

CHAPTER 609A

EXPUNGEMENT

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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 expungement is automatic under sections 609A.015, 609A.017, or 609A.035, or a petition is authorized under section 609A.02, subdivision 3; expungement is automatic under section 609A.055; expungement is considered by a panel under section 609A.06; or other applicable law. The remedy available is limited to a court order or grant of expungement under section 609A.015 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; 2023 c 52 art 7 s 11; 2023 c 63 art 5 s 1

NOTE: The amendment to this section by Laws 2023, chapter 52, article 7, section 11, is effective January 1, 2025. Laws 2023, chapter 52, article 7, section 11, the effective date.

609A.015 AUTOMATIC EXPUNGEMENT OF RECORDS.

Subdivision 1. **Eligibility; dismissal; exoneration.** (a) A person who is the subject of a criminal record or delinquency record is eligible for a grant of expungement relief without the filing of a petition:

(1) if the person was arrested and all charges were dismissed after a case was filed unless dismissal was based on a finding that the defendant was incompetent to proceed;

(2) 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; or

(3) if all pending actions or proceedings were resolved in favor of the person.

(b) For purposes of this chapter, a verdict of not guilty by reason of mental illness is not a resolution in favor of the person. For purposes of this chapter, an action or proceeding is resolved in favor of the person if the petitioner received an order under section 590.11 determining that the person is eligible for compensation based on exoneration.

(c) The service requirements in section 609A.03, subdivision 8, do not apply to any expungements ordered under this subdivision.

(d) An expungement order does not apply to records held by the commissioners of health and human services.

Subd. 2. Eligibility; diversion and stay of adjudication. (a) A person is eligible for a grant of expungement relief if the person has successfully completed the terms of a diversion program or stay of adjudication for a qualifying offense that is not a felony and has not been petitioned or charged with a new offense, other than an offense that would be a petty misdemeanor, in Minnesota:

(1) for one year immediately following completion of the diversion program or stay of adjudication; or

(2) for one year immediately preceding a subsequent review performed pursuant to subdivision 5, paragraph (a).

(b) The service requirements in section 609A.03, subdivision 8, do not apply to any expungements ordered under this subdivision.

(c) An expungement order does not apply to records held by the commissioners of health and human services.

Subd. 3. Eligibility; certain criminal proceedings. (a) A person is eligible for a grant of expungement relief if the person:

(1) was convicted of a qualifying offense;

(2) has not been convicted of a new offense, other than an offense that would be a petty misdemeanor, in Minnesota:

(i) during the applicable waiting period immediately following discharge of the disposition or sentence for the crime; or

(ii) during the applicable waiting period immediately preceding a subsequent review performed pursuant to subdivision 5, paragraph (a); and

(3) is not charged with an offense, other than an offense that would be a petty misdemeanor, in Minnesota at the time the person reaches the end of the applicable waiting period or at the time of a subsequent review.

(b) As used in this subdivision, "qualifying offense" means a conviction for:

(1) any petty misdemeanor offense other than a violation of a traffic regulation relating to the operation or parking of motor vehicles;

(2) any misdemeanor offense other than:

(i) section 169A.20 under the terms described in section 169A.27 (fourth-degree driving while impaired);

(ii) section 518B.01, subdivision 14 (violation of an order for protection);

(iii) section 609.224 (assault in the fifth degree);

(iv) section 609.2242 (domestic assault);

(v) section 609.746 (interference with privacy);

(vi) section 609.748 (violation of a harassment restraining order);

(vii) section 609.78 (interference with emergency call);

(viii) section 609.79 (obscene or harassing phone calls);

- (ix) section 617.23 (indecent exposure); or
- (x) section 629.75 (violation of domestic abuse no contact order);
- (3) any gross misdemeanor offense other than:
 - (i) section 169A.25 (second-degree driving while impaired);
 - (ii) section 169A.26 (third-degree driving while impaired);
 - (iii) section 518B.01, subdivision 14 (violation of an order for protection);
 - (iv) section 609.2113, subdivision 3 (criminal vehicular operation);
 - (v) section 609.2231 (assault in the fourth degree);
 - (vi) section 609.224 (assault in the fifth degree);
 - (vii) section 609.2242 (domestic assault);
 - (viii) section 609.233 (criminal neglect);
 - (ix) section 609.3451 (criminal sexual conduct in the fifth degree);
 - (x) section 609.377 (malicious punishment of child);
 - (xi) section 609.485 (escape from custody);
 - (xii) section 609.498 (tampering with witness);
 - (xiii) section 609.582, subdivision 4 (burglary in the fourth degree);
 - (xiv) section 609.746 (interference with privacy);
 - (xv) section 609.748 (violation of a harassment restraining order);
 - (xvi) section 609.749 (harassment; stalking);
 - (xvii) section 609.78 (interference with emergency call);
 - (xviii) section 617.23 (indecent exposure);
 - (xix) section 617.261 (nonconsensual dissemination of private sexual images); or
 - (xx) section 629.75 (violation of domestic abuse no contact order); or
- (4) any felony offense listed in section 609A.02, subdivision 3, paragraph (b), other than:
 - (i) section 152.023, subdivision 2 (possession of a controlled substance in the third degree);
 - (ii) 152.024, subdivision 2 (possession of a controlled substance in the fourth degree);
 - (iii) section 609.485, subdivision 4, paragraph (a), clause (2) or (4) (escape from civil commitment for mental illness); or
 - (iv) section 609.746, subdivision 1, paragraph (e) (interference with privacy; subsequent violation or minor victim).

