- **Criminal and Juvenile Justice Information Task Force**

Report of the Background Checks and Expungements Delivery Team

November 2006

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CriMNet

CriMNet is a framework of people, processes, data standards and technology standards, focused on providing accurate and comprehensive data to criminal justice agencies throughout the state of Minnesota. CriMNet is not one system or technology solution – it is an enterprise architecture – a technology infrastructure to deliver desired information to agencies statewide and across the criminal justice system. It allows agencies to use data where it exists in the criminal justice system, rather than creating one place where all that data resides.

Criminal and Juvenile Justice Policy Group:

Minnesota Statutes 299C.65 provides for a Policy Group to oversee the successful completion of statewide criminal justice information system integration, including ongoing operations of the CriMNet Program and other related projects. The membership of the Policy Group is available on the CriMNet web site.

Criminal and Juvenile Justice Task Force:

Minnesota Statutes 299C.65 provides for the appointment of a Task Force to advise the Criminal and Juvenile Justice Information Policy Group regarding the ongoing operations of the CriMNet Program and other related projects. The Task Force charter, bylaws and membership are available on the CriMNet web site.

CriMNet Program Office:

Minnesota Statutes 299C.65 provides that the policy group may hire an executive director to manage the CriMNet projects and to be responsible for the day-to-day operations of CriMNet. The executive director manages the CriMNet Program Office, a state-level program office that encourages and facilitates the sharing of information electronically among criminal justice agencies. CriMNet is part of the Minnesota Bureau of Criminal Apprehension’s St. Paul Regional Office.

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Appendices:

INTRODUCTION

The topics of background checks for non-criminal justice purposes and criminal records expungements have drawn increasing interest in recent years.

Background checks have become complex and confusing, both for those who undergo them and for those who conduct them. Statutes authorizing or requiring background checks vary – a natural outgrowth of different approaches taken since the first background check statute was adopted in 1945.[1] The volume of background checks has increased, which has highlighted the need for a more consistent and understandable system.

Minnesota expungement policy and practice, which was significantly reformed in the late 1990s, has met with some new challenges. Recent Court of Appeals decisions clarified previous case law concerning the expungement of criminal records under the inherent authority of Minnesota Courts, and significantly reduced the extent to which criminal records that are sealed in court files may also be sealed in the executive branch. Furthermore, many have noted that the usefulness of sealing records to remedy the collateral consequences of criminal records has declined in the electronic age, highlighting the need to explore alternative remedies. Finally, there are numerous areas where expungement practice could be streamlined.

Background checks and expungements are interrelated. Practitioners who work with expungements indicate that the demand is increasing, even while their overall effectiveness is declining. Petitioners are seeking expungement in order to obtain jobs, housing, or licenses that are subject to background checks.

The CriMNet Program Office noted the growing concern over these two topics and discussed the need for more research and analysis with legislative leaders and members of the Criminal and Juvenile Justice Policy Group and Task Force. The Program Office requested that Management Analysis & Development (Management Analysis) in the Minnesota Department of Administration perform research and analysis of policy and operational options. Once research was underway, the Program Office and Task Force formed a "delivery team"[2] to receive the research report and discuss recommendations.

This is the report of the delivery team. The members who have volunteered to serve on this delivery team have met over nine months, with 21 meetings and 56 hours of meeting time by two sub-teams to form recommendations.

The recommendations in this report are within the scope and duties of the Criminal and Juvenile Justice Policy Group pursuant to M.S. 299C.65, Subd. 1 (d), which provides that the policy group shall study and make recommendations to the Governor, the Supreme Court, and the Legislature in a number of areas, including:

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[1] Minnesota House Research, *Background Check Statutes: An Overview*, revised January 2005, p. 1.
[2] Delivery team members are listed in Appendix A.

". . .(10) the impact of integrated criminal justice information systems on individual privacy rights;

(11) the impact of proposed legislation on the criminal justice system, including any fiscal impact, need for training, changes in information systems, and changes in processes; . . .

(14) processes for expungement, correction of inaccurate records, destruction of records, and other matters relating to the privacy interests of individuals. . ."

METHODS

Background research

Management Analysis conducted research on behalf of the CriMNet Program Office, which was used by the delivery team to prepare their recommendations. The research included:

- Interviews with key stakeholders, identified by the CriMNet Program Office, to identify major strengths, areas for improvement, and options to address areas for improvement;
- A written survey of organizations that Minnesota law authorizes to conduct background checks, to identify the range of practices and procedures that organizations currently use, and to ask these organizations for their views; and
- A literature review to identify existing practices and emerging trends, nationally and in other states.

A copy of this report, *Background Checks and Expungements – Research Report*, hereinafter referred to as the Research Report, is available online (hyperlink below), by request to the CriMNet Program Office, and at the Legislative Reference Library.
http://www.crimnet.state.mn.us/GovOrg/BGChecksExpungement.htm

Delivery team formation

Task Force membership

Membership on the delivery team has been open throughout the process to any Criminal and Juvenile Justice Information Task Force (Task Force) member or proxy interested in attending meetings or receiving information about the delivery team. Membership from the Task Force was accomplished through two requests for volunteers from the Task Force.

- Judicial Branch members included Judge Randy Slieter (Judiciary); Kelly Mitchell (Supreme Court); Susan Stahl (Court Administration); and Steve Holmgren and Robert Sykora (Public Defense).
- Executive Branch members included Deb Kerschner (Department of Corrections); Julie LeTourneau Lackner (Department of Public Safety) Ray Schmitz and Doug Johnson (County Attorneys); Dave Gerjets and Randy Shimizu (Community Corrections); Ron Whitehead (Police); and Dave Fenner (Sheriffs).
- Citizen members included Rich Neumeister and Lucy Banks (Crime Victim Coalition).

These members, their Task Force Constituencies, and their dates of active meeting participation are provided in Appendix A.

Augmented membership

The Task Force's charter encourages all delivery teams to augment their memberships to include stakeholders or subject matter experts who are not on the Task Force. In this case, two key stakeholder constituencies were needed: entities that perform background checks for non-criminal justice purposes, and private and legal aid attorneys who advocate for petitioners in expungement hearings. The team also noted a need to augment membership to include more advocates for disadvantaged groups and subject matter experts.

The members and CriMNet Program Office staff chose initial augmented membership, working from a suggested list provided by Management Analysis. Consultants from Management Analysis sent invitations to potential members describing the team's scope, work products and schedule. Additional members recruited were Jerry Kerber, Kristin Johnson and Jennifer Park (Department of Human Services), Julie Frokjer (Department of Health), Allen Cavell (Minneapolis Public Schools), Tom Johnson and John McCullough (Council on Crime and Justice), Lester Collins (Council on Black Minnesotans) and Mai-Anh Kapanke (Mentoring Partnership of Minnesota). Most of these members began working with the team in April 2006. In August 2006, at the request of Sandy Neren of the law firm Messerli & Kramer, three more members joined the delivery team by agreement of the CriMNet Executive Director and First Vice Chair of the Task Force. These were Mark Anfinson (Minnesota Newspaper Association), Jack Horner (Minnesota Multi-Housing Association) and Phil Carruthers (County Attorneys). These members, their stakeholder interests, and their dates of active meeting participation are provided in Appendix A.

Formation of sub-teams

As the membership roster shows, the members divided into sub-teams to consider these priority issues. There was significant overlap between the two teams – eight members participated on both teams. This helped ensure that recommendations between the two sub-teams were consistent and that each sub-team was aware of the developing recommendations of the other. Appendix A also shows sub-team membership.

Additional staff and subject matter experts

In addition to the voting members, additional staff and subject matter experts contributed to discussions and monitored progress of the delivery team's work.

- Steve Holmgren, the First Vice Chair of the Task Force, convened meetings and provided the Management Analysis project team with advice regarding delivery team membership, meeting protocol, and facilitation.
- Dale Good, Executive Director, and Dana Gotz, Program Administrator, of the CriMNet Program Office, observed delivery team meetings and provided direction to all contract staff regarding delivery team membership, meeting protocol and facilitation, and legislative drafting.
- Deb McKnight, staff coordinator for the Research Department of House Research, contributed subject matter expertise on both topics at delivery team meetings.

- Katie Engler, the Assistant Director for the Information Policy Analysis Division of the Department of Administration, contributed subject matter expertise on data practices at delivery team meetings and assisted in legislative drafting of the delivery team's recommendations.
- Judy Grew, Mark Scipioni, Charlie Petersen, and Peter Butler, senior management consultants, and Connie Reeves, a document production specialist for Management Analysis, contributed research and analysis, meeting facilitation and documentation of delivery team meetings, and logistical support.

Delivery Team Processes

Decision-making processes

The delivery team discussed decision-making processes and group ground rules at the April meeting. By this time, most of the augmented membership had been recruited and was in attendance. The team discussed the pros and cons of consensus-based and majority-vote decision making. While members wished to strive for consensus, they acknowledged that on some issues consensus might not be possible. Therefore, the team's report should include, as needed, minority opinions. The team also discussed a preference for developing specific recommendations, rather than forming options and conclusions. Finally, team members expressed a preference for a more informal approach rather than relying on specific, detailed ground rules. By September, the two sub-teams had not been able to come to a consensus-based agreement on many key items, so the teams adopted a more formal mechanism of receiving motions, discussing them, voting, and noting majority and minority viewpoints.

Research report and issue prioritization

The team met in May and June 2006 to receive copies and hear presentations about the Research Report. The delivery team was asked to prioritize among the many issues identified in the report.

For background checks, the team chose four priority issues, and a fifth issue was added at the request of the CriMNet Executive Director to respond to legislative hearings that had been held on the topic of subsidizing background checks for volunteers. The issues were:

1. What criminal justice data should be included for background checks (convictions at various levels, arrests, juvenile records, and law enforcement incident reports)?
2. Under what circumstances should state and national fingerprint-based searches be performed?
3. What informed consent and individual privacy protections should be in place?
4. When should a background check be mandatory?
5. How should background checks be funded? Who should pay for them?

For expungements, the delivery team confirmed that the four high-level policy options provided in the Research Report would provide focus for their discussions:

1. Whether to reconcile the effects of statutory and judicial inherent authority expungements, post-Schultz.[3] The reconciliation would allow inherent authority expungements to cover executive branch records as well as judicial branch records.
2. Whether the expungement remedy should be enhanced through streamlining the process generally, or streamlining only for certain types of cases, such as criminal proceedings not resulting in a conviction. (Streamlining options might include administrative procedures, automatic sealing procedures, or waiving a hearing when there are no objections to an expungement.)
3. Whether expungement should be supported and enhanced to have a central role for relieving collateral effects of criminal records in meritorious cases.
4. Whether additional laws, rules, and guidelines should be developed to govern who has access to expunged records.

Discussion and recommendations

The recommendations summarized on the following pages received a majority affirmative vote from members who were present at the meetings when the vote took place. Following each recommendation is a discussion of issues raised during the development of the proposal into a recommendation. The discussion points are a summary and should not be regarded as a complete explanation of all issues raised by each proposal. Members regularly noted the complex relationships among statutory provisions that must be considered in evaluating these proposals.

Delivery team members submitted minority reports to express their viewpoints on some of the issues that were discussed. Recommendations and topics that are addressed in minority reports are marked with an asterisk (✳) and page references.

[3] *State v. Schultz*, 676 N.W.2d 337 (Minn. App. 2004). This is a Court of Appeals decision that clarified previous case law concerning the expungement of criminal records under the inherent authority of Minnesota Courts and significantly reduced the extent to which criminal records that are sealed in court files may also be sealed in the executive branch. For further discussion of this decision, see pp. 26-27.

BACKGROUND CHECKS

Framework for the discussion

At the conclusion of their work, each member of the background checks team wrote a few short phrases to summarize the key messages to convey to the Task Force and Policy Group. They provide a framework that demonstrates the team's effort to balance competing interests and to develop a more consistent, understandable system. The ranking matrix referred to below is discussed in the next section.

The need for consistency; reducing complexity

- Need for consistent practice/statutes in "what is" a background check, who can do them, etc.
- Consistency – through use of [a ranking] matrix
- Use of ranking matrix for future statutory requirements
- Complexity of background checks
- Public education on what records exist and what they mean

Protecting vulnerable populations

- Remember: Protecting the vulnerable is the most important thing
- Keep children safe and fund background checks!
- The need to give preeminent weight to the safety of the vulnerable, when balancing rights of study subject vs. those receiving services
- Risk categories and the importance of protecting vulnerable populations

Arrest data and the presumption of innocence

- Concerns about the presumption of innocence
- Discriminatory schemes using arrest and suspense data
- Background checks often create a presumption of guilt
- The fact that someone was once arrested does not mean he/she did anything wrong

Providing information for decision-making

- Give people information to make their own decisions
- "Disqualifiers" should be the minimum – don't try and legislate hiring and housing decisions
- You often need arrest and incident information to get the whole picture
- Importance of clear distinctions between law enforcement (broadly defined) and other access

Safeguards for the subjects of background checks

- Assure due process
- Develop safeguards for data subjects
- Greater controls on information disseminated by data harvesters

Fingerprint-based checks

- The importance of fingerprint-based checks

What criminal justice data should be included for background checks?

The team's highest priority background check issue was to consider what data should be used in statutory background checks. The Research Report's interviews and background check inventory results indicated that background checks most commonly include the public Bureau of Criminal Apprehension (BCA) criminal history (criminal convictions for which less than 15 years have elapsed since discharge from sentence), self-reported information from the applicant, and the full BCA criminal history (including arrests and convictions for which more than 15 years have elapsed since discharge). Beyond these sources, use of other information sources varied. A key objective was to make the use of data more consistent and understandable.

The team spent four meetings on this topic. Most of its work was done in a workshop setting – specific motions and votes were not necessary until the final step. The team's approach can be described, stepwise:

Step 1 – Develop categories and levels for background checks: The team discussed general categories for background checks in related areas. Conceptually, background checks of similar types with similar levels of risk[4] would receive the same information. The team discussed consolidating background checks into levels, and increasing the number of sources and the amount of information sought about individuals at each level. The risk of harm associated with positions for which the check is required would determine the level it was assigned.

Step 2 – Assign current checks to levels (approximate): The team then explored the *current* requirements and practices for statutory background checks, and made *approximate* assignments of these checks to the levels they established. The assignments were only approximate because data currently collected for each check did not always align with any described level.

Step 3 – Assess risks and propose new levels, if needed: The team further discussed the risks involved that necessitate the background checks, using risk factors to guide them in assigning some statutory checks to a proposed level.

Step 4 – Tailor the data needed for specific checks: Finally, for some statutory checks, the team was able to decide, by vote, specifically what data should be included for the background check. In some cases, the prescribed set of data for the assigned level was "too much" or "not enough," so the team discussed some tailoring needed for specific checks.

The table on the next two pages displays the resulting categorization of checks by level. The table columns indicate that the team's focus was on vulnerable adults and children. Some other categories were not completed, as noted on the table. Following the table are more detailed discussion points relating to each of the steps described above. Data that was tailored to specific checks are shown in italics.

[4] See pages 12-14 for more descriptions of risks.

