

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 468

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CRIMINAL RECORDS; AMENDING SECTION 18-3316, IDAHO CODE, TO  
2 REVISE PROVISIONS REGARDING THE UNLAWFUL POSSESSION OF A FIREARM BY A  
3 FELON; AMENDING CHAPTER 25, TITLE 19, IDAHO CODE, BY THE ADDITION OF  
4 A NEW SECTION 19-2519A, IDAHO CODE, TO PROVIDE FOR A PETITION FOR EX-  
5 PUNGEMENT OF A CRIMINAL RECORD IN CERTAIN INSTANCES; AMENDING SECTION  
6 19-2604, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE DISCHARGE OF  
7 A DEFENDANT AND AN AMENDMENT OF JUDGMENT, TO PROVIDE THAT A DEFENDANT  
8 IN A MISDEMEANOR CASE MAY APPLY FOR RELIEF IN CERTAIN INSTANCES, AND TO  
9 DEFINE TERMS; AND DECLARING AN EMERGENCY.  
10

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

12 SECTION 1. That Section 18-3316, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 18-3316. UNLAWFUL POSSESSION OF A FIREARM BY A FELON. (1) A Subject to  
15 subsection (3) of this section, a person who ~~previously has been~~ stands con-  
16 vinced of a felony who purchases, ~~owns,~~ possesses, or has under his custody  
17 or control any firearm shall be guilty of a felony and shall be imprisoned in  
18 the state prison for a period of time not to exceed five (5) years and by a  
19 fine not to exceed five thousand dollars (\$5,000).

20 (2) For the purpose of subsection (1) of this section, "stands con-  
21 vinced of a felony" shall include, subject to subsection (3) of this section,  
22 mean a person who ~~has entered a plea of guilty, nolo contendere~~ stands con-  
23 vinced or who has been found ~~not~~ guilty of any of the crimes enumerated in  
24 section 18-310, Idaho Code, or to a comparable felony crime by reason of  
25 insanity of a crime punishable by more than one (1) year of imprisonment  
26 whether in this state or in another state, territory, commonwealth, ~~or~~ other  
27 jurisdiction of the United States-, or in any court of the United States, but  
28 shall not include:

29 (a) Any federal or state offenses pertaining to antitrust violations,  
30 unfair trade practices, restraints of trade, or other similar offenses  
31 relating to the regulation of business practices; or

32 (b) Any state offense classified by the laws of the state as a misde-  
33 meanor and punishable by a term of imprisonment of two (2) years or less.

34 (3) Subsection (1) of this section shall not apply to a person whose For  
35 the purpose of this section, a person stands convicted, whether in an adult  
36 court or adjudicated as a juvenile, at such time as a plea of guilty has been  
37 accepted or a verdict of guilty has been filed notwithstanding the pendency  
38 of any future proceedings, including but not limited to sentencing or dis-  
39 position, posttrial or post-fact-finding motions, and appeals, unless the  
40 conviction has been nullified by expungement, pardon, setting aside the con-  
41 vicition, reduction of a felony conviction to a misdemeanor, or other compa-  
42 rable procedure by this state or the jurisdiction where the felony convic-

1 tion occurred; ~~or~~. Subsection (1) of this section shall not apply to a per-  
 2 son whose civil right to bear arms either specifically or in combination with  
 3 other civil rights has been restored by any other provision of Idaho law or by  
 4 the jurisdiction where the conviction occurred.

5 SECTION 2. That Chapter 25, Title 19, Idaho Code, be, and the same is  
 6 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 7 ignated as Section 19-2519A, Idaho Code, and to read as follows:

8 19-2519A. PETITION FOR EXPUNGEMENT OF RECORD. (1) A person having been  
 9 convicted of a misdemeanor may petition the magistrate division of the dis-  
 10 trict court for the county where such conviction occurred to have the records  
 11 of such conviction or former conviction expunged. For purposes of this sec-  
 12 tion, the term "misdemeanor" shall include multiple misdemeanors that arise  
 13 out of the same occurrence or related course of events.

14 (2) A petition submitted pursuant to subsection (1) of this section  
 15 shall be sworn to under oath and shall be served on the office of the prosecu-  
 16 tor that prosecuted the misdemeanor. For purposes of this section, the term  
 17 "prosecutor" shall include a county prosecuting attorney or a city attorney  
 18 or their successors.

