



**Criminal and Juvenile Justice
Information Policy Group**

**Report to the Legislature on
Background Checks and Sealing of
Criminal Records**

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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 Information Policy Group (Policy Group):

Minnesota Statutes, section 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 Information Task Force (Task Force):

Minnesota Statutes, section 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, section 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. The CriMNet Program Office is part of the Minnesota Bureau of Criminal Apprehension.

Report to the Legislature on Background Checks and Sealing of Criminal Records

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Executive Summary

The topics of background checks and criminal record expungements have been the subject of increasing interest by public policymakers in recent years. This is due to the complexity of these processes as well as some perceived disparities for individuals and communities. It has been asserted by some that criminal records sometimes have a negative effect on an individual's ability to obtain housing or employment and thus affect the individual's ability to rehabilitate. This "collateral sanction" prompted the 2006 Legislature to informally ask the Criminal and Juvenile Justice Information Policy Group (Policy Group) to study background check and expungement processes. These two issues are within the scope of the Policy Group's duties under Minnesota Statutes, section 299C.65.

The Policy Group recognized that how these collateral sanctions were addressed could have a negative affect on public safety. It's possible that records could be sealed from law enforcement or from those agencies charged with conducting background checks for employment involving vulnerable populations or situations. Through the auspices of the CriMNet Program Office (Program Office), the Management Analysis and Development Division within the Department of Administration conducted some initial research and presented its findings to the Policy Group. After the initial research was completed, the Policy Group directed the Criminal and Juvenile Justice Information Task Force (Task Force) to create a delivery team to review both background checks and expungement policy. The delivery team presented its findings and recommendations to the Task Force in late 2006. The Task Force forwarded the delivery team report to the Policy Group without recommendation. Both the initial research report and the delivery team report can be found at www.crimnet.state.mn.us.

After extensive consideration of the delivery team's report, the Policy Group adopted a series of high-level policy recommendations related to background checks and expungements (sealing) to address the collateral sanctions identified in the Delivery Team's report. As part of its decision-making process, the Policy Group requested that the Program Office work with subject matter experts to analyze the business implementation issues and the fiscal impact of the recommendations. In addition, the Policy Group solicited public comment on the high level policy direction. Comments by 49 individuals or organizations were received. A summary of the substantive issues raised by the comments is attached as Appendix 1.

In November and December 2007, the Policy Group discussed the analysis of the business and fiscal implications that result from the recommendations. The Policy Group noted that these two issues fit into the overall integration vision for the criminal justice information system in Minnesota and the integration priorities that have already been established (e.g. increased data linked to a biometric identifier such as a fingerprint). To fully implement both the background check and expungement (sealing) recommendations, a substantial financial investment is needed. The Policy Group suggested that one possibility might be to phase the implementation of some of the recommendations, in which case, the financial investment could be made over a longer period of time. Finally, the Policy Group noted that some of the implementation options fit within the scope of current or future integration projects sponsored by the Policy Group.

In summary, the Policy Group continues to support the policy recommendations adopted in mid-2007. However, recognizing the current budget situation and other competing initiatives, the Policy Group chose not to recommend any specific implementation options but rather to forward the analysis and options to the Legislature for its consideration. Should the Legislature decide to act on these collateral sanctions issues, the Policy Group encourages the Legislature to consider the recommendations as the

foundation for any proposal and to bear in mind the fiscal impact to state and local agencies and the overall integration goals of the Policy Group.

The high-level recommendations as well as details about the proposals that were used to assess the business and fiscal implications of the recommendations are presented in this report, including options requested by the Policy Group to determine if there were alternative ways to accomplish the recommendations that had a reduced fiscal impact. The report also documents open issues that the Policy Group believes may be worthy of further consideration in the future as part of a comprehensive package to address public safety and the collateral sanctions of criminal records.

Background Check Recommendations – Adopted by the Policy Group, June 2007

The essence of the background check recommendations is to bring uniformity and consistency to checks conducted for similar purposes. The Policy Group reviewed three global questions/issues related to background checks and adopted the following recommendations:

1. Should statutory background checks become more consistent in their approaches, guided by a set of principles?

Current Law Summary:

Statutory background checks, which have been authorized by various legislative committees at various times since 1945, vary in their approaches and in their specificity. For example, not all individuals who work with vulnerable populations have the same records reviewed as part of the statutorily authorized check. See pages 58-63 of the Delivery Team report for a summary table of Minnesota statutes that authorize background checks. A more detailed and updated summary by Minnesota House Research is located at:

<http://www.house.leg.state.mn.us/hrd/pubs/bkgdchck.pdf>

Recommendation: The Policy Group recommends that background checks be more consistent and be guided by the following principles.

- A. Like-type statutory checks should be treated similarly** (similar occupations and license types)
(Recommended by Delivery Team)
- B. Potential risks to the public, vulnerable populations, systems and data ought to influence how much information is sought about individuals on background checks** (Recommended by Delivery Team)
- C. Checks of fingerprint-based repositories, such as the BCA's Computerized Criminal History, ought to be performed with a fingerprint** (Recommended by Delivery Team)
- D. In the longer term, the state should pursue national (FBI) checks for most statutorily-required checks** (Not recommended by the Delivery Team, but there is a national direction toward facilitating access to FBI records)
- E. Potential risks to children call for mandatory (rather than voluntary) checks in situations where individuals will have frequent unsupervised contact with children** (A more detailed recommendation was made by Delivery Team)
- F. Sensitive data, including older arrest data and suspense information should be provided only to public agencies** (Recommended by Delivery Team)

2. Should statutory background checks adopt consistent procedures to ensure that individuals are given sufficient information and process protections while undergoing a background check?

Current Law Summary:

Statutory background checks, which have been authorized by various legislative committees at various times since 1945, vary in their requirements. The most comprehensive scheme for giving notice is found in Chapter 245C for checks conducted by the Department of Human Services. Other statutes do not require any notice to the individual subject of the check. The protections of the Minnesota Government Data Practices Act (MGDPA) apply when the background check entity is a government entity.

Recommendation: The Policy Group recommends the following procedures to make statutory background checks more consistent and to provide more safeguards and process protections for individuals.

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

- B. Provide notice of disqualifying offenses, if any, identified in statute.**

- C. Provide individuals with a copy of the background check (with the exception of confidential data).**

- D. Provide notice of the data subject’s rights to access and correct data.**

- E. Provide notice to the background check subject when the background check is completed, and identify who initiated the check.**

- F. Use information, fingerprints or other data provided by the subject of a background check, solely for the purpose of the background check.**

The Policy Group also discussed a Center of Excellence or “one-stop shop” for conducting background checks. While making the sources used for background checks consistent, the process for conducting the background check itself should also be consistent. One possibility is to get all information from a single source.

3. Should state agencies provide background checks at no charge for volunteers?

Current Law Summary:

User charges are authorized for Minnesota background checks. These charges are not waived when citizens intend to volunteer their time. However, background checks for some nonprofit volunteers are already reimbursed in certain state and federal program budgets.

Recommendation: The Policy Group recommends that background checks be provided by state agencies for volunteers at no charge or at a reduced charge, depending on future cost estimates to be considered by the Policy Group.

Volunteers would be considered individuals who volunteer their time for public benefit. This would apply only when the check is mandated by statute or authorized by statute and only when the check is not otherwise reimbursed.

Analysis of the recommendations

Option One

To provide the implementation and fiscal analysis for all of the recommendations above, staff from the CriMNet Program Office met with various stakeholders and subject matter experts throughout the summer of 2007 (see Appendix 2 for the list of stakeholders). Information on current processes, as well as reaction to the direction of the Policy Group, was obtained. To facilitate development of fiscal information, draft statutory language was created and revisions were made based on comments received from stakeholders. The draft language was distributed to state and local stakeholders to develop the requested fiscal information (much like bill language is used as a basis for a fiscal note during the legislative session).

The draft language in Appendix 3 provides one way to implement the Policy Group’s recommendations on background checks. This language was used by state agency and court stakeholders to provide fiscal implications. A summary of the fiscal impact, in the format of a consolidated fiscal note, is contained in Appendix 4.

See Appendix 5 for draft language to create a center of excellence. This language would facilitate the partnership of the Bureau of Criminal Apprehension and the Department of Human Services to plan and implement a center of excellence for background checks in Minnesota.

The information provided by stakeholders indicates that the overall fiscal impact of the recommendations is estimated to be:

Dollars (in thousands)	FY09	FY10	FY11	FY12
Total Cost	\$24,861.8	\$33,613.3	\$34,223.6	\$34,284.7
Full Time Equivalents	FY09	FY10	FY11	FY12
Total (FTE)	121.6	163.6	163.6	163.6

This estimate was presented to the Policy Group in November 2007. Major cost items in this proposal are the increased number of national background checks conducted through the Federal Bureau of Investigation (FBI), the increased number of data repositories that must be queried before a background check is complete, and background checks provided at no charge to volunteers.

Option Two

Due to the significant costs associated with option one, Policy Group members requested that staff develop one or more options to reduce the fiscal impact of the proposal. In December 2007, an alternative proposal was presented. This proposal reduced the number of FBI checks by limiting the circumstances when this type of check would need to be conducted. The draft statutory language to implement option two and the fiscal impact are contained in Appendix 6.

The reduction in FBI checks reduces the cost of the overall proposal by an estimated \$7.7 million per year as follows:

Dollars (in thousands)	FY09	FY10	FY11	FY12
Total Cost	\$17,168	\$25,913	\$26,523	\$26,584
Full Time Equivalents	FY09	FY10	FY11	FY12
Total (FTE)	121.6	163.6	163.6	163.6

Expungement/Sealing Recommendations – Adopted by the Policy Group, May 2007

While current statutes and case law use the word “expungement” to describe what happens to criminal records, the remedy that is described in Minnesota Statutes, section 609A.01 is the sealing of records. When something is “expunged,” it generally means that it is destroyed. Rather than continuing to use the word “expungement” to describe what is proposed, the statutory draft refers to “seal” and “sealing” as a more accurate description of the remedy that would be available.

Currently, Chapter 609A provides the statutory basis for sealing criminal records. The remedy is limited to a few types of records in both the executive and judicial branches and most individuals are unable to completely seal their criminal records.

The expungement/sealing proposal is a balance between increased eligibility to have criminal records sealed and more access by criminal justice agencies without a court order for criminal justice purposes and access for certain background checks. There are three main components to the proposal: (1) sealing certain records like arrests and stays of adjudication without any action by the affected individual; (2) for those criminal records where a petition to seal must be filed, providing a framework, timeline and criteria that must be satisfied for sealing to be granted; and (3) for those situations where government is not opposed to the petition to seal, providing for a streamlined court process. These components, when taken together, address the four recommendations below.

The Policy Group reviewed four global questions/issues related to expungements and adopted the following recommendations (note: the language used in the original recommendations is repeated below and so there are references to “expungement” versus “sealing”):

1. For what purposes should expunged records continue to be used (meaning, they are accessible for certain purposes)?

The use of expunged records for additional criminal justice purposes

Current Law Summary:

An expunged record may be opened for these purposes:

- for a criminal investigation, prosecution, or sentencing, upon an *ex parte* court order¹
- for purposes of evaluating a prospective employee in a criminal justice agency *without a court order;*” (records of convictions only)²
- for purposes of a background study under section 245C.08 unless the court order for expungement is directed specifically to the commissioner of human services³

Recommendation: The Policy Group recommends that expunged records be accessible to the courts, law enforcement, prosecutors, probation officers, and corrections officers without a court order.

¹ M.S. 609A.03, subd. 7, (b)(1)

² M.S. 609A.03, subd. 7, (b)(2)

³ M.S. 609A.03, subd. 7, (b)(3)

This is in addition to the allowed access to expunged records authorized in current law, as noted above. Data may be transmitted between and among these agencies. This is recommended with the understanding that audit trails and purpose codes should document access to records and the purpose for the access.

Recommendation: The Policy Group recommends that expunged convictions still be considered convictions for purposes of gun laws, sex offender registration, expungement proceedings, sentencing, subsequent prosecution, other crimes evidence, impeachment, probation and statutorily mandated background checks (*Policy Group noted this list may not be exhaustive*).

The use of expunged records for non-criminal justice purposes

Recommendation: The Policy Group recommends that expunged records be accessible for statutory background checks, if the government agency provides, in statutes or rules, for a review process including the right to administrative or judicial review.

The Policy Group is concerned that there may be some other high risk occupation categories that do not have background checks mandated by statute. In these categories, the government entity conducting the background check should have a review process, and should obtain a statutory mandate by legislative determination.

2. Should expungements be more uniform across all government entities?

Current Law Summary:

- Until March 2004, expungements ordered from the judicial branch were generally effective on executive branch records – there was general parity between what was sealed in the courts and in the executive branch⁴
- The Court of Appeals decision *State v. Schultz* in March 2004 limited the effectiveness of expungements on executive branch records. They are now generally limited to three statutorily-authorized categories:
 1. For certain controlled substance offenses, upon dismissal and discharge;
 2. For juveniles prosecuted as adults, upon discharge; and
 3. For actions or proceedings that were resolved in favor of the petitioner.
- Expungement orders are effective on executive branch records if constitutional rights are violated.
- Courts may still order expungement of *court records* under the inherent authority of the courts

Some reported consequences of the lack of parity between the two branches:

- For the petitioner – the expungement remedy has limited effectiveness and is only useful in select circumstances
- For the systems and data users – data can be accessed from executive branch databases – but court records for the same case cannot be seen.

⁴ This is a simplification. *State v. Schultz*, 676 N.W.2d 337 (Minn. Ct. App. 2004), clarified some previous case law that some judges were already following.

Recommendation: The Policy Group recommends that expungements should be more uniform across all government entities, and that there should be a statutory remedy.

