

HOUSE BILL NO. 741

INTRODUCED BY A. DOANE

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT BOOKING PHOTOGRAPHS ARE PUBLIC CRIMINAL JUSTICE INFORMATION; REQUIRING A CRIMINAL JUSTICE AGENCY TO CHARGE A CLERKING FEE FOR RELEASE OF ~~A BOOKING PHOTOGRAPH~~ CERTAIN BOOKING PHOTOGRAPHS; AMENDING SECTIONS 44-5-103 AND 44-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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. It 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 investigative or intelligence 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.

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

(b) Criminal history record information does not include:



- 1 (i) records of traffic offenses maintained by the department of justice; or
2 (ii) court records.
- 3 (5) (a) "Criminal intelligence information" means information associated with an identifiable individual,
4 group, organization, or event compiled by a criminal justice agency:
5 (i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential
6 criminal operation, or producing an estimate of future major criminal activities; or
7 (ii) in relation to the reliability of information, including information derived from reports of informants or
8 investigators or from any type of surveillance.
- 9 (b) Criminal intelligence information does not include information relating to political surveillance or
10 criminal investigative information.
- 11 (6) (a) "Criminal investigative information" means information associated with an individual, group,
12 organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a
13 crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators
14 or from any type of surveillance.
- 15 (b) The term does not include criminal intelligence information.
- 16 (7) "Criminal justice agency" means:
17 (a) any court with criminal jurisdiction;
18 (b) any federal, state, or local government agency designated by statute or by a governor's executive
19 order to perform as its principal function the administration of criminal justice, including a governmental fire
20 agency organized under Title 7, chapter 33, or a fire marshal who conducts criminal investigations of fires;
21 (c) any local government agency not included under subsection (7)(b) that performs as its principal
22 function the administration of criminal justice pursuant to an ordinance or local executive order; or
23 (d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer
24 to perform as its principal function the administration of criminal justice and that has been approved for the receipt
25 of criminal justice information by the Montana attorney general, who may consult with the United States
26 department of justice.
- 27 (8) (a) "Criminal justice information" means information relating to criminal justice collected, processed,
28 or preserved by a criminal justice agency.
- 29 (b) The term does not include the administrative records of a criminal justice agency.
- 30 (9) "Criminal justice information system" means a system, automated or manual, operated by foreign,

1 federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving,
2 or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

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

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

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

10 (ii) acquittal;

11 (iii) acquittal by reason of mental disease or disorder;

12 (iv) acquittal by reason of mental incompetence;

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

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

15 (vii) nolle prosequi;

16 (viii) a nolo contendere plea;

17 (ix) deferred prosecution or diversion;

18 (x) bond forfeiture;

19 (xi) death;

20 (xii) release as a result of a successful collateral attack;

21 (xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action

22 for determination of mental incompetence or mental illness;

23 (xiv) a finding of civil incompetence or mental illness;

24 (xv) exercise of executive clemency;

25 (xvi) correctional placement on probation or parole or release; or

26 (xvii) revocation of probation or parole.

27 (c) A single arrest of an individual may result in more than one disposition.

28 (11) "Dissemination" means the communication or transfer of criminal justice information to individuals
29 or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the
30 existence or nonexistence of criminal justice information.

- 1 (12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.
- 2 (13) "Public criminal justice information" means:
- 3 (a) information made public by law;
- 4 (b) information of court records and proceedings;
- 5 (c) information of convictions, deferred sentences, and deferred prosecutions;
- 6 (d) information of postconviction proceedings and status;
- 7 (e) information originated by a criminal justice agency, including:
- 8 (i) initial offense reports;
- 9 (ii) initial arrest records, including booking photographs;
- 10 (iii) bail records; and
- 11 (iv) daily jail occupancy rosters;
- 12 (f) information considered necessary by a criminal justice agency to secure public assistance in the
- 13 apprehension of a suspect; or
- 14 (g) statistical information.
- 15 (14) "State repository" means the recordkeeping systems maintained by the department of justice
- 16 pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and
- 17 disseminated.
- 18 (15) "Statistical information" means data derived from records in which individuals are not identified or
- 19 identification is deleted and from which neither individual identity nor any other unique characteristic that could
- 20 identify an individual is ascertainable."

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22 **Section 2.** Section 44-5-301, MCA, is amended to read:

23 **"44-5-301. Dissemination of public criminal justice information.** (1) There are no restrictions on the

24 dissemination of public criminal justice information.

25 (2) (A) All public criminal justice information is available from the department or the agency that is the

26 source of the original documents and that is authorized to maintain the documents according to applicable law.

27 These documents must be open, subject to the restrictions in this section, during the normal business hours of

28 the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal

29 justice information.

30 (B) (i) A criminal justice agency shall charge a clerking fee of \$100 for the release of a booking

1 photograph PRIOR TO THE TERMINATION OF CRIMINAL PROCEEDINGS AGAINST THE INDIVIDUAL DEPICTED IN THE
2 PHOTOGRAPH. This fee may be waived in the case of an emergency EXTENUATING CIRCUMSTANCES.

3 (II) IF AN INDIVIDUAL IS CONVICTED OF AN OFFENSE RELATED TO THE ARREST FOR WHICH THE BOOKING
4 PHOTOGRAPH WAS TAKEN, THE CRIMINAL JUSTICE AGENCY MAY NOT CHARGE A CLERKING FEE FOR THE RELEASE OF THE
5 BOOKING PHOTOGRAPH."

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7 NEW SECTION. Section 3. Nonseverability. It is the intent of the legislature that each part of [this act]
8 is essentially dependent upon every other part, and if some part is held unconstitutional or invalid, all other parts
9 are invalid.

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11 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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