

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; ELIMINATING A REQUIREMENT TO RETURN FINGERPRINT AND PHOTOGRAPH INFORMATION TO CERTAIN INDIVIDUALS; REVISING WHEN A VICTIM MUST BE NOTIFIED OF A REQUEST FOR EXPUNGEMENT OF MISDEMEANOR RECORDS; REVISING THE CRIMES FOR WHICH EXPUNGEMENT MAY NOT BE PRESUMED; 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

1 being fingerprinted shall present the charging document, information, or citation at the time of fingerprinting, and
 2 the charging document, information, or citation must be returned to the individual after the fingerprints are taken.

3 (5) An individual who is issued a notice to appear or who is arrested for a misdemeanor traffic,
 4 regulatory, or fish and game offense may not must MAY NOT be photographed or fingerprinted unless if UNLESS
 5 the individual is:

6 (A) incarcerated or if the offense carries a penalty of incarceration; OR

7 (B) SENTENCED TO A TERM OF INCARCERATION, WHETHER OR NOT THE TERM OF INCARCERATION WAS
 8 SUSPENDED BY THE SENTENCING JUDGE.

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

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

15 (8) If an individual is released without the filing of charges, if the charges did not result in a conviction,
 16 or if a conviction is later invalidated, the court having jurisdiction in the criminal action shall report the disposition
 17 to the state repository as required in 44-5-213(2) within 14 business days. Photographs and fingerprints taken
 18 of the individual must be returned by the state repository to the originating agency, which shall ~~return~~ EXPUNGE
 19 all copies ~~to the individual from whom they were taken.~~ A criminal justice agency may not maintain any copies
 20 of the individual's fingerprints or photographs related to that charge or invalidated conviction."
 21

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

23 **"46-18-1101. Expungement of misdemeanor records -- petition to district court -- criteria for**
 24 **expungement -- definitions.** (1) (a) A person convicted of a misdemeanor offense or offenses who has
 25 completed the terms of the sentence for the misdemeanor offense or offenses may petition the district court for
 26 an order requiring the expungement of all records of the arrest, investigation, and detention, if any, and any court
 27 proceedings that may have been held in the case.

28 (b) The district court shall determine whether a victim ~~is entitled to notification should be notified of the~~
 29 ~~request for expungement as provided in Article II, section 36, subsection(1)(c), of the Montana constitution OF~~
 30 THE OFFENSE CAN BE IDENTIFIED. If a victim is identified by the district court, the prosecution office responsible for

1 the conviction for which expungement is being requested must attempt to notify the victim OF THE OFFENSE AND
2 DOCUMENT THE ATTEMPT. THE NOTIFICATION MUST INCLUDE THAT THE VICTIM HAS THE RIGHT TO RESPOND TO THE
3 EXPUNGEMENT REQUEST. If the victim appears, the victim must be given an opportunity to respond.

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

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

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

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

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

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

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

