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As of: 2020/04/29 07:11:41

Drafter: Julianne Burkhardt, 406-444-4025

PD 0003

67th Legislature

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 SJ19-3 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SEX OFFENDER REGISTRY TO MAKE IT
6 PRIVATE***; AMENDING SECTIONS 41-5-216 AND 46-23-508, ~~MCA.~~"

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9

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

11 **"41-5-216. Disposition of youth court, law enforcement, and department records -- sharing and**

12 **access to records.** (1) Formal and informal youth court records, law enforcement records, and department
13 records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by
14 this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the
15 court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon
16 termination of the extended jurisdiction.

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

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

23 (4) The requirements for sealed records in this section do not apply to medical records, fingerprints,
24 DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all
25 requirements of the court's judgment or disposition, records referred to in 42-3-203, ~~or the information referred~~
26 ~~to in 46-23-508,~~ in any instance in which the youth was required to register as a sexual offender pursuant to
27 Title 46, chapter 23, part 5.

28 (5) After formal and informal youth court records, law enforcement records, and department records

Commented [BJ1]: This draft was created based on the specific direction of the LJC to revise only the sex offender portion of the registry to make it private. Note that the violent offender aspect of the registry is still public under this draft.

Ideas to consider:

(1) This draft simply makes the registry private. The original version of 46-23-508, passed in 1995, provided that only the name of the offender was public and provided a procedure to petition the district court to release more information if necessary, for public safety.

(2) You may want to consider making the same changes to the violent offender registry or other appropriate changes.

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- 1 are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:
- 2 (a) those persons and agencies listed in 41-5-215(2); and
- 3 (b) adult probation and parole staff preparing a presentence report on an adult with an existing sealed
- 4 youth court record.
- 5 (6) (a) When formal youth court records, law enforcement records, and department records are
- 6 sealed under subsection (1), the electronic records of the management information system maintained by the
- 7 office of court administrator and by the department relating to the youth whose records are being sealed must
- 8 be preserved for the express purpose of research and program evaluation.
- 9 (b) The department of public health and human services, the office of court administrator, and the
- 10 department shall disassociate the offense and disposition information from the name of the youth in the
- 11 respective management information system. The offense and disposition information must be maintained
- 12 separately and may be used only:
- 13 (i) for research and program evaluation authorized by the office of court administrator or by the
- 14 department and subject to any applicable laws; and
- 15 (ii) as provided in Title 5, chapter 13.
- 16 (7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be
- 17 physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency
- 18 is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be
- 19 inspected only pursuant to subsection (5).
- 20 (b) The informal youth court records are confidential and may be shared only with those persons and
- 21 agencies listed in 41-5-215(2).
- 22 (c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended
- 23 supervision ends and the youth was involved only in informal proceedings, informal youth court records that are
- 24 in hard-copy form must be destroyed and any electronic records in the youth court management information
- 25 system must disassociate the offense and disposition information from the name of the youth and may be used
- 26 only for the following purposes:
- 27 (i) for research and program evaluation authorized by the office of the court administrator and subject
- 28 to any applicable laws; and

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

2 (8) Nothing in this section prohibits the sharing of formal or informal youth court records within the
3 juvenile probation management information system to a person or agency listed in 41-5-215(2).

4 (9) This section does not prohibit the sharing of formal or informal youth court records within the
5 department's youth management information system. Electronic records of the department's youth
6 management information system may not be shared except as provided in subsection (5). A person or agency
7 receiving the youth court record shall destroy the record after it has fulfilled its purpose.

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

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

14 (12) This section does not prohibit the office of court administrator, upon written request from the
15 department of public health and human services, from confirming whether a person applying for a registry
16 identification card pursuant to 50-46-307 or a license pursuant to 50-46-308 is currently under youth court
17 supervision."

18

19 **Section 2.** Section 46-23-508, MCA, is amended to read:

20 **"46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential
21 criminal justice information, as defined in 44-5-103, except that:

22 (a) the name and address of a registered ~~sexual or violent offender~~ is public criminal justice
23 information, as defined in 44-5-103; and

24 (b) the department of justice or the registration agency shall release any offender registration
25 information for violent offenders that it possesses relevant to the public if the department of justice or the
26 registration agency determines that a registered offender is a risk to the safety of the community and that
27 disclosure of the registration information that it possesses may protect the public and, at a minimum:

28 ~~(i) if the offender is also a violent offender, the department of justice shall and the registration agency~~

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1 may disseminate to the victim and the public:

2 (A)(i) the offender's name; and

3 (B)(ii) the offenses for which the offender is required to register under this part;

4 ~~(ii) if an offender was given a level 1 designation under 46-23-509, the department of justice shall and~~

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5 the registration agency may disseminate to the victim and the public:

6 (A) the offender's address;

7 (B) the name, photograph, and physical description of the offender;

8 (C) the offender's date of birth; and

9 (D) the offenses for which the offender is required to register under this part;

10 (iii) if an offender was given a level 1 designation and committed an offense against a minor or was

11 given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may

12 disseminate to the victim and the public:

13 (A) the offender's address;

14 (B) the type of victim targeted by the offense;

15 (C) the name, photograph, and physical description of the offender;

16 (D) the offender's date of birth;

17 (E) the license plate number and a description of any motor vehicle owned or operated by the

18 offender;

19 (F) the offenses for which the offender is required to register under this part; and

20 (G) any conditions imposed by the court upon the offender for the safety of the public; and

21 (iv) if an offender was given a level 3 designation under 46-23-509, the department of justice and the

22 registration agency shall give the victim and the public notification that includes the information contained in

23 subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if

24 not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must

25 include the community in which the offense occurred.

26 (c) prior to release of information under subsection (1)(b), a registration agency may, in its sole

27 discretion, request an in camera review by a district court of the determination by the registration agency under

28 subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible,

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1 render its opinion so that release of the information is not delayed beyond release of the offender from
2 confinement.

3 (2) The identity of a victim of an offense for which registration is required under this part may not be
4 released by a registration agency without the permission of the victim.

5 (3) Dissemination to the public of information allowed or required by this section may be done by
6 newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining
7 the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to
8 the public.

9 (4) The department of justice shall develop a model community notification policy to assist registration
10 agencies in implementing the dissemination provisions of this section."

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- END -