3. Who should be statutorily eligible to petition for expungement?

Current Law Summary:

- Current law states that the following are eligible to petition for expungement and to have the expungement be effective upon executive branch records:
 1. For certain controlled substance offenses, upon dismissal and discharge;
 2. For juveniles prosecuted as adults, upon discharge; and
 3. For actions or proceedings that were resolved in favor of the petitioner.
- Offenses for which predatory offender registration is required are not may not be expunged.

The Policy Group believes there ought to be some minimum amount of time that a person with a conviction should wait before they file a petition for expungement, and that some other restrictions should serve as “gatekeepers” to prevent a person from petitioning for expungement. However, there other factors that should not prevent someone from petitioning, but should be considered by the court when deciding whether to issue an expungement order.

Waiting periods and other “gatekeepers” regarding eligibility to petition for expungement

Recommendation: The Policy Group recommends that eligibility to petition be after a specified number of years following discharge from supervision.

The Policy Group adopted the timeframes in the table below; however, the Policy Group agreed that these timeframes might be arbitrary and could possibly be refined based on research-based criteria. Years shown are *from* the date of discharge *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

Recommendation: The Policy Group recommends that 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 discharge from supervision for the later conviction.

Recommendation: The Policy Group recommends that convictions for certain crimes are ineligible to petition such as: (1) registration crimes, as in current law; and (2) traffic offenses, for example DWI, speeding.

Recommendation: The Policy Group recommends that a person may not file a petition for expungement if the petitioner is under correctional supervision for an offense, is currently involved in a diversion program, or is currently charged with violating a criminal law.

Recommendation: The Policy Group recommends that eligibility to petition should be extended to juvenile records that are public.

Factors to consider when deciding whether to issue an expungement order:

Recommendation: The Policy Group recommends that the following factors be considered when deciding whether to issue an expungement order:

- (a) When deciding whether to issue an expungement order under this section, the court shall consider the following factors:
- (1) Whether the petitioner's sentencing conditions were satisfactorily completed for the underlying crime whose record is the subject of the expungement petition;
 - (2) Whether the petitioner's restitution has been paid for the underlying crime whose record is the subject of the expungement petition;
 - (3) Whether any treatment has been completed for the underlying crime whose record is the subject of the expungement petition;
 - (4) The nature and severity of the underlying crime whose record is the subject of the expungement petition;
 - (5) the danger, if any, the petitioner poses to any individuals or society;
 - (6) the length of time since the crime occurred;
 - (7) the steps taken by the petitioner towards rehabilitation following the crime;
 - (8) extenuating or mitigating factors relating to the underlying crime, including, but not limited to, the petitioner's level of participation, claims of innocence, and irregularities in the trial;
 - (9) The reasons for the expungement, including, but not limited to, the petitioner's attempts to obtain employment, housing, or other necessities;
 - (10) the petitioner's criminal record;
 - (11) the petitioner's record of employment and community involvement;
 - (12) the recommendations of interested law enforcement, prosecutorial, and corrections officials;
 - (13) the recommendations of any victims of the underlying crime;
 - (14) any expungement already obtained by petition; and
 - (15) any other factor deemed relevant by the court.
- (b) Except as provided in paragraph (a), a court may grant an expungement if it determines by a preponderance of the evidence that the benefit to the petitioner outweighs the disadvantages to the public and public safety after considering the factors listed in paragraph (a).
- (c) If the proceedings had been resolved in the petitioner's favor the expungement shall be granted unless the agency or jurisdiction whose records would be affected established by clear and convincing evidence that the interests of the public and public safety outweighs the disadvantages to the petitioner of not sealing the records.

4. Should any expungements happen without a petition? (require no action by the subject)

Current Law Summary:

The subject of the criminal record must petition to have criminal records expunged. However, in the case of proceedings resolved in favor of the petitioner, the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record.

Recommendation: The Policy Group recommends that expungements be granted without the need for the subject to file a petition with the court in certain circumstances.

Proceedings resolved in favor of the petitioner

- For those who were arrested but not charged
- For those who were charged but the case was dismissed
 - There should be a waiting period for arrests and dismissed charges, mentioned above, for one year
 - These expungements of arrests/charges should apply only to non-person crimes.

Other non-conviction categories

- For those who received a continuance for dismissal
- For those who received a stay of adjudication
- For those successfully completing diversion
 - The prosecutor should agree to the continuance, stay or diversion, mentioned above
 - There should be satisfactory completion of conditions imposed for the continuance, stay or diversion
 - Automatic expungements should apply only to non-person crimes

Other Decisions by Policy Group

As Program Office staff worked with the recommendations and the various stakeholder representatives, concerns were raised and presented to the Policy Group for its consideration. As a result, some changes to the recommendations were made by the Policy Group. They are summarized as follows.

1. In Recommendation 3, petty misdemeanors were removed from the chart that establishes the time to wait to petition for sealing. This decision was based on the fact that petty misdemeanors are not crimes and because the petition process involves more process than is applied to resolving petty misdemeanor charges.

2. In Recommendation 3, factor 8 was removed as it would change the focus from rehabilitation of the individual to a re-trial of the underlying case.

3. In Recommendation 4, the focus of sealing arrests or charges older than one year was changed from applying only to non-person crimes to not applying to arrests or charges crimes defined in sections 518B.01, subdivision 14, 609.1095, subdivision 1, paragraph (d), 609.215, 609.224, 609.748, subdivision 6 and 611A.036, subdivision 7. These sections can generally be described as crimes of violence against people.

4. Based on a suggestion made by a stakeholder, the draft language in Appendix 7 includes changes to the pardon language to incorporate the sealing of records as part of the result of a pardon. No business or fiscal implication was noted by any reviewing agency and so the changes are part of the language that was reviewed by the Policy Group.

Analysis of the recommendations

Option One

The draft language in Appendix 7 implements the recommendations with some modifications as directed by the Policy Group. This language was used by state agency, court and local government stakeholders to provide fiscal implications. A summary of the fiscal impact, in the format of a consolidated fiscal note, are contained in Appendix 8.

The information provided by the stakeholders who responded indicates that the fiscal impact of the recommendations is estimated to be:

Dollars (in thousands)	FY09	FY10	FY11	FY12
Total Cost	\$8,532.1	8,041.1	\$8,697.7	\$8,441.3

Full Time Equivalents	FY09	FY10	FY11	FY12
Total (FTE)	70.3	91.7	93.95	93.95

Option Two

CriMNet Program Office staff prepared an alternative option for the Policy Group’s consideration at its December meeting. Option two amends the existing expungement statute to accomplish two things: 1) make orders expunging records effective in the executive branch; and 2) add the ability to petition for convictions to be expunged. The draft statutory language to implement option two and the fiscal impact are contained in Appendix 9. In this option as presented, all requests for sealing would need to be heard according to the current petition process. This option results in increased costs because more judicial resources are needed as the efficiencies of the non-petition sealing and streamlined processes are eliminated. A summary of the option as proposed is estimated to be:

Dollars (in thousands)	FY09	FY10	FY11	FY12
Total Cost	\$12,882	\$12,391	\$13,047	\$12,791

Full Time Equivalents	FY09	FY10	FY11	FY12
Total (FTE)	93.2	114.6	116.85	116.85

Other Issues for Consideration

The following issues are listed to capture topics that have been identified as part of this process and may require further study.

- 1.** In the background check area, no research or proposal was drafted to address the lack of uniformity once data about an individual has been gathered. There is no uniformity in the conduct which disqualifies an individual from employment or licensure. There is no uniform way in which an individual can challenge the results of a background check. Finally, there is no uniform method of judicial review for decisions made by a government entity performing a background check. As this topic is also being considered by the Collateral Sanctions Committee, the Policy Group determined that they would wait to see if further work by staff was appropriate.
- 2.** Certificates of rehabilitation were researched and then briefly discussed by the Task Force delivery team. The use of this tool in other states is new and there is not any information about its efficacy. This is also being considered by the Collateral Sanctions Committee. The Policy Group determined it would wait to see what recommendations are brought forward by the Collateral Sanctions Committee.
- 3.** In the sealing area, stakeholder descriptions indicate that there is not a uniform method for sealing criminal records under current law. Current practices may make it impossible to find criminal records or may seal more or less information than is needed to comply with the court order. The development of best practices and training sessions on those best practices may assist state and local agencies in this area.

Appendix 1

Summary of Public Comments on Background Checks and Sealing of Criminal Records

General Note: Public Comments were provided to the Recommendations adopted by the Policy Group at their May and June 2007 meetings (See Appendices 1 and 2) and were not made to the specific statutory language included as part of the November 2007 report.

This document is a summary of some of the comments received and is intended to highlight issues presented in those comments.

Minnesota County Attorneys Association

Issue: Prevent sealing of all counts in a multiple count complaint when the defendant was convicted of one count.

Response: This language is in section 609C.05, subd. 4.

Issue: Changing the burden of proof from clear and convincing evidence to preponderance of the evidence. MCAA is concerned that this will increase the number of records that are sealed.

Response: What outcome would the Policy Group like to achieve? The same number of records sealed as in the past, or an increased number of records sealed to assist individuals in dealing with the collateral consequences of a criminal record?

Issue: Exchange the 14 factors for the court to consider in granting a petition to seal with the Delivery Team proposal of completed probation, restitution, successful completion of court ordered treatment and show a contributing member of society. The emphasis is on having demonstrated rehabilitation before sealing.

Response: Successful completion of probation and court ordered treatment are required. See section 609C.02, subdivision 2 and 609C.04, subd. 1. The Policy Group explicitly indicated that it did not want payment of restitution to be a condition of filing a petition.

Issue: The separation of powers is at risk when the courts have the authority to seal executive branch, as well as judicial branch records. A Certificate of Rehabilitation is proposed as an alternative along with a comment that conviction data in the private sector that is not affected by the sealing process.

Response: The current expungement scheme (chapter 609A and inherent authority) does not provide complete relief to individuals with a criminal record who otherwise qualify for sealing. The MCAA recommendations for change (see summary below) all incorporate a provision making the sealing applicable to executive and judicial branch records.

Certificates of Rehabilitation were briefly discussed by the Delivery Team but no proposal was offered.

MCAA Recommendations for changes regarding sealing criminal records:

1. Automatic expungement for arrests and dismissed charges for non-person crimes

The statutory draft essentially adopts this recommendation with a change that the focus is not on a distinction between “person” and “non-person” crimes, but rather that certain arrests for violent crimes

can only be sealed following a petition (see sections 609C.05, subd. 3 and 609C.06, subd. 1) and all other eligible arrests are sealed without action by the individual (see section 609C.06). The draft also includes access to the sealed record without a court order, as is recommended.

2. Automatic expungement for continuances for dismissal and stays of adjudication

The statutory draft contains all the elements of the recommendation (see section 609C.06, subd. 2 and 3).

3. Automatic expungement for diversion

The statutory draft contains all the elements of the recommendation (see section 609C.06, subd. 4).

4. Eligibility for certain convictions

This recommendation sets out a framework with time periods when certain crimes become eligible for sealing. The portion of this framework that has been modified in the statutory draft is that the severity of the crime (rather than “person” versus “non-person”) established the time period. The other major difference is that the statutory draft does not require payment of restitution to be eligible. All other portions of the recommendation appear in the statutory draft (see section 609C.08).

5. Eligibility contingent on successful completion of probation

The statutory draft meets this recommendation (see sections 609C.02, subd. 2 and 609C.08, subd. 5-7).

6. Eligibility for certain juveniles

The statutory draft meets this recommendation (see section 609C.02, subd. 4).

7. Access to records for government agency background checks

The statutory draft meets this recommendation (see section 609C.11, subd. 2).

8. Access to expunged records, generally

The statutory draft meets this recommendation (see section 609C>11).

9. Restoration language expanded to include all expungement orders including those for convictions

The statutory draft meets this recommendation (see section 609C.03, subd. 1(e) and (f)).

10. Expunged convictions for purposes of certain other laws

The statutory draft meets this recommendation (see section 609C.03, subd. 2).

11. District court authority

This recommendation would require statutory language that limits the court's ability to seal executive branch records to the situations described in the statute. Section 609C.03, subd. 1(a) says that an order to seal affects both judicial branch and executive branch records while paragraph (h) says that an order issued under inherent authority only affects records of the judicial branch.

12. Attachments to petition

This recommendation is not included in the statutory draft due to the ability of unscrupulous petitioners to use easily accessible software to create what they claim are copies of the complaint or police reports and attach them to the petition.

13. Liability limitation

A limitation on the liability of government or government employees was never discussed by the Delivery Team and was not included in the Policy Group's recommendations. There is no language in the statutory draft addressing this issue.

Mothers Against Drunk Driving

This group would prefer that sealing be granted only after payment of all restitution and the completion of all treatment.

The statutory draft requires completion of treatment. The payment of restitution is one of the factors the court will consider in whether to grant the petition (see 609C.10, subd. 4(a)(2)), at the direction of the Policy Group.

Minnesota Board of Teaching

The Board supports access to sealed records for statutorily mandated background checks. The Board opposes sealing records without a petition and opposes easing the requirements to seal a record because the Board can base licensure decisions on conduct that is not a conviction.

The Board's comments in opposition do not reflect the fact that the sealed record would be available to the Board to conduct its statutorily mandated background check so long as the Board provides a review process. See section 609C.11, subd. 2.

With respect to the Background Check Recommendations, the Board would like access to records in the "suspense" file. The Board is concerned that an individual who is the subject of a background check would alter the copy of the results that the individual receives and present it as a background check. The Board is also concerned about the information to be provided to an individual about their right to contest the accuracy and/or completeness of data. Both of the Board's concerns can be addressed through business processes.

Chiefs Goldstein (Plymouth) and Siitari (Edina)

These two chiefs support the provisions relating to the use of sealed records for criminal justice purposes. They ask for non-criminal justice purposes for "high risk occupations" to be included. The occupations that are of concern are not specified.

