

SENATE BILL NO. 267

INTRODUCED BY P. EKEGREN

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT RECORDS OF A CONVICTION FOR POSSESSION OF AN INTOXICATING SUBSTANCE BY A MINOR, UNLESS THE CONVICTION INVOLVES CONSUMPTION WHILE DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE AT THE TIME OF THE OFFENSE, MUST BE SEALED WHEN THE OFFENDER REACHES 21 YEARS OF AGE AND MUST BECOME CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; AND AMENDING SECTIONS 3-10-518, 41-5-215, 41-5-216, 45-5-624, AND 61-11-105, MCA."

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

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Section 1. Section 3-10-518, MCA, is amended to read:

"3-10-518. Youth matters cited in justice's court -- public record -- exceptions. (1) Except as provided in 41-5-216 and subsection (2) of this section, all filed matters related to a youth cited in a justice's court are a public record.

(2) All records pertaining to a conviction under 45-5-624, except a conviction involving the consumption of an intoxicating substance while the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, must be physically sealed when the convicted person reaches 21 years of age. When the records are sealed, the records are confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only by district court order upon good cause shown."

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Section 2. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court and department records -- notification of school. (1) Reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:



- 1 (a) the youth court and its professional staff;
- 2 (b) representatives of any agency providing supervision and having legal custody of a youth;
- 3 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
4 of the court;
- 5 (d) any court and its probation and other professional staff or the attorney for a convicted party
6 who had been a party to proceedings in the youth court when considering the sentence to be imposed
7 upon the party;
- 8 (e) the county attorney;
- 9 (f) the youth who is the subject of the report or record, after emancipation or reaching the age
10 of majority;
- 11 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
12 not listed in this subsection (2);
- 13 (h) members of a local interagency staffing group provided for in 52-2-203; and
- 14 ~~(i) persons allowed access to the records referred to under 45-5-624(7); and~~
- 15 ~~(j)~~(i) persons allowed access under 42-3-203.
- 16 (3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions
17 of subsection (3)(b) of this section, the youth court shall notify the school district that the youth presently
18 attends or the school district that the youth has applied to attend of a youth's suspected drug use or
19 criminal activity if after an investigation has been completed:
- 20 (i) the youth has admitted the allegation or a petition has been filed with the youth court; and
- 21 (ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug
22 use or other criminal activity that has a bearing on the safety of children.
- 23 (b) Notification under subsection (3)(a) may not be given for status offenses.
- 24 (c) A school district may not refuse to accept the student if refusal violates the federal Individuals
25 With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.
- 26 (4) In all cases, a victim is entitled to all information concerning the identity and disposition of the
27 youth, as provided in 41-5-1416.
- 28 (5) The identity of a youth who for the second or subsequent time admits violating or is
29 adjudicated as having violated a statute must be disclosed by youth court officials to the administrative
30 officials of the school in which the youth is a student. The administrative officials may enforce school

1 disciplinary procedures that existed at the time of the admission or adjudication. The information may not
2 be further disclosed and may not be made part of the student's permanent records.

3 (6) The school district may disclose, without consent, personally identifiable information from an
4 education record of a pupil to the youth court and law enforcement authorities pertaining to violations of
5 the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities
6 receiving the information shall certify in writing to the school district that the information will not be
7 disclosed to any other party except as provided under state law without the prior consent of the parent
8 or guardian of the pupil.

9 (7) Any part of records information secured from records listed in subsection (2), when presented
10 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
11 for the parties to the proceedings."
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13 **Section 3.** Section 41-5-216, MCA, is amended to read:

14 **"41-5-216. Disposition of youth court, law enforcement, and department records.** (1) Youth court
15 records, law enforcement records, and department records that are not exempt from sealing under
16 subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed 3
17 years after supervision for an offense ends. In those cases in which jurisdiction of the court or any agency
18 is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of
19 the extended jurisdiction.

20 (2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this
21 section are sealed, an agency, other than the department, that has in its possession copies of the sealed
22 records shall destroy the copies of the records. Anyone violating the provisions of this subsection is
23 subject to contempt of court.

24 (3) Except as provided in subsection (6), this section does not prohibit the destruction of records
25 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

26 (4) The requirements for sealed records in this section do not apply to fingerprints, DNA records,
27 photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements
28 of the court's judgment or disposition, ~~or~~ records referred to in 42-3-203, or 45-5-624(7) records of a
29 conviction under 45-5-624 if the conviction involved the consumption of an intoxicating substance while
30 the person was driving or was otherwise in actual physical control of a motor vehicle when the offense

1 occurred.

2 (5) After youth court records, law enforcement records, and department records are sealed, they
3 are not open to inspection except, upon order of the youth court, for good cause, including when a youth
4 commits a new offense, to:

5 (a) those persons and agencies listed in 41-5-215(2); and

6 (b) adult probation professional staff preparing a presentence report on a youth who has reached
7 the age of majority.

8 (6) (a) When youth court records, law enforcement records, and department records are sealed
9 under subsection (1), the electronic records of the management information system maintained by the
10 department of public health and human services relating to the youth whose records are being sealed must
11 be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

12 (b) The department of public health and human services shall disassociate the offense and
13 disposition information from the name of the youth in the management information system. The offense
14 and disposition information must be maintained separately and may be used only:

15 (i) for research and program evaluation authorized by the department of public health and human
16 services and subject to any applicable laws; and

17 (ii) as provided in Title 5, chapter 13."
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19 **Section 4.** Section 45-5-624, MCA, is amended to read:

20 **"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- interference**
21 **with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of
22 an intoxicating substance if the person knowingly consumes or has in the person's possession an
23 intoxicating substance. A person does not commit the offense if the person consumes or gains possession
24 of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of
25 employment it is necessary to possess alcoholic beverages.