19 (3) The prosecutor shall review the petition and shall file with the  
 20 court an objection or recommendation, if any, to the petition within thirty  
 21 (30) days after service of the notice by the petitioner upon the prosecutor.  
 22 If the prosecutor or an identifiable victim identified and notified by the  
 23 prosecutor submits a written objection to the court concerning the petition  
 24 within thirty (30) days after service of the notice by the petitioner upon  
 25 the prosecutor, the court shall set a date for a hearing and notify the pros-  
 26 ecutor, any identifiable victims who have submitted a written objection to  
 27 the petition, and the petitioner of the date set for the hearing. Subject to  
 28 the Idaho rules of evidence, any person who has relevant information about  
 29 the petitioner may testify at the hearing.

30 (4) If no objection is filed to the petition within thirty (30) days  
 31 after service of the notice by the petitioner upon the prosecutor, the court  
 32 may summarily enter an order if the court finds, by a preponderance of the  
 33 evidence, that the petitioner is eligible for relief under this section.  
 34 No order granting expungement shall be entered prior to the expiration of  
 35 thirty (30) days after service was made to the prosecutor.

36 (5) No person shall be granted an expungement under this section:

37 (a) Who is subject to the registration requirements of chapter 83, ti-  
 38 tle 18, Idaho Code, or of any other similar requirement in another ju-  
 39 risdiction;

40 (b) Who has previously filed a petition under this section and been de-  
 41 nied expungement, unless twelve (12) months have elapsed since such de-  
 42 nial;

43 (c) If the misdemeanor for which the person is seeking expungement has  
 44 an element of the use or attempted use of physical force against a per-  
 45 son that involved the use or attempted use of a firearm or other deadly  
 46 weapon;

47 (d) Who stands convicted in any court, whether in this state or in an-  
 48 other state, territory, commonwealth, other jurisdiction of the United  
 49 States, or in any court of the United States, of any felony or misde-

1 meanor offense committed after the misdemeanor that is the subject of  
2 the petition;

3 (e) Who is currently charged with a felony or misdemeanor offense in  
4 any court, whether in this state or in another state, territory, common-  
5 wealth, other jurisdiction of the United States, or in any court of the  
6 United States;

7 (f) If a civil case arising out of the same occurrence or related course  
8 of events is pending in any court; or

9 (g) Unless at least ten (10) years have elapsed since final discharge of  
10 the petitioner as defined in section 19-2604(7), Idaho Code; however,  
11 a court may, in its discretion, grant a petition for expungement that  
12 does not satisfy the provision of this paragraph upon a showing by the  
13 petitioner, by clear and convincing evidence, that the petitioner has  
14 been held accountable and is developing life skills necessary to become  
15 a contributing member of the community provided that all other require-  
16 ments of this section are satisfied.

17 (6) If the court, after review of the evidence, including the criminal  
18 history of the petitioner, finds by a preponderance of the evidence that the  
19 petitioner is eligible for relief under this section and that the petitioner  
20 does not represent a substantial danger to himself, to any identifiable vic-  
21 tim, or to society, the court must enter an order granting expungement of the  
22 applicable records.

23 (7) An expungement granted under this section shall remove all legal  
24 disabilities occurring as a result of the conviction or, if the petitioner  
25 no longer stands convicted, the former conviction. A conviction or former  
26 conviction expunged pursuant to this section shall not be included in the  
27 criminal history of the petitioner for purposes of determining a sentence  
28 for any future conviction. Any person granted an order of expungement under  
29 this section may respond to any future inquiry as though the conviction, the  
30 charge, and any arrest did not occur. Notwithstanding any other provisions  
31 of this section, an order of expungement shall not affect any administrative  
32 or disciplinary action commenced by a licensing board described in title 3,  
33 36, or 54, Idaho Code, before the entry of such order.

34 (8) The records of the case in the custody of the court shall be removed  
35 and sent to the Idaho supreme court, which shall keep, index, and maintain  
36 such records. Inspection of such records may thereafter be permitted only:

37 (a) Upon petition by the person who is the subject of the records; or

38 (b) Upon order of a court of competent jurisdiction and only to persons  
39 named in the petition.