[Full table shown on the next two pages]]

Minnesota Background Checks Data Dissemination			
Levels	**Proposed level and data to be included (Completed Step 4)**	**Proposed level assigned; data to include not resolved (Completed Step 3)**	**Current level assigned (approximate); future level/data not resolved (Completed Step 2)**
A All data in levels B, C and D, plus: ▪ All government data regardless of how classified	**Note:** An explanation of the steps (1 – 4) is provided on page 8 and pages 12-15	**Criminal justice (employment/purpose)** ▪ Peace officer licensing and employment ▪ Purchase certain firearms ▪ Permit to carry a pistol *Additional for above two: DHS commitments*	
B All data in levels C and D, plus: ▪ National Crime Information Center (NCIC) ▪ FBI criminal history ▪ All POR not previously covered ▪ Court records ▪ Supervisions ▪ Suspense, only for public agencies (applies to first two columns) ▪ Open arrests over one year, only for public agencies (applies to first two columns)	**Vulnerable Adults and Children:** ▪ Adult and Child Foster Family Care; In-home Child Care licenses ▪ Non-custodial parent who will care for a child placed out-of-home ▪ Adopting families ▪ DOC-licensed facilities for minors ▪ Hospitals, nursing homes, hospices, home care providers, nursing services agencies, and residential treatment facilities ▪ Parent of child who is returning to a home that child was removed from *Additional for the above six: maltreatment; Minnesota juvenile adjudications with current statutory safeguards* ▪ Employees or volunteers who work with children *Additional: juvenile adjudications within current statute*	**Vulnerable Adults and Children:** ▪ K-12 employees ▪ Teacher licensing ▪ K-12 volunteers, student employees, and contractors ▪ Social worker licensing ▪ Bus driver licensing *Additional: driving record* ▪ Private detective and protective agency ▪ Alcohol/drug counselor license *Additional: maltreatment*	**Criminal justice purpose** ▪ Equipping vehicle with police band radio **Other** ▪ Firefighters **Vice (Gambling):** ▪ Liquor (manufacture, wholesale, retail) ▪ State lottery ▪ Horse track racing owner, operator or employee ▪ Indian tribe casinos ▪ Gambling device makers/sellers ▪ Lawful gambling (bingo, raffles, etc.) **Vulnerable Adults and Children:** ▪ Apartment managers/caretakers ▪ Court-appointed guardians and conservators (except gov't agencies, parents, trust companies) *Additional: maltreatment* ▪ Foreign student host family ▪ Transport services for elderly/disabled **Drivers** ▪ Driving instructor *Additional: drivers' records* ▪ Passenger motor carriers **Financial** ▪ Acquiring control of a bank ▪ Currency exchange ▪ Hazardous or solid waste facility permit

Minnesota Background Checks Data Dissemination			
Levels	**Proposed level and data to be included (Completed Step 4)**	**Proposed level assigned; data to include not resolved (Completed Step 3)**	**Current level assigned (approximate); future level/data not resolved (Completed Step 2)**
C All data in level D, plus: ▪ Open arrests of under one year ▪ Convictions where more than 15 years have elapsed ▪ Level 1 and 2 sex offenders ▪ "Adult" currently registered POR ▪ Warrants	▪ Court-appointed guardians ad litem *Additional: maltreatment*		▪ Limousine and personal drivers ▪ DNR volunteer instructors
D ▪ CCH public ▪ Level 3 sex offenders			▪ Accelerated mortgage payment providers ▪ McGruff safe houses

Develop Categories and Levels for background checks (Step 1)

The team reviewed a summary table of Minnesota Statutes authorizing background checks, which is provided at Appendix B. They also reviewed a summary chart and descriptive information about the design for dissemination of criminal history information in California. The California configuration showed six categories for dissemination and the types of criminal history records that are prescribed for dissemination in each category.

Categories of background checks

The categorization of background checks by type was not difficult, as a House Research report had already provided a categorization.[5] Members pointed out that criminal justice employment was a distinct category from other checks performed for public safety or criminal justice purposes (such as gun checks). They also noted that the "vulnerable people/populations" category would include children, but that risks related to different background checks in that category would vary. Categories formed as:

- Vulnerable people/populations
- Criminal justice purpose (other than employment)
- Criminal justice employment
- Drivers (for example, bus drivers, limousine drivers)
- Financial
- Vice (gambling)
- Other

Risk levels for background checks

The team discussed that the level of scrutiny to apply to a background check would depend on the risk of harm associated with positions for which the check is required. Some factors of risk that were mentioned were contact with children or vulnerable adults, especially if there is unsupervised access. Each level of check, from A to D, would include data from the previous level, but add information. There are brief descriptions below of some of the data sources. More complete descriptions of the data sources are in Appendix C.

Level A currently contains only criminal justice employment and public safety-related background checks. These are the most in-depth checks, face the highest level of scrutiny, and use the most sources of information. Some examples of data sources that have been authorized for use at this level were gang records, expunged criminal records (when authorized by law), pardon records and incident records.

Level B includes Minnesota and national (FBI and NCIC) checks, as well as additional information from POR, court records, and supervisions. Some of these data sources overlap, to some extent, but also provide supplemental information. For example, court records would show the same felony, gross-misdemeanor and targeted misdemeanor-

[5]Minnesota House Research, *Background Check Statutes: An Overview*, revised January 2005

level convictions that are shown on BCA reports, but would also include any misdemeanor-level convictions that were not shared with the BCA. Some open arrests recorded at the BCA also are found to have dispositions on file at the courts. Level B also includes two sources of information that the team recommended be available *only* to public agencies:

- The BCA suspense file is a database of court and custody records that cannot be matched to their arrest records. Considering that these records are not fingerprint-based and may be subject to errors in interpretation, the team decided to recommend access to the suspense file only to public agencies. Public agencies were perceived to be subject to greater accountability in making interpretations.
- Open arrests over one year old can include both cases in process (where a defendant has been arrested, charged, and his or her case is still in process in the courts), and older arrests where charges may have been dropped or never filed. Some BCA records that appear to be open arrests have a disposition on file at the courts. Some team members stressed that providing open arrest information to background check entities does not presuppose that agencies would disqualify someone based on that information alone. Other members stated that providing the information to a prospective employer or landlord can result in immediate disqualification. Members were more confident that public agencies that are exempt from the Criminal Offenders Rehabilitation Act (Chapter 364) would not discriminate based on arrest data. A member noted that many public agencies are not allowed to use arrest records that are not followed by a valid conviction.

Level C is a Minnesota-only check that includes additional information from the full (public and private) BCA criminal history, including open arrests under one year, convictions where more than 15 years have elapsed since the date of discharge, level 1 and level 2 sex offenders, adults who are registered on the Predatory Offender Registry (POR), and warrants that are public at the local level. Members noted that access to warrants can be difficult, and would need to be improved.

Level D is a Minnesota-only check of statewide public information relating to convictions. It includes publicly-available information from the BCA (convictions in which less than 15 years have elapsed since discharge from sentencing) and level 3 sex offenders from the Department of Corrections. This was viewed as the minimal amount of information. Few of Minnesota's current statutorily-required checks fit within this category, as the Legislature generally has required checks in higher risk categories.

Assign current checks to levels (approximate) (Step 2)

The team explored the *current* requirements and practices for statutory background checks, and made *approximate* assignments of these checks to the levels that had been established. The assignments were only approximate because data currently collected for each check did not always align with any described level. Most statutory checks authorize a search of FBI and NCIC records, so were assigned to Level B. Not all checks at this level use the other sources defined in Level B. Particularly, non-criminal justice agencies are not currently able to access the BCA suspense file.

Assess risks and propose new levels, if needed (Step 3)

Individual members who were more familiar with specific checks recommended levels for team discussion. The team used a list of risk factors to guide them in the assignment of statutory checks to risk levels:

- Who is being protected from risk, and how vulnerable are they to harm?
- How isolated is the relationship or contact?
- What is the authority or power relationship with the population served?
- To what extent is this a position of "public trust"?
- To what extent will there be access to or control of electronic systems or architecture?
- To what extent will there be access to or control of sensitive data?

The team was able to recommend a level for 18 of the statutory checks. Many of the checks remained at Level B due to the risk level of the check and the related need for a national check.

Tailor the data needed for specific checks (Step 4)

Members who were more familiar with specific checks also recommended data sources to add or exclude for specific checks. Six checks were considered to be of similar risk; all allowed for unsupervised contact with vulnerable populations in a position of authority. These were:

- Adult and child foster family care; In-home child care licenses
- Non-custodial parent who will care for a child placed out-of-home
- Adopting families
- DOC-licensed facilities for minors
- Hospitals, nursing homes, hospices, home care providers, nursing services agencies, and residential treatment facilities
- Parent of child who is returning to a home that child was removed from

For this grouping, the team recommended additional data to include maltreatment reports, a database maintained by the Department of Human Services of all people who have maltreated an adult or child. They also recommended access to Minnesota juvenile adjudications with current statutory safeguards. They also recommended open arrests for over one year.[6]

Juvenile adjudications, with current statutory safeguards: Currently, each of the six background checks above has some level of access to juvenile records, but the practices and circumstances under which juvenile records are accessed for these six checks vary.[7] The team decided that current statutory safeguards and controls on decision making with

[6] In Favor 7. Opposed 2. Abstain 0. (The same vote totals were recorded on two votes relating three checks each on October 4, 2006)

[7] Most of the checks provide for a search of teenagers and young adults living in a home setting. The teenager/young adult is usually a different person than the applicant for the job/license.

current records should apply. However, it was noted that the extent to which juvenile adjudications should be disseminated and how they are used to disqualify individuals should be further studied.

Open arrests: There was disagreement over the extent to which open arrests, or any arrests, should be included.*

- Those opposed to using arrest data stated that studies show that people of color are arrested more often without charges being filed. The lack of fairness of current practices and the social implications are important to consider when arrests records are applied against them. They noted that use of arrest data should depend on what type of check it is.
- Supporters of the use of open arrests noted that arrest data can be useful information. Some open arrests point to actual dispositions in the court files or cases that are still in process at the courts. They also pointed out that access to the arrest data does not presuppose disqualification based on the information, and that past arrests are reviewed carefully. For example, one agency's processes require background investigators to show, with a preponderance of the evidence, that the applicant did the act he/she was accused of, and any disqualified applicants can request a hearing. Finally, it was noted that repeated arrests for some offenses, such as domestic violence, are cause for concern for some occupations and licenses.
- It was noted that the team was also recommending automatic expungement for some arrests (see page 29), so other team recommendations would address some issues with open arrests.

Employees or volunteers who work with children: The team discussed tailoring data for another category, "employees or volunteers who work with children." The team discussed that the risks involved with employees or volunteers who work with children are very similar to the risks involved with the six categories they had already discussed (unsupervised contact with a vulnerable population in a position of trust). However, this category involves a mix of public and private volunteer and employment situations. It also involves some supervised situations, as well as unsupervised situations. Many members were uncomfortable with providing suspense file data to private organizations that may not have policies to accurately identify individuals. They also were uncomfortable with providing arrest data in circumstances where there was less public accountability for the use of the data. Therefore, the team decided to categorize these checks at the same level as the previous six (Level B), but to state that only public agencies in this category would receive suspense and open arrest data over one year old. They also clarified that access to juvenile adjudications within this category would not expand beyond the current statute.[8]

Arrest and suspense data: After concluding this discussion, the team decided that suspense and open arrest data over one year old should only be given to public agencies in general, for the Level B checks (see earlier discussion about the levels of checks.)

* This topic is addressed in the minority reports of Richard Neumeister and Steve Holmgren.

[8] In Favor 7. Opposed 2. Abstain 0 (Vote on October 4, 2006).

Under what circumstances should state and national fingerprint-based searches be performed?

Fingerprint-based searches are currently performed only for FBI (national) checks, where authorized by federal or state law. As the Research Report noted, the FBI requires fingerprints in order to search its criminal records. Currently, the BCA does not conduct a state-only fingerprint check against state criminal files when a national check is not authorized. One key issue to consider was whether the state should check its own criminal history files with a fingerprint submitted from the individual, even when a national check is not authorized.

Another issue concerned the circumstances under which national checks should be performed, in addition to state checks. The delivery team considered this as a distinguishing characteristic between the level "C" and level "B" background checks, described in the previous section.

Recommendation

Require fingerprint-based checks of the state criminal history repository, even in cases where the FBI check is not required, for background checks required by Minnesota Statutes.[9]

Discussion points

The benefit of error reduction with fingerprint-based checks

The primary advantage to conducting fingerprint-based checks, even when an FBI check is not authorized, is to reduce errors in identifying individuals. Delivery team members noted that error reduction benefits both the subject of the check and the background investigator. The team noted that, when making decisions that substantially affect people's lives, it is important to be as accurate as possible.

Another benefit is that it would also reduce the amount of time that background investigators spend sifting through and sorting out duplicate and similar names and dates of birth.

Fingerprint-based checks reduce two types of errors that occur with name-based checks. These errors arise because many people have the same or similar names and birth dates, and there is widespread use of "alias" names by people engaged in criminal activity. Fingerprint-based searches, compared to name-based searches, reduce the instance of "false positives," in which a person who has no record is mistaken for an individual with one. They also reduce "false negatives," in which a person's criminal record is not found using a name-based search.

[9] This recommendation was made before the team instituted motion and voting procedures. The minutes (8-2-06) show that 10 members attended, and one expressed that he was uncomfortable with it, noting that he was not sure that the increased accuracy was outweighed by the cost and logistics concerns.

These benefits can be quantified, to some extent. The BCA recently performed a study of false negatives at the BCA front desk, where people may walk in to request copies of their criminal histories. The study captured prints from subjects, with their consent, and ran them against the Automated Fingerprint Identification System (AFIS). The BCA found that in about one percent of cases, there was a "hit" through fingerprint searches where there would not have been a name and date of birth hit. This provides an approximation of the false negative rate in current practice. The BCA also estimates that the current rate of "false positives" is about three percent.

Continued need for name-based searches and individual privacy protections

Team members clarified that, while fingerprint-based searches reduce error in identification of the person, many other data elements on a background check report also can contain errors. For example, a felony conviction that was reduced to a misdemeanor after successful completion of probation might not be correctly updated. Furthermore, some data banks, such as court records, are not biometrically searchable. Caution should continue to be exercised in conducting name-based searches. The team's later recommendations regarding informed consent and individual privacy protections included a recommendation that the subjects of the checks receive copies of their checks and be informed of their rights to correct information about themselves. Implementation of state fingerprint-based checks does not reduce or eliminate the need for this information to be provided.

Implementation and logistics

While supporting fingerprint-based checks for BCA records, members discussed cost and other logistical challenges involved with implementing fingerprint-based checks.

The cost of the checks is a primary issue, both for executive branch implementation costs and ongoing costs. The cost that could potentially be charged to applicants is another issue, as fingerprint-based checks currently cost $29 for an FBI check (a state fingerprint-based check might be cheaper), compared to $8 (for individuals) or $15 (for employers) for a name-based check.

It was noted that the cost might have the unintended consequence of discouraging employers and landlords from conducting fingerprint-based background checks in cases where they are optional. Considering this possible unintended consequence for voluntary checks, the delivery team recommended that fingerprint-based checks be implemented first for checks that are required by law. It was also noted that, as time passes, the technology will likely become less expensive.

Adequate infrastructure to take fingerprints and the stigma attached to fingerprinting are additional issues. Current practice, for FBI checks, is to take fingerprints at local police departments, booking facilities, the BCA or private companies. For human services background checks alone, the volume is about 240,000 per year. This volume might interfere with the efficient processing of criminal justice-related fingerprints. Additionally, people applying for jobs or licenses might feel intimidated or criminalized

by being required to provide their fingerprints, especially at a police station or jail. The stigma attached to fingerprinting may decline as fingerprints become more commonplace in civil settings, such as retail check-outs. The U.S. Attorney General's report on background checks recommended that fingerprint devices be installed in places other than police departments to address these concerns. One option is to provide the infrastructure at driver license offices.[10]

Infrastructure to take fingerprints might also be affected by action at the federal level. Currently, two national studies recommend broadening access to FBI criminal history files, and contemplate the involvement of private sector parties in taking prints.[11]

Considering the cost and implementation concerns, members concluded discussion in favor of fingerprint-based checks for mandatory state background checks, with the understanding that many logistical details and a reasonable timeline would need to be recommended by subject matter experts.

[10] U.S. Department of Justice, *The Attorney General's Report on Criminal History Background Checks*, June 2006, p. 69.