(c) As used in this subdivision, "applicable waiting period" means:

- (1) if the offense was a petty misdemeanor, two years since discharge of the sentence;
- (2) if the offense was a misdemeanor, two years since discharge of the sentence for the crime;
- (3) if the offense was a gross misdemeanor, three years since discharge of the sentence for the crime;
- (4) if the offense was a felony violation of section 152.025, four years since the discharge of the sentence for the crime; and
- (5) if the offense was any other felony, five years since discharge of the sentence for the crime.

(d) Felony offenses deemed to be a gross misdemeanor or misdemeanor pursuant to section 609.13, subdivision 1, remain ineligible for expungement under this section. Gross misdemeanor offenses ineligible for a grant of expungement under this section remain ineligible if deemed to be for a misdemeanor pursuant to section 609.13, subdivision 2.

(e) The service requirements in section 609A.03, subdivision 8, do not apply to any expungements ordered under this subdivision.

(f) An expungement order does not apply to records held by the commissioners of health and human services.

Subd. 4. **Notice.** (a) The court shall notify a person who may become eligible for an automatic expungement under this section of that eligibility at any hearing where the court dismisses and discharges 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; concludes that all pending actions or proceedings were resolved in favor of the person; grants a person's placement into a diversion program; or sentences a person or otherwise imposes a consequence for a qualifying offense.

(b) To the extent possible, prosecutors, defense counsel, supervising agents, and coordinators or supervisors of a diversion program shall notify a person who may become eligible for an automatic expungement under this section of that eligibility.

(c) If any party gives notification under this subdivision, the notification shall inform the person that:

(1) a record expunged under this section may be opened for purposes of a background study by the Department of Human Services or the Department of Health under section 245C.08 and for purposes of a background check by the Professional Educator Licensing and Standards Board as required under section 122A.18, subdivision 8; and

(2) the person can file a petition under section 609A.03, subject to the process in section 609A.03 and the limitations in section 609A.02, to expunge the records held by the commissioner of human services, the commissioner of health, and the Professional Educator Licensing and Standards Board.

Subd. 5. **Bureau of Criminal Apprehension to identify eligible persons and grant expungement relief.** (a) The Bureau of Criminal Apprehension shall identify any records that qualify for a grant of expungement relief pursuant to this subdivision or subdivision 1, 2, or 3. The Bureau of Criminal Apprehension shall make an initial determination of eligibility within 30 days of the end of the applicable waiting period. If a record is not eligible for a grant of expungement at the time of the initial determination, the Bureau of Criminal Apprehension shall make subsequent eligibility determinations annually until the record is eligible for a grant of expungement.

(b) In making the determination under paragraph (a), the Bureau of Criminal Apprehension shall identify individuals who are the subject of relevant records through the use of fingerprints and thumbprints where fingerprints and thumbprints are available. Where fingerprints and thumbprints are not available, the Bureau of Criminal Apprehension shall identify individuals through the use of the person's name and date of birth. Records containing the same name and date of birth shall be presumed to refer to the same individual unless other evidence establishes, by a preponderance of the evidence, that they do not refer to the same individual. The Bureau of Criminal Apprehension is not required to review any other evidence in making a determination.

(c) The Bureau of Criminal Apprehension shall grant expungement relief to qualifying persons and seal its own records without requiring an application, petition, or motion. Records shall be sealed 60 days after notice is sent to the judicial branch pursuant to paragraph (e) unless an order of the judicial branch prohibits sealing the records or additional information establishes that the records are not eligible for expungement.

(d) Nonpublic criminal records maintained by the Bureau of Criminal Apprehension and subject to a grant of expungement relief shall display a notation stating "expungement relief granted pursuant to section 609A.015."

(e) The Bureau of Criminal Apprehension shall inform the judicial branch of all cases for which expungement relief was granted pursuant to this section. Notification may be through electronic means and may be made in real time or in the form of a monthly report. Upon receipt of notice, the judicial branch shall seal all records relating to an arrest, indictment or information, trial, verdict, or dismissal and discharge for any case in which expungement relief was granted and shall issue any order deemed necessary to achieve this purpose.