26 (2) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years
27 of age who is convicted of the offense of possession of an intoxicating substance:

28 (a) for the first offense, shall be fined an amount not to exceed \$100 and:

29 (i) must have the person's driver's license confiscated by the court for not less than 30 days and
30 not more than 90 days and shall be ordered not to drive during that period if the person was driving or was

1 otherwise in actual physical control of a motor vehicle when the offense occurred;

2 (ii) shall be ordered to perform community service if a community service program is available; and

3 (iii) shall be ordered to complete and pay, either directly with money or indirectly through
4 court-ordered community service, if any is available, all costs of participation in a community-based
5 substance abuse information course, if one is available;

6 (b) for a second offense, shall be fined an amount not to exceed \$200 and:

7 (i) must have the person's driver's license suspended for not less than 60 days and not more than
8 120 days;

9 (ii) shall be ordered to perform community service if a community service program is available; and

10 (iii) shall be ordered to complete and pay, either directly with money or indirectly through
11 court-ordered community service, if any is available, all costs of participation in a community-based
12 substance abuse information course, if one is available;

13 (c) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than
14 \$500 and:

15 (i) must have the person's driver's license suspended for not less than 120 days and not more
16 than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor
17 vehicle when the offense occurred, must have the person's driver's license revoked for 1 year or until the
18 person reaches ~~the age of 18~~ years of age, whichever occurs last;

19 (ii) shall be ordered to complete and pay, either directly with money or indirectly through
20 court-ordered community service, if any is available, all costs of participation in a community-based
21 substance abuse information course, if one is available, which may include alcohol or drug treatment, or
22 both, approved by the department of public health and human services, if determined by the court to be
23 appropriate.

24 (3) A person 18 years of age or older who is convicted of the offense of possession of an
25 intoxicating substance:

26 (a) for a first offense, shall be fined an amount not to exceed \$50 and be ordered to perform
27 community service if a community service program is available;

28 (b) for a second offense, shall be fined an amount not to exceed \$100 and:

29 (i) shall be ordered to perform community service if a community service program is available; and

30 (ii) must have the person's driver's license suspended for not more than 60 days if the person was

1 driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

2 (c) for a third or subsequent offense, shall be fined an amount not to exceed \$200 and:

3 (i) shall be ordered to perform community service if a community service program is available;

4 (ii) must have the person's driver's license suspended for not more than 120 days if the person
5 was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

6 (iii) shall be ordered to complete an alcohol information course at an alcohol treatment program
7 approved by the department of public health and human services, which may, in the sentencing court's
8 discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug
9 treatment, or both; and

10 (iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed
11 6 months.

12 (4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating
13 substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of
14 attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$50 if the person
15 was 18 years of age or older at the time that the offense was committed or \$100 if the person was under
16 18 years of age at the time that the offense was committed.

17 (5) A defendant who fails to comply with a sentence and is under 21 years of age and was under
18 18 years of age when the defendant failed to comply must be transferred to the youth court. If
19 proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated
20 as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment
21 under 41-5-1512.

22 (6) A person commits the offense of interference with a sentence or court order if the person
23 purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section
24 or a youth court disposition order for a youth found to have violated this section and upon conviction shall
25 be fined \$100 or be imprisoned in the county jail for 10 days, or both.

26 (7) (a) A conviction or youth court adjudication under this section must be reported by the court
27 to the department of justice under 61-11-101 for the purpose of keeping a record of the number of
28 offenses committed but may not be considered part of the person's driving record for insurance purposes
29 unless a second or subsequent conviction or adjudication under this section occurs.

30 (b) When the convicted person reaches 21 years of age, all records pertaining to a conviction

1 under this section, except a conviction involving the consumption of an intoxicating substance while the
 2 person was driving or was otherwise in actual physical control of a motor vehicle when the offense
 3 occurred, must be physically sealed and masked from the person's driving record. When the records are
 4 sealed, the records are confidential criminal justice information, as defined in 44-5-103, and public access
 5 to the information may be obtained only by district court order upon good cause shown. (See compiler's
 6 comments for contingent termination of certain text.)"

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8 **Section 5.** Section 61-11-105, MCA, is amended to read:

9 **"61-11-105. Release of information -- fees.** (1) Except as provided in ~~subsection~~ subsections (2)
 10 and (3), the department shall, upon request, furnish a person the individual Montana driving record of a
 11 licensee, showing the following:

- 12 (a) driver's license status and expiration date;
 13 (b) convictions of the licensee; and
 14 (c) traffic accidents in which the licensee was involved.

15 (2) Unless the merits of public disclosure exceed the demands of individual privacy, a driving
 16 record of a licensee released under subsection (1) may not disclose an individual's address, social security
 17 number, photograph, medical or disability information, or information provided through means of a tracking
 18 device.

19 (3) When a person convicted under 45-5-624 reaches 21 years of age, all records pertaining to
 20 the conviction, except a conviction involving the consumption of an intoxicating substance while the
 21 person was driving or was otherwise in actual physical control of a motor vehicle when the offense
 22 occurred, must be masked from the person's driving record, must be treated as confidential criminal justice
 23 information, as defined in 44-5-103, and may not be accessed by the public except upon district court
 24 order.

25 ~~(3)~~(4) Information relating to a traffic accident that did not involve a conviction, as defined in
 26 61-11-203, may not be released by the department unless the release is requested or approved by a party
 27 involved in the accident or is required by court order or a duly executed subpoena.

28 ~~(4)~~(5) A fee of \$4 must be paid for each individual Montana driving record requested. A fee of \$10
 29 must be paid if a certified Montana record, as provided in 61-11-102(6), is requested. All driving records
 30 must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or

1 federal agency."

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