



**Montana Legislative Services Division**  
**Legal Services Office**

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TO: Members of the Law and Justice Interim Committee

FROM: Valencia Lane, Staff Attorney

DATE: September 20, 2007

RE: Dept. of Corrections Rule Submissions -- Rule Review  
Security and Confidentiality of Youth Records

The Department of Corrections has filed the following rule notice with the Secretary of State's office for publication in the Montana Administrative Register (MAR):

I.

MAR 2007 Issue No. 16 (August 23, 2007), MAR Notice No. 20-7-37, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION. The Department has filed a NOTICE OF HEARING in the matter of the proposed adoption of six new rules pertaining to security and confidentiality of youth records. A hearing was scheduled for September 13, 2007, at 10 a.m. in room 24 of the Department of Corrections Annex at 515 N. Sanders, Helena, Montana. The public comment period ran to September 20, 2007. The rules address definitions, management of electronic youth data systems, destruction of youth records, access and update capabilities and restrictions, maintaining confidentiality of restricted data, and reporting data security breaches. The stated necessity for the rules is to implement the provisions of Title 41, chapter 5, part 2, MCA, which requires the Department to adopt appropriate control methods to ensure adequate integrity, security, and confidentiality of any electronic records of a youth that are collected, generated, disseminated, or maintained by the Department in any management information system. The provisions to be implemented were adopted by the Legislature in SB 426 (Ch. 423) in 2005. Authority and implementing sections are cited, and the notice states that the primary bill sponsor was notified by mail of the proposed rules.

TECHNICAL NOTE: The proposed rules were reviewed by Legislative Services Division staff, and staff notes the following:

- \* New Rule II (3) seems to be internally contradictory and possibly in contravention of statute in that it provides in the first sentence that youth electronic records must be maintained totally separate and apart from adult electronic records (as is required by statute--41-5-220(3))--and in the second sentence provides that the youth data system may be a separate entity of a system used for the adult population. There is no indication as to what a separate "entity" of an adult system means. Perhaps this subsection needs to be clarified, or perhaps the problem is a lack of understanding on the rule reviewer's part; regardless, the Department must ensure that both the rules and the electronic data systems used by the Department comply with the statute by ensuring that the youth data systems are "maintained separately from any adult offender management information system".
- \* New Rule II (2) provides that the Department shall follow all current state "Montana Enterprise" policies governing user responsibility, security of electronic information,

workstation care, and virus detection and prevention. This rule reviewer did not know what "Montana Enterprise" referred to but subsequently learned that it refers to computer policies developed by the Department of Administration, Information Technology Services Division. The rule reviewer suggests that the term be defined for the benefit of others who may not be familiar with the jargon.

- \* New Rule III: subsection (1) refers to "any entity" receiving youth information as allowed by law, and subsection (2) refers to "another agency" that may be provided youth information by the Department. In the Youth Court Act, "agency" is defined as any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth. The distinction between "any entity" and "another agency" in the proposed rule is not clear to the rule reviewer. Further, New Rule III simply states that the Department shall ensure that any "entity" receiving youth information is informed of its obligation to destroy information but does not require destruction by the entity. Subsection (2) does require other agencies to destroy records.
- \* There are many terms that are defined in Rule I--Definitions that are not used in the rules. As a matter of drafting style, this is not in conformance with bill drafting rules. As a matter of substance, it raises the question of whether there was an intent to make a substantive statement or impose a substantive requirement (which was not accomplished by merely defining a term) or not.
- \* Several of the rules are simply declaratory statements of requirements on the Department, many of which are imposed by statute. The reviewer was left with the question of just what the rules actually accomplish and whether the rules fulfill the statutory mandate to ensure confidentiality of youth electronic records and the protection of youth, as contemplated by SB 426.

The rule reviewer spoke to both the rule drafter and the rule reviewer at the Department and discussed these concerns. In addition, this written review will be submitted to the Department. These comments must be addressed by the Department as any other comments received by the Department in response to the notice of proposed adoption.

cc: Sheri Heffelfinger, Committee Research Analyst, Law and Justice Interim Committee  
Pat Gervais, Senior Fiscal Analyst, Legislative Fiscal Division  
Colleen Ambrose, DOC Rule Drafter  
Colleen White, DOC Hearings Examiner  
Greg Petesch, LSD Legal Division Director  
Senator Cory Stapleton, sponsor of Ch. 423, L. 2005 (SB 426)

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