

HOUSE BILL NO. 184

INTRODUCED BY S. GALLUS, COCCHIARELLA, EGGERS, HARRINGTON, KEANE, LASLOVICH,
MCCARTHY, SHEA

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT TRAFFIC OFFENSE RECORDS OF THE DEPARTMENT OF JUSTICE RELATING TO OFFENSES OF DRIVING A VEHICLE UNDER THE INFLUENCE OR WHILE AN AMOUNT OF ALCOHOL OR DRUGS IS IN THE PERSON'S BODY CONSTITUTE CRIMINAL HISTORY RECORD INFORMATION FOR PURPOSES OF THE MONTANA CRIMINAL JUSTICE INFORMATION ACT OF 1979; PERMITTING CRIMINAL JUSTICE AGENCIES TO PHOTOGRAPH AND FINGERPRINT A PERSON CHARGED WITH AN OFFENSE OF DRIVING A VEHICLE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR WITH AN ALCOHOL CONCENTRATION OF 0.10 OR MORE; AND AMENDING ~~SECTION~~ SECTIONS 44-5-103 AND 44-5-202, MCA."

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

Section 1. Section 44-5-103, MCA, is amended to read:

"44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. ~~‡~~ The term includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

- (a) criminal investigative information;
- (b) criminal intelligence information;
- (c) fingerprints and photographs;
- (d) criminal justice information or records made confidential by law; and
- (e) any other criminal justice information not clearly defined as public criminal justice information.

1 (4) (a) "Criminal history record information" means information about individuals collected by
2 criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the
3 filing of complaints, indictments, or informations and dispositions arising ~~therefrom~~ from those filings;
4 sentences; correctional status; and release. ~~‡~~ The term includes identification information, such as
5 fingerprint records or photographs, unless the information is obtained for purposes other than the
6 administration of criminal justice.

7 (b) Criminal history record information does not include:

8 (i) records of traffic offenses maintained by the department of justice, except offenses of driving
9 a vehicle under the influence or while an amount of alcohol or drugs is in the person's body; or

10 (ii) court records.

11 (5) (a) "Criminal intelligence information" means information associated with an identifiable
12 individual, group, organization, or event compiled by a criminal justice agency:

13 (i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting
14 potential criminal operation, or producing an estimate of future major criminal activities; or

15 (ii) in relation to the reliability of information, including information derived from reports of
16 informants or investigators or from any type of surveillance.

17 (b) Criminal intelligence information does not include information relating to political surveillance
18 or criminal investigative information.

19 (6) (a) "Criminal investigative information" means information associated with an individual, group,
20 organization, or event compiled by a criminal justice agency in the course of conducting an investigation
21 of a crime or crimes. ~~‡~~ The term includes information about a crime or crimes derived from reports of
22 informants or investigators or from any type of surveillance.

23 (b) ~~‡~~ Criminal investigative information does not include criminal intelligence information.

24 (7) "Criminal justice agency" means:

25 (a) any court with criminal jurisdiction;

26 (b) any federal, state, or local government agency designated by statute or by a governor's
27 executive order to perform as its principal function the administration of criminal justice;

28 (c) any local government agency not included under subsection (7)(b) that performs as its principal
29 function the administration of criminal justice pursuant to an ordinance or local executive order; or

30 (d) any agency of a foreign nation that has been designated by that nation's law or chief executive

1 officer to perform as its principal function the administration of criminal justice and that has been approved
2 for the receipt of criminal justice information by the Montana attorney general, who may consult with the
3 United States department of justice.

4 (8) (a) "Criminal justice information" means information relating to criminal justice collected,
5 processed, or preserved by a criminal justice agency.

6 (b) ~~‡~~ Criminal justice information does not include the administrative records of a criminal justice
7 agency.

8 (9) "Criminal justice information system" means a system, automated or manual, operated by
9 foreign, federal, regional, state, or local governments or governmental organizations for collecting,
10 processing, preserving, or disseminating criminal justice information. ~~‡~~ The term includes equipment,
11 facilities, procedures, and agreements.

12 (10) (a) "Disposition" means information disclosing that criminal proceedings against an individual
13 have terminated and describing the nature of the termination or information relating to sentencing,
14 correctional supervision, release from correctional supervision, the outcome of appellate or collateral review
15 of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has
16 been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely
17 postponed.

