



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

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.

(5) An individual who is issued a notice to appear or who is arrested for a misdemeanor traffic, regulatory, or fish and game offense ~~may not~~ may not be photographed or fingerprinted ~~unless~~ unless the individual is:

(a) incarcerated; or

(b) sentenced to a term of incarceration, whether or not the term of incarceration was suspended by the sentencing judge.

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

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

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

Section 2. 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 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~~ 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 payment of any financial obligations or successful completion of court-ordered treatment; or

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

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

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

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

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

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

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

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

(a) "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.

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

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

- END -

I hereby certify that the within bill,
HB 0047, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2019.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 47
INTRODUCED BY T. MOORE
BY REQUEST OF THE DEPARTMENT OF JUSTICE

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.