[11] The two national reports are: SEARCH, the National Consortium for Justice Information and Statistics, *Report of the National Task Force on the Criminal Backgrounding of America*, May 2006 and U.S. Department of Justice, *The Attorney General's Report on Criminal History Background Checks*, June 2006.

What informed consent and individual privacy protections should be in place?

In addressing this topic, the team reviewed information in the Research Report, as well as the following sources:

- A list of the Fair Information Practices (FIPs), including cross-references to how the practices have been implemented in the Minnesota Government Data Practices Act (MGDPA), provided at Appendix D;
- Summary information about Department of Human Services' processes for subjects of background checks, an example of how Fair Information Practices have been applied to statutory background checks; and
- A set of general informed consent and individual privacy protections, referenced from two national task force reports.[12]

The team considered and recommended the following procedures as one set.

Recommended set of procedures[13]

When Minnesota statutes require a background check, those responsible for conducting the background check, as well as those responsible for making employment, licensing or other decisions with the background check information should put into place administrative procedures to ensure that individuals are given sufficient information and process protections while undergoing the background check.

Provide information to individuals that a background check is required by law or provide a consent form. The information provided or consent form should include, at minimum:

- The type of criminal history records check authorized by the law, including the databases that would be checked;
- The scope of the check;
- The duration of the check, including the number of years of a "look back" period
- Whether the check covers automatic updates to check results;
- Whether re-disclosure is allowed and, if so, under what circumstances; and
- The extent to which the law allows storage and re-use of the information obtained to conduct the check.

Provide notice of disqualifying offenses, if any, identified in statute. Individuals should have access to information that describes disqualifying offenses at the earliest point in time possible, preferably prior to completing an application for employment, licensure or other service.

[12] The two reports are SEARCH, the National Consortium for Justice Information and Statistics, *Report of the National Task Force on the Criminal Backgrounding of America*, May 2006, and U.S. Department of Justice, *The Attorney General's Report on Criminal History Background Checks*, June 2006.

[13] In favor: 8. Opposed: 0. Abstain 1. The recommendations are worded as policy study recommendations. They are not worded as draft statutory language.

Provide individuals with a copy of the background check study results. Preferably, individuals should receive a copy before final action is taken based on the information in the record.

Provide notice of the data subject's rights to access and correct data. Data subjects should be informed of their rights to obtain both name-based and fingerprint-based criminal history record check results about themselves, and should have the opportunity to review and correct such records at minimal or no cost.

Provide notice to the background check subject when the background check is completed, and identify who initiated the check. This ensures that background checks are not performed without the individual's knowledge. This would apply when an information item, rather than a consent form, was provided.

Discussion points

The team considered, but did not recommend, procedures for background checks that are not required by statute. This is an area for future policy development. The team particularly is interested in the relationship between these practices and those of private sector data harvesters.

Members generally spoke in support of providing enhanced protections. While they will entail more administrative burden, these enhancements seem necessary in light of the increasing prevalence of background checks. Two national task forces have looked into these issues and recommended similar practices to respond to the increasing non-criminal justice interest in accessing FBI criminal history files.

Use limitation recommendation[14]

Information, fingerprints or other data provided by the subject of a background check, solely for the purpose of the background check, shall only be used for the purpose of the background check.

Discussion points

This recommendation addresses other uses of information provided solely for the purpose of a background check. For example, it would keep an employer from selling the background check information or using it for other purposes, such as retail applications.

The team clarified that this recommendation would not prevent the entity conducting the background check from using the same information provided for the initial background check to do subsequent re-checks on a periodic basis.

The team also clarified that it would not prohibit the use of *all* information provided on an employment or housing application, simply because a background check question was asked on the same form. The intent is to limit the use of information provided solely for the purpose of the background check.

[14] In favor: 5. Opposed: 4. Abstain 0. (Vote on October 11, 2006)

When should a background check be mandatory?

In several categories, the Legislature has made an authorized check non-mandatory – conducting the check is left to the discretion of the licensing or hiring authority. These optional checks are:

- K-12 volunteers, student employees, and contractors
- Employees or volunteers who work with children
- Foreign student host family
- Firefighters
- Hazardous or solid waste facility permit
- Accelerated mortgage payment providers
- DNR volunteer instructors

Recommendation

Two non-mandatory checks in the "Serving Children" category should be mandatory for employees and independent contractors. State background checks for volunteers 18 or older who work directly with children in an unsupervised setting should be mandatory *when provided* at no charge by state executive branch agencies.[15] This involves two situations where background checks are now optional.

1. K-12 volunteers, student employees, and independent contractors seeking to work in schools (M.S. 123B.03). [16]
2. Employees or volunteers for public, private, and nonprofits who work with children and are not checked under another statute (M.S. 299C.61, 299C.62, 299C.64). [17]

Discussion points

- A major reason these checks are now optional is the cost, especially for volunteers. The team has made a recommendation to remove the cost barrier for volunteers. (See the following report section.)
- The intent of this recommendation is to make state background checks mandatory for volunteers, but only if they are available at no charge. This would allow policymakers to balance no-cost checks with available resources, for example, funding a pilot program. It would also protect volunteers from unanticipated costs if funding was initially approved but cut in the future.

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[15] In favor 7. Opposed 2. Abstain 2. (Vote on October 18, 2006)

[16] M.S. 123B.03, Subd. 1 (c) states: "A school hiring authority may, at its discretion, request a criminal history background check from the superintendent of the Bureau of Criminal Apprehension on any individual who seeks to enter a school or its grounds for the purpose of serving as a school volunteer or working as an independent contractor or student employee."

[17] Minnesota House Research, *Background Check Statues: An Overview*, revised January 2005, page 10 summarizes that this category "Includes owners, employees, and volunteers who care for, treat, educate, train, or provide recreation for children and who are not subject to another statutory background check as a condition of occupational licensure or employment."

- The recommendation also is focused on adult volunteers, working directly with children in unsupervised settings. This is to focus on the highest risk area while not adding an undue burden for lower risk activities such as volunteers who do administrative work with no client contact or students mentoring their classmates in a group setting.

- The intent is not to mandate FBI checks, but still provide them at no charge where nonprofits or political subdivisions/agencies would choose to do them. Since FBI checks are fingerprint based, this is an attempt not to discourage volunteers by mandating fingerprinting under today's slow and onerous process. This could be revisited when the new AFIS (Automated Fingerprint Identification System) is implemented and fingerprinting processes are improved in the future.

- The cost of a background check for an employee or an independent contractor is minimal compared to all the other costs involved in hiring or contracting. This minimal investment in a background check is worth the added level of protection it provides for the children.

At a meeting prior to the consideration of the above proposal, members had discussed the legislative histories for some of these checks. For example, the Legislature did not mandate checks for volunteers because many of the volunteer organizations were nonprofits that did not have funding to put into them. Members expressed a reluctance to revisit what the Legislature had decided. They also noted that representatives from some of these groups were not at the table to discuss the impact that mandatory checks would have on their organizations (firefighters, for example). Members were more comfortable making recommendations to the Legislature regarding more consistent background check business processes, and less comfortable making judgments about which categories of occupations/licenses should be subject to mandatory checks.

At a subsequent meeting, however, the team considered and approved a proposal to provide background checks free of charge for some volunteers (see the funding section below). Since the cost of the background checks was a major barrier to requiring checks for volunteers, the team reconsidered mandatory checks for the category "Employees or volunteers who work with children," as noted above.

The team also examined background checks in relation to risk factors that included the vulnerability of the population served (children), the isolation that an employee or volunteer might have with that population, and the power and authority relationship between the employee/volunteer and the child. Such risks favor making these checks mandatory rather than optional.

Funding for background checks

A key question concerns the funding for background checks and who should be responsible to pay for them. To examine this issue, the team reviewed a summary table of Minnesota Statutes that require or authorize background checks, and an article from the National Conference of State Legislatures (NCSL) entitled, *The Appropriate Role of User Charges in State and Local Finance*. The NCSL article provides principles for the appropriate use of user charges, one of which addresses public vs. private goods:

"User charges may be appropriate when government is performing a service that narrowly benefits an individual taxpayer, or for certain government activities that compete directly with private sector providers." [18]

User charges for background checks, in general, are justified under this principle when they provide benefits to individual persons or businesses. They may be appropriate when they facilitate a risk analysis for the business in hiring an employee, for example. However, they are not as well justified in circumstances that produce public benefits. For example, it may not be appropriate to charge a citizen who intends to volunteer his or her time for public benefit.

Recommendations – Background checks for volunteers

State agencies to provide background checks at no charge for volunteers for nonprofits or political subdivisions/agencies when the background check is mandatory or authorized by state statute, where not otherwise reimbursed. [19]

Support the direct costs of providing background checks for volunteers in nonprofits or political subdivisions/agencies when the background check is mandatory or authorized by state statute, and where not otherwise reimbursed, for state and federal records. [20]

Discussion points

The rationale to provide background checks free of charge to volunteers was that it is good public policy and an investment to help nonprofits and organizations recruit more mentors and other volunteers. The intent was to pay for background checks when the volunteer service is a public good.

The team tailored this recommendation to specific circumstances of need, and defined the type of checks that would be subsidized, as follows:

[18] National Conference of State Legislatures, *The Appropriate Role of User Charges in State and Local Finance*, Updated 29 July 1999. http://www.ncsl.org/programs/fiscal/fpufmain.htm#prnciples
[19] In Favor 5. Opposed 3. Abstain 1. (Vote on September 27, 2006)
[20] In Favor 8. Opposed 1. Abstain 2. (Vote on October 18, 2006)

Scope of "volunteers": The definition of "volunteer" should be confined to categories of current statutorily-authorized checks that stated they were for volunteers – K-12 volunteers, volunteers who work with children, and DNR volunteers, for example. The recommendation does not intend for any volunteer to obtain a free background check for any reason other than those instances where the Legislature has deemed the risk to be so significant that the background check is in statute. For additional clarification, the team stated that these would be only volunteers for nonprofits or political subdivisions/agencies.

Privacy protections: It was noted that many optional checks for volunteers are not done due to the cost. Conducting them with no charge would allow more checks to be done. It is important to ensure privacy protections and make certain there has been consent.

Scope of check: The amount of government subsidy would relate to how many data banks could be accessed, in which branches of government, and at what level. For example, there is a charge for the BCA to get checks at the federal level. The team clarified that the intent was to subsidize state and federal checks, specifically the BCA computerized criminal history and FBI checks (when authorized by law). Courts and local agencies might still need to charge a fee, but this would be a step in the right direction.

Accounting for checks that are already subsidized: Background checks for some nonprofit volunteers are already reimbursed in other state or federal program budgets. This proposal should not replace or add to that current level of subsidy.

Concern about the cost impact: The team discussed that it would be difficult to anticipate the number of additional checks that would be authorized. Once it is known that the checks are provided at no charge, requests "could come out of the woodwork." The team also recommended supporting the direct costs of providing these checks. Without funding, it would take longer to get the checks done at the BCA, if they are overwhelmed with new volumes of background checks with no additional staffing to do them.

Additional issues

Unfinished business

The team made progress in defining risk levels for background checks, assigning many of the statutory checks to a level, and deciding specifically the data that should be provided for specific checks. This task proved to be time consuming, and the team was not able to complete the task of assigning all 38 statutory checks in the time given.

The team also was not able to discuss the extent to which the CIBRS database should be used as a data source for background checks required by law. The Research Report addresses this issue, and the Commissioner of Public Safety will report to the Legislature on this topic.

Topics for future study and interesting ideas

At the conclusion of its work, each team member was asked to list a few topics for future research, or other interesting ideas that were not within the scope of the team's work. At an earlier meeting, the group had identified the issue of access to records and disqualifications as related to juvenile adjudications as a topic for further research. Suggested topics highlight the need to discuss the data harvesting issues, in particular.

Data harvesting

- Further study – data practices policies applying to data harvesters
- How to deal with data harvesters
- Data harvesting needs more study
- Regulation of private sector "info broker"
- Criminal data harvesters

Consistency; simplifying administration

- Condense those 38 or so categories into something that is more consistent
- Consistency in studies where feasible
- One background checks statute
- Create an easy-to-use official site for criminal data
- Explore giving one agency the duty of doing background checks for everybody
- Rap-Back (notices back to background screeners of new offenses)

Rehabilitation goals and laws

- Revisit and clarify 364 (The Minnesota Offender Rehabilitation Act)
- Rehabilitation laws for the private sector

Legal guidance and protection

- Clear legal guidance and protection to users of information, i.e., if agency is aware of information, what can the agency do with it, what does the agency have to do with it, and what happens if the agency does it wrong

EXPUNGEMENT of CRIMINAL RECORDS

Background

Previous research

Access to criminal records: Criminal records are accessed from the courts, as well as state and local executive branch agencies. Many executive branch criminal records are classified as public data under the Minnesota Government Data Practices Act. Other criminal records that are classified as private are available with the data subject's consent, for example, on employment and housing applications. Access to court records is governed by the Rules of Public Access to Records of the Judicial Branch. Records can also be accessed from bulk purchasers of public criminal records. The growing scale of the data harvesting industry has increased the impacts of criminal records on individuals.

Collateral consequences: The consequences of a criminal record that are beyond the sentence and conditions imposed by the courts are often called "collateral consequences." Federal and state laws preclude or limit access to jobs, housing, or other opportunities for persons with certain types of criminal records. A recent compilation by the Minnesota Revisor of Statutes of statutory collateral sanctions identified about 150 such provisions.[21] Additionally, in the private sector, decisions about employment and housing are routinely made with knowledge of an individual's criminal history.

Expungement as a remedy: Historically, one form of relief from collateral consequences has been the expungement of a criminal record. Following requirements set out in statutes and case law, judges consider the merit of individual petitions to have the criminal record be sealed. The record may be unsealed with a court order for law enforcement and other criminal justice agencies for various uses. However, as to the general public, the record has, at least in theory, disappeared. For serious crimes specified in statute, expungement is not available, and the record remains publicly accessible.

Recent developments in Minnesota: In 1996, Minnesota expungement statutes were modified and the allowable circumstances for expungement became more limited. Since then, some judges have used the well-established (under the doctrine of separation of powers) "inherent authority" of the courts to grant some expungements in the interest of justice, based on a balancing of considerations for some offenses and circumstances that were not provided for in statutes. Recent decisions of Minnesota's Court of Appeals (for example, *State v. T.M.B.* and *State v. Schultz*[22]) limit inherent authority expungements to be effective on court records only, not on executive branch records. Thus, an expungement granted by a court under its inherent authority does not change the BCA

[21] M.S. 609B. http://ros.leg.mn/bin/getpub.php?pubtype=STAT_CHAP&year=2006&section=609B
[22] State v. T.M.B., 590 N.W.2d 809 (Minn. Ct. App. 1999) and State v. Schultz, 676 N.W.2d 337 (Minn. Ct. App. 2004)

records. Since the BCA is a central source for those who seek criminal records, such expungements generally have little practical beneficial effect. Practitioners note, however, they are still sought and are useful in some circumstances.

Recent developments nationally: There is an emerging perception nationwide that expungements are rapidly losing practical usefulness. Other forms of relief also appear inadequate to the magnitude of the problem, so there is continued hope that expungements can be made more effective, in conjunction with other remedies, while still preserving public safety and the public's right to know about criminal justice activities.

Expungement team framework for discussion

While developing proposals, the expungements team members also developed policy priorities, listed goals and values, summarized "big picture" considerations, and listed principles they would apply in developing proposals.

Goals and values

- The purpose of background checks must be preserved (regarding expunged data)
- Recognize competing perspectives
- Changes are needed that will involve a balancing of rights
- Fairness and clarification are needed
- Criminal convictions should not be the end of useful life for people
- Remedies must be "real"

Big picture considerations

- Create the conditions: what can never be expunged, what can be expunged in certain time frames, and what can be automatic expungements. Then let judges make the exceptions when justice requires it.
- A fundamental question is, what does an expungement mean?

