

HOUSE BILL NO. 135

INTRODUCED BY K. DUDIK

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE YOUTH COURT ACT TO ALLOW FOR

6 INFORMATION SHARING; REVISING THE RECORDS THAT MUST BE SEALED ON A YOUTH'S 18TH

7 BIRTHDAY; REVISING ACCESS TO AND MAINTENANCE OF ELECTRONIC RECORDS IN MANAGEMENT

8 INFORMATION SYSTEMS; REVISING REQUIREMENTS FOR THE DEPARTMENT OF CORRECTIONS TO

9 TRANSMIT CERTAIN RECORDS TO YOUTH COURT UPON THE YOUTH'S 18TH BIRTHDAY; ~~AND~~

10 AMENDING SECTIONS 41-5-216, 41-5-220, AND 41-5-1524, MCA; AND PROVIDING AN IMMEDIATE

11 EFFECTIVE DATE."

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

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15 **Section 1.** Section 41-5-216, MCA, is amended to read:

16 **"41-5-216. Disposition of youth court, law enforcement, and department records -- sharing and**

17 **access to records.** (1) Formal and informal youth court records, law enforcement records, and department

18 records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by

19 this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the

20 court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon

21 termination of the extended jurisdiction.

22 (2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section

23 are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall

24 destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of

25 court.

26 (3) Except as provided in subsection (6), this section does not prohibit the destruction of records with

27 the consent of the youth court judge or county attorney after 10 years from the date of sealing.

28 (4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA

29 records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements

30 of the court's judgment or disposition, records referred to in 42-3-203, reports referred to in 45-5-624(7), or the

1 information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual
2 offender pursuant to Title 46, chapter 23, part 5.

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

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

7 (b) adult probation ~~professional~~ and parole staff preparing a presentence report on ~~a youth who has~~
8 ~~reached the age of majority~~ an adult with an existing sealed youth court record.

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

14 (b) The department of public health and human services, the office of court administrator, and the
15 department shall disassociate the offense and disposition information from the name of the youth in the respective
16 management information system. The offense and disposition information must be maintained separately and
17 may be used only:

18 (i) for research and program evaluation authorized by the ~~department of public health and human~~
19 ~~services~~ office of court administrator or by the department and subject to any applicable laws; and

20 (ii) as provided in Title 5, chapter 13.

21 (7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be
22 physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency
23 is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected
24 only pursuant to subsection (5).

25 (b) The informal youth court records ~~may be maintained and inspected only by youth court personnel~~
26 ~~upon a new offense prior to the youth's 18th birthday~~ are confidential and may be shared only with those persons
27 and agencies listed in 41-5-215(2).

28 (c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended
29 supervision ends and the youth was involved only in informal proceedings, informal youth court records that are
30 in hard-copy form must be destroyed and any electronic records in the youth court management information

1 system must disassociate the offense and disposition information from the name of the youth and may be used
2 only for the following purposes:

3 (i) for research and program evaluation authorized by the office of the court administrator and subject
4 to any applicable laws; and

5 (ii) as provided in Title 5, chapter 13.

6 (8) Nothing in this section prohibits the ~~intra-agency use or information~~ sharing of formal or informal youth
7 court records within the juvenile probation management information system to a person or agency listed in
8 41-5-215(2). ~~Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person~~
9 ~~authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer~~
10 ~~shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy~~
11 ~~the record after it has fulfilled its purpose or as provided in subsection (2) of this section.~~

12 (9) This section does not prohibit the ~~intra-agency use or information~~ sharing of formal or informal youth
13 court records within the department's youth management information system. Electronic records of the
14 department's youth management information system may not be shared except as provided in subsection (5).
15 ~~If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department~~
16 ~~shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy~~
17 ~~the record after it has fulfilled its purpose or as provided in subsection (2) of this section.~~ A person or agency
18 receiving the youth court record shall destroy the record after it has fulfilled its purpose.

19 (10) This section does not prohibit the sharing of formal or informal youth court records with a short-term
20 detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement
21 of a youth within the facility.

22 (11) This section does not prohibit access to formal or informal youth court records, including electronic
23 records, for purposes of conducting evaluations as required by 41-5-2003 and studies conducted between
24 individuals and agencies listed in 41-5-215(2).

25 (12) This section does not prohibit the office of court administrator, upon written request from the
26 department of public health and human services, from confirming whether a person applying for a registry
27 identification card pursuant to 50-46-307 or 50-46-308 is currently under youth court supervision."
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29 **Section 2.** Section 41-5-220, MCA, is amended to read:

30 **"41-5-220. Electronic records -- youth records to be separate -- formal policies and administrative**

1 **rules required.** (1) (a) The department and the youth court are required to adopt appropriate control methods
2 to ensure adequate integrity, security, and confidentiality of any electronic records of a youth generated or
3 maintained in any management information system.

4 (b) The office of the court administrator shall adopt formal policies, and the department shall adopt
5 administrative rules to institute the requirements in subsection (1)(a).

6 (2) For the purposes of this part, any references to "sealing", "physically sealed", and "destroyed" must
7 be interpreted to have the same meaning when applied to electronic records and must be applied to have the
8 same force and effect. A sealed record must be made unavailable for access by any person unless upon court
9 order as provided in 41-5-216. A destroyed record must be rendered inaccessible and unrecoverable and
10 disposed of in a manner in which confidentiality is protected, which may include disassociating the offense and
11 disposition information from the name of the youth.

12 ~~(3) After October 1, 2005, any management information system that is developed and that contains~~
13 ~~formal or informal youth court records or department records must be maintained separately from any adult~~
14 ~~offender management information system in the criminal justice or corrections system."~~

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16 **Section 3.** Section 41-5-1524, MCA, is amended to read:

17 **"41-5-1524. Commitment to department -- transfer of records.** (1) Whenever the court commits a
18 youth to the department, it shall transmit with the dispositional judgment copies of formal and informal youth court
19 records, including medical reports, social history material, youth assessment material, education records, and
20 any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

21 (2) The youth court may share informal youth court records with the department when a youth has been
22 committed to the department of corrections for custody. On the youth's 18th birthday or upon discharge,
23 whichever is earlier, the department shall seal the entire record and is subject to 41-5-216(5).

24 ~~(3) The department shall maintain the records of a youth committed to the department in a separate~~
25 ~~management information system and may not include any youth records in an adult offender management~~
26 ~~information system unless the youth has been adjudicated under 41-5-206. If the department returns the youth~~
27 ~~back to youth court supervision on the youth's 18th birthday as required by the court order, the department shall~~
28 ~~transmit to the supervising juvenile probation office any medical reports, youth assessment material, education~~
29 ~~records, and other clinical or behavioral health information pertinent to the care and treatment of the youth.~~"

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1 NEW SECTION. SECTION 4. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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