(f) The Bureau of Criminal Apprehension shall inform each law enforcement agency that its records may be affected by a grant of expungement relief. Notification may be through electronic means. Each notified law enforcement agency that receives a request to produce records shall first determine if the records were subject to a grant of expungement under this section. The law enforcement agency must not disclose records relating to an arrest, indictment or information, trial, verdict, or dismissal and discharge for any case in which expungement relief was granted and must maintain the data consistent with the classification in paragraph (g). This paragraph does not apply to requests from a criminal justice agency as defined in section 609A.03, subdivision 7a, paragraph (f).

(g) Data on the person whose offense has been expunged under this subdivision, including any notice sent pursuant to paragraph (f), are private data on individuals as defined in section 13.02, subdivision 12.

(h) The prosecuting attorney shall notify the victim that an offense qualifies for automatic expungement under this section in the manner provided in section 611A.03, subdivisions 1 and 2.

(i) In any subsequent prosecution of a person granted expungement relief, the expunged criminal record may be pleaded and has the same effect as if the relief had not been granted.

(j) The Bureau of Criminal Apprehension is directed to develop, modify, or update a system to provide criminal justice agencies with uniform statewide access to criminal records sealed by expungement.

Subd. 6. Immunity from civil liability. Employees of the Bureau of Criminal Apprehension shall not be held civilly liable for the exercise or the failure to exercise, or the decision to exercise or the decision to decline to exercise, the powers granted by this section or for any act or omission occurring within the scope of the performance of their duties under this section.

History: 2023 c 52 art 7 s 12; 2023 c 70 art 15 s 5

NOTE: This section, as added by Laws 2023, chapter 52, article 7, section 12, is effective January 1, 2025, and applies to offenses that meet the eligibility criteria on or after that date and applies retroactively to offenses that met the eligibility criteria before January 1, 2025, and are stored in the Bureau of Criminal Apprehension's criminal history system as of January 1, 2025. Laws 2023, chapter 52, article 7, section 12, the effective date.

NOTE: The amendment to this section by Laws 2023, chapter 70, article 15, section 5, is effective January 1, 2025, and applies to offenses that meet the eligibility criteria on or after that date and applies retroactively to offenses that met the eligibility criteria before January 1, 2025, and are stored in the Bureau of Criminal Apprehension's criminal history system as of January 1, 2025. Laws 2023, chapter 70, article 15, section 5, the effective date.

609A.017 MISTAKEN IDENTITY; AUTOMATIC EXPUNGEMENT.

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meanings given.

(b) "Conviction" means a plea of guilty, a verdict of guilty by a jury, or a finding of guilty by a court.

(c) "Mistaken identity" means a person was incorrectly identified as being a different person:

(1) because the person's identity had been transferred, used, or possessed in violation of section 609.527; or

(2) as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime.

Subd. 2. **Determination by prosecutor; notification.** If, before a conviction, a prosecutor determines that a defendant was issued a citation, charged, indicted, or otherwise prosecuted as the result of mistaken identity, the prosecutor must dismiss or move to dismiss the action or proceeding and must state in writing or on the record that mistaken identity is the reason for the dismissal.

Subd. 3. **Order of expungement.** (a) The court shall issue an order of expungement without the filing of a petition when an action or proceeding is dismissed based on a determination that a defendant was issued a citation, charged, indicted, or otherwise prosecuted as the result of mistaken identity. The order shall cite this section as the basis for the order.

(b) An order issued under this section is not subject to the considerations or standards identified in section 609A.025 or 609A.03, subdivision 5, paragraph (a), (b), or (c).

Subd. 4. **Effect of order.** (a) An order issued under this section is not subject to the limitations in section 609A.03, subdivision 7a or 9. 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.

(b) A criminal justice agency may seek access to a record that was sealed under this section for purposes of determining whether the subject of the order was identified in any other action or proceeding as the result of mistaken identity or for a criminal investigation, prosecution, or sentencing involving any other person.

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.

(c) The court administrator must distribute and confirm receipt of an order issued under this section pursuant to section 609A.03, subdivision 8.

(d) Data on the person whose offense has been expunged contained in a letter or other notification sent under this subdivision are private data on individuals as defined in section 13.02.

History: 2023 c 52 art 7 s 13

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 a petty misdemeanor or misdemeanor or the sentence imposed was within the limits provided by law for a misdemeanor and the petitioner 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 a gross misdemeanor or the sentence imposed was within the limits provided by law for a gross misdemeanor and the petitioner has not been convicted of a new crime for at least three years since discharge of the sentence for the crime;

(5) the petitioner was convicted of a gross misdemeanor that is deemed to be for a misdemeanor pursuant to section 609.13, subdivision 2, clause (2), and has not been convicted of a new crime for at least three years since discharge of the sentence for the crime;

(6) the petitioner was convicted of a felony violation of section 152.025 and has not been convicted of a new crime for at least four years since discharge of the sentence for the crime;

(7) the petitioner was convicted of a felony that is deemed to be for a gross misdemeanor or misdemeanor pursuant to section 609.13, subdivision 1, clause (2), and has not been convicted of a new crime for at least five years since discharge of the sentence for the crime; or

(8) the petitioner was convicted of a felony violation of an offense listed in paragraph (b), and has not been convicted of a new crime for at least four years since discharge of the sentence for the crime.