Policy priorities

- Consistency in definitions and administration
- Individual rights protection, rehabilitation, and access for disadvantaged persons
- Balance between interests of public safety and interests of individuals who are disadvantaged by having a criminal record
- Protection of the public, public safety, and critical government functions
- Transparency of data and public rights

Principles to apply in developing proposals

- Some expungements should be automatic (no action required by the subject)
- Criminal justice agencies (some) should have access to expunged records
- Commercial data harvesters and others should be responsible for updating their records for expunged criminal records
- Petitioners should demonstrate rehabilitation when seeking expungement of convictions
- Recognize that the courts will retain inherent authority to order expungement when justice so requires, but that a more comprehensive expungement statute may reduce the circumstances in which inherent authority expungements might be sought

Summary of expungement recommendations

Twelve recommendations were developed by the Expungements Sub-team in eight meetings. Over 30 proposals were considered. The recommendations address the initiation of "automatic" expungements, new eligibility requirements for petitioning for expungement, changes in access to expunged records, and an issue of expungement process. Within these changes to the statutory framework proposed here, *expungements would be effective on both judicial branch and executive branch records.* Presented first is a one-page *overview*, then a more detailed review of the team's discussions.

Automatic expungements

Expungements would be automatic or administrative under certain circumstances. They would occur when all conditions are successfully completed, including payment of restitution. They would occur for:

- arrests that do not result in charges or where charges are dismissed, for *non-person crimes only*, and
- for stays of adjudication, continuances for dismissal, and for diversion.

Eligibility to petition for expungement

Conditions and specific waiting periods for eligibility to petition for expungement of certain convictions are recommended. Eligibility would be conditioned on successful completion of all terms of sentencing, including payment of restitution. Juvenile records would be eligible for expungement with respect to records that are publicly accessible.

Access to expunged records

Expunged records would be available to government agencies to conduct statutory background checks if the agency provides, in statutes or rules, for a review process including the right to administrative or judicial review. Expunged records would be accessible to the courts, law enforcement, prosecutors, probation officers, and corrections officers without a court order, and the data may be transmitted between and among these agencies. The team noted disagreement about whether expunged criminal records should be available to state agencies for *non-statutorily mandated* background checks when the agency provides a review process in either statutes or rules.

Effect of expungements

An expunged conviction would still be a conviction for purposes of gun laws, sex offender registration, expungement proceedings, sentencing, subsequent prosecution, other crimes evidence, impeachment, and statutorily mandated background checks. The effect of a statutory expungement would be to "restore the person, in the contemplation of the law, to the status the person occupied before the arrest, indictment, information, or conviction, except as otherwise provided by law."

Expungement process

Where practicable, the petitioner for an expungement should attach a copy of the complaint or the police reports for the offense to the petition.

Automatic expungement

The following recommendations provide for automatic (administrative) expungements in certain circumstances, with effect on both judicial and executive branch records. The same rationale generally supports all recommendations for automatic expungement:

- Automatic expungements would apply to the types of cases that courts are most likely to expunge, and where objections are least likely in current practice.[23]
- Advocates for petitioners noted that both access and the process are difficult for most petitioners, including disadvantaged populations. Something more automatic would be helpful to them.
- Automatic expungements would reduce burden on the courts and other agencies by reducing the volume of court petitions, motions, and hearings
- A promise of an expungement upon completion of conditions could be an incentive for defendants to comply with conditions, such as treatment

Recommendation – automatic expungement for arrests and dismissed charges[24]*

For non-person crimes: (a) when an arrest does not result in charges, an expungement will be automatically triggered one year after the arrest, and (b) when charges are dismissed, an expungement will automatically be triggered one year after the charges are dismissed.

- If a charge is filed after the expungement, the expunged record is unsealed.
- The expungement applies to records of the executive and judicial branches.
- The expunged record remains available to the courts, prosecutors, law enforcement, and probation, without a court order.
- The expunged record remains available to government agencies to conduct statutory background checks if the agency provides, in statutes or rules, for a review process including the right to administrative or judicial review. [25]

Discussion points

Why arrests are on the record: There was discussion about why arrests remain on the record, when an investigation is over, and there are no charges. The records may still be relevant for criminal justice purposes – for example, they could show a pattern of arrests.

The need for restricted public access to arrest records: It was noted that arrest records would still be available for criminal justice purposes – just not to the public. Sealing the record was seen to support the presumption of innocence, noting that research, surveys, and journal articles confirm that employers, once they see an arrest record, back away.

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[23] Minnesota Department of Administration, *CriMNet Program Office: Background Checks and Expungements – Research Report*, October 2006, p. 80.

[24] In Favor 11. Opposed 3. Abstain 0. (Vote on October 10, 2006. Language clarified at Oct. 12 meeting.)

* This topic is addressed in the minority reports of Richard Neumeister, Julie LeTourneau Lackner, Steve Holmgren and Mark Anfinson.

[25] The motion that passed contained the language ". . .including the right to a hearing." Members subsequently refined that language to ". . .including the right to administrative or judicial review."

No applicability to person crimes: Members did not want to automatically expunge arrests for crimes against persons. An example offered was domestic violence cases, where the victim may not cooperate with police. Individuals would need to petition for expungement in these cases.

The one-year timing question: Members discussed how long an arrest should remain on the record before an expungement is triggered. A consideration was the length of time it can take to complete investigations and file charges. Some thought that this should not matter because the arrest record is only sealed to the public – it is still available to law enforcement for investigations. They further noted that records of continuing investigations are confidential. Some noted the timing should be based on when law enforcement says that it has closed the investigation. The team decided on a one-year period, starting from the date of arrest (if there was no charge) or when the charges are dismissed. It was noted that someone must notify the BCA that no charges were filed in the year. It was also noted that in many cases, there was no arrest (tab charges), so the trigger would be one year after arrest or from the date charges are dismissed.[26]

Recommendation – automatic expungement for continuances for dismissal and stays of adjudication[27]

- Automatic expungement by the court administrator for continuances for dismissal where the prosecutor agreed to the continuance for dismissal, and the conditions, including restitution, have been met. Applies to judicial and executive branch records.
- Automatic expungement by the court administrator for stays of adjudication where the prosecutor agreed to the stay of adjudication, and the conditions, including restitution, have been met. Applies to judicial and executive branch records.
- The expunged record remains available to the courts, prosecutors, law enforcement, and probation, without a court order.
- The expunged record remains available to government agencies to conduct statutory background checks if the agency provides, in statutes or rules, for a review process including the right to administrative or judicial review. [28]

Discussion points

Implementation concerns for court administration: The team noted that the court administrator would have to notify the other parties in the executive branch of the expungement. It was noted that this would be an implementation challenge and would probably require some MNCIS programming. It also presents a problem for the courts to keep track of prosecutor agreements.

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[26] For open arrests, for which no charge has been filed, the onus would be on law enforcement to automatically expunge the arrest record. For incidents that resulted in charges that have been dismissed, the onus would be on court administration to initiate the automatic expungement.

[27] In Favor 11. Opposed 2. Abstain 0. (Vote on September 18, 2006)

[28] The motion that passed contained the language, "Law enforcement, including prosecutors, will continue to have access to the sealed records. Agencies required to do background checks also would have access." Members subsequently expanded the list of agencies that would have access to "courts, prosecutors, law enforcement and probation," and narrowed access for conducting background checks to those agencies that provide, in statutes or rules for a review process including the right to administrative or judicial review."

Recommendation – automatic expungement for diversion[29]

Automatic expungement by the court administrator upon successful completion of diversion where the prosecutor agreed to the diversion, and all conditions, including restitution, have been met. Applies to judicial and executive branch records.

- The court will notify affected public agencies if the diversion is post-plea, and the prosecutor will notify affected agencies if the diversion is pre-plea.
- This will not change current law as to gun laws or sex offender registration.

Discussion points

Same caveats as above apply: The team clarified that they would apply the same caveats regarding access to records as were applied for dismissals and stays of adjudication.

Applicability – pre- or post-charge diversion programs: The team discussed the applicability to diversion programs prior to court action. It was clarified that diversion programs can be pre- or post-charge, and the recommendation applies in both cases.

Some diversion programs are not eligible under current law: It was noted that some diversion programs (such as Washington County's) require that people admit guilt before entering the program. In these cases, the diversion is not currently eligible under 609A as a "resolution in favor" of the petitioner. This provision would allow for expungement of these records.

Responsibilities for notification: As originally worded, court administrators were responsible for informing other public agencies of the expungement. After some discussion relating to information the courts and prosecutors might have for various types of diversion programs, the proposal was modified so that the courts would notify other agencies if the diversion is post-plea, and prosecutors would notify if the diversion was pre-plea.

Sex offense and gun laws: The team noted that it is important to recognize that sex offense and gun laws are not changed by this proposal.

The meaning of prosecutor agreement: It was noted that agreement by the prosecution concerns whether to allow the diversion, the stay, the dismissal, etc. It is *not* agreement on whether to grant an expungement. It was clarified that if a prosecutor agrees that you get a stay or diversion and meet your obligations, you get the automatic expungement.

[29] In Favor 11. Opposed 2. Abstain 0. (Vote on September 18, 2006)

Eligibility to petition for expungement

The team recommended new provisions for eligibility to petition for expungement. Unlike the automatic expungement recommendations, these recommendations define parameters that would allow (or not allow) someone to *petition* for expungement, have a judge consider the merit of the individual case, and, if successful, have the expungement apply to both judicial and executive branch records. These would supplement current eligibility provisions that allow expungement in three cases[30]:

1. For certain controlled substance offenses, upon dismissal and discharge
2. For juveniles prosecuted as adults, upon discharge
3. For actions or proceedings that were resolved in favor of the petitioner

Recommendation – eligibility for certain convictions[31]

Persons are eligible to petition for expungement after a specified number of years following successful completion of the terms of sentencing. Years shown are *from* the date of successful completion of all sentencing conditions *to* the date of first eligibility to petition for the expungement of convictions under statute.

Convictions	Felony	Gross Misdemeanor	Misdemeanor	Petty Misdemeanor
Person crime	15 years	10 years	7 years	3 years
Other crimes (property, drug)	5 years	3 years	2 years	1 year

- Persons with certain convictions are eligible to petition for an expungement.
- If granted, the expungement is effective on judicial and executive branch records.
- The new language would supplement (not replace) current law concerning eligibility to petition for expungement of a criminal record.
- All sentencing conditions must have been satisfactorily completed.
- If there is a conviction subsequent to the crime sought to be expunged and that subsequent conviction is for a felony, gross misdemeanor, or targeted misdemeanor, then the "clock starts over" – that is, the eligibility date to petition for expungement for the earlier crime is reset to the date of satisfactory accomplishment of all sentencing conditions for the later conviction.
- Convictions for certain crimes are ineligible under this scheme: (1) registration crimes, as in current law (2) traffic offenses, for example, DWI, speeding, (3) one of two charge counts that stemmed from the same set of facts, but the person pleads to the lower level offense.

[30] See M.S. 609A for details.
[31] In Favor 7. Opposed 1. Abstain 1. (Vote on October 12, 2006)

Discussion points

Description of the framework: This framework sets criteria that must be met before expungement of certain convictions can occur. Currently the majority of expungements of convictions (under inherent authority) result in judicial branch records being sealed. This expungement framework would be effective on both executive branch and judicial branch records, yet set some limits on judicial discretion. The time frames consider the level and type of offense. Person crimes are more serious than non-person crimes, and therefore petitioners would need to wait longer to petition for expungement of these offenses. Likewise, petitioners would need to wait longer to petition for higher-level offenses.

The definition of "person crime": A concern was raised that a definition of "person crime" was needed. The statutory definitions for "violent crime" (M.S. 609.1095) and "crime of violence" (M.S. 624.712) were distributed for consideration. It was also suggested that the sentencing guidelines could be used as a basis for the felonies or, in the alternative, consideration would be given to the seriousness of the crime and the criminal history of the offender. The team determined that it didn't have the time or expertise to define a "person crime" for this purpose. It was agreed that a general understanding of a "person crime" based on common usage would suffice for the team's work and the specific definition would be left to a later inquiry.

The definition of the level of offense: The team agreed that the level of the offense (felony, gross misdemeanor, and misdemeanor) should be based on the *conviction*, rather than the *charge*.

Ineligibility to petition: Some crimes were excluded from eligibility to petition:

- Traffic charges, such as speeding tickets and driving under the influence – petitioners should not be able to use the expungement process to attempt to lower their insurance rates
- Offenses for which predatory offender registration is required, as is provided in current law
- Offenses for which the conviction is for one of two charges from the same behavioral incident. Because both charges stem from the same event, it should not be permitted to seal parts of the record. Sealing a portion of a record is particularly difficult on criminal complaints and investigative reports.

Petty misdemeanors: The framework as originally proposed did not have a column for petty misdemeanors, and one was added after some discussion. It was noted that petty misdemeanors are not crimes, yet courts nevertheless receive and consider petitions for the expungement of convictions for petty misdemeanor – for example, theft, disorderly conduct, possession of drugs, and consumption by a minor.

Restarting the clock: Not only must all sentencing conditions be completed, but if there is another offense, it restarts the clock. The time that must run before a petition can be filed begins again with the most recent conviction. After some discussion, the team decided that felony, gross misdemeanor, or targeted misdemeanor offenses should restart the clock.

Recommendation – eligibility contingent upon successful completion of probation[32]*

As to any proposed expungement, whether automatic or by motion, a person is not eligible for expungement if the person has not successfully completed the conditions of probation or of a stay, including restitution, payment of fines, and completion of treatment. A person on probation is not eligible until completion of probation.

Discussion points

The sentencing conditions set by the judge ought to have been completed in order for the petitioner to demonstrate rehabilitation and payment of his/her dues to society. There have been cases where people petition while they are still on probation for the offense.

While there was not controversy regarding completion of other sentencing conditions, there was opposition to the requirement that the petitioner pay full restitution. It was noted that restitution amounts can be set at levels that people do not have the ability to pay, and that people should not be punished for their financial situation. An example was given of a person who burned down an old building and restitution was set at $500,000. Everyone knew this could never be paid, but the order was established in case the offender won the lottery or received an inheritance.

Supporters of the proposal countered that a person who cannot meet the conditions of probation through no fault of his or her own can go back to the court and get the conditions changed. They noted that restitution is a problem that creates difficulties for victims, and that the victim should be made whole before the offender can petition.

Recommendation – eligibility for certain juveniles[33]

Eligibility for expungements will be equally available to juveniles with respect to juvenile adjudication and extended jurisdiction juvenile conviction records *that are public* (delinquency or extended jurisdiction juvenile cases where the child is alleged to have committed a felony and was 16 or 17 at the time of the offense).

Discussion points

Under M.S. 260B.163, subd. 1(c), public proceedings include any delinquency or extended jurisdiction juvenile case where the child is alleged to have committed a felony and was 16 or 17 at the time of the offense. Juveniles who are 16 or 17 suffer many of the same issues as adults do and the same expungement remedies can be made available.

The overriding concern of the team was to limit expungement of juvenile records to the public records. It was noted that expunging juvenile records that are not already public would be counterproductive, as the expungement proceeding would unseal an already sealed juvenile record.

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[32] In Favor 7. Opposed 3. Abstain 3. (Vote on September 18, 2006)

* This topic is addressed in the minority report of Steve Holmgren.

[33] In Favor 10. Opposed 0. Abstain 0. (Vote on October 16, 2006. Language clarified in communication with K. Mitchell on Oct. 23)

Access to expunged records

These recommendations address access to expunged records by government agencies for statutory background checks and for certain criminal justice agencies.

Recommendation – access to records for statutory background checks[34]*

If expungement is granted, the record is available to government agencies to conduct statutory background checks if the agency provides, in statutes or rules, for a review process including the right to administrative or judicial review.