40 (9) When granting an expungement under this section, the court must  
41 order all records, including law enforcement investigatory reports and  
42 fingerprint records, in the custody of any other agency or official of this  
43 state or a political subdivision thereof to be sealed and must further order  
44 all references to said conviction, charge, investigation, and, as appli-  
45 cable, any arrest or probation removed from all indices and from all other  
46 records available to the public. Copies of the order must be sent by the  
47 clerk of the court to each agency or official named in the order. The court  
48 must transmit a certified copy of the order to the bureau of criminal iden-  
49 tification that must, within thirty (30) days of receipt of the order, cause  
50 the Idaho central repository of criminal history records to be updated to

1 reflect the expungement of the record and forward a copy of the order of ex-  
2 pungement to the federal bureau of investigation.

3 (10) Notwithstanding any other provision of law, the bureau of crimi-  
4 nal identification and its employees and any prosecutor are immune from lia-  
5 bility, either as an agency or individually, for any actions, inactions, or  
6 omissions by the agency or any employee thereof in the performance of their  
7 duties pursuant to this section.

8 (11) Any person convicted of a misdemeanor prior to the effective date  
9 of this act shall be eligible to submit a petition pursuant to the provisions  
10 of this section.

11 SECTION 3. That Section 19-2604, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT.

14 (1) (a) Application for relief under this subsection may be made by  
15 the following persons who have pled guilty to or been found guilty of a  
16 crime:

17 (i) A defendant whose sentence has been suspended or who has re-  
18 ceived a withheld judgment;

19 (ii) A defendant in a felony case whose sentence has been commuted  
20 under section 19-2601 1., Idaho Code;

21 (iii) A defendant in a felony case upon whom the court has not im-  
22 posed a sentence to the custody of the board of correction;

23 (iv) A defendant who has not been sentenced but who has success-  
24 fully completed ~~a drug court or mental health~~ an authorized spe-  
25 cialty or problem-solving court program; and

26 (v) A defendant in ~~a any~~ misdemeanor case ~~who has not been sen-~~  
27 ~~tenced to serve a term in the county jail or whose sentence or any~~  
28 ~~portion thereof has been suspended.~~

29 (b) Upon application of the defendant and upon ~~satisfactory~~ showing by  
30 a preponderance that, as applicable:

31 (i) ~~The court did not find, and If the defendant did is not admit,~~  
32 ~~in any probation violation proceeding that the defendant violated~~  
33 ~~any of the terms or conditions of any probation that may have been~~  
34 ~~imposed within the scope of subparagraph (1) (a) (iv) of this sec-~~  
35 ~~tion, there is good cause for granting the requested relief; or~~

36 (ii) If the defendant is within the scope of subparagraph  
37 (1) (a) (iv) of this section and:

38 1. The defendant has successfully completed and gradu-  
39 ated from an authorized ~~drug court program or mental health~~  
40 specialty or problem-solving court program;

41 2. ~~and~~ During any period of probation that that may have been  
42 served following such graduation, the court did not find,  
43 and the defendant did not admit, in any probation violation  
44 proceeding that the defendant violated any of the terms or  
45 conditions of probation; and

46 3. There is good cause for granting the requested relief;

47 the court, if convinced by the showing made that there is no longer cause  
48 for continuing the period of probation should the defendant be on pro-  
49 bation at the time of the application, ~~and that there is good cause for~~

1 ~~granting the requested relief,~~ may terminate the sentence or set aside  
 2 the plea of guilty or conviction of the defendant, and finally dismiss  
 3 the case and discharge the defendant or may amend the judgment of con-  
 4 viction from a term in the custody of the state board of correction to  
 5 "confinement in a penal facility" for the number of days served prior to  
 6 sentencing, and the amended judgment may be deemed to be a misdemeanor  
 7 conviction. This shall apply to the cases in which defendants have been  
 8 convicted before this law goes into effect, as well as to cases which  
 9 arise thereafter. The final dismissal of the case or, subject to sec-  
 10 tion 18-3316, Idaho Code, the reduction of a felony conviction to a mis-  
 11 demeanor conviction as herein provided shall have the effect of restor-  
 12 ing the defendant to his civil rights as applicable.

