

1 HOUSE BILL NO. 795

2 INTRODUCED BY J. REAVIS, D. ZOLNIKOV, J. MORIGEAU, J. TREBAS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CRIMINAL RECORD EXPUNGEMENT LAWS;
5 PROVIDING THAT CERTAIN NONVIOLENT FELONY OFFENSE RECORDS ARE ELIGIBLE FOR
6 EXPUNGEMENT; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 46-18-1102, 46-18-1103, 46-18-
7 1104, 46-18-1105, 46-18-1107, 46-18-1108, AND 46-18-1110, MCA."

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

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11 **Section 1.** Section 46-18-1102, MCA, is amended to read:

12 **"46-18-1102. Short title.** This part may be cited as the "~~Misdemeanor~~ Expungement Clarification
13 Act"."

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15 **Section 2.** Section 46-18-1103, MCA, is amended to read:

16 **"46-18-1103. Definitions.** As used in this part, the following definitions apply:

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

20 (2) "Nonviolent felony offense" means a felony offense other than a violent offense.

21 ~~(2)(3)~~ (a) "Record" means any:

- 22 (i) identifiable description, notation, or photograph of an arrest and detention;
23 (ii) complaint, indictment, or information or any disposition arising from a complaint, indictment, or
24 information;
25 (iii) sentence;
26 (iv) correctional status;
27 (v) release; or
28 (vi) court document or filing.

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

(4) "Violent offense" has the same meaning provided for a crime of violence in 46-18-104."

Section 3. Section 46-18-1104, MCA, is amended to read:

"46-18-1104. Eligibility for ~~misdemeanor~~ expungement. (1) A person convicted of one or more misdemeanor offenses or one of more nonviolent felony offenses, whether in one court or multiple courts and whether in one case or multiple cases, and who has not had the person's records expunged under this part previously, may petition a district court for an order requiring the expungement of all records of arrest, investigation, and detention, if any, and any court proceedings that may have been held related to the misdemeanor offense or offenses or the nonviolent felony offense or offenses.

(2) A person may petition for expungement pursuant to this part no more than one time during the person's life.

(3) A person submitting a petition for expungement under this part must be fingerprinted for purposes of validating the person's identity."

Section 4. Section 46-18-1105, MCA, is amended to read:

"46-18-1105. Venue. A person may file a petition for expungement in the district court of a judicial district in which the person was convicted of ~~a misdemeanor~~ an offense for which expungement is sought."

Section 5. Section 46-18-1107, MCA, is amended to read:

"46-18-1107. When expungement presumed. Expungement is presumed if the person requesting expungement is not currently being detained for the commission of an offense, is not charged with the commission of an offense, and does not have charges pending for the commission of a new offense, as verified by the prosecution office responsible for a conviction for which expungement is being requested, and:

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

1 court-ordered treatment, for a period of:

2 (a) 5 years for a misdemeanor offense or offenses for which expungement is sought; or

3 (b) 10 years for a nonviolent felony offense or offenses for which expungement is sought; or

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

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8 **Section 6.** Section 46-18-1108, MCA, is amended to read:

9 **"46-18-1108. When expungement not presumed.** (1) Expungement may not be presumed if the
10 person seeking expungement has one or more convictions for assault under 45-5-201, partner or family
11 member assault under 45-5-206, stalking under 45-5-220, sexual assault under 45-5-502, sexual abuse of
12 children under 45-5-625, ritual abuse of a minor under 45-5-627, a violation of a protective order under 45-5-
13 626, or driving under the influence of alcohol or drugs, however named, under Title 61, chapter 8, part 10, or
14 any offense that carries a statutorily enhanced penalty as a result of the offender driving under the influence of
15 alcohol or drugs.

16 (2) In making the determination of whether expungement should be granted, the district court shall
17 consider:

18 (a) the age of the petitioner at the time the offense was committed;

19 (b) the length of time between the offense and the request;

20 (c) the rehabilitation of the petitioner;

21 (d) the likelihood that the person will reoffend; and

22 (e) any other factor the court considers relevant."

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24 **Section 7.** Section 46-18-1110, MCA, is amended to read:

25 **"46-18-1110. Expungement orders.** (1) When multiple ~~misdemeanor~~ offenses are requested to be
26 expunged, the court may order expungement of all, some, or none of the ~~misdemeanor~~ offenses.

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

28 (a) the order must direct, for each offense being expunged, the arresting law enforcement agency,

1 the prosecutor's office that prosecuted the offense, and the clerk of the court in which the person was
2 sentenced to permanently seal all records of the arrest, investigation, and detention, if any, and any court
3 proceedings that may have been held in the case in the possession of the recipient of the order within existing
4 resources; and

5 (b) the person whose records are to be expunged shall send, for each offense being expunged, a
6 copy of the order to the arresting law enforcement agency, the prosecutor's office that prosecuted the offense,
7 the clerk of the court in which the person was sentenced, and the department of justice, along with the
8 fingerprints taken pursuant to 46-18-1104 for validating identity and a form prepared by the department of
9 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
11 justice shall, within existing department resources, expunge all records of arrest, investigation, detention, and
12 court proceedings relating to the person's offenses addressed by the order."

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