Discussion points

General applicability: The above recommendation was made during a discussion of expungement of convictions. Similar language had been approved previously by the team relating to some non-conviction records. After approving the above language, the team determined that the same should apply to the non-conviction categories as well.

Administrative or judicial review: The team intended for access to be limited to background checks that have due process or a balancing test on decision making. The team observed that expunged records should not be open to any government agency that has any type of hearing process, but rather some formal administrative or judicial review. It was also suggested that some agency decisions can be appealed directly to the Court of Appeals and so they should not be excluded.

Department of Human Services (DHS), or broader, applicability: The team discussed whether the recommendation should apply only to DHS, for employment background checks for facilities that serve vulnerable populations. It was noted that the review process outlined in M.S. 245C (the relevant DHS statute) is fair and that other agencies may not have the same processes. However, other agencies need to offer the protections in Chapter 364 (the Criminal Offenders Rehabilitation Act – DHS is exempt.) The team did not want to preclude the possibility that other statutory background checks would have administrative or judicial review of their decisions.

Applicability for statutory, versus non-statutory, background checks: The team members formally disagreed[35] about whether expunged records should be available for *non-statutorily* mandated background checks, in contrast to access for *statutorily*-mandated background checks. Some wanted consideration for any agency that conducts background checks that have a review process, either under rules or statutes. Examples provided were the Law Examiners Board or the Board of Medical Practice. Others were concerned that any agency could issue rules and get access to expunged records, and such broad access would make expungements meaningless. They argued that access should be given only in areas the Legislature says are so important that they require background checks in statutes, rather than those who decide to do background checks on their own.

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[34] In Favor 7. Opposed 2. Abstain 0. (Vote on October 12, 2006)

*This topic is addressed in the minority reports of Phil Carruthers, Richard Neumeister and Steve Holmgren.

[35] In Favor 7. Opposed 1. Abstain 1. (Vote on October 16, 2006)

Recommendation – access to expunged records, generally[36]*

Expunged records shall be accessible to the courts, law enforcement, prosecutors, probation officers, and corrections officers without a court order. Data may be transmitted between and among these agencies.

Discussion points

There was general agreement to simplifying access to records for criminal justice purposes, given that the purpose of records expungement should be to address the collateral consequences of the records, not to impede the efficient administration of criminal justice functions.

In current law, expunged records may be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an *ex parte* court order. They may also be opened for purposes of evaluating a prospective employee in a criminal justice agency without a court order. Finally, 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. The recommendation above proposes broader access by agencies for criminal justice purposes without an *ex parte* court order.

Certificate of need: The team discussed whether courts, prosecutors, law enforcement, and probation should have access to expunged records based on a "certificate of need" instead of a court order. A certificate of need would be prepared by the government entity accessing the sealed record, and would be addressed to the person who holds the record. There would be a reasonable cause standard for accountability. It was noted that an administrator would have a tough time deciding whether enough need is stated, but it was clarified that the administrator holding the record would not have the power to decide if enough justification had been provided. Rather, the certificate simply creates a record of who accessed the sealed record, and why, and would create the basis for the subject of the record to later challenge the release. While a courts representative indicated this process would work, particularly if the records custodian was given immunity for record releases, it was problematic for the executive branch. Criminal justice agencies currently access criminal history records electronically, so if a certificate of need were implemented, there would have to be individual handling for sealed records. At this point, the certificate of need did not seem to be an efficient solution for executive branch access.

Alternative language was considered, authorizing the transmission of data between and among criminal justice agencies as defined in M.S. 13.02, subd. 3a. It was noted that an electronic request for sealed records is recorded, access should be for criminal justice purposes, and sealed records should not be accessible by outside parties.

[36] In Favor 8. Opposed 1. Abstain 0. (Vote on October 12, 2006)

* This topic is addressed in the minority report of Richard Neumeister.

Effect of expungement

These proposals include a redraft of statutory language regarding the effect of any expungement, including for convictions. They also clarify the relationship of expungement laws to other laws.

Recommendation – restoration language expanded to include all expungement orders including those for convictions[37]

609A.03, subd. 6 is amended to read as follows: "Effect of expungement order. If the court issues an order for expungement under this chapter, 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, information, or conviction, except as otherwise provided by law."

Discussion points:

This recommendation adds convictions to an existing provision pertaining to record sealing for certain first-time drug offenders (M.S. 152.18) and broadens its application to expungement orders under chapter 609A. It also deletes the second sentence from M.S. 609A.03, subd. 6: "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."

Various approaches were discussed to solve the underlying problem. Chapter 364, the Criminal Offenders Rehabilitation Act, deals with state boards' application of the information. A number of other states provide that expungement shall not be used against anyone for housing and employment. Others say specifically in their labor laws that expunged arrests can't be used, but expunged convictions can be used in certain circumstances. A general statement is that expunged arrest records are not used, but high risk convictions and other specified offenses must be disclosed.

It was noted that in the current statutory language, the intent was to help first-time drug offenders who go through treatment to successfully get a second chance. The trouble is applying the language more broadly. The provision allowing offenders not to acknowledge the record in response to "any inquiry for any purpose" would contradict all exceptions the team provided for in statutes and would be too broad.

The team discussed whether to provide specific direction for offenders about how to respond to the question, "have you ever been convicted of a crime?" – for example on job applications. Some believed the proposed language sufficed, but others did not, and believed the change may not create any clarification or simplification. Some noted that even with the current language, people don't know what it means. Those who advocated for a specific recommendation argued that if an expungement is to be of value, a person must be able to say "no" to the job application question. It would be unreasonable to place the burden on individuals when to say "yes" or "no," to questions based on the

[37] In Favor 10. Opposed 0. Abstain 1. (Vote on October 16, 2006)

language proposed, because it would be asking them to make a legal determination in order to fill out a job application. Another comment was that it is equally important that there not be a negative consequence to the individual for saying "no," when that is what is intended in the law. However, another view was that it is troublesome to tell people to lie to employers.

A possible consequence was mentioned, that if a successful petitioner were to be allowed to say "no" to the job application question, but the employer knew or found out, the petitioner could be penalized. An option posed was to require the employer to use the job application question: "Have you ever been convicted of a crime that has not been expunged?" It was noted that a number of other states prohibit inquiries relating to expunged records. However, it was not clear how such provisions would apply if the employer acted on other available information besides that stated on the job application. The employer could simply not hire the person and claim it was for other reasons. Another option posed was to not allow employers to discriminate on this basis.

The team did not make a recommendation about what a successful petitioner should say in response to an inquiry. However, they noted that the general recommendation is that there should be some mechanism to protect the individual who has an expungement.

Recommendation – expunged convictions for purposes of certain other laws[38]

An expunged conviction is still a conviction for purposes of gun laws, sex offender registration, expungement proceedings, sentencing, subsequent prosecution, other crimes evidence, impeachment, probation, and statutorily mandated background checks.

Discussion points:

During consideration of the expungement eligibility framework, it was difficult for some to decide upon the convictions that should be eligible for expungement without first clarifying that expunged records would still be considered convictions for numerous criminal justice purposes. "Other crimes evidence" was explained as referring to Spriegl situations[39], and "expungement proceedings" were explained as being needed so that the expungement framework conditions can be enforced.

There was some confusion regarding the statement that the expunged conviction would still be considered a conviction for statutorily mandated background checks. Access-related recommendations had already resolved that expunged records would only be available to background check agencies that provide, in statutes or rules, for a review process including the right to administrative or judicial review. It was clarified that the access provision would determine if the agency could see the record, and the above language would allow the agency to consider the conviction for the background check.

[38] In Favor 7. Opposed 2. Abstain 0. (Vote on October 12, 2006)
[39] Evidence of other crimes or bad acts by the defendant that may be introduced in evidence is characterized as "Spriegl evidence."

Expungement process

Recommendation – Attachments to petition[40]

Where practicable, the petitioner shall attach a copy of the complaint or the police reports for the offense to the petition.

Discussion points:

The rationale for this recommendation was that with older cases, prosecutors' offices may no longer have the physical file and cannot easily determine the facts of the offense or identifying information on the victim in order to notify the victim, as provided in the statute. While the police department may still have a copy, given high volumes of expungement cases, there may not be time to get them. Having the petitioner attach the complaint or police report would be helpful to prosecutors in assessing whether to support, oppose, or take no position on the expungement motion. It also will help the judge make a better decision. In at least some cases, the complaint will help the petitioner because the facts of the offense were not aggravated, so expungement is more likely to be granted. Often the petitioners have copies of the complaint or can get access to the complaint. In Pardon Board cases, the petitioner usually attaches a copy of the complaint, so it can be done. Since the burden is on petitioners to show they merit expungement, it is not unfair to ask that they include this information in the motion papers.

It was noted that public defense offices do not keep copies of these records. Prosecutors noted they might be able to find the record, but it takes a lot of time, and they might oppose an expungement when they don't have the facts on it.

It was noted that this information will, more and more, be on computers. In Washington County, for example, complaints can be called up in three minutes.

Members who work with petitioners noted that if the motion language is "if practicable," it likely won't be done, as petitioners generally do not have these copies. Additionally, they might want *in forma pauperis* (IFP – a court order to waive fees) to obtain the copies, so that would entail more cost and more work for the court.

[40] In Favor 7. Opposed 2. Abstain 0. (Vote on October 16, 2006)

Additional issues

Some issues, although discussed extensively, were not the subject of proposals acted upon by the team. Chief among them were the issues of handling expunged criminal records in the hands of non-governmental organizations and certificates of rehabilitation.[41]

Certificates of rehabilitation

The team agreed that certificates of rehabilitation should be further considered. However, they did not develop a specific proposal for a Minnesota certificate program. It was noted that states that have certificates of rehabilitation emphasize using them for first-time offenders with convictions.

They could be based on the passage of time, with no new offenses. Another comment was that the certificate of rehabilitation would only be effective if there also is limited or no liability for employers who rely on the certificate, because employers' concerns about liability for negligent hiring of employees with criminal histories are driving this issue.

Team members clarified that certificates of rehabilitation are not a stand-alone solution – that with certificates, there still would be expungements, and there may still be circumstances where people wish to pursue them. But they could be a route for people who have convictions on their record.

They would also address that in a modern information society, the benefit of expungements has declined. Because records are with the data harvesters, you need a different approach. With certificates, the truth (the criminal record) is still available.

Expunged records in the private sector – data harvesters

The team discussed options to address that records are privately available from data harvesters. There are several ways this issue has been approached:

Obligations to correct private data: Texas law provides that government records are corrected for expungements, and private data collectors are obligated to delete expunged records. If they do not, there is a civil fine. If there are more problems, they lose access to the information. This Texas provision has been in effect there for three years. A proposed bill in Minnesota, HF3844 (2005-2006 Legislative Session), provides that "business screening services" shall delete references to expunged records of "arrest, citation, criminal proceeding, or conviction" if they know the record was expunged. The bill provides a remedy to the subject of the record for violations.

Include private harvesters in the expungement order: In Nevada, you can serve an expungement order on a private entity.

[41] Also refer to the Research Report regarding certificates of rehabilitation, p. 67, and, regarding data harvesters, in several sections of the report starting with the section on access, p. 57.

Regulate how data are used: A third way is to regulate how the data are used in the private sector. Some states provide that you can only use arrest and conviction records for a certain number of years, a Fair Credit Reporting Act[42] (FCRA)-type approach. And you cannot use arrests for jobs under $50,000, for example. Another approach is to prohibit the use of arrest records, or to prohibit the use of expunged arrest or conviction records. One state provides that you cannot use pardoned offenses. Use limitations have been provided in several states for years; they have a track record, and their use has been affirmed by the courts. Some states have a FCRA-like model at the state level. Federal law pre-empts, but there is a lot of leeway for states to regulate. Some states piggyback on the federal law with additional state enforcement incorporating accountability and fair information practices.

It was noted that the meaning of a "use limitation" was vague in this context. While insurance companies can collect data and have use limitations, it is different from saying that an employer cannot use certain information.

It was noted that enforcing regulations is an issue. Ohio considered a bill recently that had provisions for enforcement. Also look at *Los Angeles Police Department v. United Reporting Publishing Company*,[43] a case about regulation of how private entities can use certain types of information. It was noted in response that team members were not sure how the state would enforce such a law. Unlike FCRA, this would be a state act. But this is interstate commerce. The databases could move to the Grand Caymans where activities are unregulated. However, it was noted that requirements can apply to businesses who want to do business in a state. It depends on the enforcement mechanism.

A representative of the industry (not a team member, but an interested party at the meeting) noted he did not know the extent to which the industry recognizes expungement orders, but noted that his client updates records to recognize expungement orders. The problem is when the same information is available from other sources, for example, newspapers. They would not remove information that comes from other public sources. He noted that a lot of information does not come from government sources.

To summarize this discussion, the team was not at the point where it could make recommendations, but noted that it is an area that needs to be addressed. Members said they needed more facts and answers that are relevant for the information age to address these private sector issues. They also noted that recommendations for expunged records need to be made in conjunction with those for background checks.

[42] Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.
[43] *Los Angeles Police Department v. United Reporting Publishing Company*, 528 U.S. 32 (1999), 146 F.3d 1133

MINORITY REPORTS

The following minority reports were submitted by members of the delivery team. They are published in the order they were received.

Minority Report of Phil Carruthers
October 16, 2006

Access to records for statutory background checks
(See page 35 of delivery team report)

I disagree with a footnote that took no position on whether government agencies that do background checks pursuant to rules, rather than under a statutory mandate, would have access to expunged records.[44] There are agencies that conduct extremely important background checks that are not required by statute, but undertaken under that agency's rules. I believe examples would be the Minnesota Board of Medical Practice and the Chiropractic Board, among others. Given the high level of responsibility undertaken by lawyers, doctors, etc., the agencies that license these professions should also have access to expunged records, as would agencies statutorily required to do background checks under the adopted recommendations.

Minority Report of Richard Neumeister
November 27, 2006

The use of arrest and suspense data in background checks
(See pages 13–15 of delivery team report)

I disagree with the majority in allowing suspense and open arrest data over one year old to be used in background checks as directed by statute.

The majority position does not recognize in my view the following –

1. Timelines and relevancy of an arrest record
2. Presumption of innocence
3. Reputation and privacy of the individual
4. Discriminatory impact of arrest records on citizens
5. Fairness to the individual

In *Menard v. Mitchell*, it was stated:

> "Information denominated a record of arrest, if it becomes known, may subject an individual to serious difficulties. Even if no direct economic loss is involved, the injury to an individual's reputation may be substantial…
>
> "Opportunities for schooling, employment or professional licenses may be restricted or non-existent as a consequence of the mere fact of an arrest, even if followed by acquittal or complete exoneration of the charges involved."[45]

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[44] The delivery team agreed to address their differences on this issue in a "footnote" to the delivery team report. However, the discussion is summarized in the body of the report on page 35.
[45] *Menard v. Mitchell*, 430 F.2d 486, 490 (1970).

(Minority Report of Richard Neumeister, continued)

Automatic expungement of arrest records

(See page 29 of delivery team report)

I disagree with the majority position in allowing automatic expungement of arrest records.

The power to arrest, detain, and search is a mighty tool that is used by law enforcement. It has also been used to deny people their liberty and constitutional rights. With closure of records there would be no ability for the public to monitor and hold accountable this awesome power that law enforcement has.

Access to records for statutory background checks

(See page 35 of delivery team report)

I disagree with the majority position in allowing access to expunged arrest records pursuant to my rationale as stated in, "The use of arrest and suspense data in background checks," above. I do not think that government agencies should have access to *all* expunged convictions in their background checks. There should be emphasis on the most serious crimes, and take into consideration relevancy and time.

Access to expunged records, generally

(See page 36 of delivery team report)

I disagree with the majority position because there is no accountability for the person or entity wanting access to expunged records. I see no problem with current law.

