

HOUSE RESEARCH

Bill Summary

FILE NUMBER: S.F. 229

DATE: April 6, 2001

Version: First Engrossment

Authors: McGuire and others

Subject: Victim Notification of Expungement Hearings

Analyst: Jeffrey P. Diebel, 651-296-5041

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd.

Overview

This bill requires that persons seeking expungement of a crime list the victims' names, if any, in the petition. The bill requires victims to inform the appropriate authority that they want to be notified of an expungement proceeding. Under this bill, the prosecutorial authority is required to notify the victims of the crime of the expungement proceedings. The bill also permits the victims to submit statements regarding the expungement petition at the hearing. Finally, the bill shifts the burden of proof to the petitioner when the petitioner seeks to expunge records for incidents where the petitioner was found not guilty by reason of mental illness.

Section

- 1 **Implementation of right to notice of offender expungement.** Requires a court or its designee to make reasonable good faith efforts to inform each affected victim of the offender notice of expungement provisions created in section 2. Requires the state court administrator, in consultation with the commissioner of corrections and prosecuting authorities, to prepare a form that outlines the notice of expungement provisions created in section 2 and describes how a victim should complete and submit a request to the prosecutorial authority to be informed of an offender's expungement petition.
- 2 **Notice of expungement required.** Requires the prosecuting authority with jurisdiction over an offense for which expungement is sought to make a good faith effort to notify a victim if:
 - the victim has provided the prosecuting authority with a written request for notice of an expungement hearing; or
 - the victim has indicated on a request for notice of expungement submitted under section 1 a desire to be notified.

Requires the commissioner of corrections or other custodial authority that receives a written request for notice of expungement to forward a copy of the request to the prosecutorial authority with jurisdiction over the offense to which the notice relates.

Requires the prosecutorial authority to mail a copy of the expungement petition to the address that the victim has most recently provided in writing.

- 3 **Contents of petition for expungement.** Amends § 609A.03, subdivision 2, which sets forth the required contents of a petition for expungement, to require inclusion of victims' names or that there were no identifiable victims and whether there is a current or past order for protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims.

Requires the petitioner to attach to the petition a copy of any current or past orders for protection, restraining orders, or other no contact orders prohibiting the petitioner from contacting the victims.

- 4 **Service of petition.** Amends § 609A.03, subdivision 3, which currently identifies who must be served with the petition, to require the petitioner to serve the petition on the prosecutorial office that has jurisdiction over the offense for which expungement is sought.

Requires the prosecutorial office to serve the petition for expungement on any victims that requested notification. Service of the petition on the victims by the prosecutorial office does not violate an existing order for protection, restraining order, or other no contact order.

Requires the prosecutorial office to specifically inform victims of their right to be present and to submit an oral or written statement at the expungement hearing.

- 5 **Victim statement.** Amends § 609.03, subdivision 4, which currently provides a petitioner with a hearing. Permits victims to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether expungement should be granted or denied.

- 6 **Certain criminal proceedings not resulting in a conviction.** Prohibits courts from treating a verdict of not guilty by reason of mental illness as "a resolution in favor of the petitioner," for purposes this chapter.

- 7 **Nature of remedy; standard.** Strikes from law a change that was made in the 2000 session, which treated criminal proceedings resulting in verdicts of not guilty by reason of mental illness as having been resolved in the defendants' favor. The effect of the 2000 change was to make it much easier for such individuals to get the record of the proceedings expunged.

The change was made to comply with the court decision in *State v. Ambaye*, 596 N.W.2d 668 (Minn. App. 1999). Following the 2000 legislative session, the Minnesota Supreme Court overturned this decision. *State v. Ambaye*, 616 N.W.2d 256 (Minn. 2000). The effect of section 7 of the bill is to bring the statute in line with the Minnesota Supreme Court decision.

This means that the person seeking expungement must show by clear and convincing evidence (the highest civil standard of proof) that the benefit to the person will equal the disadvantages to the public and public safety of: (1) sealing the record, and (2) burdening the government with administering an expungement order. Minn. Stat. § 609A.03, subd. 5.

- 8 **Effective date.** August 1, 2001 for sections 1 to 5. Retroactive to August 1, 2000, for sections 6 and 7.