

1 HOUSE BILL NO. 176

2 INTRODUCED BY D. KOTTEL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE POSSIBILITY OF EXPUNGEMENT OF
5 CRIMINAL RECORDS UPON DISMISSAL OR ACQUITTAL; PROVIDING FOR A PETITION FOR
6 EXPUNGEMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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8 WHEREAS, under the U.S. Constitution and the Montana Constitution, a person is innocent until proven
9 guilty; and

10 WHEREAS, the Legislature recognizes that the social consequences of a criminal record can effectively
11 lead to a denial of an individual's right to civic participation. Life, subsequent to an arrest, is permanently altered.
12 Regardless of whether an individual has been convicted and the overall outcome in court, an arrest or citation
13 will typically appear on a criminal record. Therefore, even if the charges against the person have been dismissed,
14 the person is often subject to a degree of social public ostracism and a de facto finding of guilt.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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18 NEW SECTION. **Section 1. Expungement of criminal records -- application -- eligible records --**
19 **procedure -- effect.** (1) A defendant may file a petition with a court to expunge from the defendant's record any
20 records or entries relating to a charge if:

21 (a) the charge is dismissed prior to or at trial; or

22 (b) the outcome of any court criminal proceeding results in an acquittal.

23 (2) The petition must be filed in the court that has jurisdiction over the offense in question.

24 (3) All records kept or maintained by an arresting agency, an agency that issued a citation, the
25 department of corrections, the department of justice, and a court concerning an arrest, citation, trial, or other
26 criminal court proceeding are eligible for expungement.

27 (4) Upon receipt of a petition for expungement, the court shall direct the clerk of court to seal the records
28 until the court makes a determination as to eligibility for expungement and rules on the petition. If expungement
29 is granted, the court shall forward a copy of the expungement order to the department of justice. Upon receipt
30 of the court order, the department shall expunge the pertinent records.

1 (5) Notwithstanding any other provision of law, a defendant seeking expungement under this section may
2 not be charged a fee by the court.

3 (6) The department of justice shall adopt rules to implement procedures regarding law enforcement
4 agency procedures for handling the expunged records.

5 (7) Upon an order of expungement, all records kept by any government agency must be expunged of
6 information that identifies the individual that was arrested, cited, or charged. The department may keep
7 information that is not individually identifiable for any purpose required by law.

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9 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
10 integral part of Title 46, chapter 18, part 1, and the provisions of Title 46 apply to [section 1].

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12 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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14 **NEW SECTION. Section 4. Applicability.** [This act] applies to records in criminal cases resulting in
15 dismissal or acquittal regardless of the date of dismissal or acquittal.

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