General comments

In general, any expansion of access to criminal records for purposes of background checks has to be balanced with rights of the individual. This group has in some areas failed to do this as outlined in "Topics for Future Study…" under Data harvesting and Rehabilitation goals and laws.

Secondly, the issue of what to do with private background companies that have records that are expunged, rather than do a future study I recommend amending state law to have these companies refrain from reporting certain information that is no longer verifiable through records.

Minority Report of Julie LeTourneau Lackner
November 27, 2006

Automatic Expungement

(See page 29 of delivery team report)

On October 10, 2006, the Expungement Delivery Team discussed the topic of automatic expungement of arrests (for non-person crimes) one year after the arrest for (a) instances in which an arrest does not result in charges, and (b) instances where charges are dismissed.

In theory this sounds reasonable. However, practically it is not, for the following reasons:

- There must be an affirmative notice from the arresting agency or prosecutor to the BCA indicating that no charges will be filed; or
- There must be an affirmation from the courts or prosecutor that the charges were dismissed.

Currently this information is not consistently provided to the BCA.

If the notifications above are not received by the BCA and "automatic" is defined as an automated process, there may be instances in which the BCA has not yet received a disposition and a year has elapsed, resulting in the sealing of the arrest, when there may actually be a conviction in suspense which has not yet attached to the arrest. The arrest may be sealed because it appears the arrest did not result in a charge, yet there is a conviction. Those individuals not having access to sealed data or suspense data will not be made aware of the conviction.

Rather than defining "automatic" expungement as an automated process, it may serve the same purpose to define this as a simplified process in which upon receipt of the appropriate notifications (as listed above) action is taken to seal the arrest, eliminating the need for the data subject to petition the court to have the records sealed.

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To: State of Minnesota Criminal and Juvenile Justice Information Task Force

From: Steve Holmgren, Chief Public Defender of the 1st Judicial District and member of the Task Force Background Checks and Expungements Delivery Team representing Public Defense

Re: Supplemental Report to the Report of the Background Checks and Expungement Delivery Team

Date: November 27, 2006

Public safety is an important function of government. However to be effective, public safety policy must focus on more than just the apprehension, prosecution and punishment of individuals who violate the law. Cost effective public safety policy also requires that we assist offenders' efforts to reintegrate into society so that they can avoid future criminal behavior. Courts and corrections professionals recognize that their policies play an important role in offender reintegration, and they have developed sentencing and correctional practices that emphasize both accountability and reintegration. American society has also embraced these concepts so that most Americans would agree that a person who has paid their 'debt to society' should be entitled to a fair opportunity to create a productive life for themselves and their families. However, many criminal justice professionals believe that new computer technologies have inadvertently made it much more difficult for offenders to return to a law abiding life. The advent of the computerized criminal justice recordkeeping system results in consequences that

extend far beyond the punishment imposed in a criminal sentence. Unable to reintegrate, offenders are much more likely to return to unlawful activities.

The information age and the advent of the internet have made criminal records widely available for non-law enforcement purposes. Technological advances and fear of lawsuits have enabled and encouraged employers and landlords to access criminal history information about applicants for jobs and housing. Within the last decade there has been a dramatic increase in the number of private screening companies who sell criminal history information for profit. Anyone who has performed a "Google" search on someone is familiar with the unsolicited offers from private screening companies to do a criminal background check for a nominal fee. Additionally, the data harvesting industry provides broad internet access to conviction information. The result of this comprehensive access to criminal justice information is that criminal justice information is now routinely used for non-criminal justice purposes. It has also created an environment where even the most motivated ex offenders have difficulty finding jobs and housing; as a result they cannot provide for themselves and their families. Moreover, studies have shown that unemployment is the greatest obstacle to the successful rehabilitation of those convicted of crimes, making them likely candidates for recidivism.

The American Bar Association Commission on Effective Criminal Sanctions recently studied how legal reform can foster offender reintegration into society. The Commission issued a *Report with Recommendations to the ABA House of Delegates* that in my view makes many thoughtful policy recommendations in the area of expungement and background check law. This report is expected to be presented for consideration by the ABA House of Delegates within the upcoming year. I have incorporated some of the Commission's arguments and recommendations in writing this report. I encourage anyone who wants more information on these subjects to read the ABA report at *http://www.abanet.org/dch/committee.cfm?com=CR2098000*.

I have chosen to call this a supplemental report, rather than a minority report because I support most of the recommendations of the Task Force Delivery Team. As a member of the Delivery Team I am appreciative of the amount of time, effort, debate and compromise that went into making these recommendations. However, I am concerned that even though efforts were made to invite as many stakeholders as possible to participate in this Delivery Team, in reality those who actually participated in the process cannot be said to be equally representative of

all potential stakeholders. When the Delivery Team was formed it was envisioned that recommendations would be made by consensus rather than by voting, so steps were not taken to insure proportional representation. Even though team members worked hard to consider alternate points of view and to achieve consensus on issues, it eventually became apparent that consensus would not be possible on many issues and that voting would be required. I therefore caution the readers of the Delivery Team Report to be careful when trying to interpret the vote totals that are included in the report.

Despite my concerns, I do believe that the adoption of many of the recommendations of the Delivery Team could result in a significant step toward addressing the problem of offender reintegration. However I do disagree with some of the recommendations. I also believe that additional work needs to be done in many areas. I therefore offer the following for consideration.

<u>The Delivery Team recommendation requiring that restitution be fully paid before a person is eligible to file an expungement petition discriminates against indigent petitioners, ignores the fact that financial circumstances of offenders change, and frustrates the purpose of expungement law.</u>

The recommendation that a person be required to make full restitution before being <u>eligible</u> to petition for expungement is very troubling because access to courts should not depend on ability to pay. Constitutional equal protection guarantees demand that access to the courts not by constrained by a person's ability to pay. The requirement that a person pay full restitution before being eligible to petition for an expungement can result in wealthy persons having access to the expungement remedy, while indigent persons are denied access. A person should be able to petition the court for an expungement regardless of whether or not they have paid full restitution. The court should be able to take into account the circumstances giving rise to the nonpayment during the expungement proceeding. It should not be assumed that failure to pay restitution is an act of defiance or neglect. Often it is a result of simple poverty. In most instances, years have passed since the date of the sentencing and a petitioner's financial situations might have dramatically changed. Nor should it be assumed that the sentencing court expected that restitution be fully paid as a condition of its sentence. In my experience as a public defender, courts routinely order that full restitution be paid even when they know that the defendant does not have the ability to pay the full amount. The court usually does this to preserve the ability

to collect full restitution if the defendant later becomes able to pay the full amount. It is also common for the sentencing court to enter a judgment against a defendant for the amount of restitution even though the defendant did not have the financial ability to pay while on probation. The Delivery Team recommendation would effectively take the option of ordering full restitution in these situations away from the trial judge if the judge also wanted to keep the expungement remedy available to the defendant in the future.

Finally, requiring that full restitution be paid prior to becoming eligible to petition for expungement ignores the possibility that an expungement can increase the ability of the person to pay off a restitution judgment by making it easier for them to get a job. I can also envision situations where the victim of the crime might be in favor of the expungement if it enables the defendant to pay off a restitution obligation that has been rendered to judgment. However, a blanket prohibition against expungement unless restitution has been fully paid prevents the judge from exercising discretion to fashion a remedy that might benefit both the petitioner and the victim of the crime.

<u>The disqualification standard of the Minnesota Criminal Rehabilitation Act should be applied to statutorily mandated background checks that are performed for the benefit of non-public employers or non-public entities.</u>

The majority of the work of the Delivery Team in the area of background checks focused on the study of statutorily mandated background checks and the creation of a scrutiny matrix for mandated checks. (Time restraints prevented the team from conducting significant work in the area of non-statutorily mandated checks.) While the team was able to devise a scrutiny matrix to be applied to statutorily mandated background checks, it struggled with issues relating to whether a disqualification standard should be applied to non-public employers and non-public entities that receive statutorily mandated background check data. The Delivery Team members spent considerable time discussing concerns that private employers or agencies often do not possess the expertise to fairly interpret the background check information provided to them, and how this can lead to discriminatory use of governmental data. However in the end no disqualification standard was agreed to. Instead, it was decided that a compromise remedy would be to restrict the disclosure of certain types of data to private employers and agencies in these situations. The problem with this approach is that private entities and agencies are given no direction in how to appropriately interpret and apply the background

information they are provided. I believe that a better approach would be to apply the safeguards of the Minnesota Criminal Rehabilitation Act to these situations.

The Minnesota Criminal Rehabilitation Act states that "it is the policy of the State of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of citizenship." Minn. Stat. Sec. 364.01. The Act further provides that public employers and licensing agencies may not disqualify a person "solely or in part" based on conviction unless 1) there is a "direct relationship" between the occupation or license and the relationship of the crime to the individual's fitness to perform the duties of the position; and 2) the individual has not shown "sufficient rehabilitation and present fitness to perform" the duties of the public employment or licensed occupation. (See Minn. Stat. Sec. 364.03)

The recommendation of the Delivery Team is that government should conduct and provide background check reports to non-public employers and non-public entities when background checks are required by statute. Because government is conducting the check and turning the information over to the private entity, it seems reasonable to require the private entity to apply the same disqualification standard that government must use. To simply provide the data without any direction or training on how it should be interpreted or used creates the possibility for inappropriate use and surely frustrates the purpose of Minnesota Criminal Rehabilitation Act. I therefore urge that the disqualification standard applicable to public employers and agencies be extended to private employers and agencies when the government conducts a supplies background checks to them.

The recommendation that records of arrests and expunged convictions be available and used for background check purposes is contrary to the language, policy and purpose of the Minnesota Criminal Rehabilitation Act and should not be adopted.

The Minnesota Criminal Rehabilitation Act currently provides that "the following criminal records shall not be used, distributed, or disseminated by the state of Minnesota, its agents or political subdivisions in connection with any application for public employment nor in connection with an application for a license: (1) Records of arrest not followed by a valid conviction. (2) Convictions which have been, pursuant

to law, annulled or expunged. (3) Misdemeanor convictions for which no jail sentence can be imposed." See *Minn. Stat. Sec 364.04.* However, the Delivery Team is recommending that this statute be changed to allow both arrest records and expunged convictions to be available for statutorily mandated background checks.

The use of arrest data for background check purposes is troublesome because the mere fact that someone was arrested does not mean that they have committed illegal conduct. Arrests are not judicially tested determinations of guilt, but are rather mere allegations of wrongdoing. Accused persons are considered in court to be innocent unless guilt is proven beyond a reasonable doubt. Citizens are frequently arrested based upon initial allegations of wrongdoing, but often further investigation determines that they did not commit the conduct that they were arrested for. Studies have also shown that persons of color are more frequently arrested than other segments of the population without charges ever being filed against them. Whenever a person is arrested without conviction, the stigma of the arrest remains.

America has traditionally followed the policy that citizens are presumed to be innocent of wrongdoing unless and until the government have proven wrongdoing in court. The idea is that citizens are entitled to due process of law and that government should not impose a disability on a citizen unless the disability is warranted. However, permitting the government to use arrest data in a background check that was not followed by a valid conviction has the effect of imposing a disability upon a person without due process of law. It also shifts the burden of proof to the citizen to explain the circumstances surrounding the arrest. However, the average citizen is not equipped with the information or ability to effectively explain an arrest.

The recommendation that expunged convictions be available for background checks is also contrary to the language and intent of the Minnesota Criminal Rehabilitation Act. It also has the effect of allowing the judgment of the trial court to be overridden by a person conducting a background check. The Minnesota Criminal Rehabilitation Act currently states that "a person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment

sought or the occupation for which the license is sought." (*Minn. Stat 364.03, Subd. 3, emphasis added.*) Expungements are granted by a court when they determine that a person has demonstrated rehabilitation and the individual need for the expungement outweighs the societal need for the information. The Delivery Team proposal would have the effect of permitting the decision of the background check examiner to override both the decision of the trial court and the policy of the State Legislature expressed in the Minnesota Criminal Rehabilitation Act. Moreover, the recommendation would also provide expunged convictions to unregulated private employers and entities in statutorily mandated background check situations. For those reasons it is unwise and should not be adopted.

Background check law should be modified to establish standards for and monitor the activities of private screening companies and to the extent legally possible restrict them from reporting records that have been sealed or expunged.

The issue of data held by private data harvesters is a major issue that the Delivery Team did not have time to address. However, unless the issue is addressed, much of the work of the Delivery Team in the area of expungements will have no practical effect. The problem is that data harvesters are not required to delete records from their databases even though the government has determined that societal and individual interests justify an expungement of the record. The information therefore remains available for purchase from a data harvester contrary to the action of government. Data harvesters should not be permitted to report records that have been expunged or sealed, or whose public availability has been otherwise limited when government has determined that the societal need for sealing the record outweighs its use. As mentioned in the Delivery Team Report, other states have restricted reporting of expunged records by data and I believe that Minnesota must also do so.

Additionally, the *American Bar Association Commission on Effective Criminal Sanctions Report to the House of Delegates on Employment and Licensure of Persons with a Criminal Record* (located at *http://www.abanet.org/dch/committee.cfm?com=CR2098000.)* reports that the Federal Trade Commission has recently taken the position that the Fair Credit Reporting Act covers the activities of private screening companies. The Fair Credit Reporting Act does not prohibit data harvesters from reporting expunged data, but it does require that an employer seeking information about an applicant's criminal record from a screening company must first get the applicant's written

authorization, then provide the applicant with the copy of any investigative report generated, and notice of any adverse action taken. Where an employer requests a criminal record report from a commercial vendor for purposes of a hiring decision it is regarded as a "consumer report" and is thus governed by the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.* Among the duties that FCRA imposes in such a situation are the following: 1) The employer must provide a clear written notice to the job applicant that it may obtain a consumer report. 15 U.S.C. § 1681b(b)(2). 2) The employer must obtain written authorization from the job applicant to get the report. 15 U.S.C. § 1681b(b)(3). 3) If the employer intends to take adverse action based on the consumer report, a copy of the report and a Federal Trade Commission Summary of Rights must be provided to the job applicant before the action is taken. 15 U.S.C. § 1681b(b)(3). This requirement permits a job applicant to address the report before an employment decision is made. Afterwards, the employer, as a user of a consumer report, must notify the job applicant that an adverse decision was made as a result of the report and must provide, among other things, the name, address and telephone number of the credit agency and the right to dispute the accuracy or completeness of the report. 15 U.S.C. § 1681m(a).

<u>Automatic expungements should apply to all arrests whether person or non-person crimes that did not result in conviction and without the requirement of a 1 year waiting period.</u>

While I agree with many of Delivery Team's recommendation for automatic expungement, I believe that automatic expungements should apply to all arrests that did not result in conviction, and not just to arrests for non-person crimes. It is important to remember that the Delivery Team is proposing that arrest data always be available to law enforcement. Therefore automatic expungement will not prevent or hinder law enforcement in charging crimes or in assessing the dangerousness of a suspect. I also see no valid reason for limiting automatic expungement of arrests that did not result in conviction to property crimes. If the government didn't have the sufficient evidence to prove guilt, a citizen should not suffer disability because of it. A preferable alternative would be to require the government to make a showing of need to preclude an automatic expungement of an arrest that did not result in conviction. To somehow assume that there is some legitimacy from the mere fact that a person was once arrested for a person crime offends due process.

Finally, I also understand that there is a need for some sort of mechanism to trigger the automatic expungement of an arrest that did result in charges being filed, but the one year period proposed by the Delivery Team is arbitrary. A shorter period would accomplish the objective of the Delivery Team sand result in less hardship to the individual who was arrested without conviction.

