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68th Montana Legislature

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October 31, 2023

TO: Law and Justice Interim Committee
FROM: Maddie Krezowski, Legislative Services Division Staff Attorney
RE: Parental Consent in HB 676 (Ch. 527)

Question

Does § 40-6-701(2)(i), MCA, as amended in the 2023 legislative session by HB 676 (Ch. 527) apply to a school sports coach filming a game or a band teacher filming a band concert?

Short Answer

The right of a parent to consent before a government entity makes an audio or video recording of a child in § 40-6-701(2)(i), MCA, as amended by HB 676 (Ch. 527) would apply to a coach filming a game or a teacher filming a band concert.

Analysis

The relevant parts of amended 40-6-701, MCA, provide:

“(2) All parental rights are exclusively reserved to the parent of a child without obstruction or interference by a government entity, including but not limited to the rights and responsibilities to do the following:

(i) consent before a *government entity* makes an audio or video recording of the child, unless the audio or video recording is made during or as part of:

- (i) a court proceeding;
- (ii) a law enforcement investigation;
- (iii) a forensic interview in a criminal or child abuse and neglect investigation;
- (iv) the security or surveillance of building, grounds, or transportation of students; or
- (v) a photo identification card.

(6) As used in this section, the following definitions apply:

(c) “Government entity” means the state, its political subdivisions, or any department, agency, commission, board, authority, institution, or office of the state, including a

municipality, county, consolidated municipal-county government, *school district*, or other special district.” (Emphasis added.)

Under the plain language of subsection §40-6-701(6)(c), a school district is a government entity. Under subsection (2)(i), a parent has a right to consent before a school district (or its employees) make an audio or video recording of a child, unless it occurs as part of one of five enumerated exceptions. Neither a sporting event nor a concert is included in the five enumerated exceptions, which are a court proceeding; a law enforcement investigation; a forensic interview in a criminal or child abuse and neglect investigation; the security or surveillance of building, grounds, or transportation of students, or a photo identification card.

Conclusion

The parental right to consent before a government entity makes an audio or video recording of a child in amended 40-6-701(2)(i), MCA, applies to school districts and their employees. This right to consent would apply to a school coach filming a game or a band teacher filming a concert.