

HOUSE BILL NO. 47

INTRODUCED BY T. MOORE

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL RECORDS LAWS; REVISING WHEN AN INDIVIDUAL WHO IS CITED OR ARRESTED MUST BE PHOTOGRAPHED AND FINGERPRINTED; REVISING WHEN A VICTIM MUST BE NOTIFIED OF A REQUEST FOR EXPUNGEMENT OF MISDEMEANOR RECORDS; AND AMENDING SECTIONS 44-5-202 AND 46-18-1101, MCA."

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

Section 1. Section 44-5-202, MCA, is amended to read:

"44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

- (a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;
- (b) the department of corrections; and
- (c) the department of justice.

(2) The department of corrections may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

- (a) the charge is the commission of a felony or a misdemeanor except as provided in subsection (5);
- (b) the identification of an accused is in issue; or
- (c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony or a misdemeanor is not arrested, the person shall appear before the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of initial appearance in court to answer the information or indictment against the person. The individual being fingerprinted shall present the charging document, information, or citation at the time of fingerprinting, and the charging document, information, or citation must be returned to the individual after the fingerprints are taken.

1 (5) An individual who is issued a notice to appear or who is arrested for a misdemeanor traffic,
 2 regulatory, or fish and game offense ~~may not~~ must be photographed or fingerprinted ~~unless~~ if the individual is
 3 incarcerated or if the offense carries a penalty of incarceration.

4 (6) Within 10 days, the originating agency shall send the state repository a copy of each fingerprint taken
 5 on a completed form provided by the state repository.

6 (7) The state repository shall compare the fingerprints received with those already on file in the state
 7 repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall
 8 at once inform the originating agency. If it is determined that the individual has a criminal record, the state
 9 repository shall send the originating agency a copy of the individual's complete criminal history record.

10 (8) If an individual is released without the filing of charges, if the charges did not result in a conviction,
 11 or if a conviction is later invalidated, the court having jurisdiction in the criminal action shall report the disposition
 12 to the state repository as required in 44-5-213(2) within 14 business days. Photographs and fingerprints taken
 13 of the individual must be returned by the state repository to the originating agency, which shall return all copies
 14 to the individual from whom they were taken. A criminal justice agency may not maintain any copies of the
 15 individual's fingerprints or photographs related to that charge or invalidated conviction."
 16

17 **Section 2.** Section 46-18-1101, MCA, is amended to read:

18 **"46-18-1101. Expungement of misdemeanor records -- petition to district court -- criteria for**
 19 **expungement -- definitions.** (1) (a) A person convicted of a misdemeanor offense or offenses who has
 20 completed the terms of the sentence for the misdemeanor offense or offenses may petition the district court for
 21 an order requiring the expungement of all records of the arrest, investigation, and detention, if any, and any court
 22 proceedings that may have been held in the case.

23 (b) The district court shall determine whether a victim ~~is entitled to notification~~ should be notified of the
 24 request for expungement ~~as provided in Article II, section 36, subsection(1)(q), of the Montana constitution.~~ If a
 25 victim is identified by the district court, the prosecution office responsible for the conviction for which
 26 expungement is being requested must attempt to notify the victim. If the victim appears, the victim must be given
 27 an opportunity to respond.

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

30 (a) (i) the person has not been convicted of any other offense in this state, another state, or federal court

1 for a period of 5 years since the person completed the terms of the original sentence for the offense, including
2 payment of any financial obligations or successful completion of court-ordered treatment; or

3 (ii) the person has applied to a United States military academy, has applied to enlist in the armed forces
4 or national guard, or is currently serving in the armed forces or national guard and is prohibited from enlisting or
5 holding a certain position due to a prior conviction; and

6 (b) the person is not currently being detained for the commission of a new offense and has not been
7 charged with the commission of a new offense, or does not have charges pending for the commission of a new
8 offense, as verified by the prosecution office responsible for the conviction for which expungement is being
9 requested.

10 (3) Expungement may not be presumed if the person seeking expungement has one or more convictions
11 for assault under 45-5-201, partner or family member assault under 45-5-206, stalking under 45-5-220, sexual
12 assault under 45-5-502, a violation of a protective order under 45-5-626, or driving under the influence of alcohol
13 or drugs under Title 61, chapter 8, part 4. The prosecution office that prosecuted the offense for which
14 expungement is being requested must be notified of the request and be given an opportunity to respond and
15 argue against the expungement. In making the determination of whether expungement should be granted, the
16 district court must consider, in addition to any other factors, the age of the petitioner at the time the offense was
17 committed, the length of time between the offense and the request, the rehabilitation of the petitioner, and the
18 likelihood that the person will reoffend.

19 (4) If the order of expungement is granted, a copy of the order must be sent by the person whose records
20 are to be expunged to the arresting law enforcement agency, the prosecutor's office that prosecuted the offense,
21 the clerk of the court in which the person was sentenced, and the department of justice, along with a form
22 prepared by the department of justice that contains identifying information about the petitioner.

23 (5) For purposes of handling expunged records, the department of justice may adopt rules to implement
24 the provisions of this section.

25 (6) A person's records may be expunged pursuant to this section no more than one time during the
26 person's life. A person submitting a petition for expungement under this section must be fingerprinted for
27 purposes of validating the person's identity.

28 (7) The department of justice shall expunge any records under this section within existing department
29 resources.

30 (8) For purposes of this section, the following definitions apply:

