

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 344

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO SUSPENSION OF JUDGMENT AND SENTENCE; AMENDING SECTION 19-2604, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE SEALING AND EXPUNGEMENT OF CERTAIN RECORDS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-2604, Idaho Code, be, and the same is hereby amended to read as follows:

19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT -- EXPUNGEMENT OF RECORD. (1) If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that:

(a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or

(b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;

the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, ~~and if it be compatible with the public interest,~~ terminate the sentence or set aside and vacate the plea of guilty ~~or conviction~~ and sentencing order of the defendant, and finally dismiss the case and discharge the defendant or may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction. This shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

(2) If sentence has been imposed but suspended for any period during the first three hundred sixty-five (365) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as provided in subsection 4. of section 19-2601, Idaho Code, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that:

(a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or

1 (b) The defendant has successfully completed and graduated from an au-
2 thorized drug court program or mental health court program and during
3 any period of probation that may have been served following such grad-
4 uation, the court did not find, and the defendant did not admit, in any
5 probation violation proceeding that the defendant violated any of the
6 terms or conditions of probation;

7 the court may amend the judgment of conviction from a term in the custody of
8 the state board of correction to "confinement in a penal facility" for the
9 number of days served prior to suspension, and the amended judgment may be
10 deemed to be a misdemeanor conviction.

11 (3) Subsection (2) of this section shall not apply to any judgment of
12 conviction for a violation of any offense requiring sex offender registra-
13 tion as set forth in section 18-8304, Idaho Code. A judgment of conviction
14 for a violation of any offense requiring sex offender registration as set
15 forth in section 18-8304, Idaho Code, shall not be subject to dismissal or
16 reduction under this section. A conviction for the purposes of this chapter
17 means that the person has pled guilty or has been found guilty, notwithstand-
18 ing the form of the judgment or withheld judgment.

19 (4) A defendant shall have his record sealed and expunged if charges
20 against him were filed but subsequently dismissed or the defendant was ac-
21 quitted.

22 (5) A defendant may have his guilty plea, sentencing order and record
23 sealed and expunged upon completion of probation according to the standards
24 set forth in subsections (1), (2) and (3) of this section:

25 (a) After the expiration of one (1) year from discharge from probation
26 on a misdemeanor or after the expiration of three (3) years from dis-
27 charge from probation on a felony; and

28 (b) Provided that the defendant has not been convicted of a subsequent
29 felony or misdemeanor involving an act of violence and no criminal
30 charges are pending against the defendant in any state or federal court.

31 (6) If an order is entered pursuant to subsections (4) and (5) of this
32 section, the court shall order all records in the defendant's case in the
33 custody of the court and all such records, including law enforcement in-
34 vestigatory reports and fingerprint records, in the custody of any other
35 agency or official, sealed and shall further order all references to such
36 dismissal, acquittal, guilty plea or sentencing order be removed from all
37 indices and from all other records available to the public. Provided that
38 a special index of the sealed or expunged proceedings and records shall be
39 kept by the court ordering that the matter be sealed or expunged, which index
40 shall not be available to the public and shall be revealed only upon order
41 of a court of competent jurisdiction. Copies of the order shall be sent to
42 each agency or official named in the order. Upon the entry of the order, the
43 proceedings in the defendant's case shall be deemed never to have occurred
44 and the defendant may properly reply accordingly upon any inquiry. The pro-
45 visions of this section shall apply to the disposition of cases before the
46 effective date of this section, as well as to cases that arise on or after
47 the effective date of this section. Nothing set forth in this section shall
48 affect or prevent the use of a defendant's prior conviction in a subsequent
49 criminal prosecution.

1 (7) The clerk of the court in which the order sealing and expunging
2 records is entered shall immediately transmit the order to the Idaho state
3 police, bureau of criminal identification, or its successor, and to those
4 named in the order, including the initiating local police agency. Such agen-
5 cies shall immediately update their records to reflect that the matter has
6 been sealed and expunged. The clerk of the court shall seal the physical file
7 and electronic record, including the Idaho repository. The Idaho bureau of
8 criminal identification shall immediately give notice of such action to the
9 national crime information center. A record that has been sealed and ex-
10 punged under this section shall not be disseminated or disclosed by the Idaho
11 state police or local law enforcement agency to any person or entity, except
12 as otherwise provided in this section and except to other law enforcement
13 agencies.