

HOUSE BILL NO. 46

INTRODUCED BY L. SHELDON-GALLOWAY

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING OR ELIMINATING STATUTORY REFERENCES TO ARTICLE II, SECTION 36, OF THE MONTANA CONSTITUTION; AMENDING SECTIONS 46-18-1101 AND 53-1-203, MCA; AND REPEALING SECTIONS 46-11-801, 46-24-301, 46-24-302, AND 46-24-307, MCA."

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

Section 1. Section 46-18-1101, MCA, is amended to read:

"46-18-1101. Expungement of misdemeanor records -- petition to district court -- criteria for expungement -- definitions. (1) ~~(a)~~ (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 shall 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.~~

(B) THE DISTRICT COURT SHALL DETERMINE WHETHER A VICTIM OF THE OFFENSE CAN BE IDENTIFIED. 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 OF THE OFFENSE AND DOCUMENT THE ATTEMPT. THE NOTIFICATION MUST INCLUDE THAT THE VICTIM HAS THE RIGHT TO RESPOND TO THE EXPUNGEMENT REQUEST. 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



- 1 payment of any financial obligations or successful completion of court-ordered treatment; or
- 2 (ii) the person has applied to a United States military academy, has applied to enlist in the armed forces
- 3 or national guard, or is currently serving in the armed forces or national guard and is prohibited from enlisting or
- 4 holding a certain position due to a prior conviction; and
- 5 (b) the person is not currently being detained for the commission of a new offense and has not been
- 6 charged with the commission of a new offense, or does not have charges pending for the commission of a new
- 7 offense, as verified by the prosecution office responsible for the conviction for which expungement is being
- 8 requested.
- 9 (3) Expungement may not be presumed if the person seeking expungement has one or more convictions
- 10 for assault under 45-5-201, partner or family member assault under 45-5-206, stalking under 45-5-220, a violation
- 11 of a protective order under 45-5-626, or driving under the influence of alcohol or drugs under Title 61, chapter
- 12 8, part 4. The prosecution office that prosecuted the offense for which expungement is being requested must be
- 13 notified of the request and be given an opportunity to respond and argue against the expungement. In making
- 14 the determination of whether expungement should be granted, the district court must consider, in addition to any
- 15 other factors, the age of the petitioner at the time the offense was committed, the length of time between the
- 16 offense and the request, the rehabilitation of the petitioner, and the likelihood that the person will reoffend.
- 17 (4) If the order of expungement is granted, a copy of the order must be sent by the person whose records
- 18 are to be expunged to the arresting law enforcement agency, the prosecutor's office that prosecuted the offense,
- 19 the clerk of the court in which the person was sentenced, and the department of justice, along with a form
- 20 prepared by the department of justice that contains identifying information about the petitioner.
- 21 (5) For purposes of handling expunged records, the department of justice may adopt rules to implement
- 22 the provisions of this section.
- 23 (6) A person's records may be expunged pursuant to this section no more than one time during the
- 24 person's life. A person submitting a petition for expungement under this section must be fingerprinted for
- 25 purposes of validating the person's identity.
- 26 (7) The department of justice shall expunge any records under this section within existing department
- 27 resources.
- 28 (8) For purposes of this section, the following definitions apply:
- 29 (a) "Expunge" or "expungement" means to permanently destroy, delete, or erase a record of an offense
- 30 from the criminal history record information system maintained by the department of justice in a manner that is

1 appropriate for the record's physical or electronic form.

2 (b) (i) "Record" means any identifiable description, notation, or photograph of an arrest and detention;
3 complaint, indictment, or information and disposition arising from a complaint, indictment, or information;
4 sentence; correctional status; release; and court document or filing.

5 (ii) The term does not include a fingerprint record or data that may be maintained for investigative
6 purposes."

7

8 **Section 2.** Section 53-1-203, MCA, is amended to read:

9 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

10 (a) subject to subsection (6), adopt rules necessary:

11 (i) to carry out the purposes of 41-5-125;

12 (ii) for the siting, establishment, and expansion of prerelease centers;

13 (iii) for the expansion of treatment facilities or programs previously established by contract through a
14 competitive procurement process;

15 (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

16 (v) for the admission, custody, transfer, and release of persons in department programs except as
17 otherwise provided by law; ~~and~~

18 ~~—— (vi) to carry out the purposes of Article II, section 36, of the Montana constitution;~~

19 (b) subject to the functions of the department of administration, lease or purchase lands for use by
20 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
21 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
22 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
23 persons confined in correctional facilities;

24 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community
25 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and
26 maintain:

27 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
28 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
29 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
30 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The

1 centers must be operated in coordination with other department correctional programs. This subsection does not
2 affect the department's authority to operate and maintain prerelease centers.

3 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
4 provided for in 46-18-201 or 46-18-202, and any other sections relating to alternative sentences for persons
5 convicted of possession of methamphetamine. The department shall issue a request for proposals using a
6 competitive process and shall follow the applicable contract and procurement procedures in Title 18.

7 (d) use the staff and services of other state agencies and units of the Montana university system, within
8 their respective statutory functions, to carry out its functions under this title;

9 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
10 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
11 in correctional facilities or programs;

12 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
13 education of felony offenders;

14 (g) encourage efforts within the department and at the local level that would develop housing options
15 and resource materials related to housing for individuals who are released from the Montana state prison or
16 community corrections programs;

17 (h) maintain data on the number of individuals who are discharged from the adult correction services
18 listed in 53-1-202 into a homeless shelter or a homeless situation;

19 (i) administer all state and federal funds allocated to the department for delinquent youth, as defined in
20 41-5-103;

21 (j) collect and disseminate information relating to youth who are committed to the department for
22 placement in a state youth correctional facility;

23 (k) maintain adequate data on placements that it funds in order to keep the legislature properly informed
24 of the specific information, by category, related to delinquent youth in out-of-home care facilities;

25 (l) provide funding for youth who are committed to the department for placement in a state youth
26 correctional facility;

27 (m) administer youth correctional facilities;

28 (n) provide supervision, care, and control of youth released from a state youth correctional facility; and

29 (o) use to maximum efficiency the resources of state government in a coordinated effort to:

30 (i) provide for delinquent youth committed to the department; and

1 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
2 administered by the department.

3 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
4 and maintain a residential sexual offender treatment program. If the department intends to contract for that
5 purpose, the department shall adopt rules for the establishment and maintenance of that program.

6 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
7 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
8 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
9 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
10 committee. The legislative audit division shall review the contract and make recommendations or comments to
11 the legislative audit committee. The committee may make recommendations or comments to the department. The
12 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
13 prior to entering into the contract.

14 (4) The department of corrections may enter into contracts with nonprofit corporations or associations
15 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
16 juvenile parole supervision.

17 (5) The department may contract with Montana corporations to operate a day reporting program as an
18 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
19 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
20 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
21 with any conditions of probation, such as drug testing.

22 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory
23 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
24 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
25 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
26 at any location without community support. The prerelease siting, establishment, and expansion must be subject
27 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection
28 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,
29 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

30 (7) The department shall ensure that risk and needs assessments drive the department's supervision

1 and correctional practices, including integrating assessment results into supervision contact standards and case
2 management. The department shall regularly validate its risk assessment tool."

3
4 NEW SECTION. **Section 3. Repealer.** The following sections of the Montana Code Annotated are
5 repealed:

- 6 46-11-801. Prosecutorial immunity.
- 7 46-24-301. Enforcement of victim's rights.
- 8 46-24-302. Victim's rights card.
- 9 46-24-307. Information sharing.

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