The ability of the sealing order to affect executive branch records is not supported. They also argue for longer waiting periods for drug-related crimes and crimes against persons. They are not in favor of the factors as possible bases for use in deciding whether to grant a petition. Rather, they would prefer to see the presence or absence of certain information as preventing a petition for an order to seal.

Continuances for dismissal may be used less frequently if they remain eligible for sealing without petition as they do not see these cases as being resolved in the individual's favor. The final issue raised is to prevent an individual from requesting that several criminal records be sealed in one petition.

Chief Siitari (Edina)

In a separate submission, Chief Siitari suggests that the focus should be on data harvesters and access to these records in the private sector. Chief Siitari indicates that there are not currently satisfactory mechanisms to track sealed arrest records and so the information in these records, while available to law enforcement, will not be accessible.

Salvation Army

The Salvation Army supports free background checks for volunteers and changes to the sealing statutes that help individuals rehabilitate.

Minnesota Sheriffs Association and Minnesota Police and Peace Officers Association

Issue: Sealed records should be available to criminal justice agencies for any purpose including firearms background checks and civil litigation with a specific reference to other sealing proceedings.

Response: Sealed records would be available for a firearms background check (see section 710.03, subdivision 6 of the Background Check draft). Also, part of the petition to seal records is to say what other petitions have been granted (see 609C.09, subdivision 2(a)(9)).

Issue: Define the circumstances where an expunged conviction is no longer a conviction with the example of housing and employment.

Response: See section 609C.03, subdivision 1(f) for language prohibiting the use of sealed records in housing and employment.

Issue: Local government should not have to get legislation passed to have access to sealed records to do a background check. Suggested alternatives are access to sealed records by informed consent or allow access by local ordinance.

Response: Access to sealed records using informed consent is not authorized by section 609C.12. Not all state statutory background checks meet the proposed standard for a review process and so they would also have to have statutory changes. The background check proposal begins the process of providing uniformity and consistency across checks.

Issue: Direct that sealing of a judicial branch record requires sealing of the executive branch record.

Response: See section 609C.03, subd. 1(a) for language directing that this occur.

Issue: Set time for filing a petition based on the crime as charged, not based on its disposition.

Response: In section 609C.08, subd. 2, the draft currently sets the time for filing a petition based on the crime at disposition.

Issue: A stay of adjudication should be a conviction.

Response: The sealing of the record where there has been a stay of adjudication is addressed in section 609C.06, subd. 3 and provides for sealing without action by the individual if all the conditions of the stay have been met and the prosecutor has agreed to the entry of the stay.

Issue: If an individual re-offends during the waiting period after a conviction, the record should never be eligible for sealing.

Response: Section 609C.08, subd. 1 currently is written so that the waiting period to petition begins anew if there is a conviction within the waiting period.

Issue: Felony person crimes should not be eligible for sealing.

Response: The draft's approach has changed from a distinction between "person" and "non-person" crimes to a focus on the violence of the crimes. The prohibitions on sealing are found in section 609C.05 and include adult and juvenile offenses that require predatory offender registration and traffic offenses. Arrests for crimes of violence may only be sealed if a petition is granted.

Issue: An individual should be ineligible to petition for sealing if they are under supervision, in diversion or currently charged with a crime in any jurisdiction, not just Minnesota.

Response: This issue is not addressed in the statutory draft.

Issue: Allowing a judge to consider "any other factor deemed relevant by the court" in deciding whether to grant a petition to seal does not promote consistency and uniformity.

Response: Is a change in this factor, or its removal, desired?

Issue: The proposals have significant fiscal impact that has not been considered.

Response: The fiscal impact of the proposals, including the impact on local units of government, are included as part of this report. The Sheriffs in Douglas, Hennepin, Isanti, Ramsey, Steele and Wright Counties and the Chiefs in Alexandria, Buffalo, Cambridge, Medina, Minneapolis, Owatonna and St. Paul were asked to provide fiscal information.

Issue: The burden of proof should be consistent, no matter what type of criminal record is involved.

Appendix 1, Summary of Public Comments, continued

Response: The clear and convincing burden of proof in current law for records of cases resolved in favor of the individual is unchanged. The draft does reduce the burden of proof on the petitioner from clear and convincing evidence to a preponderance of the evidence.

Issue: There shouldn't be any expansion of the process in section 299C.11 for return of records without a petition. Any sort of automatic process will violate procedural due process and jeopardize public safety.

Response: Comments from stakeholders indicated that many local law enforcement offices interpret section 299C.11 as not being applicable to their records. The proposed language sealing records without action by the individual either have prosecutorial involvement or law enforcement involvement. Both parties have the ability to petition for a court order that would permit them to not follow the law in a particular case they believe would jeopardize public safety.

Issue: An alternative mechanism is to expand the reach of the Ex-offender Rehabilitation Act, Chapter 364.

Response: Section 609C.03, subd. 1(f) provides that a sealed record cannot be used for employment or housing purposes and provides a penalty.

State Public Defender

John Stuart, the State Public Defender, is generally supportive of the policy direction being pursued by the Policy Group. He has provided information about the disparate impact of criminal records on communities of color.

Mentoring Partnership of Minnesota

The Mentoring Partnership of Minnesota focused its comments on the background check recommendations. The organization wants to ensure that it is easy to collect and process fingerprints on a statewide basis. It is also concerned about the cost of background checks and the impact on mentoring programs when volunteers are expected to pay for their own check.

Council on Crime and Justice

The Council is generally supportive of the sealing recommendations.

Issue: Using record retention, rather than sealing without petition, to control the use of arrest records, continuances for dismissal, stays of adjudication and diversion.

Response: Is this an option the Policy Group would like to pursue?

Charlie Weaver, Minnesota Business Partnership

Mr. Weaver believes that it should not be more difficult for employers to learn about the criminal background of potential employees.

Rodd Tschida, criminal defense attorney

Mr. Tschida suggests that petty misdemeanors should either be made a crime or they should be completely removed from the criminal records set.

Appendix 2

Subject Matter Experts Consulted on Fiscal and Implementation Impacts of Policy Considerations

Agency	Name
State	
Minnesota Sentencing Guidelines Commission	Linda McBrayer
Bureau of Criminal Apprehension	Julie LeTourneau Lackner Bob Johnson Wendy Gray Jean Kelly Carol Savage
Department of Human Services	Jerry Kerber Laura Zrust Kristin Johnson Jennifer K. Park James Schmidt
State Court Administration	Annette Fritz Kelly Mitchell Judy Rehak
State Patrol	Mark Dunaski Mike Asleson Craig Hendrickson
Department of Corrections	Deb Kerschner Lori Caspers Tracy Fischer
Local	
Washington County	Barb Nelson Doug Johnson Christina Richert
Rice County	Jim Haas
Minnesota Multi Housing Association	Jack Horner
House Research	Jeff Diebel
Council on Crime and Justice	John McCullough
Anoka County	Kate McPherson Pam McCabe
Minnesota County Attorney's Association	John Kingrey
Minneapolis Police Department	Jennifer Kellogg Michael Ridgley Mark Jorgensen Thaya Wallace Josephine Stuart Fonda Lee Dennis Bersntrom
Hennepin County Courts	Leo Wiley
Hennepin County Courts Self Help Center	Debra Swaden

Appendix 2, Subject Matter Experts, continued

Minneapolis Attorney	Jay Heffern
City of Minneapolis	Karen Wagner Scott Neimann
St. Paul PD	Nancy Diperna Mark Pearson
St. Paul Attorney	John Choi
City of St. Paul	Margaret Egan Elizabeth Davis
Ramsey County	Terry Speiker
Ramsey County Attorney	Jack Rhodes Phil Carruthers
Ramsey County Sheriff	Dave Fenner
Ramsey County Human Services	Dave Haley
Ramsey County Community Corrections	Paul Schroeder
Ramsey County Project Remand	Mary Pat Maher
Hennepin County Sheriff	Dave Ringberg
Hennepin County Attorney	Michael Freeman
Hennepin County Jail	Dave Ringberg
Medina Police Department	Edgar Belland
Douglas County Sheriff	Troy Wolbersen
Douglas County Attorneys Office	Chris Karpan
Alexandria Police Department	Richard Wyffels
Wright County Sheriff	Gary Miller
Wright County Attorney	Tom Kelly
Buffalo Police Department	Mitch Weinzetl
Isanti County Sheriff	Russ Monson
Isanti County Attorney	Jeffrey Edblad
Cambridge Police Department	Dave Pajnic
Steele County Sheriff	Gary Ringhofer
Steele County Attorney	Douglas Ruth
Owatonna Police Department	Shaun LaDue
LOGIS	Tom Folie
Sheriff Association	Jim Franklin
MN Chiefs Association	Harlan Johnson

Appendix 3
Draft Statutory Language to Implement Background Check Policy Suggestions

ARTICLE ONE

Minnesota Statutes are amended to add a new chapter:

Chapter 710 General Provisions Governing Background Checks

Section 710.01. [Scope.] The provisions of this chapter apply to all statutorily mandated or authorized background checks conducted pursuant to chapters 5A, 13, 46, 53A, 115, 122A, 123B, 144, 144A, 148B, 148C, 171, 174, 221, 240, 241, 245C, 256B, 259, 268, 299A, 299C, 299F, 299L, 326, 332, 340A, 349, 349A, 524, 604A, 624 and 626.

Section 710.02. [Definitions.] Subdivision 1. [Applicability.] As used in this chapter, the terms defined in this section have the meanings given them.

Subd. 2. [Background check.] “Background check” means a statutorily mandated or authorized review of data and information maintained by government entities to ensure that a data subject qualifies to receive a license, perform a job or volunteer in an activity that involves vulnerable populations, systems or data.

Subd. 3. [Criminal history] “Criminal history” means all convictions regardless of age and all arrests including those that are unresolved within one year of the date of the arrest.

Subd. 4. [Data subject.] “Data subject” means the individual human being about whom a background check is conducted.

Subd. 5. [Government entity.] “Government entity” has the meaning given in section 13.02, subdivision 7a.

Subd. 6. [Informed consent.] “Informed consent” means written permission from a data subject to an inquirer so that a background check can be performed.

Subd. 7. [Inquirer.] “Inquirer” means the person requesting a background check.

Subd. 8. [Results.] “Results means a statement whether the background check resulted in the data subject being disqualified or not.

Subd. 9. [Review.] “Review” for a government entity means to access and look at data and may include a copy of the data. For a person not a government entity, “review” means to access and look at public data and records and to receive that information permitted by law from data and records not accessible by the public.

Section 710.03. [Background check process.]

Subdivision 1. [Data used to conduct background check.] (a) The level of risk to the affected population, system or data determines the type of background check that must be conducted.

(b) To have a background check conducted, a data subject must provide their full name, date of birth, contact information and, if applicable, a type of biometric identifier determined by the commissioner of the department of public safety.

Appendix 3, Background Check Statutory Language, continued

Subd. 2. [**Access to sealed records.**] (a) If the background check is required by law and the government entity meets the requirements of section 609C.11, subdivision 2, the government entity will have access to sealed records for all background checks under subdivisions 3 through 6.

(b) If the inquirer is not a government entity but must request the background check through a government entity, the inquirer does not have access to sealed records.

Subd. 3. [**Basic background check.**] To conduct a basic background check, the inquirer must review the following Minnesota records about the data subject:

(a) public and private criminal history data held by the department of public safety, bureau of criminal apprehension under sections 13.87 and 299C.46;

(b) level 1, 2 and 3 sex offenders maintained by the department of corrections under section 244.052;

(c) adults in the predatory offender registry maintained by the department of public safety, bureau of apprehension under section 299C.093; and

(d) arrest warrants that are public at the courts and the department of corrections.

Subd. 4. [**Intermediate background check.**] (a) In addition to doing a basic background check, an inquirer must review the following records about the data subject:

federal records maintained by the federal bureau of investigation and accessed under Public Law 92-544.

To accomplish the federal records check, the data subject must provide fingerprints as required by the federal bureau of investigation. The fingerprints will be submitted to the federal bureau of investigation to obtain the required records. Any records received from the federal bureau of investigation will not be provided to a non-government entity.

(b) If the background check is prior to appointment as a guardian-ad-litem under section 518.165, then the inquirer must also review substantiated maltreatment records about the data subject maintained by the department of human services.

(c) If the background check is prior to licensure of involving transportation of people under sections 171.35, 221.011, 221.178, or 221.84, the inquirer must also review driver's license records about the data subject maintained by the department of public safety.

Subd. 5. [**Comprehensive background check.**] (a) In addition to doing a basic and intermediate background check under subdivisions 3 and 4, an inquirer must review the following records about the data subject:

(i) all active warrants from the bureau of criminal apprehension;

(ii) all public court records on criminal matters in Minnesota state or federal courts; and

(iii) supervisions records in the statewide supervision system maintained by the department of corrections under section 241.065.

(b) If the inquirer is a government entity, then the inquirer must also review the following records about the data subject:

(1) the suspense file maintained by the department of public safety, bureau of criminal apprehension; and

(2) open arrests more than one year old maintained by the department of public safety, bureau of criminal apprehension.

Appendix 3, Background Check Statutory Language, continued

(c) For a background check of a data subject who will work vulnerable populations and are licensed under chapter 245C or sections 5A.04, 144.057, 144A.46, 241.021, 256B.0651-.0655, 259.41, 260C.209, 260C.212, 299A.28, 299C.62, or 524.5-118, the inquirer must also review the following records about the data subject:

- (i) reports of substantiated maltreatment maintained by the department of human services; and
- (ii) juvenile adjudication records under section 299C.095, subdivision 1, paragraph (b).

(d) For a background check about a data subject who will be licensed as a:

- (i) drug or alcohol counselor under section 148C.09;
- (ii) a social worker under 148D.055, 148D.245, 148D.250, 148D.255, 148D.260 or 148D.270; or
- (iii) a mental health rehabilitation worker under section 256B.0623;

the inquirer must also review any records of substantiated maltreatment by the data subject maintained by the department of human services.