(b) Paragraph (a), clause (7), 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 152.023, subdivision 2 (possession of a controlled substance in the third degree); 152.024, subdivision 2 (possession of a controlled substance in the fourth degree); 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 2, when sentenced pursuant to section 609.52, subdivision 3, clause (3)(a) (theft of \$5,000 or less) or 609.52, subdivision 3a, clause (1) (theft of \$1,000 or less with risk of bodily harm); or any other offense sentenced pursuant to section 609.52, subdivision 3, clause (3)(a);

(21) section 609.521 (possession of shoplifting gear);

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

(23) section 609.526, subdivision 2, clause (2) (metal dealer receiving stolen goods);

(24) 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);

(25) section 609.53 (receiving stolen goods);

(26) section 609.535, subdivision 2a, paragraph (a), clause (1) (dishonored check over \$500);

(27) section 609.54, clause (1) (embezzlement of public funds \$2,500 or less);

(28) section 609.551 (rustling and livestock theft);

(29) section 609.5641, subdivision 1a, paragraph (a) (wildfire arson);

(30) section 609.576, subdivision 1, clause (3), item (iii) (negligent fires);

(31) section 609.582, subdivision 3 (burglary in the third degree);

(32) section 609.59 (possession of burglary or theft tools);

(33) section 609.595, subdivision 1, clauses (3) to (5), and subdivision 1a, paragraph (a) (criminal damage to property);

(34) section 609.597, subdivision 3, clause (3) (assaulting or harming police horse);

(35) 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);

(36) section 609.65, clause (1) (false certification by notary); or 609.651, subdivision 4, paragraph (a) (lottery fraud);

(37) section 609.652 (fraudulent driver's license and identification card);

(38) section 609.66, subdivision 1a, paragraph (a) (discharge of firearm; silencer); or 609.66, subdivision 1b (furnishing firearm to minor);

(39) section 609.662, subdivision 2, paragraph (b) (duty to render aid);

(40) section 609.686, subdivision 2 (tampering with fire alarm);

(41) section 609.746, subdivision 1, paragraph (g) (interference with privacy; subsequent violation or minor victim);

(42) section 609.80, subdivision 2 (interference with cable communications system);

(43) section 609.821, subdivision 2 (financial transaction card fraud);

(44) section 609.822 (residential mortgage fraud);

(45) section 609.825, subdivision 2 (bribery of participant or official in contest);

(46) section 609.855, subdivision 2, paragraph (c), clause (1) (interference with transit operator);

(47) section 609.88 (computer damage); or 609.89 (computer theft);

(48) section 609.893, subdivision 2 (telecommunications and information services fraud);

(49) section 609.894, subdivision 3 or 4 (cellular counterfeiting);

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

(51) section 609.896 (movie pirating);

(52) 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

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

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; 2018 c 182 art 1 s 103; 2023 c 52 art 7 s 14

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 under this section 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 following proper service of a petition, or following proceedings under section 609A.017, 609A.025, or 609A.035 upon service of an order 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 Professional Educator Licensing and Standards Board;

(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;

(7) a prosecutor may request, and the district court shall provide, certified records of conviction for a record expunged pursuant to sections 609A.015, 609A.017, 609A.02, 609A.025, and 609A.035, and the certified records of conviction may be disclosed and introduced in criminal court proceedings as provided by the rules of court and applicable law; and

(8) the subject of an expunged record may request, and the court shall provide, certified or uncertified records of conviction for a record expunged pursuant to sections 609A.015, 609A.017, 609A.02, 609A.025, and 609A.035.

(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 or the Professional Educator Licensing and Standards Board 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 or the Professional Educator Licensing and Standards Board 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, and grants of expungement relief issued on or after January 1, 2025.

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 issued under this section 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; 1Sp2017 c 5 art 12 s 22; 1Sp2021 c 13 art 11 s 2; 2023 c 52 art 7 s 15-17; 2023 c 70 art 15 s 6

609A.035 PARDON EXTRAORDINARY; NO PETITION REQUIRED.

(a) Notwithstanding section 609A.02, if the Board of Pardons grants a pardon pursuant to section 638.17, it shall file a copy of the pardon extraordinary with the district court of the county in which the conviction occurred.

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

History: 2023 c 52 art 7 s 18

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

609A.05 NO DUTY TO DISCOVER; EMPLOYERS AND LANDLORDS.

