

HOUSE BILL NO. 543

INTRODUCED BY Z. BROWN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MISDEMEANOR EXPUNGEMENT LAW; CLARIFYING THAT EXPUNGEMENT MAY COVER MULTIPLE MISDEMEANORS; CLARIFYING VENUE; REVISING NOTICE PROVISIONS; REVISING PRESUMPTION CRITERIA; SPECIFYING PROCEDURE; REVISING PROVISIONS FOR EXPUNGEMENT ORDERS; PROVIDING RULEMAKING AUTHORITY; AND REPEALING SECTION 46-18-1101, MCA."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Misdemeanor Expungement Clarification Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Expunge" or "expungement" means to permanently destroy, delete, or erase a record of an offense from the criminal history record information system maintained by the department of justice in a manner that is appropriate for the record's physical or electronic form.

- (2) (a) "Record" means any:
 - (i) identifiable description, notation, or photograph of an arrest and detention;
 - (ii) complaint, indictment, or information or any disposition arising from a complaint, indictment, or information;
 - (iii) sentence;
 - (iv) correctional status;
 - (v) release; or
 - (vi) court document or filing.
- (b) The term does not include a fingerprint record or data that may be maintained for investigative purposes.

1 **NEW SECTION. Section 3. Eligibility for misdemeanor expungement.** (1) A person convicted of one
2 or more misdemeanor offenses, whether in one court or multiple courts and whether in one case or multiple
3 cases, and who has not had the person's records expunged under [sections 1 through 10] previously, may
4 petition a district court for an order requiring the expungement of all records of arrest, investigation, and detention,
5 if any, and any court proceedings that may have been held related to the misdemeanor offense or offenses.

6 (2) A person may petition for expungement pursuant to [sections 1 through 10] no more than one time
7 during the person's life.

8 (3) A person submitting a petition for expungement under [sections 1 through 10] must be fingerprinted
9 for purposes of validating the person's identity.

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11 **NEW SECTION. Section 4. Venue.** A person may file a petition for expungement in the district court
12 of a judicial district in which the person was convicted of a misdemeanor for which expungement is sought.

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14 **NEW SECTION. Section 5. Notice.** (1) A person seeking expungement shall serve a copy of the
15 petition for expungement to every prosecution office that prosecuted an offense for which expungement is being
16 requested.

17 (2) If a victim of an offense subject to a requested expungement exists, the prosecution office responsible
18 for the conviction for which expungement is being requested shall attempt to notify the victim of the offense within
19 14 days of receiving the petition for expungement and shall document the attempt. The notification must include
20 that the victim has the right to respond to the expungement request and must inform the victim of any dates
21 scheduled for court hearings.

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23 **NEW SECTION. Section 6. When expungement presumed.** Expungement is presumed if the person
24 requesting expungement is not currently being detained for the commission of an offense, is not charged with
25 the commission of an offense, and does not have charges pending for the commission of a new offense, as
26 verified by the prosecution office responsible for a conviction for which expungement is being requested, and:

27 (1) the person has not been convicted of any offense in this state, another state, or federal court for a
28 period of 5 years since the person completed the sentencing terms for the offense or offenses for which
29 expungement is being requested, including payment of any financial obligations or successful completion of
30 court-ordered treatment; or

1 (2) the person has applied to a United States military academy, has applied to enlist in the armed forces
 2 or national guard, or is currently serving in the armed forces or national guard and is being held back in any way
 3 from enlisting or holding a certain position due to prior conviction.

4
 5 **NEW SECTION. Section 7. When expungement not presumed.** (1) Expungement may not be
 6 presumed if the person seeking expungement has one or more convictions for assault under 45-5-201, partner
 7 or family member assault under 45-5-206, stalking under 45-5-220, sexual assault under 45-5-502, a violation
 8 of a protective order under 45-5-626, or driving under the influence of alcohol or drugs, however named, under
 9 Title 61, chapter 8, part 4, or any offense that carries a statutorily enhanced penalty as a result of the offender
 10 driving under the influence of alcohol or drugs.

11 (2) In making the determination of whether expungement should be granted, the district court must
 12 consider:

- 13 (a) the age of the petitioner at the time the offense was committed;
- 14 (b) the length of time between the offense and the request;
- 15 (c) the rehabilitation of the petitioner;
- 16 (d) the likelihood that the person will reoffend; and
- 17 (e) any other factor the court considers relevant.

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 19 **NEW SECTION. Section 8. Procedure.** (1) The court must make its determination for an expungement
 20 on a preponderance of the evidence.

21 (2) A presumption in favor of expungement may be overcome upon a determination that the interests of
 22 public safety demand dismissal.

23 (3) If a representative of a prosecution office appears, the representative must be given an opportunity
 24 to respond.

25 (4) If a victim appears, the victim must be given an opportunity to respond.

- 26 (5) (a) The rules of evidence do not apply in an expungement hearing.
- 27 (b) The court may exclude irrelevant, immaterial, or unduly repetitious evidence.

28
 29 **NEW SECTION. Section 9. Expungement orders.** (1) When multiple misdemeanor offenses are
 30 requested to be expunged, the court may order expungement of all, some, or none of the misdemeanor offenses.

1 (2) If an order of expungement is granted:

2 (a) the order must direct, for each offense being expunged, the arresting law enforcement agency, the
3 prosecutor's office that prosecuted the offense, and the clerk of the court in which the person was sentenced to
4 permanently seal all records of the arrest, investigation, and detention, if any, and any court proceedings that may
5 have been held in the case in the possession of the recipient of the order; and

6 (b) the person whose records are to be expunged shall send, for each offense being expunged, a copy
7 of the order to the arresting law enforcement agency, the prosecutor's office that prosecuted the offense, the clerk
8 of the court in which the person was sentenced, and the department of justice, along with a form prepared by the
9 department of justice that contains identifying information about the petitioner.

10 (3) On receipt of an expungement order sent pursuant to subsection (2)(b), the department of justice
11 shall, within existing department resources, expunge all records of arrest, investigation, detention, and court
12 proceedings relating to the person's offenses addressed by the order.

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14 **NEW SECTION. Section 10. Rulemaking authority.** For purposes of handling expunged records, the
15 department of justice may adopt rules to implement the provisions of this section.

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17 **NEW SECTION. Section 11. Repealer.** The following section of the Montana Code Annotated is
18 repealed:

19 46-18-1101. Expungement of misdemeanor records -- petition to district court -- criteria for expungement --
20 definitions.

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22 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 10] are intended to be
23 codified as an integral part of Title 46, chapter 18, part 11, and the provisions of Title 46, chapter 18, part 11,
24 apply to [sections 1 through 10].

25

26 **NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are
27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
28 the part remains in effect in all valid applications that are severable from the invalid applications.

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