13 (c) Notwithstanding paragraph (b) of this subsection, upon application  
 14 of the defendant in a misdemeanor case and upon showing by a preponder-  
 15 ance that:

16 (i) The misdemeanor conviction sought to be set aside was not re-  
 17 duced from any felony charge in the same case, provided that if no  
 18 record is available of whether a misdemeanor conviction involved  
 19 reduction from a felony charge in the same case, there shall be  
 20 a rebuttable presumption that the misdemeanor conviction did not  
 21 involve reduction from a felony charge;

22 (ii) The defendant is not currently charged with a felony or mis-  
 23 demeanor offense in any court, whether in this state or in another  
 24 state, territory, commonwealth, other jurisdiction of the United  
 25 States, or in any court of the United States; and

26 (iii) The defendant does not stand convicted in any court, whether  
 27 in this state or in another state, territory, commonwealth, other  
 28 jurisdiction of the United States, or in any court of the United  
 29 States, of any felony or misdemeanor offense committed after the  
 30 misdemeanor conviction sought to be set aside and:

31 1. At least three (3) years have elapsed since final dis-  
 32 charge of the defendant if the defendant does not stand  
 33 convicted in any court, whether in this state or in another  
 34 state, territory, commonwealth, other jurisdiction of the  
 35 United States, or in any court of the United States, of any  
 36 felony or misdemeanor offense committed before the misde-  
 37 memeanor conviction sought to be set aside; or

38 2. At least seven (7) years have elapsed since final dis-  
 39 charge of the defendant if the defendant stands convicted  
 40 in any court, whether in this state or in another state,  
 41 territory, commonwealth, other jurisdiction of the United  
 42 States, or in any court of the United States, of any felony or  
 43 misdemeanor offense committed before the misdemeanor con-  
 44 viction sought to be set aside;

45 the court must set aside the plea of guilty or conviction of the defen-  
 46 dant and finally dismiss the case. The final dismissal of the case as  
 47 provided in this section shall have the effect of restoring the defen-  
 48 dant to his civil rights as applicable.

49 (2) If sentence has been imposed but suspended for any period during the  
 50 first three hundred sixty-five (365) days of a sentence to the custody of the

1 state board of correction, and the defendant placed upon probation as pro-  
 2 vided in subsection 4. of section 19-2601 or 19-2601A, Idaho Code, upon ap-  
 3 plication of the defendant, the prosecuting attorney, or upon the court's  
 4 own motion, and upon satisfactory showing by a preponderance that:

5 ~~(a) The court did not find, and the defendant did not admit, in any pro-~~  
 6 ~~bation violation proceeding that~~ Unless the provisions of paragraph (b)  
 7 of this subsection are applicable to the defendant violated any of the  
 8 terms or conditions of probation, there is good cause for granting the  
 9 requested relief; or

10 (b) The defendant has successfully completed and graduated from an au-  
 11 thorized ~~drug court program or mental health specialty~~ or problem-solv-  
 12 ing court program and:

13 (i) During any period of probation that may have been served fol-  
 14 lowing such graduation, the court did not find, and the defendant  
 15 did not admit, in any probation violation proceeding following the  
 16 most recent order of probation that the defendant violated any of  
 17 the terms or conditions of the most recent term of probation; and

18 (ii) There is good cause for granting the requested relief;

19 the court may amend the judgment of conviction from a term in the custody of  
 20 the state board of correction to "confinement in a penal facility" for the  
 21 number of days served prior to suspension, and the amended judgment may be  
 22 deemed to be a misdemeanor conviction. This shall apply to the cases in which  
 23 defendants have been convicted before this law goes into effect, as well as  
 24 to cases that arise thereafter. The amendment of the judgment of conviction  
 25 as provided in this section shall have the effect of restoring the defendant  
 26 to his civil rights as applicable.

27 (3) (a) In addition to the circumstances in which relief from a felony  
 28 conviction may be granted under subsections (1) and (2) of this sec-  
 29 tion, a defendant who has been convicted of a felony and who has ~~been~~  
 30 ~~discharged from probation~~ received final discharge may apply to the  
 31 sentencing court for a reduction of the conviction from a felony to a  
 32 misdemeanor as provided in this subsection.

33 (b) If less than five (5) years have elapsed since ~~the defendant's~~  
 34 final discharge from probation of the defendant, the application may be  
 35 granted only if the prosecuting attorney stipulates to the reduction.

