since the  
6.8 sentence was discharged and during that time the person must not have been convicted of  
6.9 any other crime.

6.10 If the Board of Pardons determines that the person is of good character and reputation, the  
6.11 board may, in its discretion, grant the person a pardon extraordinary. The pardon  
6.12 extraordinary, when granted, has the effect of setting aside and nullifying the conviction  
6.13 and of purging the person of it, and the person shall never after that be required to disclose  
6.14 the conviction at any time or place other than in a judicial proceeding or as part of the  
6.15 licensing process for peace officers. The pardon extraordinary, after being granted and filed  
6.16 with the district court in which the conviction occurred, will also seal all records wherever  
6.17 held related to the arrest, indictment or information, trial, verdict, and pardon.

6.18 The application for a pardon extraordinary, the proceedings to review an application,  
6.19 and the notice requirements are governed by the statutes and the rules of the board in respect  
6.20 to other proceedings before the board. The application shall contain any further information  
6.21 that the board may require.

6.22 Sec. 6. Minnesota Statutes 2022, section 638.02, subdivision 3, is amended to read:

6.23 Subd. 3. **Pardon extraordinary; filing; copies sent.** Upon granting a pardon  
6.24 extraordinary, the Board of Pardons shall file a copy of it with the district court of the county  
6.25 in which the conviction occurred, and the court shall order the conviction set aside and  
6.26 include a copy of the pardon in the court file. The court shall order all records wherever  
6.27 held relating to the arrest, indictment or information, trial, verdict, and pardon sealed and  
6.28 prohibit the disclosure of the existence of the records or the opening of the records except  
6.29 under court order or pursuant to section 609A.03, subdivision 7a, paragraph (b), clause (1).  
6.30 The court shall send a copy of its order and the pardon to the Bureau of Criminal  
6.31 Apprehension and all other government entities that hold affected records. The court  
6.32 administrator under section 609A.03, subdivision 8, shall send a copy of the expungement  
6.33 order to each government entity whose records are affected by the order, including but not

- 7.1 limited to the Department of Corrections, the Department of Public Safety, and law
- 7.2 enforcement agencies.