Respectfully submitted,

Steve Holmgren
Chief Public Defender
1st Judicial District

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November 27, 2006

Ms. Judy Grew
Senior Management Consultant
Management Analysis and Development
Minnesota Department of Administration
203 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Re: Minority Report

Dear Ms. Grew:

I submit this minority report as a member of the Background Checks and Expungements Delivery Team. The focus of my concern is the dramatic expansion of expungement that would occur in Minnesota should the recommendations of the Team be adopted, particularly automatic expungement.

Before proceeding, I want to clearly affirm that, in the course of the Delivery Team's deliberations, a case for reforming Minnesota expungement law was convincingly made. The problem, however, is that the Team was in no position to properly or thoroughly evaluate the enormous amount of empirical evidence—pro and con—that pertains to this issue. Indeed, a very considerable portion of the Team's deliberations relied on speculation and anecdotal offerings as a result.

Compounding this deficiency was the fact that representation on the Delivery Team was by no means comprehensive, at least in terms of those who actually appeared at most of the meetings. Attendance was sporadic, and many who were titular members of the Team never were present for the great majority of the Team's sessions. Furthermore, some important stakeholders had no representation on the Delivery Team. Thus critical

perspectives were frequently absent, and often the Team's votes hinged on who happened to show up at a particular meeting.

In submitting this minority report, I do not in any way seek to diminish the efforts of the Delivery Team over the course of the many weeks it chewed away at these difficult issues. The Team did a good job of identifying and cataloging problems. But that contribution needs to be distinguished from the credibility of a number of the Team's recommendations, for the reasons described above. Of particular concern are the recommendations that would greatly expand the availability of expungement in Minnesota.

While many anecdotes were offered pertaining to the apparent abuses suffered by those who are innocently accused of crimes and are then unable to escape the past, an equally compelling societal concern was markedly undervalued, namely, the public's ability to effectively monitor the criminal justice system. Furthermore, where expungements are too easily obtained, many individuals who have engaged in seriously antisocial behavior will disappear from the radar screen, with potentially drastic consequences for future innocent victims. Simply because someone is never formally convicted by the criminal justice system hardly permits a casual conclusion of innocence. The courts and law enforcement agencies are fallible, just like other human institutions. This very fallibility requires the maximum level of visibility and transparency, particularly because of the enormous power wielded by law enforcement officers and the courts. A process that too readily permits widespread expungement will, among other things, inhibit the public's capacity to observe and understand what these institutions are doing, and how well they are doing it.

In sum, before credible recommendations for significant changes to Minnesota's expungement laws can be made, more empirically based study is required, and a broader and fully representative opportunity for the parties potentially affected by such changes must be afforded.

Respectfully submitted,

/s/

Mark R. Anfinson

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APPENDIX A – DELIVERY TEAM MEMBERSHIP

List of members from the Criminal and Juvenile Justice Information Task Force

Task Force Constituency	Task Force Members and Proxies	Dates of meeting participation
Public defenders appointed by the Board of Public Defense	Steve Holmgren Chief Public Defender, 1st Judicial District	February – October, both sub-teams
	Robert Sykora (John Stuart, proxy) Chief Information Officer MN Defender Information Systems	August and October, expungements sub-team
District judge appointed by the Conference of Chief Judges	Judge Randall Slieter Renville County, 8th Judicial District Court	February – October, remote participation during the summer and fall
County attorneys recommended by the Minnesota County Attorneys Association	Ray Schmitz Olmsted County Attorney	February – October, background checks sub-team
	Doug Johnson Washington County Attorney	February – October, expungements sub-team
A member appointed by the Chief Justice of the Supreme Court	Kelly Mitchell (proxy for Bob Hanson) Staff Attorney, State Court Administrator's Office	February – October, expungements sub-team
A court administrator	Susan Stahl Court Administrator, Renville County	February – October, remote participation during the summer and fall
A member appointed by the Commissioner of Public Safety	Julie Letourneau Lackner (Proxy for Bob Johnson) BCA/CJIS Manager	February – October, both sub-teams
A member appointed by the Commissioner of Corrections	Deb Kerschner Department of Corrections	February – October, both sub-teams
Community corrections administrators recommended by the Association of Minnesota Counties	Dave Gerjets Anoka County Community Corrections	February – March, both sub-teams
	Randy Shimizu (Proxy for Tim Cleveland) Dakota County Community Corrections	March – October, both sub-teams
A sheriff recommended by the Minnesota Sheriffs Association	Dave Fenner (Proxy for Sheriff Bob Fletcher) Ramsey County Sheriff's office	February – May; September – October both sub-teams
A member recommended by the Minnesota Chiefs of Police Association	Ron Whitehead (proxy) Project Manager, Department of Public Safety	April – August Background checks sub-team
Public members	Rich Neumeister	February – October, both sub-teams
	Lucy Banks Minnesota General Crime Victim Coalition	February - June

List of augmented membership

Stakeholder interest	Members	Dates of meeting participation
Background checks for licensed facility staff	Jerry Kerber, Director Department of Human Services Licensing Division	April – October, both sub-teams
	Kristin Johnson, Background studies supervisor Department of Human Services Licensing Division	April – October, background checks sub-team
	Jennifer K. Park, Management Analyst Department of Human Services Licensing Division	July – October, expungements sub-team
	Julie Frokjer Minnesota Department of Health	April – October, both sub-teams
Background checks for education	Allen Cavell, Administrative Manager Labor and Employee Relations Minneapolis Public Schools	April – June, background checks sub-team
Background checks for volunteers working with children	Mai-Anh Kapanke Vice President, Marketing Services Mentoring Partnership of Minnesota	May – October, background checks sub-team
Background checks for housing purposes	Jack Horner, Chief Lobbyist and General Counsel Minnesota Multi-Housing Association	August – October, background checks sub-team
County attorneys	Phil Carruthers Director, Prosecution Division Ramsey County Attorney's Office	August – October, expungements sub-team
Advocacy organization for crime and justice issues	Tom Johnson, President (Proxies: Anne Morrow and Guy Gambill) Council on Crime and Justice	April – October (including proxies) Expungements sub-team
	John McCullough, Equal Justice Works Fellow Council on Crime and Justice	April – October, Expungements sub-team
Council on Black Minnesotans	Lester Collins, Executive Director Council on Black Minnesotans	April – August, both sub-teams
Newspaper interests	Mark Anfinson, Counsel and Lobbyist Minnesota Newspaper Association	August – October, primarily with the expungements sub-team

APPENDIX B: Summary of Minnesota Statutes Authorizing Background Checks

House Report Page #	Category	Occupation or Activity	Applies to	Decision maker	Background performer	Scope	Time limit?	Manda -tory check?	Mandatory disqual- ifications?	Consent form?	Finger- prints?	Rehab Act exemp- tion?
5	Serving children	K-12 employees	People offered employment	School hiring authority	BCA	MN criminal history, (person's state or national if non-resident)	No	Yes	No	Yes	No	Yes
6	Serving children	K-12 volunteers, student employ. and contractors	Persons seeking to work in schools	School hiring authority	BCA	MN criminal history	No	No	No	Yes	No	Yes
7	Serving children	Teacher licensing	Applicants	Teaching board, Ed. Dept.	BCA	MN, national criminal history	No	Yes	No	Yes	Yes	Yes
8	Serving children	Bus driver licensing	Applicants and renewals	Dept. of Public Safety	Public or private source acceptable to DPS.	MN criminal history (national if resident for <5 years); driver's record	No	Yes	Yes. Waiver process.	No	No (unless nat'l check)	Yes
10	Serving children	Employees or volunteers who work with children	People who are not checked under another statute	Public, private, non-profit employer	BCA	Specified state and national criminal convictions	No	No	No	Yes	No (unless nat'l check)	No
11	Serving children	DOC-licensed facilities for minors	Employees, owners and household members	Dept. of Corrections	Dept. of Human Services	state and national criminal convictions	No	Yes, for employees with direct contact	Yes	No	Yes	Not for certain crimes
12	Serving children	Adopting families	Parents and juveniles over 13 in household	Not Appl.	Child-placing agency	State and national criminal convictions, maltreat. reports, dom. viol. data, juv. court records	No	Yes	No	Yes	No (unless nat'l check)	Not appl.
New 2005 law (MS 260C.209)	Serving children	Non-custodial parent who will care for a child placed out-of-home	If the social services agency has reasonable cause to believe the parent or household members over 13 has a criminal history or history of child maltr.	Not Appl.	Responsible social services agency	State and national criminal history, maltreatment reports	No	Only if there's reasonable cause to believe person has a criminal history or history of child maltr.	No	No	No (unless nat'l check)	Not appl.

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New 2005 law (MS 260C.209)	Serving children	Parent of child who is returning to a home that child was removed from	If the social services agency has reasonable cause to believe the parent or household members over 13 has a criminal history or history of child maltr.	Not Appl.	Responsible social services agency	State andnational criminal history, maltreatment reports	No	Only if there's reasonable cause to believe person has a criminal history or history of child maltr.	No	No	No (unless nat'l check)	Not appl.
New 2005 law (MS 518.165)	Serving children	Court-appointed guardian ad litems	New guardians and existing ones (check done every 3 years)	Courts	Dept. of Human Services	State and national criminal history, maltreatment reports, court data	No	Yes	No	Yes	No (unless nat'l check)	Not appl.
13	Serving children	McGruff Save Houses	Applicants	Local law enforcement agency	Dept. of Public Safety or local law enf. agency	Not specified. (Mpls does criminal history checks on everyone over 14)	No	Yes	No	No (Mpls uses one)	No	Not appl.
14	Serving children	Foreign Student Host Family	Members of the host family over 18	Student placement organization	Student placement organization	Any felony	No	No	No	Yes	No	Not appl.
15	Health and Human Services	Alcohol/Drug counselor license	Applicants	Health Dept.	Health (may contract with Dept. of Human Services)	Any state, national specified felony or gross mis. conviction; maltreat. report	No	Yes	No	Yes	No	No
16	Health and Human Services	Adult and Child Foster Family Care; In-Home Child Care licenses	Applicants and renewals; employees and volunteers with direct contact or unsupr. access; household members over 13	Dept. of Human Services	Dept. of Human Services, county, or tribal agency	Criminal convictions, pert. arrest/invest. data, maltreat. reports, juv. court records	No	Yes	Yes. Waiver process.	No	Can be requested if more information is needed.	Yes

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House Report Page #	Category	Occupation or Activity	Applies to	Decision maker	Background performer	Scope	Time limit?	Manda -tory check?	Mandatory disqual- ifications?	Consent form?	Finger- prints?	Rehab Act exemp- tion?
18	Health and Human Services	Hospitals, nusing homes, hospices, home care providers, nursing services agencies, and res. treatment facilities	Applicants and renewals; employees and volunteers with direct contact or unsupr. access; household members over 13	Dept of Health or Human Services (whichever one issues the license)	Dept. of Human Services	Criminal convictions, pert. arrest/invest. data, maltreat. reports, juv. court records	No	Yes	Yes (disqualifies from direct contact or access, not employment) Waiver process.	No	Yes	Yes
20	Health and Human Services	Social worker licensing	Applicants	Board of Social Work	BCA	MN criminal history	No	Yes	No	Yes	No	No
21	Public Safety	Peace Officer licensing and employment	Applicants	POST board and hiring law enforcement agency	POST board and hiring law enforcement agency	Thorough review to see if any criminal record or conduct would affect performance	No	Yes	Yes	Yes, for employee records	Yes	Yes
22	Public Safety	Firefighters	Applicants	Fire departments	BCA	MN, natl criminal history (only job-related criminal history can be used in assessment), employment history	No	No	No	No	Yes	Yes
23	Public Safety	Purchase certain firearms	Potential purchasers	Police chief or sheriff	Police chief or sheriff	Local, state and national criminal histories, including juvenile; DHS commitments; other govt. records	No	Yes	Yes	Yes	No	Not appl.
25	Public Safety	Permit to carry a pistol	Applicants	Sheriff	Sheriff or contracted police chief	Local, state and national criminal histories, including juvenile; DHS commitments; other govt. records	No	Yes	Yes	Yes	No	Not appl.
26	Public Safety	Haz.or solid waste facility permit	Applicants (including managers, officers and partners of corporations)	Pollution Control Agency	PCA	State and fed criminal convictions that bear on facility's operation	5 years	No	No	No	No	Not appl.

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27	Public Safety	Equipping vehicle with police band radio	People who aren't peace officers or don't hold a FCC amateur radio license	BCA	BCA	MN or national conviction of a "crime of violence"	10 years	Yes	Yes	No	No	Not appl.
28	Other	Court-appointed guardians and conservators (except govt agencies, parents, trust companies)	Initial appointments and every 5 years	Court	Dept. of Human Services	MN criminal history (national if resident for <5 years); maltreat. reports	No	Yes	No	Yes	Yes, if needed for nat'l search	Not appl.
30	Drivers	Driving instructor	Applicants	Dept. of Public Safety	BCA	MN and national criminal history, driver's record	No	Yes	Yes (disqualifies from instructing students under 18). Waiver process	Yes	Yes	Yes
31	Drivers	Passenger motor carriers	New hires and then every 3 years	Carrier	BCA	Felony conviction for certain MN crimes (nat'l if resident for <10 years or requested by employer)	No	Yes	Yes	Yes	Yes (for out-of-state search)	No
33	Drivers	Transport services for elderly/disabled	New hires and then annually	Employer	BCA, local law enforcement agency, or private business	State driving records and certain criminal convictions (nat'l if resident for <10 years)	3 years on driving record and 15 on criminal	Yes	Yes	No	No	Yes
34	Drivers	Limousine and personal drivers	New permits and then annually	Employer	Employer	State driving records and certain criminal convictions	3 years on driving record	Yes	Yes	No	No	No

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35	Gambling	Horse track racing owner, operator or employee	Applicants	Racing Commission	Racing Commission or Gambling Enforce Division (DPS)	Criminal history and financial background investigation	No	Yes	Yes	No	Yes (can be requested if DPS performs)	No
36	Gambling	Lawful gambling (bingo, raffles, etc.)	Applicants and renewals (people and organizations)	Gambling Control Board	Gambling Control Board or Gambling Enforce Division (DPS)	Criminal history	No	Yes	Yes	No	Yes	No
37	Gambling	Gambling device makers/sellers	Applicants	Gambling Enforce Division (DPS)	Gambling Enforce Division (DPS)	Criminal history	No	Yes	Yes	No	Yes	No
37	Gambling	Indian Tribe casinos	Employees	Indian Tribe	Gambling Enforce Division (DPS)	Criminal history	No	Yes	No	No	Yes	No
38	Gambling	State Lottery	Employees, retailers, vendors	State Lottery	State Lottery or Gambling Enforce Division (DPS)	Criminal history and financial background	5 years for any convct., no limit for fraud or gamb. convct. (Vendors: 10 years any convct.; 5 for fraud/gamb.)	Yes	Yes	No	Yes	No
39	Other	Liquor (manufacture, whlse, retail)	Applicants	Alcohol Enforce Division (DPS) or local govt (retailers)	Alcohol Enforce Division (DPS) or local govt (retailers)	MN and federal criminal history, financial background	5 years	Yes	Yes	No	Yes	No
40	Other	Apartment managers/ caretakers	New hires	Building owner	BCA (may use existing study done by DHS, local law enforce. agency or private business)	MN criminal history (national if resident for <10 years)	No	Yes	Yes	Yes	Yes (for out-of-state search)	Not appl.

