JUDICIARY
Exhibit No. 7
Date 1-12-07
Bill No. 141

DEPARTMENT OF JUSTICE
SB 141: Setting Guidelines for Return of Photographs & Fingerprints

Background

The Department of Justice maintains the central criminal history repository for the state. Local law enforcement agencies have access to the repository through the criminal justice information network. Agencies rely on the state repository to research criminal histories and determine the appropriate charges and sentences in criminal cases. Criminal history records are based on fingerprints and Montana law requires fingerprinting for all felony offenses. The law also allows fingerprinting for misdemeanor offenses, but does not require it.

In 1989, the Legislature eliminated the courts' authority to expunge criminal history records from the repository. However, MCA 44-5-202 retained a provision that gives courts the authority to order the return of photographs and fingerprints to the individual from whom they were taken. This provision was a holdover from the 1979 version of the criminal justice information act. Such an order from the court effectively wipes out an offender's criminal history record because there are no underlying fingerprints to support that record.

Existing law gives courts unlimited discretion to order the return of photographs and fingerprints. There are no parameters or guidelines outlining the circumstances under which return of photographs and fingerprints is appropriate. This broad grant of authority is contrary to the intent of the 1989 Legislature's decision to repeal the statutes which allowed criminal history records to be expunged.

Proposed Amendments

SB 141 would amend MCA 44-5-202 to establish guidelines on when the return of photographs and fingerprints is appropriate. Specifically, it would limit the courts' authority to those situations where:

- an individual is released without charges being filed;
- charges did not result in a conviction; or
- a conviction is later invalidated.

SB 141 would retain the courts' authority to order the return of photographs and fingerprints in appropriate circumstances while also ensuring that accurate and complete criminal histories are maintained when an offender is convicted.

2007 Legislature
January 12, 2007