

HOUSE BILL NO. 398

INTRODUCED BY D. ZOLNIKOV

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO YOUTH COURT RECORDS;
5 PROVIDING THAT FORMAL YOUTH COURT RECORDS FILED WITH THE DISTRICT COURT ARE NOT
6 PUBLIC; PROVIDING THAT AFTER YOUTH COURT RECORDS ARE SEALED THE YOUTH NO LONGER HAS
7 A CRIMINAL HISTORY; AMENDING SECTIONS 3-10-518, 41-5-215, AND 41-5-216, MCA; AND PROVIDING
8 AN APPLICABILITY DATE."

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

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12 **Section 1.** Section 3-10-518, MCA, is amended to read:

13 **"3-10-518. Youth matters cited in justice's court -- public record.** Except as provided in ~~41-5-216~~
14 41-5-216(1), all filed matters related to a youth cited in a justice's court are a public record."

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16 **Section 2.** Section 41-5-215, MCA, is amended to read:

17 **"41-5-215. Youth court and department records -- notification of school.** (1) Formal youth court
18 records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts,
19 and orders and decrees on file with the clerk of court are not public records, ~~and are not~~ open to public inspection,
20 ~~until the records are sealed under 41-5-216~~ and may be obtained only by order of the court by a person having
21 a legitimate interest in the case.

22 (2) Social, medical, and psychological records, youth assessment materials, predispositional studies,
23 and supervision records of probationers are open only to the following:

24 (a) the youth court and its professional staff;
25 (b) representatives of any agency providing supervision and having legal custody of a youth;
26 (c) any other person, by order of the court, having a legitimate interest in the case ~~or in the work of the~~
27 ~~court;~~

28 (d) any court and its probation and other professional staff or the attorney for a convicted party who had
29 been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

30 (e) the county attorney;

- 1 (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;
- 2 (g) a member of a county interdisciplinary child information and school safety team formed under
- 3 52-2-211 who is not listed in this subsection (2);
- 4 (h) members of a local interagency staffing group provided for in 52-2-203;
- 5 (i) persons allowed access to the reports referred to under 45-5-624(7);
- 6 (j) persons allowed access under 42-3-203; and
- 7 (k) persons conducting evaluations as required in 41-5-2003.
- 8 (3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e), subject to the provisions of
- 9 subsection (3)(b) of this section, and according to the guidelines in subsection (3)(f) of this section, the chief
- 10 probation officer or other designee from the district that has jurisdiction over the matter or the department of
- 11 corrections for youth under the supervision of the department shall notify the school district that the youth
- 12 presently attends or the school district that the youth has applied to attend of a youth's past or current drug use
- 13 or criminal activity if after an investigation has been completed:
- 14 (i) a petition has been filed with the youth court or charges are filed in district court alleging a violation
- 15 of any section in Title 45, chapter 5; or
- 16 (ii) the youth has admitted the allegation and the acts involve any offense in which another youth was an
- 17 alleged victim and the admitted activity has a bearing on the safety of children.
- 18 (b) Notification under subsection (3)(a) may not be given for status offenses.
- 19 (c) Notification under subsection (3)(a) terminates upon the end of the youth court's supervision or the
- 20 discharge of the youth by the department of corrections.
- 21 (d) A school district may not refuse to accept the student if refusal violates the federal Individuals With
- 22 Disabilities Education Act or the federal Americans With Disabilities Act of 1990.
- 23 (e) The administrative officials of the school district may enforce school disciplinary procedures that
- 24 existed at the time of the admission or adjudication. The information may not be further disclosed and may not
- 25 be made part of the student's permanent records.
- 26 (f) Notification to the school district under subsection (3)(a) must be provided to:
- 27 (i) the school district superintendent or the superintendent's designee in districts that employ a
- 28 superintendent;
- 29 (ii) the building principal or the principal's designee in school districts where the building principal is the
- 30 only administrator; or

1 (iii) the county superintendent in school districts that do not employ an administrator.

2 (4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth,
3 as provided in 41-5-1416.

4 (5) The school district may disclose, without consent, personally identifiable information from an
5 education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the
6 Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving
7 the information shall certify in writing to the school district that the information will not be disclosed to any other
8 party except as provided under state law without the prior consent of the parent or guardian of the pupil.

9 (6) Any part of records information secured from records listed in subsection (2), when presented to and
10 used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties
11 to the proceedings."
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13 **Section 3.** Section 41-5-216, MCA, is amended to read:

14 **"41-5-216. Disposition of youth court, law enforcement, and department records -- sharing and**
15 **access to records.** (1) Formal youth court records, law enforcement records, and department records that are
16 not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter are
17 not public records and must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction
18 of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed
19 upon termination of the extended jurisdiction. Except as provided in subsection (6), when the records are sealed
20 following the youth's 18th birthday or the termination of the extended jurisdiction, the proceeding must be treated
21 as if it had never occurred and the youth may not be held under any provision of law to be guilty of perjury or
22 otherwise giving a false statement by reason of failure to recite or acknowledge the proceeding.

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

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

29 (4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA
30 records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements

1 of the court's judgment or disposition, records referred to in 42-3-203, reports referred to in 45-5-624(7), or the
2 information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual
3 offender pursuant to Title 46, chapter 23, part 5.

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

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

8 (b) adult probation professional staff preparing a presentence report on a youth who has reached the
9 age of majority.

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

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

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

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

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

24 (b) The informal youth court records may be maintained and inspected only by youth court personnel
25 upon a new offense prior to the youth's 18th birthday.

26 (c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended
27 supervision ends and the youth was involved only in informal proceedings, informal youth court records that are
28 in hard-copy form must be destroyed and any electronic records in the youth court management information
29 system must disassociate the offense and disposition information from the name of the youth and may be used
30 only for the following purposes:

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

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

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

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

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

19 (11) This section does not prohibit access to formal or informal youth court records, including electronic
20 records, for purposes of conducting evaluations as required by 41-5-2003.

21 (12) This section does not prohibit the office of court administrator, upon written request from the
22 department of public health and human services, from confirming whether a person applying for a registry
23 identification card pursuant to 50-46-307 or 50-46-308 is currently under youth court supervision."
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25 NEW SECTION. **Section 4. Applicability.** [This act] applies to offenses committed on or after [the
26 effective date of this act].

27 - END -