(e) For a background check about a data subject who will be licensed as a school bus driver or Head Start driver under section 171.321 or 171.3215 or a driver for special transportation services for the elderly or disabled passengers under section 174.30, the inquirer must also review driver's license records about the data subject maintained by the department of public safety.

Subd. 6. **[Public safety background check.]** (a) This background check is available only when the data subject is an applicant for employment as a peace officer as defined in section 626.05, subdivision 2.

(b) In addition to conducting basic, intermediate and comprehensive background checks under subdivisions 3, 4 and 5, the inquirer must review the following records about the data subject:

- (i) gang records authorized by section 299C.091 and maintained by the department of public safety, bureau of criminal apprehension;
- (b) records of crimes for which a pardon has been obtained;
- (c) records of incidents in the comprehensive incident-based reporting system maintained by the department of public safety, bureau of criminal apprehension under section 299C.40; and
- (d) records of commitments under chapter 253B maintained by the courts.

Section 710.04. [Fingerprint-based background checks.] All criminal history records checks must be made using the fingerprints of the data subject.

Section 710.05. [Use limitation.] Information, fingerprints and any other data provided by a data subject can only be used to conduct the background check and for criminal justice purposes evident at the time the background check is conducted. No other use is authorized or permitted.

Section 710.06. [Information to data subject.]

Subdivision 1. **[Notice to data subject.]** Prior to initiating a background check required by law, an inquirer must give the data subject notice of the following:

- (a) a description of the type of background check that will be conducted according to section 710.03, including the names of the records that will be reviewed;
- (b) the age of the records to be reviewed;

Appendix 3, Background Check Statutory Language, continued

(c) the amount of time specific records will cause an individual to be disqualified;
(d) whether the background check will be automatically updated to determine if there are new results;
(e) whether redisclosure of the results of the background check are authorized and in what circumstances; and
(f) how long the background check results will be maintained and, if the results can be used later, for what purposes.

Subd. 2. **[Informed consent of data subject.]** If the background check is not required by law, then the inquirer must obtain the informed consent of the data subject. To be effective, the informed consent must contain:

(a) a description of the type of background check that will be conducted according to section 710.03, including the names of the records that will be reviewed;
(b) a statement that the inquirer is permitted to review some or all of the records described in (a);
(c) the age of the records that can be reviewed;
(d) the amount of time specific records will cause an individual to be disqualified;
(e) whether the background check can be automatically updated to determine if there are new results;
(f) whether redisclosure of the results of the background check are permitted and in what circumstances; and
(g) how long the background check results can be maintained and, if the results can be used later, for what purposes.

Subd. 3. **[Notice of disqualifying offenses.]** If the statute requiring or authorizing the background check includes a list of disqualifying offenses, the inquirer is required to give the data subject notice of those disqualifying offenses.

Subd. 4. **[Copy of results.]** The inquirer must provide the data subject with a writing containing the results of the background check. For purposes of this section, “results” means a statement whether the data subject was disqualified or not.

Subd. 5. **[Right to challenge data.]** (a) The inquirer must provide a data subject with information outlining the data subject’s right to access their government data using their name or fingerprints. The inquirer must also provide a data subject with information about how the data subject can challenge the accuracy and completeness of government data under section 13.04, subdivision 4.

(b) The inquirer may satisfy its obligations in paragraph (a) by placing information on a publicly accessible internet site and providing the data subject with the internet site location; unless the data subject indicates that internet access is not available. If the data subject does not have internet access, then the inquirer must provide the information required in paragraph (a) in a manner that can be accessed by the data subject.

Subd. 6. **[Notice that check was performed.]** The government entity producing records for the inquirer must notify the data subject that a check was performed under subdivision 1 and that the results or records have been provided to the inquirer. The notice must also include the name of the inquirer who initiated the check.

Subd. 7 **[Copy of record showing disqualification.]** (a) If the disqualification is done by a government entity, the government entity must provide the data subject with a copy of the records showing the basis for the disqualification.

(b) If the disqualification is done by the inquirer, the inquirer must provide the data subject with a copy of the records showing the basis for the disqualification.

ARTICLE TWO
Examples of Conforming changes

Section 1. Minnesota Statutes, section 53A.03 is amended to read:

53A.03 APPLICATION FOR LICENSE; FEES.

(a) An application for a license must be in writing, under oath, and in the form prescribed and furnished by the commissioner and must contain the following:

- (1) the full name and address (both of residence and place of business) of the applicant, and if the applicant is a partnership or association, of every member, and the name and business address if the applicant is a corporation;
- (2) the county and municipality, with street and number, if any, of all currency exchange locations operated by the applicant; and
- (3) the applicant's occupation or profession, for the ten years immediately preceding the application; present or previous connection with any other currency exchange in this or any other state; whether the applicant has ever been convicted of any crime; and the nature of the applicant's occupancy of the premises to be licensed; and if the applicant is a partnership or a corporation, the information specified in this paragraph must be supplied for each partner and each officer and director of the corporation. If the applicant is a partnership or a nonpublicly held corporation, the information specified in this paragraph must be required of each partner and each officer, director, and stockholders owning in excess of ten percent of the corporate stock of the corporation.

(b) The application shall be accompanied by a nonrefundable fee of \$1,000 for the review of the initial application. Upon approval by the commissioner, an additional license fee of \$500 must be paid by the applicant as an annual license fee for the remainder of the calendar year. An annual license fee of \$500 is due for each subsequent calendar year of operation upon submission of a license renewal application on or before September 1. Fees must be deposited in the state treasury and credited to the general fund. Upon payment of the required annual license fee, the commissioner shall issue a license for the year beginning January 1.

(c) The commissioner shall require the applicant to submit to a an intermediate background investigation conducted by the Bureau of Criminal Apprehension check under section 710.03, subdivision 4 as a condition of licensure. ~~As part of the background investigation, the Bureau of Criminal Apprehension shall conduct criminal history checks of Minnesota records and is authorized to exchange fingerprints with the Federal Bureau of Investigation for the purpose of a criminal background check of the national files.~~ The cost of the investigation background check must be paid by the applicant. In addition, each applicant must receive the notices required by section 710.06.

(d) For purposes of this section, "applicant" includes an employee who exercises management or policy control over the company, a director, an officer, a limited or general partner, a manager, or a shareholder holding more than ten percent of the outstanding stock of the corporation.

Section 2. Minnesota Statutes, section 123B.03, is amended to read:

123B.03 BACKGROUND CHECK.

Subdivision 1. **Background check required.** (a) A school hiring authority, as defined in subdivision 3, shall request a comprehensive ~~criminal history~~ background check under section 710.03, subdivision 5 ~~from the superintendent of the Bureau of Criminal Apprehension~~ on all individuals who are offered employment

in the school, as defined in subdivision 3. In order to be eligible for employment, an individual who is offered employment must provide an executed ~~criminal history~~ consent form and a money order or check payable to either the Bureau of Criminal Apprehension or the school hiring authority, at the election of the school hiring authority, in an amount equal to the actual cost to the Bureau of Criminal Apprehension and the school district of conducting the ~~criminal history~~ background check. A school hiring authority electing to receive payment may, at its discretion, accept payment in the form of a negotiable instrument other than a money order or check and shall pay the superintendent of the Bureau of Criminal Apprehension directly to conduct the background check. The individual must also receive the notices required by section 710.06. ~~The superintendent of the Bureau of Criminal Apprehension shall conduct the background check~~ shall be conducted by retrieving ~~criminal history~~ the data maintained required by section 710.03, subdivision 5 in the criminal justice information system computers. A school hiring authority, at its discretion, may elect not to request a ~~criminal history~~ background check on an individual who holds an initial entrance license issued by the State Board of Teaching or the commissioner of education within the 12 months preceding an offer of employment.

(b) A school hiring authority may use the results of a ~~criminal~~ background check conducted at the request of another school hiring authority if:

- (1) the results of the ~~criminal~~ background check are on file with the other school hiring authority or otherwise accessible;
- (2) the other school hiring authority conducted a ~~criminal~~ background check under this section and section 710.03, subdivision 5 within the previous 12 months;
- (3) the individual who is the subject of the ~~criminal~~ background check executes a written consent form giving a school hiring authority access to the results of the check; and
- (4) there is no reason to believe that the individual has committed an act subsequent to the check that would disqualify the individual for employment.

(c) A school hiring authority ~~may, at its discretion,~~ shall request a ~~criminal history~~ comprehensive background check ~~from the superintendent of the Bureau of Criminal Apprehension under section 710.03, subdivision 5,~~ 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. ~~In order for an individual to enter a school or its grounds under this paragraph when the school hiring authority elects to request a criminal history background check on the individual,~~ The individual first must provide an executed ~~criminal history~~ consent form and a money order, check, or other negotiable instrument payable to the school district in an amount equal to the actual cost to the Bureau of Criminal Apprehension and the school district of conducting the ~~criminal history~~ background check. Notwithstanding section 299C.62, subdivision 1, the cost of the ~~criminal history~~ background check under this paragraph is the responsibility of the individual. In addition, the individual must receive the notices required by section 710.06.

~~(d) For all nonstate residents who are offered employment in a school, a school hiring authority shall request a criminal history background check on such individuals from the superintendent of the Bureau of Criminal Apprehension and from the government agency performing the same function in the resident state or, if no government entity performs the same function in the resident state, from the Federal Bureau of Investigation. Such individuals must provide an executed criminal history consent form and a money order, check, or other negotiable instrument payable to the school hiring authority in an amount equal to the actual cost to the government agencies and the school district of conducting the criminal history background check. Notwithstanding section 299C.62, subdivision 1, the cost of the criminal history background check under this paragraph is the responsibility of the individual.~~

Subd. 2. **Conditional hiring; discharge.** A school hiring authority may hire an individual pending completion of a background check under subdivision 1 but shall notify the individual that the individual's employment may be terminated based on the result of the background

Appendix 3, Background Check Statutory Language, continued

check. A school hiring authority is not liable for failing to hire or for terminating an individual's employment based on the result of a background check under this section.

Subd. 3. **Definitions.** For purposes of this section:

(a) "School" means a school as defined in section 120A.22, subdivision 4, except a home school, and includes a school receiving tribal contract or grant school aid under section 124D.83; school, for the purposes of this section, also means a service cooperative, a special education cooperative, or an education district under Minnesota Statutes 1997 Supplement, section 123.35, a charter school under section 124D.10, and a joint powers district under section 471.59.

(b) "School hiring authority" means the school principal or other person having general control and supervision of the school.

Section 3. Minnesota Statutes, section 299C.62, subdivision 1 is amended as follows:

Subdivision 1. **Generally.** The superintendent shall develop procedures to enable a children's service provider to request a background check to determine whether a children's service worker is the subject of any reported conviction for a background check crime. The superintendent shall perform the background check by retrieving and reviewing data on background check crimes maintained in the CJIS computers. The superintendent is authorized to exchange fingerprints with the Federal Bureau of Investigation for purposes of a criminal history check. ~~The superintendent shall recover the cost of a background check through a fee charged the children's service provider.~~

Section 4. Minnesota Statutes, section 299C.62, subdivision 5 is amended as follows:

Subd. 5. **No duty to check.** Sections 299C.60 to 299C.64 do ~~not~~ create a duty to perform a background check.

Section 5. Minnesota Statutes, section 299C.62 is amended by adding a subdivision:

Subd. 7. [Cost of background check.] The department of public safety is responsible for the cost of a background check, whether state or federal that is required under sections 299C.60 to 299C.64.

Appendix 4
Consolidated Draft Fiscal Note for Implementing Background Check Language

Informal Consolidated Fiscal Note

Bill #:NA **Title:** Uniform Background Check Draft Legislation w/Center of Excellence

Consolidated: Y **Contact Person:** David Anderson, CriMNet, (651) 793-2722

Agencies: Department of Public Safety, Department of Human Services and Local Agencies

What version of the bill are you working on? 09/27/07 Bill Draft
(Changing the version of the bill will automatically create a new fiscal note request.)

(The following four fiscal impact questions must be answered before an agency can sign off on a fiscal note.)

	Yes	No
State (Does this bill have a fiscal impact to your Agency?)	X	
Local (Does this bill have a fiscal impact to a Local Gov Body?)	X	
Fee/Dept Earnings (Does this bill impact a Fee or Dept Earning?)		X
Tax Revenue (Does this bill impact Tax Revenues?)		X

Dollars (in thousands)		FY09	FY10	FY11	FY12
Expenditures					
Bureau of Criminal Apprehension		721.0	9,822.5	10,432.8	10,493.9
Department of Human Services		24,081.0	23,731.0	23,731.0	23,731.0
Ramsey County Human Services		56.0	56.0	56.0	56.0
St. Paul Police Department		3.8	3.8	3.8	3.8
Total Cost <Savings> to the State		24,861.8	33,613.3	34,223.6	34,284.7

		FY09	FY10	FY11	FY12
Bureau of Criminal Apprehension		3	45	45	45
Department of Human Services		118.5	118.5	118.5	118.5
St. Paul Police Department		0.05	0.05	0.05	0.05
Total Full Time Equivalent (FTE)		121.6	163.6	163.6	163.6

Bill Description

The background check proposal provides for 4 levels of background checks, requires that background checks be biometrically based when possible, identifies the systems to be checked for various levels, changes Child Protection Background Checks from authorized to mandatory, and requires the Department of Public Safety to perform the checks, both state and national, at no charge. The draft includes a Center of Excellence hybrid approach of a partnership between the Bureau of Criminal Apprehension and the Department of Human Services to create a “one stop shop” for background checks.