18 (b) Particular dispositions include but are not limited to:

19 (i) conviction at trial or on a plea of guilty;

20 (ii) acquittal;

21 (iii) acquittal by reason of mental disease or defect;

22 (iv) acquittal by reason of mental incompetence;

23 (v) the sentence imposed, including all conditions attached to the sentence by the sentencing
24 judge;

25 (vi) deferred imposition of sentence with any conditions of deferral;

26 (vii) nolle prosequi;

27 (viii) a nolo contendere plea;

28 (ix) deferred prosecution or diversion;

29 (x) bond forfeiture;

30 (xi) death;

- 1 (xii) release as a result of a successful collateral attack;
- 2 (xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil
3 action for determination of mental incompetence or mental illness;
- 4 (xiv) a finding of civil incompetence or mental illness;
- 5 (xv) exercise of executive clemency;
- 6 (xvi) correctional placement on probation or parole or release; or
- 7 (xvii) revocation of probation or parole.
- 8 (c) A single arrest of an individual may result in more than one disposition.
- 9 (11) "Dissemination" means the communication or transfer of criminal justice information to
10 individuals or agencies other than the criminal justice agency that maintains the information. ~~‡~~ The term
11 includes confirmation of the existence or nonexistence of criminal justice information.
- 12 (12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.
- 13 (13) "Public criminal justice information" means:
- 14 (a) information made public by law;
- 15 (b) information of court records and proceedings;
- 16 (c) information of convictions, deferred sentences, and deferred prosecutions;
- 17 (d) information of postconviction proceedings and status;
- 18 (e) information originated by a criminal justice agency, including:
- 19 (i) initial offense reports;
- 20 (ii) initial arrest records;
- 21 (iii) bail records; and
- 22 (iv) daily jail occupancy rosters;
- 23 (f) information considered necessary by a criminal justice agency to secure public assistance in
24 the apprehension of a suspect; or
- 25 (g) statistical information.
- 26 (14) "State repository" means the recordkeeping systems maintained by the department of justice
27 pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and
28 disseminated.
- 29 (15) "Statistical information" means data derived from records in which individuals are not
30 identified or identification is deleted and from which neither individual identity nor any other unique

1 characteristic that could identify an individual is ascertainable."

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3 **SECTION 2. SECTION 44-5-202, MCA, IS AMENDED TO READ:**

4 **"44-5-202. Photographs and fingerprints.** (1) The following agencies may, if authorized by
5 subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

6 (a) any criminal justice agency performing, under law, the functions of a police department or a
7 sheriff's office, or both;

8 (b) the department of corrections; and

9 (c) the department of justice.

10 (2) The department of corrections may photograph and fingerprint anyone under the jurisdiction
11 of the division of corrections or its successor.

12 (3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a
13 person who has been arrested or noticed or summoned to appear to answer an information or indictment
14 if:

15 (a) the charge is the commission of a felony;

16 (b) the identification of an accused is in issue; ~~or~~

17 (c) it is required to do so by court order; or

18 (d) the charge is for the offense of driving a vehicle while under the influence of alcohol or drugs
19 or of operation of a vehicle with an alcohol concentration of 0.10 or more.

20 (4) Whenever a person charged with the commission of a felony is not arrested, the person shall
21 appear before the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at
22 the time of initial appearance in court to answer the information or indictment against the person.

23 (5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an
24 accused if the accused has been arrested for the commission of a misdemeanor, except that an individual
25 arrested for a traffic, regulatory, or fish and game offense, except an offense covered under subsection
26 (3)(d), may not be photographed or fingerprinted unless the individual is incarcerated.

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

29 (7) The state repository shall compare the fingerprints received with those already on file in the
30 state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state

1 repository shall at once inform the originating agency. If it is determined that the individual has a criminal
2 record, the state repository shall send the originating agency a copy of the individual's complete criminal
3 history record.

4 (8) Photographs and fingerprints taken must be returned by the state repository to the originating
5 agency, which shall return all copies to the individual from whom they were taken, in the following
6 circumstances:

7 (a) upon order of the court that had jurisdiction; or

8 (b) upon the request of the individual when the individual was released without the filing of
9 charges or when the charges did not result in a conviction."

10 - END -