



Updates on Expungement Law: Cannabis and Other Offenses

by Ashley Probst

Hello everyone!

Exciting news for expungement! Many changes were made during the 2023-24 legislative session and all were huge steps forward. Still have work to do, but here are all of the updates and when they take effect:

CANNABIS OFFENSES

Overall, cannabis convictions/charges are not all automatically expunged. There are also many felony level convictions that do not fall under the statute, but the ones that do include both sale and possession.

August 1, 2023

Offenses that will be automatically expunged:

1. Any level of charges that result in dismissals or resolutions in favor of petition,
2. non-felony convictions under 152.027 subd. 3 or 4 (marijuana in a motor vehicle and possession or sale of small amounts of marijuana)

How they are expunged:

1. BCA runs checks and notifies the judicial branch of the expungement.
2. Court seals records within 60 days of receiving the notice.
3. Issues orders but cannot order DHS or MDH to seal its records.**

Created a Cannabis Board

1. Cannabis Expungement Board was created to review felony convictions for expungement, and it consists of:
 - a. Chief justice
 - b. AG
 - c. One public defender
 - d. Commissioner of corrections
 - e. One member of the public with experience appointed by the governor
2. The Board shall review all available records to determine whether case is eligible for expungement or resentencing. An expungement is presumed to be in the public interest unless there is *clear and convincing evidence that it would create a risk to public safety*.
 - a. The judiciary cannot order DHS or MDH to seal records under this statute.**

Offenses that need to be reviewed by board:

1. *Felony convictions:*
 - a. Person is eligible for expungement or resentencing to a lesser offense (misdemeanor or gross misdemeanor) if they were convicted or received a stay of adjudication for:
 - i. First degree sale 152.021 subd. 1(6)
 - ii. First degree possession 152.021 subd. 2(6)
 - iii. Second degree sale 152.022 subd. 1(5) or (7)(iii)
 - iv. Second degree possession 152.022 subd.2(6)
 - v. Third degree sale 152.023 subd. 1(5)
 - vi. Third degree possession 152.023 subd. 2(5)
 - vii. Fourth degree sale 152.024 subd. 4
 - viii. Fifth degree possession 152.025 subd 2 (1); AND
 - b. The conviction did not involve a dangerous weapon, physical harm or threat of physical harm;
 - c. The act on which the charge was based would either be a lesser offense now or no longer a crime now; AND
 - d. The person did not appeal the conviction and be denied, or the deadline to file an appeal has expired.

*****DHS and MDH:***

1. Commissioner may not consider information that identifies a violation of chapter 152 (drugs) without determining if the offense involved the possession of cannabis and, if so, whether the person received a grant of expungement or order of expungement, or the person was resentenced to a lesser offense.
2. If the person received a grant of expungement or order of expungement, **the commissioner may not consider information related to that violation but may consider any other relevant information arising out of the same incident.**

EXPUNGEMENT OF ALL OTHER TYPES OF OFFENSES

Overall, biggest changes are all stays of imposition on felonies now are eligible beginning July 1, GMD waiting periods are lowered to 3 years beginning July 1, new felonies were added which include burglary in 3rd degree beginning July 1, and automatic expungements beginning January 1, 2025. ***Not all cases eligible for petition are eligible for automatic expungement. Also, bottom line, if clients need DHS AND MDH to expunge cases, they will need to file a petition.***

July 1, 2023

Expungement by petition changes:

Eligibility

1. Resolved in favor of client
2. Diversion or adjudication with 1 year waiting period
3. Convicted of PMD or MSD OR the sentence imposed with within the limits of MSD with 2 year waiting period
4. Convicted of GMD or the sentence imposed with within limit of GMD with a 3 year waiting period
5. Stays of imposition on GMDs with a 3 year WP
6. Convicted of felony under 152.025 (5th degree sale or possession) with a 4 year WP

7. Stays of imposition on felonies with a 5 year WP
8. Convictions for qualifying felonies with a 4 year WP
 - a. New felonies:
 - i. Possession of a controlled substance in 3rd degree
 - ii. Possession of a controlled substance in 4th degree
 - iii. Any theft offense sentences under 609.52 subd. 3(3)(a) (theft under 5k)
 - iv. Possession of shoplifting gear
 - v. Burglary in the 3rd degree
 - vi. Possession of burglary tools or theft tools

August 1, 2023

Automatic Expungement Mistaken Identity ADDED

1. Dismissals of any level of case due to mistaken identity
 - a. Prosecutor must state in dismissal it was due to mistaken identity.
 - b. Expungement restores person to place before they were charged etc.
 - c. Cannot be reopened except for investigations into that person.

January 1, 2025

Automatic Expungement

Eligibility requirements:

2. Dismissals or cases resolved in favor of a person.
 - a. DOES include diversion first time drug cases (152.18)
 - b. Does NOT include cases dismissed due to incompetency
3. Diversion or stays of adjudication on MSD or GMD cases
 - a. Person has not been CHARGED with a new offense (other than PMD) for one year immediately after discharge from probation or one year immediately preceding a subsequent review by the BCA**
4. Convictions of qualifying offenses
 - a. Not been convicted of a new crime (other than PMD) during waiting period immediately after probation or immediately preceding a subsequent review by the BCA**
 - b. AND
 - c. Was not charged with a new offense during the waiting period or during the time immediately preceding a subsequent review by BCA**
 - d. Qualifying offenses:
 - i. All MSD's except: DUI, domestic related cases, assaults, or indecent exposure
 - ii. All GMD's except: DUI, domestic related cases, assaults, crim sex related cases, burglary, witness tampering or escape from custody
 - iii. Convictions for any felony listed in 609A.02, subd. 3(b) except: drug possession in third or fourth degree, escape from civil commitment, interference with privacy
 - e. Waiting periods:
 - i. PMD and MSD – 2 years
 - ii. GMD – 3 years
 - iii. Drug felony – 4 years
 - iv. Any other felony – 5 years
 - f. STAYS OF IMPOSITION ARE NOT ELIGIBLE FOR AUTOMATIC EXPUNGEMENT

**** How it works**

1. BCA checks eligibility within 30 days after waiting period is up.
 - a. If not eligible at that time, makes annual eligibility determinations until the record is eligible for expungement.
2. The BCA then notifies the judicial branch, the police agencies, and the prosecuting agencies.
3. The court order is sent to those with records.

DHS and Educator licensing board can open the automatically expunged cases when doing background checks but a person can file a petition to expunge the record and request that the petition be directed to the commission of DHS and the education licensing board to prevent this from happening.