Assumptions

1. Statutory background checks will be categorized and governed by their respective level and the associated information necessary to facilitate the check, as stipulated in Table 1 of the *CriMNet Background Checks -- Follow Up Report* (Jun 2007). This table supports the recommendation that statutory checks supporting similar occupations and license types should be addressed in the same way.
2. Implementation and its associated costs surrounding background checks assume at least two potential practices. First, that the myriad agencies currently involved in facilitating background checks will continue to be involved per current processes; secondly, that a centralized “one-stop-shop” or “center of excellence” may be established to conduct background checks on behalf of all requesting agencies in the state.
 - a. A centralized office for conducting background checks is assumed to require access to both criminal justice and human services information. As such, a centralized office likely represents the close collaboration between BCA and DHS background check operations, given that these two agencies perform the bulk of background checks in the state.
 - b. With consideration of the one-stop-shop concept, it is assumed that a centralized office for facilitating background checks would be of further benefit to the expungements area, and is thus referred in the Expungement Assumptions (#7) listed above. The federal mandates governing access to criminal justice information are substantial, and may represent a critical consideration in creation of a future one-stop-shop for conducting background checks.
 - c. The need for uniformity across both sealing and background check processes is well-established, as well as the need to streamline processes for maximum clarity and efficiency. What is most critical, however, is the development of sound criteria that will support streamlining of these processes. Criteria include, for example, the conditions under which an expungement hearing should occur, as well as when a petition should fall under a more streamlined workflow process.
3. The potential risks to the public, vulnerable populations, systems, and data are important factors that impact how much information is accessible via a background check -- while these risks merit consideration, no set structure has been developed to measure or gauge the degree to which the risk should be balanced by access to information.
4. The wider use of fingerprints for accessing criminal justice information -- including the Computerized Criminal History (CCH) system, the use of FBI data to support statutory checks, and the establishment of mandatory checks for individuals who have frequent and unsupervised contact with children, largely represent expansions of existing background check processes and substantial fiscal implications.
5. Information provided to the subject of a background check will include the following components:
 - a. Whether the check covers automatic updates over a period of time (a “wrap-back” policy);
 - b. Length of time accessible for review under the parameters of the background check (extent of the “look-back” period); and
 - c. Whether and how “re-disclosure” (the sharing of information after the check is conducted) is permitted to occur.
6. Consistency around background checks would be strengthened with the development of standardized processes and template forms to ensure uniformity of approach.
7. Subjects of background checks have the right to receive and review a copy of the check conducted, and also to submit a data challenge to correct erroneous data.
 - a. The assumption is that a data challenge may be submitted to any one agency that reflects erroneous data, regardless of the fact that the data may have been shared across numerous agencies at both state and local levels. The agency processing a data challenge must verify and substantiate its claim, and is then obligated to notify all associated agencies of changes made to the record.

- b. This assumption further recognizes that changes made at one agency may or may not necessarily be applicable to other agencies, depending upon the nature of the error and the record(s) involved.
 - c. It is also assumed that the process of addressing correction issues by agencies in a systematic manner potentially represents large outlays in associated costs, particularly given the fact that the volume of background checks conducted in the future is difficult to predict with any accuracy.
8. Although the subject of disqualifiers is critical, no actual recommendations have been made to support definition of standard disqualifiers in the case of background checks. As a result, it is assumed that disqualifiers will be uniform in nature across background check types and purposes in the future.
 9. Similarly, the subject's right to appeal the results of a background check is an essential component of recommended changes. However, given that this appeal process has not yet been clearly defined, it is assumed that appeal processes to background checks conducted will be uniform in the state, and possibly grouped according to the type of background check conducted (e.g., checks conducted for employment purposes, for housing, etc.).
 10. Providing free or subsidized background checks for volunteers represents a large financial commitment by the agencies involved.
 - a. Given that background checks for many volunteer functions today are discretionary, it is not possible to project the volume of checks initiated in the future should associated costs become free or reduced for either the sponsoring organization or the individual volunteer.
 - b. Additionally, the stipulation that the volunteer situation must provide a public benefit in order to receive a free or reduced background check may be problematic, given that it may be assumed that all volunteering provides some public benefit. For the purposes of straightforward identification of those volunteers who provide a public benefit, it may be assumed that volunteers for the purpose of supporting political campaigns are ineligible for free/subsidized background checks.
 - c. Providing free or reduced-price background checks for volunteers of DHS programs necessitates clear identification of the agency providing oversight and responsible for coordinating efforts -- a direct agency contact is important for mitigating the potential volume of background checks conducted.
 11. It is assumed that state subsidies for background checks could potentially extend to both statewide and federal checks.
 12. The maturity of MN Statute § 245C governing DHS background checks suggests that this legislation may serve as a sound model for statutory language addressing all other background checks, in keeping with the concepts and principles outlined under the Policy Group's recommendations.

I have reviewed the content of this fiscal note and believe it is a reasonable estimate of the expenditures and revenues associated with this proposed legislation.

Fiscal Note Coordinator Signature: _____ Date: _____

Note: Detailed worksheets are available regarding the fiscal impact of background check policy suggestions on the Minnesota Department of Human Services, Minnesota Bureau of Criminal Apprehension, Ramsey County Department of Human Services and St. Paul Police Department.

Appendix 5

Draft Statutory Language to Create a Center of Excellence for Processing Background Checks

Center of Excellence Draft November 13, 2007

Subdivision 1. [**Center of Excellence established.**] A center of excellence is established to accept and process requests for background checks. The center is to be staffed by the departments of human services and public safety.

Subd. 2. [**Tasks.**] (a) The center of excellence is responsible for the following tasks for background checks using government data:

- (i) provide mechanisms in a variety of formats for any inquirer to make a request;
- (ii) review all submitted requests to determine that all legal requirements are met;
- (iii) query all data sets required by this chapter for the type of request submitted;
- (iv) aggregate the required data for appropriate dissemination to the inquirer or data subject;
- (v) comply with all requirements of this chapter; and
- (vi) furnish the inquirer with the results of the background check the inquirer is authorized to receive.

(b) Except as otherwise required by law, the center of excellence is not responsible for making disqualification determinations or for providing appeals or reviews of the disqualification determinations that are made.

Subd. 3. [**Mandatory use.**] Any inquirer who wishes government data for a background check under this chapter must submit the request to the center of excellence.

Subd. 4. [**Access to government data.**] The center of excellence has access to all government data, included sealed records, required to perform the background checks required by this chapter.

Appendix 6 Background Check Options Considered by the Policy Group

Background Check Options December 12, 2007

Purpose of the document: To provide options for Policy Group consideration that respond to the request at the Nov. 13, 2007, meeting for a way to lower the cost of the background check proposal.

Option #1: Original Proposal

Part of the original proposal presented on Nov. 13th was for more federal criminal records checks through the FBI. Within the four-tiered background check proposal, federal criminal records checks are introduced at the second check (intermediate; section 710.03, subd. 4 in Appendix 6).

The total cost for the entire background check proposal is \$34 million per year. Of that total, \$9.6 Million for Department of Human Services and \$3.0 million for Volunteer Background Checks at the Bureau of Criminal Apprehension or \$12.6 million combined represent the costs of conducting the FBI records checks.

Option #2 for consideration: Fewer national checks

This option was created in response to a request at the Nov. 13th meeting for a less costly option for background checks. The following option reduces the number of federal criminal records checks through the FBI by making them applicable in one of the following situations: (a) the data subject has resided outside of Minnesota in the previous five years; (b) the government entity or inquirer has a reasonable basis to believe there is information outside Minnesota that is pertinent; or (c) the authorizing statute requires a FBI check.

New language (or location contrasted to original proposal) in italics.

Section 710.03. [Background check process.]

Subdivision 1. **[Data used to conduct background check.]** (a) The level of risk to the affected population, system or data determines the type of background check that must be conducted.

(b) To have a background check conducted, a data subject must provide their full name, date of birth, contact information and, if applicable, a type of biometric identifier determined by the commissioner of the department of public safety.

If the data subject has not resided in Minnesota for the five years prior to the background check, the data subject must also provide the home address, city and state for each place the data subject resided during the five year period.

Subd. 2. **[Access to sealed records.]** (a) If the background check is required by law and the government entity meets the requirements of section 609C.11, subdivision 2, the government entity will have access to sealed records for all background checks under subdivisions 3 through 7.

(b) If the inquirer is not a government entity but must request the background check through a government entity, the inquirer does not have access to sealed records.

Subd. 3. **[Basic background check.]** To conduct a basic background check, the inquirer must review the following Minnesota records about the data subject:

Appendix 6, Policy Group Background Check Options, continued

- (a) public and private criminal history data held by the department of public safety, bureau of criminal apprehension under sections 13.87 and 299C.46;
- (b) level 1, 2 and 3 sex offenders maintained by the department of corrections under section 244.052;
- (c) adults in the predatory offender registry maintained by the department of public safety, bureau of apprehension under section 299C.093; and
- (d) arrest warrants that are public at the courts and the department of corrections.

Subd. 4. [National records check.] (a) If any of the following apply, federal records maintained by the federal bureau of investigation and accessed under Public Law 92-544 must also be reviewed for background checks conducted under subdivisions X through Z:

- (i) the data subject has not resided in Minnesota for the five years prior to the background check;
- (ii) the inquirer or government entity has reasonable cause to believe that further pertinent information may exist on the data subject; or
- (iii) the statute authorizing the background check requires a national records check.

(b) To accomplish the federal records check, the data subject must provide fingerprints as required by the federal bureau of investigation. The fingerprints will be submitted to the federal bureau of investigation to obtain the required records. Any records received from the federal bureau of investigation will not be provided to a non-government entity.

Subd. 5. [Intermediate background check.] (a) In addition to doing a basic background check, an inquirer must review the following records about the data subject:

- (i) If the background check is prior to appointment as a guardian-ad-litem under section 518.165, then the inquirer must also review substantiated maltreatment records about the data subject maintained by the department of human services.
- (ii) If the background check is prior to licensure of involving transportation of people under sections 171.35, 221.011, 221.78, or 221.84, the inquirer must also review driver's license records about the data subject maintained by the department of public safety.

Subd. 6. [Comprehensive background check.] (a) In addition to doing a basic background check, an inquirer must review the following records about the data subject:

- (i) all active warrants from the bureau of criminal apprehension;
- (ii) all public court records on criminal matters in Minnesota state or federal courts; and
- (iii) supervisions records in the statewide supervision system maintained by the department of corrections under section 241.065.

(b) If the inquirer is a government entity, then the inquirer must also review the following records about the data subject:

- (i) the suspense file maintained by the department of public safety, bureau of criminal apprehension; and
- (ii) open arrests more than one year old maintained by the department of public safety, bureau of criminal apprehension.

(c) For a background check of a data subject who will work vulnerable populations and are licensed under chapter 245C or sections 5A.04, 144.057, 144A.46, 241.021, 256B.0651-.0655, 259.41, 260C.209, 260C.212, 299A.28, 299C.62, or 524.5-118, the inquirer must also review the following records about the data subject:

Appendix 6, Policy Group Background Check Options, continued

- (i) reports of substantiated maltreatment maintained by the department of human services; and
- (ii) juvenile adjudication records under section 299C.095, subdivision 1, paragraph (b).

(d) For a background check about a data subject who will be licensed as a:

- (i) drug or alcohol counselor under section 148C.09;
- (ii) a social worker under 148D.055, 148D.245, 148D.250, 148D.255, 148D.260 or 148D.270; or
- (iii) a mental health rehabilitation worker under section 256B.0623;

the inquirer must also review any records of substantiated maltreatment by the data subject maintained by the department of human services.

(e) For a background check about a data subject who will be licensed as a school bus driver or Head Start driver under section 171.321 or 171.3215 or a driver for special transportation services for the elderly or disabled passengers under section 174.30, the inquirer must also review driver's license records about the data subject maintained by the department of public safety.

Subd. 7. **[Public safety background check.]** (a) This background check is available only when the data subject is an applicant for employment as a peace officer as defined in section 626.05, subdivision 2.

(b) In addition to conducting basic and comprehensive background checks, the inquirer must review the following records about the data subject:

- (i) the national records check described in subdivision 4;
- (ii) gang records authorized by section 299C.091 and maintained by the department of public safety, bureau of criminal apprehension;
- (iii) records of crimes for which a pardon has been obtained;
- (iv) records of incidents in the comprehensive incident-based reporting system maintained by the department of public safety, bureau of criminal apprehension under section 299C.40; and
- (v) records of commitments under chapter 253B maintained by the courts.

[delete section 701.04 and renumber other sections]

COST ESTIMATE

Assumptions

1. The population is mobile
2. A large percentage of the population lives on the borders with other states
3. Many with college degrees are arriving in Minnesota from outside the State
4. The amount only reflects the cost of the FBI portion of the check
5. The amount only reflects those who have resided outside Minnesota in the five years prior to the check

Cost: \$17.2 million in FY 09
\$25.9 million in FY10

Appendix 7
Draft Statutory Language to Implement Recommendations for Sealing of Criminal Records

ARTICLE ONE

Minnesota Statutes are amended by adding a new Chapter

Chapter 609C Sealing of Criminal Justice Agency Records

609C.01 Criminal records sealing.

This chapter provides the grounds and procedures for sealing criminal records, unless another provision provides a different process. The remedy available is limited to a court order sealing the records and prohibiting the disclosure of their existence or their opening except under court order or statutory authority. Nothing in this chapter authorizes the destruction of criminal records or their return to the subject of the criminal records.

609C.02 Definitions.

Subdivision 1. [**Applicability.**] As used in this chapter, the terms defined in this section have the meanings given them.

Subd. 2. [**Completion of sentence.**] “Completion of sentence” means that an individual has finished serving any sentence of incarceration and any supervised release.

Subd. 3. [**Criminal justice agency.**] “Criminal justice agency” has the meaning given in section 299C.46, subdivision 2.

Subd. 4. [**Criminal record.**] “Criminal record” means either an adult or juvenile record in a criminal justice agency that contains data about conduct that, if the allegations are proved, is either criminal in nature or would result in a juvenile being adjudicated delinquent. “Criminal record” also includes all records of adult petty misdemeanors and all juvenile petty offenses.