A landlord or employer does not have a duty to discover or use a record that has been expunged under this chapter or other law for purposes of making a housing or employment decision.

History: 2023 c 52 art 7 s 19

609A.055 AUTOMATIC EXPUNGEMENT OF CERTAIN CANNABIS OFFENSES.

Subdivision 1. **Eligibility; dismissal, exoneration, or conviction of nonfelony cannabis offenses.** (a) A person is eligible for expungement:

(1) 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;

(2) if the person was convicted of or received a stayed sentence for a violation of section 152.027, subdivision 3 or 4;

(3) if the person was arrested and all charges were dismissed prior to a determination of probable cause for charges under section 152.021, subdivision 2, paragraph (a), clause (6); 152.022, subdivision 2, paragraph (a), clause (6); 152.023, subdivision 2, paragraph (a), clause (5); 152.024, subdivision 2, clause (2); 152.025, subdivision 2, clause (1); or 152.027, subdivision 3 or 4; or

(4) if all pending actions or proceedings were resolved in favor of the person for charges under section 152.021, subdivision 2, paragraph (a), clause (6); 152.022, subdivision 2, paragraph (a), clause (6); 152.023, subdivision 2, paragraph (a), clause (5); 152.024, subdivision 2, clause (2); 152.025, subdivision 2, clause (1); or 152.027, subdivision 3 or 4.

(b) For purposes of this section:

(1) a verdict of not guilty by reason of mental illness is not a resolution in favor of the person; and

(2) an action or proceeding is resolved in favor of the person if the person received an order under section 590.11 determining that the person is eligible for compensation based on exoneration.

Subd. 2. **Bureau of Criminal Apprehension to identify eligible individuals.** (a) The Bureau of Criminal Apprehension shall identify bureau records that qualify for expungement pursuant to subdivision 1.

(b) The Bureau of Criminal Apprehension shall notify the judicial branch of:

- (1) the name and date of birth of each person whose case is eligible for an order of expungement; and
- (2) the court file number of the eligible case.

Subd. 3. **Expungement relief; notification requirements.** (a) The Bureau of Criminal Apprehension shall grant expungement relief to each qualifying person whose records the bureau possesses and seal the bureau's records without requiring an application, petition, or motion. The bureau shall seal records related to an expungement within 60 days after the bureau sent notice of the expungement to the judicial branch pursuant to subdivision 2, paragraph (b), unless an order of the judicial branch prohibits sealing the records or additional information establishes that the records are not eligible for expungement.

(b) Nonpublic criminal records maintained by the bureau and subject to a grant of expungement relief must display a notation stating "expungement relief granted pursuant to section 609A.055."

(c) The bureau shall inform the judicial branch of all cases that are granted expungement relief pursuant to this section. The bureau may notify the judicial branch using electronic means and may notify the judicial branch immediately or in a monthly report. Upon receiving notice of an expungement, the judicial branch shall seal all related records, including records of the person's arrest, indictment, trial, verdict, and dismissal or discharge of the case. Upon receiving notice of an expungement, the judicial branch shall issue any order necessary to seal related records. The judicial branch shall not order the Department of Health or the Department of Human Services to seal records under this section.

(d) The bureau shall inform each arresting or citing law enforcement agency or prosecutorial office with records affected by the grant of expungement relief issued pursuant to paragraph (a) that expungement has been granted. The bureau shall notify each agency or office of an expungement within 60 days after the bureau sent notice of the expungement to the judicial branch. The bureau may notify each agency or office using electronic means. Upon receiving notification of an expungement, an agency or office shall seal all records related to the expungement, including the records of the person's arrest, indictment, trial, verdict, and dismissal or discharge of the case.

(e) The bureau shall provide information on its publicly facing website clearly stating that persons who are noncitizens may need copies of records affected by a grant of expungement relief for immigration purposes, explaining how they can obtain these copies after expungement or other granted relief, and stating that a noncitizen should consult with an immigration attorney.

(f) Data on a person whose offense has been expunged under this subdivision, including any notice sent pursuant to paragraph (d), are private data on individuals as defined in section 13.02, subdivision 12.

(g) Section 609A.03, subdivision 6, applies to an order issued under this section sealing the record of proceedings under section 152.18.

(h) The limitations under section 609A.03, subdivision 7a, paragraph (b), do not apply to an order issued under this section.

(i) The subject whose record qualifies for expungement shall be given access to copies of the records of arrest, conviction, or incarceration for any purposes, including immigration purposes.

(j) Relief granted under this subdivision shall not impact the ability of a petitioner to file for relief under section 590.01.

Subd. 4. **Immunity from civil liability.** The Department of Public Safety, commissioner of public safety, Bureau of Criminal Apprehension, superintendent of the Bureau of Criminal Apprehension, and all employees of the Bureau of Criminal Apprehension shall not be held civilly liable when acting in good faith to exercise the powers granted by this section or for acts or omissions occurring within the scope of the performance of their duties under this section.