36 (c) If at least five (5) years have elapsed since ~~the defendant's~~ final  
 37 discharge from probation of the defendant, and if the defendant was con-  
 38 victed of any of the following offenses, the application may be granted  
 39 only if the prosecuting attorney stipulates to the reduction:

40 (i) Assault with intent to commit a serious felony (18-909,  
 41 18-915, Idaho Code);

42 (ii) Battery with intent to commit a serious felony (18-911,  
 43 18-915, Idaho Code);

44 (iii) Enticing of children (18-1509, Idaho Code);

45 (iv) Murder in the first or second degree (18-4003, Idaho Code);

46 (v) Voluntary manslaughter (18-4006(1), Idaho Code);

47 (vi) Assault with intent to commit murder (18-4015, Idaho Code);

48 (vii) Administering poison with intent to kill (18-4014, Idaho  
 49 Code);

50 (viii) Kidnapping in the first degree (18-4502, Idaho Code);

- 1 (ix) Robbery (18-6501, Idaho Code);  
 2 (x) Trafficking (37-2732B, Idaho Code);  
 3 (xi) Threats against state officials of the executive, legisla-  
 4 tive or judicial branch, felony (18-1353A, Idaho Code);  
 5 (xii) Unlawful discharge of a firearm at a dwelling house, occu-  
 6 pied building, vehicle or mobile home (18-3317, Idaho Code);  
 7 (xiii) Cannibalism (18-5003, Idaho Code);  
 8 (xiv) Unlawful use of destructive device or bomb (18-3320, Idaho  
 9 Code);  
 10 (xv) Attempt, conspiracy or solicitation to commit any of the  
 11 crimes described in subparagraphs (i) through (xiv) of this para-  
 12 graph.

13 (d) The decision as to whether to grant such an application shall be in  
 14 the discretion of the district court, provided that the application may  
 15 be granted only if the court finds by a preponderance that:

- 16 (i) The defendant has not been convicted of any felony committed  
 17 after the conviction from which relief is sought;  
 18 (ii) The defendant is not currently charged with any crime;  
 19 (iii) There is good cause for granting the reduction in sentence;  
 20 and  
 21 (iv) In those cases where the stipulation of the prosecuting at-  
 22 torney is required under paragraph (b) or (c) of this subsection,  
 23 the prosecuting attorney has so stipulated.

24 (e) If the court grants the application, the court shall reduce the  
 25 felony conviction to a misdemeanor and amend the judgment of conviction  
 26 for a term in the custody of the state board of correction to "confine-  
 27 ment in a penal facility" for the number of days served prior to the  
 28 judgment of conviction. This shall apply to the cases in which defen-  
 29 dants have been convicted before this law goes into effect, as well as to  
 30 cases that arise thereafter. The amended judgment of conviction as pro-  
 31 vided in this section shall be deemed to be a misdemeanor and shall have  
 32 the effect of restoring the defendant to his civil rights as applicable.

33 (4) Subsections (2) and (3) of this section shall not apply to any judg-  
 34 ment of conviction for a violation of any offense requiring sex offender reg-  
 35 istration as set forth in section 18-8304, Idaho Code. A judgment of convic-  
 36 tion for a violation of any offense requiring sex offender registration as  
 37 set forth in section 18-8304, Idaho Code, shall not be subject to dismissal  
 38 or reduction under this section.

39 (5) Except as otherwise provided by subsection (6) of this section,  
 40 a conviction for the purposes of this chapter means that the, whether in  
 41 an adult court or adjudicated as a juvenile and whether in this state or in  
 42 another state, territory, commonwealth, other jurisdiction of the United  
 43 States, or in any court of the United States, a person has ~~pled~~ been found not  
 44 guilty by reason of insanity, or a plea of guilty has been found accepted, or  
 45 a verdict of guilty has been filed, notwithstanding the form of the judgment  
 46 or withheld judgment or the pendency of any future proceedings, including  
 47 but not limited to sentencing or disposition, posttrial or post-fact-find-  
 48 ing motions, and appeals.

49 (6) Notwithstanding any other provision of law to the contrary, for the  
 50 purpose of subsection (1) (c) of this section, "stand convicted" of a felony

1 or misdemeanor shall not include a conviction that has been nullified by ex-  
2 pungement, pardon, setting aside the conviction, or other comparable proce-  
3 dure by this state or the jurisdiction where the conviction occurred.

4 (7) As used in this section, "final discharge" means the later of the  
5 following:

6 (a) The date of the final judgment of conviction or withheld judgment;  
7 or

8 (b) The termination of probation, discharge from parole, or release  
9 from imprisonment.

10 (58) Except as provided in paragraphs (1) (b) and (2) (b) of this sec-  
11 tion, a violation of the terms of an agreement of supervision with the board  
12 of correction by a person under the supervision of the board, or a probation  
13 violation, shall not preclude the granting of relief to that person under  
14 this section.

15 SECTION 4. An emergency existing therefor, which emergency is hereby  
16 declared to exist, Sections 2 and 3 of this act shall be in full force and ef-  
17 fect on and after passage and approval.