Subd. 5. [**Expunge or expunging.**] “Expunge” or “expunging” means to seal a record.

Subd. 6. [**Government entity.**] “Government entity” has the meaning given in section 13.02, subdivision 7a.

Subd. 7. [**Individual.**] “Individual” has the meaning given in section 13.02, subdivision 8.

Subd. 8. [**Notify or notification.**] “Notify” or “notification” means to provide information in writing.

Subd. 9. [**Record.**] “Record” means data in any government entity or the judicial branch, regardless of its physical form, storage media or conditions of use.

Subd. 10. [**Resolved in favor of the individual.**] “Resolved in favor of the individual” means that, at the conclusion of the proceedings, the individual was found not guilty or did not admit guilt or plead guilty, unless the admission or plea was needed to participate in a diversion program. A finding of not guilty by reason of mental illness is not a resolution in favor of the individual.

Subd. 11. [**Seal or sealing.**] “Seal” or “sealing” means to mark an individual’s record so that disclosure of the record’s existence is prohibited, except as authorized in section 609C.11 or other law.

Subd. 12. [**Sealing without petition.**] “Sealing without petition” means that the sealing of the records occurs without a request or petition from the individual subject of the record.

Subd. 13. [**Subsequent conviction.**] “Subsequent conviction” means a conviction for a felony, gross misdemeanor or targeted misdemeanor as defined in section 299C.10, subdivision 1, paragraph d except that a misdemeanor violation of section 169A.20 shall not be considered a targeted misdemeanor for purposes of this subdivision. “Subsequent conviction” also means an equivalent conviction in any other state, or federal court that occurs after the conviction for which sealing is sought.

609C.03 Effect of Sealing

Subdivision 1. [**Effect of Sealing.**] If records are sealed or expunged under this chapter, the effect shall be as follows.

(a) An order issued under section 609C.09 seals records in both the judicial branch and government entities. To be effective, the order must list the courts and government entities whose records are affected. If a court or government entity is not named in the order and served, the records of the court or government entity are not affected and shall not be sealed. An order has the effects provided in paragraphs (e), (f) and (g).

(b) An order sealing records under section 152.18 shall have the effects provided in paragraphs (a), (e), (f) and (g).

(c) For records sealed without a petition under section 609C.06, all records of the judicial branch and in government entities related to the individual and particular conduct are affected. A seal issued without petition shall have the same effect as provided in paragraphs (a), (e), (f) and (g).

(d) A pardon shall have the effects provided in paragraphs (a), (e), (f) and (g).

(e) Sealing restores the individual, in the contemplation of the law, to the status the individual occupied before the arrest, indictment, information or conviction, except as otherwise provided by law.

(f) Sealing permits the individual to not acknowledge the arrest, indictment, information, conviction, or trial in response to any inquiry made for any purpose, including employment and housing. The individual shall not be held guilty of perjury or otherwise of giving a false statement if the individual fails to acknowledge the sealed record. This provision does not apply to applicants for employment in a criminal justice agency or individuals who are the subject of a statutorily mandated background check.

Any person who is found to have violated this paragraph is subject to the penalties and remedies, including a private right of action, as provided in section 8.31.

(g) Sealing requires a government entity or the judicial branch to prohibit access to the record of the individual that were sealed except as authorized by section 609C.11 or other law. In the event a record is also about individuals who were not named in the petition or who are not eligible for sealing without petition, the record must remain open regarding those other individuals.

(h) An order issued by a court under its inherent authority must only affect records of the judicial branch.

Subd. 2. [**Lack of effect.**] Notwithstanding subdivision 1, a sealed conviction or adjudication remains a conviction or adjudication for purposes of sentencing, predatory offender registration for adults and juveniles, firearms restrictions under section 624.713 or United States Code, title 18, section 922, subsequent sealing

proceedings, subsequent prosecutions, other crimes evidence, impeachment of witnesses, statutorily mandated background checks and background checks for employment in a criminal justice agency.

Subd. 3. [**Unsealing arrest record.**] Notwithstanding subdivision 1, if an arrest record is sealed under section 609C.06, subdivision 1, the seal is removed when the prosecutor files charges related to the arrest and notifies all affected criminal justice agencies that charges have been filed. If a criminal justice agency receives notice from a prosecutor that charges have been filed, it must remove the seal from its criminal records within 10 business days.

609C.04 Eligibility for sealing.

Subdivision 1. [**Before sealing without petition can occur.**] Before sealing without petition can occur, the individual must have completed all conditions established as part of any agreement, including the payment of restitution to the victim.

Subd. 2 [**Juveniles aged 16 or 17.**] An individual who was alleged to have committed an offense or who was proven to have committed an offense that would have been a felony if committed by an adult and who was at least 16 years of age at the time of the offense, may use the provisions of this chapter to petition for sealing and must comply with all the requirements as if the individual had been an adult at the time the offense was committed.

Subd. 3. [**Juveniles prosecuted as adults.**] A petition may be filed under section 609C.09 by a individual who has been committed to the custody of the commissioner of corrections on conviction of a crime following certification to district court under section 260B.125, if the individual:
(1) is finally discharged by the commissioner; or
(2) has been placed on probation by the court under section 609.135 and has been discharged from probation after satisfactory fulfillment of it.

609C.05 Sealing prohibited.

Subdivision 1. [**Predatory offender registration.**] Records of a conviction or adjudication of an offense for which registration by an adult or a juvenile is required under section 243.166 may not be sealed.

Subd. 2. [**Traffic offenses.**] Traffic offenses charged under chapters 168, 169, 169A, 171 and 221 may not be sealed.

Subd. 3. [**Certain arrests.**] Records of arrests for crimes identified in sections 518B.01, subdivision 14, 609.1095, subdivision 1, paragraph (d), 609.215, 609.224, 609.748, subdivision 6, or 611A.036, subdivision 7 are not eligible for sealing without petition under section 609C.06.

Subd. 4. [**Multiple counts.**] When an adult individual was charged with multiple crimes based on one behavioral incident and the individual has pleaded to one of the crimes, the remaining counts may not be sealed until the conviction is eligible to be sealed. When a juvenile was charged with multiple allegations of juvenile delinquency based on one behavioral incident and the juvenile has plead guilty to one of the offenses, the remaining allegations may not be sealed until the adjudication is eligible to be sealed. If the conviction or adjudication cannot be sealed, the remaining counts or offenses may not be sealed.

Subd. 5. [**Human services background study.**] When an individual is the subject of a human services background study conducted under chapter 245C, the reconsideration, fair hearing and appeal rights are those available under chapter 245C and the individual is prohibited from using the provisions of this chapter to challenge the outcome of the background study.

Subd. 6. **[Deletion or destruction of certain arrest records.]** If section 299C.11, subdivision 1, paragraph (b) applies to the arrest records of the individual, the individual must use the process described in that provision unless the arrest records have already been sealed under section 609C.06.

609C.06 Sealing without petition.

Subdivision 1. **[Arrests.]** (a) Except as provided in paragraph (b), arrest records will be sealed without petition one year after the arrest where the arrest either did not result in charges or the charges were dismissed by the prosecutor.

(b) Arrest records for crimes under section 609C.05, subdivision 3 are not eligible for sealing without petition.

Subd. 2. **[Continuance for dismissal.]** All records related to a continuance for dismissal will be sealed without petition at the end of the period set by the court for the dismissal to occur, if the prosecutor has agreed to entry of the continuance.

Subd. 3. **[Stay of adjudication.]** All records related to a stay of adjudication will be sealed without petition at the end of the period of the stay, if the prosecutor has agreed to entry of the stay.

Subd. 4. **[Successful completion of diversion.]** All records related to a diversion will be sealed without petition at the end of the diversion process, if the prosecutor has agreed to the diversion.

Subd. 5. **[Preventing sealing without petition.]** To prevent sealing without petition from occurring in subdivisions 2 through 4, a violation proceeding must be commenced prior to the end of the period set by the court for the continuance, stay or diversion.

Subd. 6. **[Petty misdemeanors.]** One year after any fine is paid in full, all records related to a petty misdemeanor will be sealed without petition.

Subd. 7. **[Notice of sealing without petition.]** (a) Except for the sealing of records governed by paragraphs (b), (c) and (d), the court must notify the affected criminal justice agencies of the need to seal the records.

(b) When the diversion is completed without the entry of a plea or there is no court record, the prosecutor must notify the affected government entities of the need to seal the records.

(c) For records sealed pursuant to subdivision 1, paragraph (a), the law enforcement agency that made the arrest must notify the affected government entities.

(d) For records of petty misdemeanors not maintained by the court, the government entity responsible for keeping the petty misdemeanor records must notify the affected government entities of the need to seal the records.

(e) All required notifications must be given within 30 days of the date that the records are eligible for sealing without petition.

(f) All recipients of a notification to seal records under this section must seal the records within 30 days of the date of the notification.

Effective date: The provisions of this section are effective for conduct occurring or records created after the effective date of the legislation.

Section 609C.065 Matters resolved in favor of the individual

Subdivision 1. [**Time period.**] All records related to a matter resolved in favor of the individual will be sealed one year after the date on which the judgment in the individual's favor was entered, unless a petition has been filed under subdivision 2.

Subd. 2. [**Process.**] If a government entity believes that the records of a matter resolved in favor of the individual should not be sealed, the government entity must petition the court for an order preventing the sealing required by subdivision 1. The petition must be filed before the time period in subdivision 1 expires.

Subd. 3. [**Burden of proof.**] The order sealing records shall be issued unless the government entity whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the records.

Subd. 4. [**Notice of sealing.**] (a) If the government entity does not file a petition objecting to the sealing, the courts must notify affected criminal justice agencies of the need to seal the records. The required notification must be given within 30 days of the date that the records are eligible for sealing and all recipients of a notification must seal records under this section within 30 days of the date of the notification.

(b) If the government entity does file a petition, then the court must provide notice of the court's determination as provided in section 609C.10, subdivision 7.

609C.07 Grounds for order.

Subdivision 1. [**Certain controlled substance offenses.**] Upon the dismissal and discharge of proceedings against an individual under section 152.18, subdivision 1, for violation of section 152.024, 152.025, or 152.027 for possession of a controlled substance, section 609C.06 applies to seal all of the records relating to the arrest, indictment or information, trial, and dismissal and discharge.

Subd. 2. [**Certain criminal proceedings not resulting in a conviction.**] A petition may be filed under section 609C.09 to seal all records relating to an arrest, indictment or information, trial, or verdict if the records are not subject to section 299C.11, subdivision 1, paragraph (b), and if all pending actions or proceedings were resolved in favor of the petitioner.

Subd. 3. [**All other petitions.**] Any criminal records not covered by other provisions of this chapter may be the subject of a petition to seal under section 609C.09.

609C.08 Timing of petition.

Subdivision 1. [**Effect of subsequent conviction on timing of petition.**] For any of the following time periods, a subsequent conviction means that the individual loses eligibility to file the petition and must wait for the period to pass following the subsequent conviction before eligibility to petition is restored.

Subd. 2. [**Level of conviction.**] If an individual's conviction is deemed a gross misdemeanor or misdemeanor under section 609.13, the time periods in this section are based on the lesser conviction.

Subd. 3. [**Inherent authority petition; pardon.**] (a) If an individual petitions the court under its inherent authority to seal the records of the judicial branch, the individual loses eligibility to file a petition under this section and must wait for the time period to pass following the court's order sealing the records of the judicial branch.

(b) If an individual obtains a pardon prior to the time period listed in this section, the sealing provided in section 609C.03 must not occur until the time period in this section has passed.

Subd. 4. [**Arrest Record.**] For any arrest record for a crime listed in section 609C.05, subdivision 3, the individual may file a petition to seal three years after the investigation becomes inactive as defined in section 13.82, subdivision 7.

Subd. 5. [**Felony person crime.**] An individual convicted of a felony person crime may file a petition to seal 15 years after completion of sentence.

Subd. 6. [**Felony non-person crime.**] An individual convicted of a felony non-person crime may file a petition to seal five years after completion of sentence.

Subd. 7. [**Gross misdemeanor person crime.**] An individual convicted of a gross misdemeanor person crime may file a petition to seal ten years after completion of sentence.

Subd. 8. [**Gross misdemeanor non-person crime.**] An individual convicted of a gross misdemeanor non-person crime may file a petition to seal three years after completion of sentence.

Subd. 9. [**Misdemeanor person crime.**] An individual convicted of a misdemeanor person crime may file a petition to seal seven years after completion of sentence.

Subd.10. [**Misdemeanor non-person crime.**] An individual convicted of a misdemeanor non-person crime may file a petition to seal two years after completion of sentence.

609C.09 Petition to seal criminal records.

Subdivision 1. [**Petition; filing fee.**] An individual who is the subject of a criminal record and who seeks the sealing of that record shall file a petition under this section and pay a filing fee in the amount required under section 357.021, subdivision 2, clause (1). The filing fee may be waived in cases of indigency and shall be waived in the cases described in section 609C.07, subdivision 2.

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

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

(2) the petitioner's date of birth;

(3) all of the petitioner's addresses from the date of the offense or alleged offense in connection with which an order sealing criminal justice records is sought, to the date of the petition;

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

(5) the details of the offense or arrest for which sealing is sought, including:

(A) the date and jurisdiction of the occurrence,

(B) either the names of any victims or that there were no identifiable victims,

(C) the court file number,

(D) the statute under which the individual was charged or convicted, and

(E) the date of conviction or of dismissal;

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

Appendix 7, Statutory Language for Sealing of Criminal Records, continued

(7) petitioner's criminal conviction record indicating all convictions for misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable convictions in any other state or federal court, whether the convictions occurred before or after the arrest or conviction for which sealing is sought;

(8) petitioner's criminal charges record indicating all prior and pending criminal charges against the petitioner in this state, any other state or federal court, including all criminal charges that have been continued for dismissal or stayed for adjudication, or have been the subject of pretrial diversion; and

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

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

(c) A petition must be accompanied by a biometric identifier from the petitioner. The format of the biometric identifier must be established by the commissioner of the department of public safety.