Subd. 5. **Report.** The Bureau of Criminal Apprehension shall issue a report to the legislative committees and divisions with jurisdiction over public safety policy and finance upon completion of the work required under subdivision 2. The report shall contain summary data and must include the total number of expungements granted by the Bureau of Criminal Apprehension.

History: 2023 c 63 art 5 s 2

609A.06 EXPUNGEMENT AND RESENTENCING OF FELONY CANNABIS OFFENSES.

Subdivision 1. **Cannabis Expungement Board.** (a) The Cannabis Expungement Board is created with the powers and duties established by law.

(b) The Cannabis Expungement Board is composed of the following members:

- (1) the chief justice of the supreme court or a designee;
- (2) the attorney general or a designee;
- (3) one public defender, appointed by the governor upon recommendation of the state public defender;
- (4) the commissioner of corrections or a designee; and
- (5) one public member with relevant experience, appointed by the governor.

(c) In appointing the public member described in paragraph (b), clause (5), the governor shall prioritize appointment of an individual with experience as an advocate for victim's rights.

(d) Subject to the notice requirements in section 15.0575, subdivision 4, a member may be removed by the appointing authority at any time (1) for cause, after notice and hearing, or (2) after missing three consecutive meetings. Vacancies shall be filled by the appointing authority.

(e) Members are eligible for compensation pursuant to section 15.0575, subdivision 3.

(f) The Cannabis Expungement Board shall have the following powers and duties:

(1) to obtain and review the records, including but not limited to all matters, files, documents, and papers incident to the arrest, indictment, information, trial, appeal, or dismissal and discharge, which relate to a charge for sale or possession of a controlled substance;

(2) to determine whether a person committed an act involving the sale or possession of cannabis flower or cannabinoid products that would either be a lesser offense or no longer be a crime after August 1, 2023;

(3) to determine whether a person's conviction should be vacated, charges should be dismissed, and records should be expunged, or whether the person should be resentenced to a lesser offense;

(4) to identify violations of section 152.027, subdivisions 3 and 4, that were not automatically expunged pursuant to section 609A.055; and

(5) to notify the judicial branch of individuals eligible for an expungement or resentencing to a lesser offense.

(g) The Cannabis Expungement Board shall determine when it has completed its work.

Subd. 2. Executive director. (a) The governor must appoint the initial executive director of the Cannabis Expungement Board. The executive director must be knowledgeable about expungement law and criminal justice. The executive director serves at the pleasure of the board in the unclassified service as an executive branch employee. Any vacancy shall be filled by the board.

(b) The executive director's salary is set in accordance with section 15A.0815, subdivision 3.

(c) The executive director may obtain office space and supplies and hire administrative staff necessary to carry out the board's official functions, including providing administrative support to the board and attending board meetings. Any additional staff serve in the classified service.

(d) At the direction of the board, the executive director may enter into interagency agreements with the Department of Corrections or any other agency to obtain material and personnel support necessary to carry out the board's mandates, policies, activities, and objectives.

Subd. 3. Eligibility; cannabis offense. (a) A person is eligible for an expungement or resentencing to a lesser offense if:

(1) the person was convicted of, or adjudication was stayed for, a violation of any of the following involving the sale or possession of marijuana or tetrahydrocannabinols:

(i) section 152.021, subdivision 1, clause (6);

(ii) section 152.021, subdivision 2, clause (6);

(iii) section 152.022, subdivision 1, clause (5), or clause (7), item (iii);

(iv) section 152.022, subdivision 2, clause (6);

(v) section 152.023, subdivision 1, clause (5);

(vi) section 152.023, subdivision 2, clause (5);

(vii) section 152.024, subdivision (4); or

(viii) section 152.025, subdivision 2, clause (1);

(2) the offense did not involve a dangerous weapon, the intentional infliction of bodily harm on another, an attempt to inflict bodily harm on another, or an act committed with the intent to cause fear in another of immediate bodily harm or death;

(3) the act on which the charge was based would either be a lesser offense or no longer be a crime after August 1, 2023; and

(4) the person did not appeal the conviction, any appeal was denied, or the deadline to file an appeal has expired.

(b) For purposes of this subdivision, a "lesser offense" means a nonfelony offense if the person was charged with a felony.

Subd. 4. **Bureau of Criminal Apprehension to identify eligible records.** (a) The Bureau of Criminal Apprehension shall identify convictions and sentences where adjudication was stayed that qualify for review under subdivision 3, paragraph (a), clause (1).

(b) The Bureau of Criminal Apprehension shall notify the Cannabis Expungement Board of:

- (1) the name and date of birth of a person whose record is eligible for review; and
- (2) the court file number of the eligible conviction or stay of adjudication.

