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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 798

02/02/2017 Authored by Moran; Johnson, S.; Quam; Ecklund; Considine and others
The bill was read for the first time and referred to the Committee on Public Safety and Security Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; authorizing the expungement of criminal records without
1.3 petition for individuals not guilty of a crime as a result of identity theft or mistaken
1.4 identity; amending Minnesota Statutes 2016, sections 609A.02, by adding a
1.5 subdivision; 609A.025.

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

1.7 Section 1. Minnesota Statutes 2016, section 609A.02, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 1a. Identity theft or mistaken identity. (a) Upon the dismissal and discharge of
1.10 criminal proceedings brought against a person as a result of mistaken identity or another
1.11 person using the identifying information of the named person by identity theft under section
1.12 609.527, the prosecutor shall notify the court of the dismissal and discharge under section
1.13 609A.025. The court administrator under section 609A.03, subdivision 8, shall send a copy
1.14 of the expungement order to each state and federal agency and jurisdiction, including but
1.15 not limited to the Departments of Corrections and Public Safety and law enforcement
1.16 agencies, whose records are affected by the order.

1.17 (b) The condition under section 299C.11, subdivision 1, that an arrested person's criminal
1.18 records may only be destroyed or sealed if the arrested person has not been convicted of
1.19 any felony or gross misdemeanor within ten years immediately preceding the determination
1.20 of all criminal actions or proceedings in favor of the arrested person, does not apply to a
1.21 person who, as a result of mistaken identity or identity theft, is charged and:

1.22 (1) the charges are dismissed prior to a determination of probable cause or the prosecutor
1.23 declined to file charges and a grand jury did not return an indictment; or

2.1 (2) all criminal actions or proceedings are determined in favor of the arrested person.

2.2 (c) The effect of the court order to seal the record of the proceedings under paragraph  
 2.3 (a) shall be to restore the person, under the law, to the status the person occupied before the  
 2.4 arrest, indictment or information, trial, and dismissal and discharge. The person shall not  
 2.5 be guilty of perjury or otherwise of giving a false statement if the person fails to acknowledge  
 2.6 the arrest, indictment, information, or trial in response to any inquiry made for any purpose.  
 2.7 The person shall not be responsible for any fees or costs resulting from the court order  
 2.8 including but not limited to reinstatement fees of any licenses or the costs of sealing records.

2.9 (d) For the purposes of this section, the following terms have the meanings given them:

2.10 (1) "law enforcement agency" means a Minnesota municipal police department, the  
 2.11 Metropolitan Transit Police, the Metropolitan Airports Police, the University of Minnesota  
 2.12 Police Department, the Department of Corrections Fugitive Apprehension Unit, a Minnesota  
 2.13 county sheriff's department, the Enforcement Division of the Department of Natural  
 2.14 Resources, the Commerce Fraud Bureau, the Bureau of Criminal Apprehension, or the  
 2.15 Minnesota State Patrol; and

2.16 (2) "mistaken identity" means the erroneous arrest of a person for a crime as a result of  
 2.17 misidentification by a witness or law enforcement, confusion on the part of a witness or  
 2.18 law enforcement as to the identity of the person who committed the crime, misinformation  
 2.19 provided to law enforcement as to the identity of the person who committed the crime, or  
 2.20 some other mistake on the part of a witness or law enforcement as to the identity of the  
 2.21 person who committed the crime.

2.22 Sec. 2. Minnesota Statutes 2016, section 609A.025, is amended to read:

2.23 **609A.025 NO PETITION REQUIRED IN CERTAIN CASES WITH**  
 2.24 **PROSECUTOR AGREEMENT AND NOTIFICATION.**

2.25 (a) If the prosecutor agrees to the sealing of a criminal record, the court shall seal the  
 2.26 criminal record for a person described in section 609A.02, subdivision 1a or 3, without the  
 2.27 filing of a petition unless it determines that the interests of the public and public safety in  
 2.28 keeping the record public outweigh the disadvantages to the subject of the record in not  
 2.29 sealing it.

2.30 (b) Before agreeing to the sealing of a record under this section, the prosecutor shall  
 2.31 make a good faith effort to notify any identifiable victims of the offense of the intended  
 2.32 agreement and the opportunity to object to the agreement.

- 3.1 (c) Subject to paragraph (b), the agreement of the prosecutor to the sealing of records
- 3.2 for a person described in section 609A.02, subdivision 1a or 3, paragraph (a), clause (2),
- 3.3 may occur before or after the criminal charges are dismissed.