APPENDIX B: Summary of Minnesota Statutes Authorizing Background Checks

House Report Page #	Category	Occupation or Activity	Applies to	Decision maker	Background performer	Scope	Time limit?	Manda -tory check?	Mandatory disqual- ifications?	Consent form?	Finger- prints?	Rehab Act exemp- tion?
42	Financial	Currency exchange	Applicants and renewals (includes managers, company directors, large shareholders)	Dept. of Commerce can deny (approvals need local govt body concurrence)	BCA	MN and national criminal history	No	Yes	No	No	Authorized to exchange with FBI	Not appl.
43	Financial	Acquiring control of a bank	Proposed acquirers	Dept. of Commerce	Commerce or BCA	MN and national criminal history	No	Yes	No	No	Authorized to exchange with FBI	Not appl.
44	Financial	Accelerated mortgage payment providers	Applicants to be providers, then annually at Commerce's discretion	Dept. of Commerce	"Third party"	Not specified.	No	No	No	No	No	Not appl.
45	Other	Private detective and protective agency	Employees	Employer	BCA	MN and national criminal conviction	No	Yes	Yes	Yes	Yes	Yes
New 2005 law (MS 84.027)	Other	DNR volunteer instructors	Applicants	Dept. of Natural Resources	Dept. of Natural Resources	MN criminal history	No	No	No	Yes	No	Not appl.

Source: House Research, *Background Check Statutes: An Overview* , January 2005 (except the two new 2005 Session Law entries)

Note: MS 259.11 requires the courts to conduct a criminal history background check on people changing their name and to inform the BCA of the name change if the person does have a criminal history.

Column Definitions

House Report Page #: corresponding page number in the House Research report

Category: type of occupation or activity (generally follows House Research report)

Occupation or Activity: areas that state law requires a background study or check

Applies to: what type of people (new hires, for example)

Decision maker: the agency or individual that is responsible for initiating the check and using the results.

Background performer: which agency collects or provides the data

Scope: the kinds of information included in the background check. The term "national" is other states' or FBI data sources.

Time limit?: whether the statute limits the study to a certain number of years

Mandatory check?: whether the statute requires that a background study be completed

Mandatory disqualifications?: whether the statute requires disqualification for certain reasons

Consent form?: Whether the statute requires the subject to sign a consent form.

Fingerprints?: Whether the statute requires or authorizes the background performer to use fingerprints.

Rehab Act exemption?: Whether the occupation or activity is exempt from the Criminal Offenders Rehabilitation Law, which imposes parameters on governments' ability to refuse employment or licensing based on criminal history.

APPENDIX C – DESCRIPTIONS OF DATA SOURCES USED FOR BACKGROUND CHECKS

Computerized Criminal History (CCH)

Computerized Criminal History (CCH) contains public and private data maintained by the Minnesota Bureau of Criminal Apprehension. Data on criminal convictions is public for 15 years following the completion of the sentence. Public information includes: offense, court of conviction, date of the conviction and sentence information. Private information includes arrest data, juvenile data, data on convictions where 15 years or more have elapsed since the completion of the sentence, and other data deemed private or confidential.
Source: https://cch.state.mn.us/Common/BCAHome.aspx

Court records

The information obtainable when searching court records varies pursuant to statute and court rules of procedure based upon the identity of the requestor. Information by county may be obtained from the county court. In general, the public may obtain at the county level access to all open or closed adult criminal cases at the felony, gross misdemeanor, misdemeanor, or petty misdemeanor level, unless the case is restricted by statute or court order. *Minn. R. Pub.Access to Records of Judicial Branch 4, subd. 1* (stating all case records are accessible to the public unless otherwise specified). The public may also obtain access to public juvenile delinquency and extended jurisdiction juvenile cases. *Minn. Stat. § 260B.163, subd. 1(c).* Criminal justice partners must also be informed about the existence of expunged cases, and may obtain a court order to access the file. *Minn. Stat. § 609A.03, subd. 7.* Criminal justice partners are also allowed access to some nonpublic cases (i.e., nonpublic juvenile delinquency cases). *See e.g., Minn. Stat. § 260B.171, subd. 1(a).*
Source: Kelly Mitchell, Staff Attorney, State Court Administrator's Office

The public and criminal justice agencies may also obtain access to some criminal court records via Court Web Access. Minnesota Court Web Access (CWA) contains non-confidential, adult criminal case and defendant information from court cases that are Open, Closed, or Archived (excluding Sealed, Expunged, and Deleted cases). The following data is available:

- Statewide data from all counties – including Hennepin & Scott;
- Adult criminal (K-case type) defendant and case information for cases that originated as felonies, gross misdemeanors (95 percent);
- Limited traffic and non-traffic misdemeanors – also included are misdemeanor cases that originated as more serious;
- Offenses but were later reduced;
- Cases with events in 1999 for all counties except Scott County and all cases with events in 2000 going forward for all counties including Scott County;
- Historical information is available on "charge" information only; and
- Sentence information represents the current version of the sentence only.

Source: CriMNet Glossary of Terms

FBI/III (Interstate Identification Index)
The FBI/III record is a national criminal history and includes arrests from nearly all 50 states, as well as federal arrests and military arrests. The criminal history may also include court dispositions and custody information.
Source: Julie Letourneau, BCA/CJIS Manager

NCIC
National Crime Information Center. An information system and nationwide network serving local, state, and federal law enforcement agencies. A computer system maintained by the FBI, which can be queried by local agencies via state computer systems known as "control terminal agencies."
Source: CriMNet Glossary of Terms

The 11 person files are the Convicted Sexual Offender Registry, Foreign Fugitive, Identity Theft, Immigration Violator, Missing Person, Protection Order, Supervised Release, Unidentified Person, U.S. Secret Service Protective, Violent Gang and Terrorist Organization, and Wanted Person Files. In addition, the database contains images that can be associated with NCIC records to assist agencies in identifying people and property items. The Interstate Identification Index, which contains automated criminal history record information, is also accessible through the same network as the NCIC.
Source: U.S. Department of Justice, Federal Bureau of Investigation, "National Crime Information Center, An Overview," September 2005

POR
Predatory Offender Registry. The POR is the central repository for collecting and maintaining information for every registered offender in Minnesota.
Source: CriMNet Glossary of Terms

Supervision
S^3 or Statewide Supervision System. The S^3 project provides access for criminal justice professionals to information on all offenders under supervision in Minnesota, automated Sentencing Guidelines Worksheets and a link to the Department of Corrections' Prison inmate data. The current status of the system includes adult and juvenile probation data from all 87 counties, a link to Department of Corrections' prison inmate information, jail data from 77 counties, booking information from 31 police departments, and automated felony sentencing worksheets from 100 percent of jurisdictions.
Source: CriMNet Glossary of Terms

Suspense File
The suspense file is a database of court and custody records that cannot be matched to their arrest records. If the Minnesota Bureau of Criminal Apprehension (BCA) does not receive complete and accurate arrest fingerprint card data from law enforcement agencies, offenders' information may not be entered into the computerized criminal history (CCH) database, or it may not be linked to court or custody data; these incomplete records are entered into the suspense file. Records that are placed in the suspense file cannot be properly accessed by law enforcement agencies, courts, or the public.
Source: CriMNet Glossary of terms

APPENDIX D – FAIR INFORMATION PRACTICES

"Fair Information Practices," or FIPs, provide a framework for the development of policies. In Minnesota, the public sector is required to comply with these principles. Following each principle are the Minnesota statutory provisions that satisfy the principle.

1. Purpose Specification Principle. Identify the purposes for which all personal information is collected, and keep subsequent use of the information in conformance with such purposes.

> **General standards for collection and storage.** Collection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.
> *Minnesota Statutes, section 13.05, subdivision 3.*
>
> **Tennessen warning.** An individual asked to supply private or confidential data concerning the individual shall be informed of: (a) the purpose and intended use of the requested data within the collecting government entity; (b) whether the individual may refuse or is legally required to supply the requested data; (c) any known consequence arising from supplying or refusing to supply private or confidential data; and (d) the identity of other persons or entities authorized by state or federal law to receive the data. This requirement shall not apply when an individual is asked to supply investigative data, pursuant to section 13.82, subdivision 7, to a law enforcement officer.
> *Minnesota Statutes, section 13.04, subdivision 2.*
>
> **Limitations on collection and use of data.** Private or confidential data on an individual shall not be collected, stored, used, or disseminated by government entities for any purposes other than those stated to the individual at the time of collection in accordance with section 13.04, except as provided in this subdivision.
> *Minnesota Statutes, section 13.05, subdivision 4.*

2. Collection Limitation Principle. Review how personal information is collected to ensure it is collected lawfully and with appropriate authority, and guard against the unnecessary, illegal, or unauthorized compilation or personal information.

> **General standards for collection and storage.** Collection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.
> *Minnesota Statutes, section 13.05, subdivision 3.*

3. Data Quality Principle. Implement safeguards to ensure information is accurate, complete, and current, and provide methods to correct information discovered to be deficient or erroneous.

> **Data protection.** (a) The responsible authority shall (1) establish procedures to assure that all data on individuals is accurate, complete, and current for the purposes for which it was collected; and (2) establish appropriate security safeguards for all records containing data on individuals.

(b) When not public data is being disposed of, the data must be destroyed in a way that prevents its contents from being determined.
Minnesota Statutes, section 13.05, subdivision 5.

Procedure when data is not accurate or complete. (a) An individual subject of the data may contest the accuracy or completeness of public or private data. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either: (1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or (2) notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.

The determination of the responsible authority may be appealed pursuant to the provisions of the Administrative Procedure Act relating to contested cases. Upon receipt of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing required by chapter 14, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing.

(b) Data on individuals that have been successfully challenged by an individual must be completed, corrected, or destroyed by a state agency, political subdivision, or statewide system without regard to the requirements of section 138.17.

After completing, correcting, or destroying successfully challenged data, a government entity may retain a copy of the commissioner of administration's order issued under chapter 14 or, if no order were issued, a summary of the dispute between the parties that does not contain any particulars of the successfully challenged data.
Minnesota Statutes, section 13.04, subdivision 4.

4. Use Limitation Principle. Limit use and disclosure of information to the purposes stated in the purpose specification, and implement realistic and workable information-retention obligations.

Tennessen warning. An individual asked to supply private or confidential data concerning the individual shall be informed of: (a) the purpose and intended use of the requested data within the collecting government entity; (b) whether the individual may refuse or is legally required to supply the requested data; (c) any known consequence arising from supplying or refusing to supply private or confidential data; and (d) the identity of other persons or entities authorized by state or federal law to receive the data. This requirement shall not apply when an individual is asked to supply investigative data, pursuant to section 13.82, subdivision 7, to a law enforcement officer.
Minnesota Statutes, section 13.04, subdivision 2.

Limitations on collection and use of data. Private or confidential data on an individual shall not be collected, stored, used, or disseminated by government entities for any purposes other than those stated to the individual at the time of collection in accordance with section 13.04, except as provided in this subdivision.
Minnesota Statutes, section 13.05, subdivision 4.

…It shall be the duty of the head of each state agency and the governing body of each county, municipality, and other subdivision of government to establish and maintain an active, continuing program for the economical and efficient management of the records of each agency, county, municipality, or other subdivision of government….
Minnesota Statutes, section 138.17, subdivision 7.

5. Security Safeguards Principle. Assess the risk of loss or unauthorized access to information in your systems, and ensure ongoing use conforms to use limitations.

Data protection. (a) The responsible authority shall (1) establish procedures to assure that all data on individuals is accurate, complete, and current for the purposes for which it was collected; and (2) establish appropriate security safeguards for all records containing data on individuals.

(b) When not public data is being disposed of, the data must be destroyed in a way that prevents its contents from being determined.
Minnesota Statutes, section 13.05, subdivision 5.

General standards for collection and storage. Collection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.
Minnesota Statutes, section 13.05, subdivision 3.

6. Openness Principle. Provide reasonable notice about how information is collected, maintained, and disseminated by your agency, and describe how the public can access information as allowed by law or policy.

Procedures. (a) The responsible authority in every government entity shall establish procedures, consistent with this chapter, to insure that requests for government data are received and complied with in an appropriate and prompt manner.

(b) The responsible authority shall prepare public access procedures in written form and update them no later than August 1 of each year as necessary to reflect any changes in personnel or circumstances that might affect public access to government data. The responsible authority shall make copies of the written public access procedures easily available to the public by distributing free copies of the procedures to the public or by posting a copy of the procedures in a conspicuous place within the government entity that is easily accessible to the public.
Minnesota Statutes, section 13.03, subdivision 2.

Public document of data categories. The responsible authority shall prepare a public document containing the authority's name, title and address, and a description of each category of record, file, or process relating to private or confidential data on individuals maintained by the authority's government entity. Forms used to collect private and confidential data shall be included in the public document. Beginning August 1, 1977 and annually thereafter, the responsible authority shall update the public document and make any changes necessary to maintain the accuracy of the document. The document shall be available from the responsible authority to the public in accordance with the provisions of sections 13.03 and 15.17.
Minnesota Statutes, section 13.05, subdivision 1.

7. Individual Participation Principle. Allow affected individuals access to information related to them in a manner consistent with the agency mission and when such access would otherwise not compromise an investigation, case, court proceeding or agency purpose and mission.

> **Access to data by individual.** Upon request to a responsible authority, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created. The responsible authority shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority may require the requesting person to pay the actual costs of making, certifying, and compiling the copies.
>
> The responsible authority shall comply immediately, if possible, with any request made pursuant to this subdivision, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible.
> *Minnesota Statutes, section 13.04, subdivision 3.*

8. Accountability Principle. Have a formal means of oversight to ensure the privacy and information quality policies and the design principles contained therein are being honored by agency personnel.[46]

> **Responsible authority.** "Responsible authority" in a state agency or statewide system means the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data. "Responsible authority" in any political subdivision means the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law.
> *Minnesota Statutes, section 13.02, subdivision 16.*
>
> **AUTHORITY OF THE RESPONSIBLE AUTHORITY.**
>
> Pursuant to Minnesota Statutes, sections 13.02 to 13.06, the responsible authority shall have the authority to:
>
> A. implement the act and these rules in each entity;
>
> B. make good faith attempts to resolve all administrative controversies arising from the entity's practices of creation, collection, use, and dissemination of data;
>
> C. prescribe changes to the administration of the entity's programs, procedures, and design of forms to bring those activities into compliance with the act and with this chapter;

[46] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Privacy and Information Quality Policy Development for the Justice Decision Maker,* September 2005: 7.

D. take all administrative actions necessary to comply with the general requirements of the act, particularly Minnesota Statutes, section 13.04, and this chapter; and

E. where necessary, direct designees to perform the detailed requirements of the act and this chapter under the general supervision of the responsible authority. *Minnesota Rules, 1205.0900.*

DUTIES OF THE RESPONSIBLE AUTHORITY RELATING TO PUBLIC ACCOUNTABILITY.

Subpart 1. **General.** Pursuant to Minnesota Statutes, section 13.05, the duties of the responsible authority shall include but not be limited to the following.

Subp. 2. **Informing public where to direct inquiries.** For the purposes of public accountability, the responsible authority shall, by October 31, 1981, or until August 1 of each year when the requirements of subpart 3 are fully complied with, place his/her name, job title and business address, and the name(s) and job titles of any designees selected by the responsible authority on a document. Such document shall be made available to the public and/or posted in a conspicuous place by each entity. The document shall identify the responsible authority or designees as the persons responsible for answering inquiries from the public concerning the provisions of the act or of this chapter.

Subp. 3. **Information required by public notice.** In the public document to be prepared or updated by August 1 of each year as required by Minnesota Statutes, section 13.05, the responsible authority shall identify and describe by type all records, files, or processes maintained by his/her entity, which contain private or confidential data. In addition to the items to be placed in the public document as required by Minnesota Statutes, section 13.05, the responsible authority shall include the following: the name, title, and address of designees appointed by the responsible authority; identification of the files or systems for which each designee is responsible; and a citation of the state statute or federal law which classifies each type of data as private or confidential.

Subp. 4. **Required readability in public notice.** The responsible authority shall draft the descriptions of the types of records, files, and processes in easily understandable English. Technical or uncommon expressions understandable only by a minority of the general public shall be avoided, except where required by the subject matter.

Subp. 5. **Form of public notice.** The responsible authority may use the form set forth in part 1205.2000 to prepare this public document.
Minnesota Rules, 1205.1200.