(c) For the purposes of identifying background studies records that may be expunged or resentenced, the Bureau of Criminal Apprehension shall share the information provided to the Cannabis Expungement Board under paragraph (b) with the Department of Human Services. The Bureau of Criminal Apprehension and the Department of Human Services shall consult about the form and manner of information sharing.

Subd. 5. **Access to records.** Notwithstanding chapter 13 or any law to the contrary, the Cannabis Expungement Board shall have free access to records, including but not limited to all matters, files, documents, and papers incident to the arrest, indictment, information, trial, appeal, or dismissal and discharge that relate to a charge and conviction or stay of adjudication for sale or possession of a controlled substance held by law enforcement agencies, prosecuting authorities, and court administrators. The Cannabis Expungement Board may issue subpoenas for and compel the production of books, records, accounts, documents, and papers. If any person fails or refuses to produce any books, records, accounts, documents, or papers material in the matter under consideration after having been lawfully required by order or subpoena, any judge of the district court in any county of the state where the order or subpoena was made returnable, on application of the commissioner of management and budget or commissioner of administration, as the case may be, shall compel obedience or punish disobedience as for contempt, as in the case of disobedience of a similar order or subpoena issued by such court.

Subd. 6. **Meetings; anonymous identifier.** (a) The Cannabis Expungement Board shall hold meetings at least monthly and shall hold a meeting whenever the board takes formal action on a review of a conviction or stay of adjudication for an offense involving the sale or possession of marijuana or tetrahydrocannabinols. All board meetings shall be open to the public and subject to chapter 13D.

(b) Any victim of a crime being reviewed and any law enforcement agency may submit an oral or written statement at the meeting, giving a recommendation on whether a person's record should be expunged or the person should be resentenced to a lesser offense. The board must consider the victim's and the law enforcement agency's statement when making the board's decision.

(c) Section 13D.05 governs the board's treatment of not public data, as defined by section 13.02, subdivision 8a, discussed at open meetings of the board. Notwithstanding section 13.03, subdivision 11, the board shall assign an anonymous, unique identifier to each victim of a crime and person whose conviction or stay of adjudication the board reviews. The identifier shall be used in any discussion in a meeting open to the public and on any records available to the public to protect the identity of the person whose records are being considered.

Subd. 7. **Review and determination.** (a) The Cannabis Expungement Board shall review all available records to determine whether the conviction or stay of adjudication is eligible for an expungement or resentencing to a lesser offense. An expungement under this section is presumed to be in the public interest

unless there is clear and convincing evidence that an expungement or resentencing to a lesser offense would create a risk to public safety.

(b) If the Cannabis Expungement Board determines that an expungement is in the public interest, the board shall determine whether a person's conviction should be vacated and charges should be dismissed.

(c) If the Cannabis Expungement Board determines that an expungement is in the public interest, the board shall determine whether the limitations under section 609A.03, subdivision 5a, apply.

(d) If the Cannabis Expungement Board determines that an expungement is in the public interest, the board shall determine whether the limitations under section 609A.03, subdivision 7a, paragraph (b), clause (5), apply.

(e) If the Cannabis Expungement Board determines that an expungement is not in the public interest, the board shall determine whether the person is eligible for resentencing to a lesser offense.

(f) In making a determination under this subdivision, the Cannabis Expungement Board shall consider:

(1) the nature and severity of the underlying crime, including but not limited to the total amount of marijuana or tetrahydrocannabinols possessed by the person and whether the offense involved a dangerous weapon, the intentional infliction of bodily harm on another, an attempt to inflict bodily harm on another, or an act committed with the intent to cause fear in another of immediate bodily harm or death;

(2) whether an expungement or resentencing the person a lesser offense would increase the risk, if any, the person poses to other individuals or society;

(3) if the person is under sentence, whether an expungement or resentencing to a lesser offense would result in the release of the person and whether release earlier than the date that the person would be released under the sentence currently being served would present a danger to the public or would be compatible with the welfare of society;

(4) aggravating or mitigating factors relating to the underlying crime, including the person's level of participation and the context and circumstances of the underlying crime;

(5) statements from victims and law enforcement, if any;

(6) if an expungement or resentencing the person to a lesser offense is considered, whether there is good cause to restore the person's right to possess firearms and ammunition;

(7) if an expungement is considered, whether an expunged record of a conviction or stay of adjudication may be opened for purposes of a background check required under section 122A.18, subdivision 8; and

(8) other factors deemed relevant by the Cannabis Expungement Board.

(g) In making a determination under this subdivision, the Cannabis Expungement Board shall not consider the impact the expungement would have on the offender based on any records held by the Department of Health or Human Services.

(h) The affirmative vote of three members is required for action taken at any meeting.