Subd. 3. **[Service of petition and proposed order.]** (a) The petitioner shall serve by mail the petition for sealing and a proposed order. The proposed order must:

(i) provide information about all the factors in section 609C.10, subdivision 4;

(ii) include any restrictions found in section 609C.10, subdivisions 5 and 6 that apply to the petitioner; and

(iii) direct that records be sealed and name the government entities and courts where the criminal records are located.

Service must be made on the prosecutorial office that had jurisdiction over the offense for which sealing is sought and all other government entities whose records would be affected by the proposed order. The petitioner shall also serve by mail the attorney for each government entity.

(b) The failure to identify and serve a government entity with the petition and proposed order precludes the issuance of an order sealing that government entity's records.

(c) The prosecutorial office that had jurisdiction over the offense for which sealing is sought shall serve by mail the petition and proposed order on any victims of the offense for which sealing is sought who have requested notice of sealing pursuant to section 611A.06. Service under this paragraph does not constitute a violation of an existing order for protection, restraining order, or other no contact order.

(d) The prosecutorial office's notice to victims of the offense under this subdivision must specifically inform the victims of the victims' right to be present and to submit an oral or written statement at the hearing described in section 609C.10, subdivision 3.

609C.10 Petition hearing process.

Subdivision 1. **[Prosecutor review.]** The prosecutor shall review the petition, consult with appropriate government entities and determine if the petition should be opposed. If the content of the petition, the records maintained by government entities and the opinions of the affected parties indicate that the petition will not be opposed, the prosecutor must notify the court of that fact. The notification must be received by the court within 45 days of the filing of the petition.

Subd. 2. [**Order issued without hearing.**] If the prosecutor notifies the court that the government entities will not oppose the petition, no hearing is necessary and the court may issue an order sealing the records identified in the petition. The requirements of subdivisions 5, 6, and 7 apply.

Subd. 3. [**Hearing.**] A hearing on the petition shall be held no sooner than 75 days after service of the petition. A victim of the offense for which sealing is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether sealing should be granted or denied. The judge shall consider the victim's statement when making a decision.

Subd. 4. [**Factors the court must consider.**] (a) In deciding whether to grant the petition and seal records, the court must consider the following.

(1) whether the petitioner's sentencing conditions were satisfactorily completed for the underlying crime whose record is the subject of the petition;

(2) whether the petitioner's fine or restitution has been paid for the underlying crime whose record is the subject of the petition and, if the fine or restitution has not been paid, any explanation for the failure;

(3) whether any treatment has been completed for the underlying crime whose record is the subject of the petition;

(4) the nature and severity of the underlying crime whose record is the subject of the petition;

(5) the danger, if any, the petitioner poses to any individuals or society;

(6) the length of time since the crime occurred;

(7) the steps taken by the petitioner towards rehabilitation following the crime;

(8) the reasons for the sealing, including, but not limited to, the petitioner's attempts to obtain employment, housing, or other necessities;

(9) the petitioner's criminal record in this state, in other states and at the federal level;

(10) the petitioner's record of employment and community involvement;

(11) the recommendations of interested State law enforcement, prosecutorial, and corrections officials;

(12) the recommendations of any victims of the underlying crime;

(13) any sealing already obtained by petition for other criminal records; and

(14) any other factor deemed relevant by the court.

(b) A court may issue an order sealing records if it determines by a preponderance of the evidence that the benefit to the petitioner outweighs the disadvantages to the public and public safety after considering the factors listed in paragraph (a).

Subd. 5. [**Firearms restriction.**] An order sealing the record of a conviction for a crime of violence as defined in section 624.712, subdivision 5, must provide that the individual is not entitled to ship, transport, possess, or receive a firearm for the remainder of the individual's lifetime. Any individual whose record of conviction is sealed under this section and who thereafter receives a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d, is not subject to the restriction in this subdivision.

Subd. 6. [**Limitations of order.**] Upon issuance of an order sealing records related to a charge supported by probable cause, the DNA samples and DNA records held by the bureau of criminal apprehension and collected under authority other than section 299C.105, shall not be sealed, returned to the subject of the record, or destroyed.

Subd. 7. [**Distribution of orders sealing records.**] The court administrator shall send a copy of an order sealing records to each government entity whose records are affected by the terms of the order.

Subd. 8. [**Stay of order; appeal.**] An order sealing records shall be stayed automatically for 60 days after the order is filed and, if the order is appealed, during the appeal period. An individual or a government entity whose records would be affected by the order may appeal the order within 60 days of service of notice of filing of the order. A government entity or its officials or employees need not file a cost bond or supersedeas bond in order to further stay the proceedings or file an appeal.

609C.11 Access to sealed records

Subdivision 1. [**Access without court order.**] All sealed records are accessible to the courts and criminal justice agencies in Minnesota, other states or federal government without a court order. Access by these parties is limited to criminal justice purposes, which includes employment in a criminal justice agency. Sealed records may be disclosed between and among these government entities.

Subd. 2. [**Access for statutorily mandated background checks.**] Sealed records are available to a government entity to conduct statutory background checks if the government entity provides, in statutes or rules, for a review process including the right to administrative or judicial review.

609C.12 Data subject access to sealed records.

An individual who is the subject of sealed records may access the records at any government entity where they are maintained. Access includes both inspection and copying, as provided in section 13.04, subdivision 3. A signed, informed consent from the individual is not effective to provide access to a third party not specified in section 609C.11.

Revisor's Instruction. The Revisor of Statutes is directed to replace all references to chapter 609A with the appropriate reference in chapter 609C. The Revisor is also directed to replace the words "expunge," "expunged" and "expungement" with "seal," "sealed" or "sealing" as is appropriate.

Repealer: Chapter 609A is repealed.

ARTICLE TWO

Minnesota Statutes, section 13.82, subdivision 7, is amended to read:

Subd. 7. **Criminal investigative data.** Except for the data defined in subdivisions 2, 3, and 6, investigative data collected or created by a law enforcement agency in order to prepare a case against a person, whether known or unknown, for the commission of a crime or other offense for which the agency has primary investigative responsibility is confidential or protected nonpublic while the investigation is active. Inactive investigative data is public unless the release of the data would jeopardize another ongoing investigation, is sealed under chapter 609C, or would reveal the identity of individuals protected under subdivision 17. Photographs which are part of inactive investigative files and which are clearly offensive to common sensibilities are classified as private or nonpublic data, provided that the existence of the photographs shall be disclosed to any person requesting access to the inactive investigative file. An investigation becomes inactive upon the occurrence of any of the following events:

- (a) a decision by the agency or appropriate prosecutorial authority not to pursue the case;
- (b) expiration of the time to bring a charge or file a complaint under the applicable statute of limitations, or 30 years after the commission of the offense, whichever comes earliest; or
- (c) exhaustion of or expiration of all rights of appeal by a person convicted on the basis of the investigative data.

Any investigative data presented as evidence in court shall be public. Data determined to be inactive under clause (a) may become active if the agency or appropriate prosecutorial authority decides to renew the investigation.

During the time when an investigation is active, any person may bring an action in the district court located in the county where the data is being maintained to authorize disclosure of investigative data. The court may order that all or part of the data relating to a particular investigation be released to the public or to the person bringing the action. In making the determination as to whether investigative data shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the agency or to any person identified in the data. The data in dispute shall be examined by the court in camera.

Minnesota Statutes, section 152.18, subdivision 1, is amended to read:

Subdivision 1. **Deferring prosecution for certain first time drug offenders.** If any person who has not previously participated in or completed a diversion program authorized under section 401.065 or who has not previously been placed on probation without a judgment of guilty and thereafter been discharged from probation under this section is found guilty of a violation of section 152.024, subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, or 4, for possession of a controlled substance, after trial or upon a plea of guilty, and the court determines that the violation does not qualify as a subsequent controlled substance conviction under section 152.01, subdivision 16a, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum sentence provided for the violation. The court may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge the person from probation before the expiration of the maximum period prescribed for the person's probation. If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge the person and dismiss the proceedings against that person. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, and the provisions of section 609C.06 apply to the records, wherever located but a not public record of it shall be retained by the Bureau of Criminal Apprehension for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The provisions of section 609C.03 and 609C.11 also apply to the records ~~not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall notify the requesting party of the existence of the not public record and the right to seek a court order to open it pursuant to this section. The court shall forward a record of any discharge and dismissal under this subdivision to the bureau which shall make and maintain the not public record of it as provided under this subdivision. The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose. For purposes of this subdivision, "not public" has the meaning given in section 13.02, subdivision 8a.~~

Minnesota Statutes, section 299C.11, subdivision 1 is amended to read:

Subdivision 1. Identification data other than DNA. (a) Each sheriff and chief of police shall furnish the bureau, upon such form as in the format the superintendent shall prescribe, with such finger and thumb prints, photographs, distinctive physical mark identification data, information on known aliases and street names, and other identification data as may be requested or required by the superintendent of the bureau, which

Appendix 7, Statutory Language for Sealing of Criminal Records, continued

must be taken under the provisions of section 299C.10. In addition, sheriffs and chiefs of police shall furnish this identification data to the bureau for individuals found to have been convicted of a felony, gross misdemeanor, or targeted misdemeanor, within the ten years immediately preceding their arrest. When the bureau learns that an individual who is the subject of a background check has used, or is using, identifying information, including, but not limited to, name and date of birth, other than those listed on the criminal history, the bureau may add the new identifying information to the criminal history when supported by fingerprints.

(b) No petition under chapter ~~609A~~ 609C is required if the ~~person~~ individual has not been convicted of any felony or gross misdemeanor, either within or without the state, within the period of ten years immediately preceding the determination of all pending criminal actions or proceedings in favor of the arrested ~~person~~ individual, and either of the following occurred:

- (1) all charges were dismissed prior to a determination of probable cause; or
- (2) the prosecuting authority declined to file any charges and a grand jury did not return an indictment.

Where these conditions are met, the bureau or any law enforcement agency with records shall, ~~upon~~ within 30 days of receipt of a demand, return to the arrested person delete or destroy the finger and thumb prints, photographs, distinctive physical mark identification data, information on known aliases and street names, and other identification data, and all copies and duplicates of them. The bureau or any law enforcement agency must provide a written statement to the arrested individual that the records have been deleted or destroyed and the date on which the deletion or destruction occurred.

(c) Except as otherwise provided in paragraph (b), upon the determination of all pending criminal actions or proceedings in favor of the arrested ~~person~~ individual, and the granting of the petition of the arrested ~~person~~ individual under chapter ~~609A~~609C, the bureau or any law enforcement agency shall seal finger and thumb prints, photographs, distinctive physical mark identification data, information on known aliases and street names, and other identification data, and all copies and duplicates of them if the arrested ~~person~~ individual has not been convicted of any felony or gross misdemeanor, either within or without the state, within the period of ten years immediately preceding such determination.

Minnesota Statutes, section 299C.11, subdivision 3, is amended to read:

Subd. 3. **Definitions.** For purposes of this section:

- (1) "determination of all pending criminal actions or proceedings in favor of the arrested ~~person~~ individual" does not include:
- (i) the sealing of a criminal record pursuant to section 152.18, subdivision 1, 242.31, or chapter ~~609A~~ 609C;
 - (ii) the arrested ~~person's~~ individual's successful completion of a diversion program;
 - (iii) an order of discharge under section 609.165; or
 - (iv) a pardon granted under section 638.02; and
- (2) "targeted misdemeanor" has the meaning given in section 299C.10, subdivision 1.

Minnesota Statutes, section 638.02, subdivision 1, is amended to read:

Subdivision 1. **Absolute or conditional pardons; commutation of sentences.** The Board of Pardons may grant an absolute or a conditional pardon, but every conditional pardon shall state the terms and conditions on which it was granted. Every pardon or commutation of sentence shall be in writing and shall have no force or effect unless granted by a unanimous vote of the board duly convened. A pardon shall also seal the records as provided in section 609C.03.

Minnesota Statutes, section 630.02, subdivision 3, is amended to read:

Subd. 3. **Pardon extraordinary; filing; copies sent.** Upon granting a pardon extraordinary the Board of Pardons shall file a copy of it with the district court of the county in which the conviction occurred, and the court shall order the conviction set aside and include a copy of the pardon in the court file. The court shall send a copy of its order and the pardon to the Bureau of Criminal Apprehension and any law enforcement agency that has a record related to the crime.

Appendix 8
Consolidated Draft Fiscal Note for Implementing Criminal Record Sealing Language

Informal Consolidated Fiscal Note

Bill #: NA **Title:** Sealing of Criminal Records Draft Legislation

Consolidated: Y **Contact Person:** David Anderson, CriMNet, (651) 793-2722

Agencies: Department of Public Safety, Department of Corrections, State Court Administration and Local Agencies

What version of the bill are you working on? 09/27/07 Bill Draft
 (Changing the version of the bill will automatically create a new fiscal note request.)

(The following four fiscal impact questions must be answered before an agency can sign off on a fiscal note.)

