

HOUSE BILL NO. 168

INTRODUCED BY Z. BROWN, D. MORTENSEN, N. SWANDAL

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE EXPUNGEMENT OF CRIMINAL RECORDS FOR MISDEMEANOR OFFENSES IN CERTAIN CASES; PROVIDING DEFINITIONS; AND PROVIDING RULEMAKING AUTHORITY."

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

NEW SECTION. Section 1. Expungement of misdemeanor records -- petition to district court -- criteria for expungement -- DEFINITIONS. (1) (A) A person convicted of a misdemeanor offense OR OFFENSES who has completed the terms of the sentence for the misdemeanor offense OR OFFENSES may petition the district court for an order requiring the expungement of all records of the arrest, investigation, and detention, if any, and any court proceedings that may have been held in the case.

(B) THE DISTRICT COURT MUST DETERMINE WHETHER A VICTIM IS ENTITLED TO NOTIFICATION OF THE REQUEST FOR EXPUNGEMENT AS PROVIDED IN ARTICLE II, SECTION 36, SUBSECTION(1)(Q), OF THE MONTANA CONSTITUTION. IF A VICTIM IS IDENTIFIED BY THE DISTRICT COURT, THE PROSECUTION OFFICE RESPONSIBLE FOR THE CONVICTION FOR WHICH EXPUNGEMENT IS BEING REQUESTED MUST ATTEMPT TO NOTIFY THE VICTIM. IF THE VICTIM APPEARS, THE VICTIM MUST BE GIVEN AN OPPORTUNITY TO RESPOND.

(2) Unless the interests of public safety demand otherwise, the district court shall order the records expunged if:

(a) (i) the person has not been convicted of any other offense in this state, another state, or federal court for a period of 5 years since the person completed the terms of the original sentence for the offense, including payment of any financial obligations or successful completion of court-ordered treatment; ~~and~~ OR

(ii) THE PERSON HAS APPLIED TO A UNITED STATES MILITARY ACADEMY, HAS APPLIED TO ENLIST IN THE ARMED FORCES OR NATIONAL GUARD, OR IS CURRENTLY SERVING IN THE ARMED FORCES OR NATIONAL GUARD AND IS PROHIBITED FROM ENLISTING OR HOLDING A CERTAIN POSITION DUE TO A PRIOR CONVICTION; AND

(b) the person is not currently being detained for the commission of a new offense and has not been charged with the commission of a new offense, OR DOES NOT HAVE CHARGES PENDING FOR THE COMMISSION OF A NEW OFFENSE, AS VERIFIED BY THE PROSECUTION OFFICE RESPONSIBLE FOR THE CONVICTION FOR WHICH EXPUNGEMENT



1 IS BEING REQUESTED.

2 (3) Expungement may not be presumed if the person seeking expungement has ~~two~~ ONE or more
 3 convictions for assault under 45-5-201 ~~or~~, partner or family member assault under 45-5-206, STALKING UNDER
 4 45-5-220, A VIOLATION OF A PROTECTIVE ORDER UNDER 45-5-626, OR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR
 5 DRUGS UNDER TITLE 61, CHAPTER 8, PART 4. THE PROSECUTION OFFICE THAT PROSECUTED THE OFFENSE FOR WHICH
 6 EXPUNGEMENT IS BEING REQUESTED MUST BE NOTIFIED OF THE REQUEST AND BE GIVEN AN OPPORTUNITY TO RESPOND
 7 AND ARGUE AGAINST THE EXPUNGEMENT. IN MAKING THE DETERMINATION OF WHETHER EXPUNGEMENT SHOULD
 8 BE GRANTED, THE DISTRICT COURT MUST CONSIDER, IN ADDITION TO ANY OTHER FACTORS, THE AGE OF THE PETITIONER
 9 AT THE TIME THE OFFENSE WAS COMMITTED, THE LENGTH OF TIME BETWEEN THE OFFENSE AND THE REQUEST, THE
 10 REHABILITATION OF THE PETITIONER, AND THE LIKELIHOOD THAT THE PERSON WILL REOFFEND.

11 (4) If the order of expungement is granted, a copy of the order must be sent BY THE PERSON WHOSE
 12 RECORDS ARE TO BE EXPUNGED to the arresting law enforcement agency, the prosecutor's office that prosecuted
 13 the offense, THE CLERK OF THE COURT IN WHICH THE PERSON WAS SENTENCED, and the department of justice, along
 14 with a form prepared by the department of justice that contains identifying information about the petitioner.

15 ~~—— (5) After the records are expunged, all records and data relating to the charge are confidential criminal~~
 16 ~~justice information as defined in 44-5-103, and public access to the information may be obtained only by district~~
 17 ~~court order upon good cause shown.~~

18 ~~(6)(5)~~ For purposes of handling expunged records, the department of justice may adopt rules to
 19 implement the provisions of this section.

20 ~~(7)(6)~~ A person's records may be expunged pursuant to this section no more than one time during the
 21 person's life. A PERSON SUBMITTING A PETITION FOR EXPUNGEMENT UNDER THIS SECTION MUST BE FINGERPRINTED FOR
 22 PURPOSES OF DETERMINING PRIOR CONVICTIONS VALIDATING THE PERSON'S IDENTITY.

23 (7) THE DEPARTMENT OF JUSTICE SHALL EXPUNGE ANY RECORDS UNDER THIS SECTION WITHIN EXISTING
 24 DEPARTMENT RESOURCES.

25 (8) FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

26 (A) "EXPUNGE" OR "EXPUNGEMENT" MEANS TO PERMANENTLY DESTROY, DELETE, OR ERASE A RECORD OF AN
 27 OFFENSE FROM THE CRIMINAL HISTORY RECORD INFORMATION SYSTEM MAINTAINED BY THE DEPARTMENT OF JUSTICE IN
 28 A MANNER THAT IS APPROPRIATE FOR THE RECORD'S PHYSICAL OR ELECTRONIC FORM.

29 (B) (I) "RECORD" MEANS ANY IDENTIFIABLE DESCRIPTION, NOTATION, OR PHOTOGRAPH OF AN ARREST AND
 30 DETENTION; COMPLAINT, INDICTMENT, OR INFORMATION AND DISPOSITION ARISING FROM A COMPLAINT, INDICTMENT, OR

1 INFORMATION; SENTENCE; CORRECTIONAL STATUS; RELEASE; AND COURT DOCUMENT OR FILING.

2 (II) THE TERM DOES NOT INCLUDE A FINGERPRINT RECORD OR DATA THAT MAY BE MAINTAINED FOR INVESTIGATIVE
3 PURPOSES.

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

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