

HOUSE BILL NO. 704

INTRODUCED BY S. KERNS, D. FERN, N. DURAM, L. BREWSTER, P. FIELDER, G. NIKOLAKAKOS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO EXPUNGEMENT OF DRIVING UNDER INFLUENCE OFFENSES; PROVIDING THAT EXPUNGEMENT IS PRESUMED WHEN THE VEHICLE THAT THE PERSON WAS INSIDE DID NOT MOVE; AND AMENDING SECTIONS 46-18-1107 AND 46-18-1108, MCA."

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

Section 1. 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 court-ordered treatment; ~~or~~

(2) 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 being held back in any way from enlisting or holding a certain position due to prior conviction; or

(3) (a) the person was convicted of a first offense of driving under the influence of alcohol or drugs, and the vehicle, as defined in 61-8-1001, that the person was inside at the time of the offense did not move, and was not in a gear that allows self-propulsion, and had not been involved in a collision.

(b) This subsection (3) does not apply to a person driving a commercial motor vehicle as defined in 61-1-101."

Section 2. Section 46-18-1108, MCA, is amended to read:

"46-18-1108. When expungement not presumed. (1) ~~Expungement~~ Except as provided in 46-18-1107, 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, however named, under Title 61, chapter 8, part 10, or any offense that carries a statutorily enhanced penalty as a result of the offender driving under the influence of alcohol or drugs.

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

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

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