	Yes	No
State (Does this bill have a fiscal impact to your Agency?)	X	
Local (Does this bill have a fiscal impact to a Local Gov Body?)	X	
Fee/Dept Earnings (Does this bill impact a Fee or Dept Earning?)		X
Tax Revenue (Does this bill impact Tax Revenues?)		X

Dollars (in thousands)		FY09	FY10	FY11	FY12
Expenditures					
Bureau of Criminal Apprehension		495.2	1,303.3	1,896.5	1,573.5
State Court Administration		5,273.1	5,041.1	5,041.1	5,041.1
Department of Corrections		1,250.0	0.0	0.0	0.0
		100.0	50.0	50.0	50.0
City of Minneapolis		1,207.7	1,268.1	1,331.5	1,398.1
Ramsey County Attorney		96.1	96.1	96.1	96.1
St. Paul Police Department		45.0	217.5	217.5	217.5
Hennepin County Jail		65.0	65.0	65.0	65.0
Total Cost <Savings> to the State		8,532.1	8,041.1	8,697.7	8,441.3

		FY09	FY10	FY11	FY12
Bureau of Criminal Apprehension		9	27.5	29.75	29.75
State Court Administration		33.6	33.6	33.6	33.6
State Patrol		1	1	1	1
City of Minneapolis		24	24	24	24
Ramsey County Attorney		1.2	1.2	1.2	1.2
St. Paul Police Department		0.5	3.4	3.4	3.4
Hennepin County Jail		1	1	1	1
Total Full Time Equivalentents (FTE)		70.3	91.7	93.95	93.95

Bill Description

Appendix 8, Consolidated Draft Fiscal Note for Sealing of Criminal Records, continued

The sealing proposal is a balance between increased eligibility to have criminal records sealed and more access by criminal justice agencies without a court order for criminal justice purposes and access for certain background checks. There are three main components to the proposal: (1) sealing certain records like arrests and stays of adjudication without any action by the affected individual; (2) for those criminal records where a petition to seal must be filed, providing a framework, timeline and criteria that must be satisfied for sealing to be granted; and (3) for those situations where government is not opposed to the petition to seal, providing for a streamlined court process.

Assumptions

1. Because current expungement practice refers to the closing of a specified record from public view, the term “sealing” will replace expungement for the sake of clarity. Sealing does not entail the actual destruction or return of a specific record: these actions may occur as noted explicitly in statute, using the terms “destruction” or “return” of the record, respectively.
2. There exists a lack of uniformity of sealing of records practice as exercised by agencies across the state. (As a result, the impact of changes to legislation regarding sealing of records is potentially very wide and far-reaching for both local and state agencies.)
 - a. DHS currently receives no information when a criminal history record being queried has been sealed: DHS assumes no hit on the individual, and additionally has no access to records in suspense.
 - b. To supplement a CJIS “no hit” response, DHS will utilize old BCA records since DHS assumes that sealing of a record by the BCA does not affect DHS records.
3. Use of inherent authority sealing of records as a means to seal court records before a subject’s eligibility to petition for a sealing of records under the recommended framework may require statutory language to disallow any perceived “doubling of sealing of records effort.”
 - a. Some out-state judges have observed that very few sealing of records are addressed in their district, such that timelines for eligibility to petition would not impact workload. Additionally, with timelines outlined in statute, many judges will be reticent to grant a sealing of records outside of those timelines. Thus, if there is an initial impact on the courts, it may lessen over time as experience dictates that an early application will not be successful.
 - b. In the metropolitan area, however, one judge commented that the workload of the courts will increase specifically because two applications for sealing of records will be submitted.
 - c. Some strategies for mitigation include: imposing a filing fee in an amount that would make the process accessible, but also be high enough to discourage people from filing more than once; and/or building into statute a process for waiver of the timelines in extraordinary circumstances with enough detail to inform the applicant of the type of situation in which the applicant is likely to be successful.
4. The onus resides on the subject petitioning and/or their legal representative to compile and distribute necessary records and information to the appropriate parties.
 - a. Given the existing difficulties of assembling comprehensive criminal justice information, particularly by the public, statutory language may highlight relatively more important factors for which to submit information, until technological improvements facilitate more effective access and dissemination of accurate information.
 - b. The establishment of statewide standardized forms for the purposes of petitioning for a sealing of records will additionally help to ensure that subjects are notified of the information they must provide and the agencies they must serve within the petition process in order to be granted a complete remedy.
5. Each individual defendant named in a case can and will be separated out for the purposes of sealing of records of a specific record: in no case will an entire record be sealed without separation of named co-defendants.
6. In the case of sealing of records without petition, it is assumed that every agency involved in cases which are eligible is responsible for sealing its respective records only. Following sealing, the agency is also obligated to notify associated agencies of the existence of the sealed record on behalf of the subject, including the possible language “Notice to Check Status” for those records that have been sealed.
7. For the sake of efficiency and effectiveness of business practice, a streamlined petition process for addressing post-conviction sealing of records might proceed as follows:

Appendix 8, Consolidated Draft Fiscal Note for Sealing of Criminal Records, continued

- a. The subject is required to submit a petition with all required information to a centralized authority, potentially the city/county prosecutor and the Attorney General's Office, and all affected agencies.
 - b. Affected agencies are obligated to forward case management and other records regarding the subject's case to a centralized bureau for review -- possibly the local and state prosecutor's offices, or a centralized office established for the purposes of facilitating sealing of records and background checks statewide. Prosecution/the centralized office then provides a thorough review of compiled and submitted information to ensure that the petitioner and the petition meet statutory requirements. From this point, the process might proceed in one of three ways:
 - i. If agency documentation appears complete, supports the subject's case, and the subject's petition falls within established sealing of records parameters, then the petition is forwarded from prosecution/the centralized office directly to the district court for automatic approval.
 - ii. If agency documentation is not complete and/or mitigating factors exist for the subject's case, and no agency has forwarded any objections to the petition, then the court may choose to consider the case within chambers without the need to call a formal hearing.
 - iii. If documentation does not support the subject's petition and/or the petition does not meet established standards for submission, and one or more agencies register an objection, then the petition is set for a sealing of records hearing by district court, during which the affected agencies may contest granting of the sealing of records request before the bench. (In this way, hearings represent only those sealing of records cases that are exceptions to the rule.)
 - c. The proposed process may save multiple agencies from independently reviewing petitions that meet statutory parameters: agency involvement is reserved only for those petitions that are contested. The process additionally acknowledges that compiling information may be separate and different from review of the information for the purposes of decision-making, and centralizes review, or gate-keeping, for greater efficiency and standardization of practice.
 - d. The process additionally assumes that future technological improvements to existing integration activities will streamline the compilation of critical information to support or deny sealing of records cases. Current initiatives including the Integrated Search Services (ISS), Comprehensive Incident-Based Reporting System (CIBRS), and the Name-Event Index Service (NEIS) will help to provide the technical infrastructure necessary to support efficient, accurate, comprehensive, and timely queries.
 - e. A centralized office for compiling and reviewing sealing of records requests may additionally support requests for background checks (see Background Checks Assumptions), and may serve as the single physical storehouse for all sealed records. The benefit of this centralization would be creation of a single location for information monitoring and dissemination purposes, as well as providing a central point-of-contact for unsealing records and granting access to sealed records for background checks. (Records may be received automatically as an electronic download, and/or maintained as sealed hardcopy records by this centralized warehousing facility.)
8. A potential parallel option is for the courts to create a centralized body to address all requests for sealing of records. Again, the benefits of centralization include greater uniformity of practice around sealing of records, as well as the ability to leverage greater efficiencies with dedicated staff facilitating sealing of records on a daily basis.
- a. This centralization may take the form of designating one or more district court locations to operate a formal "sealing of records court" on behalf of all requests made in the state (e.g., on a regional basis), and/or creating a special centralized court in St. Paul, possibly under the auspices of the Supreme Court or the Judicial Council.
 - b. To support this "one-stop-shop" concept, it is assumed that the MNCIS court information system is, or will be, able to push out sealing of records orders from the proposed central office directly to other court districts for follow-up.
9. All expunged records must necessarily be documented as such within electronic and hardcopy record systems, in order to allow agencies to know of their existence as expunged records and to allow them to pursue opening these records in accordance with current and future statutes.
10. The establishment of appropriate purpose codes and a related process is key to ensuring that sealed records are accessed appropriately, within stated statutory parameters. Given the broadening of eligibility for sealing of records and access to expunged records being recommended, the clear designation of an associated audit trail process encompassing both electronic and hardcopy records is assumed.

Appendix 8, Consolidated Draft Fiscal Note for Sealing of Criminal Records, continued

- a. There exists a need to create one or more new purpose codes by the BCA to differentiate between certain categories of criminal history records and/or specific categories of criminal justice access to sealed records.
 - b. Under the proposed recommendations, DHS should have access to knowledge of sealed files in facilitating statutorily-mandated background checks, possibly under the designation of new purpose codes.
11. Sealed records (including both convictions and dismissals) would be available for access nationwide for all criminal justice purposes, in accordance with the opportunity for access by Minnesota agencies. Additionally, this access would be available to all sealed records regardless of their date of sealing -- in other words, all expunged records fall under the same criteria for potential, future access regardless of the original conditions under which the sealing of records occurred.
12. Reforms to the juvenile record retention policy as outlined in statute will be addressed with new statutory language regarding sealing of records in order to maintain consistency of practice between the availability of adult and juvenile records for subsequent criminal justice use.
13. The waiting period before a subject is eligible to petition for a sealing of records should reflect timeframes currently in use, including the decay factors provided by the Minnesota Sentencing Guidelines Commission, record retention policies, and possibly the parameters under which the Board of Pardons conducts its work.
- a. Greater synchronicity between sealing of records and pardon timeframes, in particular, may help to prevent the overuse of one remedy as the expense of the other due to convenience.
 - b. Effective synchronization between timelines governing the eligibility to petition and data retention practices would diminish the need to seal records that are accessible for public view. In other words, historical data that becomes inaccessible over time would diminish the need for sealing of records orders, particularly in sealing offenses that occurred beyond the proposed timeframe for petitions.

Local Government Costs

There will no doubt be some fiscal costs that vary depending on what vendor and type of Record Management System that a Local Government uses. Many RMS have been updated recently and those seem to indicate that they will have minimal costs along with case loads to handle the sealing of records and notification that a sealing has occurred. Other agencies based on sheer volume will have costs to audit, seal and notify other agencies.

Since the locals did not have stated assumption on effective date I have made assumption that there will be no fiscal impact in 2008, the current fiscal year we are in and that first costs that would appear will be in FY09.

I have reviewed the content of this fiscal note and believe it is a reasonable estimate of the expenditures and revenues associated with this proposed legislation.

Fiscal Note Coordinator Signature: _____ Date: _____

Note: Detailed worksheets and information are available regarding the fiscal impact of criminal record sealing policy suggestions on the Minnesota Bureau of Criminal Apprehension, State Court Administration, Minnesota Department of Corrections, Minnesota State Patrol, City of Minneapolis, Ramsey County Attorney, St. Paul Police Department, and the Hennepin County Jail.

Appendix 9 Criminal Record Sealing Options Considered by Policy Group

Sealing Options December 12, 2007

Purpose of the document: Because options to lower costs for the background check proposal were requested at the Nov. 13, 2007, meeting, the following information is offered in anticipation of a similar request for the sealing proposal.

Option #1: Original proposal

The original proposal balances needs of criminal justice agencies with proposals to make more criminal records eligible for sealing. The original proposal includes: (a) a non-petition process that occurs without a request from an individual to seal certain criminal justice records like some arrests, stays of adjudication, continuances for dismissal and diversions; (b) a streamlined petition process where there is no objection from the prosecutor to the petition to seal; (c) the ability to seal some convictions; and (d) the ability of criminal justice agencies to access sealed criminal records without a court order.

The cost of the original proposal is approximately \$8.5 million per year.

Option #2: Make sealing orders effective in government entities and add convictions

This option was created in anticipation of a request at the Dec. 12th meeting for a less costly option. The proposal amends the existing expungement statute to make court orders effective in government entities (a defined term in Chapter 13) and makes some convictions eligible for expungement.

Because the option does not include any of the items that make the original proposal less costly (sealing without petition, streamlined petitions, access without court order), the option results in a higher anticipated cost.

609A.01 CRIMINAL RECORDS EXPUNGEMENT.

This chapter provides the grounds and procedures for expungement of criminal records under section 13.82; 152.18, subdivision 1; 299C.11, where a petition is authorized under section 609A.02, subdivision 3; or other applicable law. The remedy available is limited to a court order sealing the records of government entities and the judicial branch and prohibiting the disclosure of their existence or their opening except under court order or statutory authority. Nothing in this chapter authorizes the destruction of records or their return to the subject of the records.

609A.02 GROUNDS FOR ORDER.

Subd. 4. **Expungement prohibited.** (a) Records of a conviction of an offense for which registration is required under section 243.166 may not be expunged.

(b) Records of an offense under chapters 168, 169, 169A, 171 or 221 may not be expunged.

(c) When an adult individual was charged with multiple crimes based on one behavioral incident and the individual has pleaded to one of the crimes, the remaining counts may not be sealed until the conviction is eligible to be sealed. When a juvenile was charged with multiple allegations of juvenile delinquency based on one behavioral incident and the juvenile has plead guilty to one of the offenses, the remaining allegations may not be sealed until the adjudication

Appendix 9, Policy Group Criminal Record Sealing Options, continued

is eligible to be sealed. If the conviction or adjudication cannot be sealed, the remaining counts or offenses may not be sealed.

Subd. 5. **[Expungement permitted.]** Any conviction not listed in subdivision 4 may be expunged.

COST ESTIMATE

Assumptions

1. No non-petition process (certain arrests, stays, continuances, diversion)
2. No streamlined petition process (prosecutor does not object)
3. Judicial costs taken from court information presented for original proposal
4. BCA numbers remain constant because now all sealing orders would arrive (some judicial districts currently issue orders involving the BCA, others do not)
5. No costs for local government, the Department of Corrections or the State Patrol are included
6. From 2006 Court Annual Report: 162,043 criminal case filings in Minnesota
7. Of the 162, 043 criminal cases, 91,516 Cases were non-convictions with 89,003 non-convictions if DWI/traffic are excluded
8. Original Court fiscal note estimated 68,155 cases would fall under acquitted, dismissed or vacated cases
9. Of the 162, 043 criminal cases, 59,947 or a percentage of the 70,537 convictions excluding traffic/DWI

Cost Estimate – \$12.8 million per year