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State of Minnesota
HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1083

01/30/2023 Authored by Frazier, Xiong, Curran and Johnson
The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy
02/16/2023 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law
03/20/2023 Adoption of Report: Amended and re-referred to the Committee on Human Services Finance

1.1 A bill for an act

1.2 relating to public safety; modifying background studies conducted by the

1.3 Department of Human Services and county agencies for family child care services

1.4 for certain expungements; authorizing the expungement of criminal records without

1.5 petition for individuals not guilty of a crime as a result of identity theft or mistaken

1.6 identity; amending Minnesota Statutes 2022, sections 245C.08, subdivisions 1, 2;

1.7 299C.11, subdivisions 1, 3; proposing coding for new law in Minnesota Statutes,

1.8 chapter 609A.

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

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

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

1.12 For a background study conducted by the Department of Human Services, the commissioner

1.13 shall review:

1.14 (1) information related to names of substantiated perpetrators of maltreatment of

1.15 vulnerable adults that has been received by the commissioner as required under section

1.16 626.557, subdivision 9c, paragraph (j);

1.17 (2) the commissioner's records relating to the maltreatment of minors in licensed

1.18 programs, and from findings of maltreatment of minors as indicated through the social

1.19 service information system;

1.20 (3) information from juvenile courts as required in subdivision 4 for individuals listed

1.21 in section 245C.03, subdivision 1, paragraph (a), when there is reasonable cause;

1.22 (4) information from the Bureau of Criminal Apprehension, including information

1.23 regarding a background study subject's registration in Minnesota as a predatory offender

1.24 under section 243.166;

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

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

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

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

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

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

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

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

3.1 (2) the commissioner received notice of the expungement order issued pursuant to section
3.2 609A.017 or 609A.025, and the order for expungement is directed specifically to the
3.3 commissioner.

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

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

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

3.16 **EFFECTIVE DATE.** This section is effective August 1, 2023.

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

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

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

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

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

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

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

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

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

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

4.5 (2) the commissioner received notice of the expungement order issued pursuant to section
4.6 609A.017 or 609A.025, and the order for expungement is directed specifically to the
4.7 commissioner.

4.8 **EFFECTIVE DATE.** This section is effective August 1, 2023.

4.9 Sec. 3. Minnesota Statutes 2022, section 299C.11, subdivision 1, is amended to read:

4.10 Subdivision 1. **Identification data other than DNA.** (a) Each sheriff and chief of police
4.11 shall furnish the bureau, upon such form as the superintendent shall prescribe, with such
4.12 ~~finger and thumb prints~~ fingerprints and thumbprints, photographs, distinctive physical
4.13 mark identification data, information on known aliases and street names, and other
4.14 identification data as may be requested or required by the superintendent of the bureau,
4.15 which must be taken under the provisions of section 299C.10. In addition, sheriffs and chiefs
4.16 of police shall furnish this identification data to the bureau for individuals found to have
4.17 been convicted of a felony, gross misdemeanor, or targeted misdemeanor, within the ten
4.18 years immediately preceding their arrest. When the bureau learns that an individual who is
4.19 the subject of a background check has used, or is using, identifying information, including,
4.20 but not limited to, name and date of birth, other than those listed on the criminal history,
4.21 the bureau shall convert into an electronic format, if necessary, and enter into a
4.22 bureau-managed searchable database the new identifying information when supported by
4.23 fingerprints within three business days of learning the information if the information is not
4.24 entered by a law enforcement agency.

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

4.29 (1) all charges were dismissed prior to a determination of probable cause; or

4.30 (2) the prosecuting authority declined to file any charges and a grand jury did not return
4.31 an indictment.

4.32 Where these conditions are met, the bureau or agency shall, upon demand, destroy the
4.33 arrested person's ~~finger and thumb prints~~ fingerprints and thumbprints, photographs,

5.1 distinctive physical mark identification data, information on known aliases and street names,
5.2 and other identification data, and all copies and duplicates of them.

5.3 (c) The bureau or agency shall destroy an arrested person's fingerprints and thumbprints,
5.4 photographs, distinctive physical mark identification data, information on known aliases
5.5 and street names, and other identification data and all copies and duplicates of them without
5.6 the demand of any person or the granting of a petition under chapter 609A if:

5.7 (1) the sheriff, chief of police, bureau, or other arresting agency determines that the
5.8 person was arrested or identified as the result of mistaken identity before presenting
5.9 information to the prosecuting authority for a charging decision; or

5.10 (2) the prosecuting authority declines to file any charges or a grand jury does not return
5.11 an indictment based on a determination that the person was identified or arrested as the
5.12 result of mistaken identity.

5.13 (d) A prosecuting authority that determines a person was arrested or identified as the
5.14 result of mistaken identity and either declines to file any charges or receives notice that a
5.15 grand jury did not return an indictment shall notify the bureau and the applicable sheriff,
5.16 chief of police, or other arresting agency of the determination.

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

5.25 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to
5.26 determinations that a person was identified as the result of mistaken identity made on or
5.27 after that date.

5.28 Sec. 4. Minnesota Statutes 2022, section 299C.11, subdivision 3, is amended to read:

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

5.30 (1) "determination of all pending criminal actions or proceedings in favor of the arrested
5.31 person" does not include:

6.1 (i) the sealing of a criminal record pursuant to section 152.18, subdivision 1, 242.31, or
6.2 chapter 609A;

6.3 (ii) the arrested person's successful completion of a diversion program;

6.4 (iii) an order of discharge under section 609.165; or

6.5 (iv) a pardon granted under section 638.02; ~~and~~

6.6 (2) "mistaken identity" means the person was incorrectly identified as being a different
6.7 person:

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

6.10 (ii) as a result of misidentification by a witness or law enforcement, confusion on the
6.11 part of a witness or law enforcement as to the identity of the person who committed the
6.12 crime, misinformation provided to law enforcement as to the identity of the person who
6.13 committed the crime, or some other mistake on the part of a witness or law enforcement as
6.14 to the identity of the person who committed the crime; and

6.15 ~~(2)~~ (3) "targeted misdemeanor" has the meaning given in section 299C.10, subdivision
6.16 1.

6.17 **EFFECTIVE DATE.** This section is effective August 1, 2023.

6.18 **Sec. 5. [609A.017] MISTAKEN IDENTIFY; AUTOMATIC EXPUNGEMENT.**

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

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

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

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

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

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

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

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

7.13 Subd. 4. **Effect of order.** (a) An order issued under this section is not subject to the
7.14 limitations in section 609A.03, subdivision 7a or 9. The effect of the court order to seal the
7.15 record of the proceedings shall be to restore the person, in the contemplation of the law, to
7.16 the status the person occupied before the arrest, indictment, or information. The person shall
7.17 not be guilty of perjury or otherwise of giving a false statement if the person fails to
7.18 acknowledge the arrest, indictment, information, or trial in response to any inquiry made
7.19 for any purpose.

7.20 (b) A criminal justice agency may seek access to a record that was sealed under this
7.21 section for purposes of determining whether the subject of the order was identified in any
7.22 other action or proceeding as the result of mistaken identity or for a criminal investigation,
7.23 prosecution, or sentencing involving any other person. The requesting agency must obtain
7.24 an ex parte court order after stating a good-faith basis to believe that opening the record
7.25 may lead to relevant information.

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

7.28 (d) Data on the person whose offense has been expunged contained in a letter or other
7.29 notification sent under this subdivision are private data on individuals as defined in section
7.30 13.02.

7.31 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to
7.32 determinations that a person was identified as the result of mistaken identity on or after that
7.33 date.