Subd. 8. Identification of eligible misdemeanor and petty misdemeanor records. The board shall identify violations of section 152.027, subdivisions 3 and 4, that were not automatically expunged pursuant to section 609A.055. Pursuant to subdivision 10, the board shall notify the judicial branch that any identified records are eligible for expungement.

Subd. 9. **Annual report.** Until the board completes its work, the board shall issue a report by January 15 of each year to the legislative committees and divisions with jurisdiction over public safety policy and finance on the board's work. The report shall contain summary data and must include:

- (1) the total number of cases reviewed in the previous year;
- (2) the total number of cases in which the board determined that an expungement is in the public interest;
- (3) the total number of cases in which the board determined that resentencing to a lesser offense is appropriate, the original sentence in those cases, and the lesser offense recommended by the board;
- (4) the total number of cases in which the board determined that no change to the original sentence was appropriate; and
- (5) the total number of cases remaining to be reviewed.

Subd. 10. **Notice to judicial branch and offenders.** (a) The Cannabis Expungement Board shall identify any conviction or stay of adjudication that qualifies for an order of expungement or resentencing to a lesser offense and notify the judicial branch of:

- (1) the name and date of birth of a person whose conviction or stay of adjudication is eligible for an order of expungement or resentencing to a lesser offense;
- (2) the court file number of the eligible conviction or stay of adjudication;
- (3) whether the person is eligible for an expungement;
- (4) if the person is eligible for an expungement, whether the person's conviction should be vacated and charges should be dismissed;
- (5) if the person is eligible for an expungement, whether there is good cause to restore the offender's right to possess firearms and ammunition;
- (6) if the person is eligible for an expungement, whether the limitations under section 609A.03, subdivision 7a, paragraph (b), clause (5), apply; and
- (7) if the person is eligible for resentencing to a lesser offense, the lesser sentence to be imposed.

(b) The Cannabis Expungement Board shall make a reasonable and good faith effort to notify any person whose conviction or stay of adjudication qualifies for an order of expungement that the offense qualifies and notice is being sent to the judicial branch. Notice sent pursuant to this paragraph shall inform the person that, following the order of expungement, any records of an arrest, conviction, or incarceration should not appear on any background check or study.

Subd. 11. **Data classification.** All data collected, created, received, maintained, or disseminated by the Cannabis Expungement Board in which each victim of a crime and person whose conviction or stay of adjudication that the Cannabis Expungement Board reviews is or can be identified as the subject of the data is classified as private data on individuals, as defined in section 13.02, subdivision 12.

Subd. 12. **Order of expungement.** (a) Upon receiving notice that an offense qualifies for expungement, the court shall issue an order sealing all records relating to an arrest, indictment or information, trial, verdict, or dismissal and discharge for an offense described in subdivision 3. The courts shall not order the Department of Health or Human Services to seal records under this section. If the Cannabis Expungement Board

determined that the person's conviction should be vacated and charges should be dismissed, the order shall vacate and dismiss the charges.

(b) If the Cannabis Expungement Board determined that there is good cause to restore the person's right to possess firearms and ammunition, the court shall issue an order pursuant to section 609.165, subdivision 1d.

(c) If the Cannabis Expungement Board determined that an expunged record of a conviction or stay of adjudication may not be opened for purposes of a background check required under section 122A.18, subdivision 8, the court shall direct the order specifically to the Professional Educator Licensing and Standards Board.

(d) The court administrator shall send a copy of an expungement order issued under this section to each agency and jurisdiction whose records are affected by the terms of the order and send a letter to the last known address of the person whose offense has been expunged identifying each agency to which the order was sent.

(e) In consultation with the commissioner of human services, the court shall establish a schedule on which it shall provide the commissioner of human services a list identifying the name and court file number or, if no court file number is available, the citation number of each record for a person who received an expungement under this section.

(f) Data on the person whose offense has been expunged in a letter sent under this subdivision are private data on individuals as defined in section 13.02, subdivision 12.

Subd. 13. **Resentencing.** (a) If the Cannabis Expungement Board determined that a person is eligible for resentencing to a lesser offense and the person is currently under sentence, the court shall proceed as if the appellate court directed a reduction of the conviction to an offense of lesser degree pursuant to rule 28.02, subdivision 12, of the Rules of Criminal Procedure.

(b) If the Cannabis Expungement Board determined that a person is eligible for resentencing to a lesser offense and the person completed or has been discharged from the sentence, the court may issue an order amending the conviction to an offense of lesser degree without holding a hearing.

(c) If the Cannabis Expungement Board determined that there is good cause to restore the person's right to possess firearms and ammunition, the court shall, as necessary, issue an order pursuant to section 609.165, subdivision 1d.

(d) In consultation with the commissioner of human services, the court shall establish a schedule on which it shall provide the commissioner of human services a list identifying the name and court file number or, if no court file number is available, the citation number of each record for a person who was resentenced under this section.

History: 2023 c 63 art 5 s 3