

HB 168

September 15, 2017

Title: An act providing for the expungement of criminal records for misdemeanor offenses in certain cases.

Signed by Gov.: April 13, 2017

Effective date: October 1, 2017

HB 168 provides a mechanism providing for the possible expungement of records for misdemeanor offenses in certain cases. It is limited to once in a person's lifetime.

By expungement, the act provides that the holder of criminal records of the relevant offense must "permanently destroy, delete, or erase a record of an offense" from the criminal history record information system maintained by the state DOJ.

It includes "all records of the arrest, investigation, and detention, if any, and any court proceedings that may have been held in the case." This includes arrest reports, booking photos, or court records and filings. It does not include fingerprint data or "data that may be maintained for investigative purposes." The type of data this exception pertains to is undefined. If the expungement order is granted, the petitioner is required to provide fingerprints in order to prove his or her identity.

An expungement request is initiated by filing a petition with the district court not less than five years after the terms and conditions of the sentence have been completed. Completion includes the payment of all fines and restitution, if any, and any court ordered treatment. Conditions for the expungement include:

- 1) a) Five years have elapsed since all sentencing conditions were completed; or
b) the petitioner has applied for enlistment into the military and is prohibited from enlisting "or holding a certain position" due to a prior conviction;

AND

- 2) Petitioner has not been convicted of any new offense since that time;

AND

- 3) No new charges are pending, "as verified by the prosecution office responsible for the conviction for which expungement is being requested." (Creates a mandate on local prosecutor's offices to review records for pending charges elsewhere.)

Assuming all these conditions are met, and "the interests of public safety" do not demand otherwise, the district court SHALL enter an order of expungement. The presumption in favor of expungement is not to be applied to convictions for the following offenses:

- 1) Assault;
- 2) PFMA;
- 3) Stalking;
- 4) Violation of Order of Protection; and,
- 5) DUI offenses “under Title 61, chapter 8, part 4.” This would appeal include DUI, DUI Per Se, Baby DUI, and Aggravated DUI.

If a petition is filed for expungement of any of these offenses, the prosecutor’s office which handled the offense must be notified and provided with an opportunity to contest the petition. The district court is to determine whether to grant the petition after considering the following factors:

- 1) Age of the offender at the time the offense was committed;
- 2) Length of time which has elapsed since the conviction;
- 3) The “rehabilitation” of the offender; and,
- 4) The likelihood that the petitioner may reoffend.

In cases where the petition to expunge is granted, the district court’s Order must be sent to:

- 1) The petitioner;
- 2) To the arresting law enforcement agency;
- 3) The prosecutor’s office that handled the offense;
- 3) The Clerk of the sentencing court; and,
- 4) The Montana DOJ;

In addition to the foregoing, the Montana DOJ is to prepare a form that contains identifying information about the petitioner which also must be completed.

The Montana DOJ is directed to adopt rules for the implementation of the expungement statute.