

VOLUME NO. 43

OPINION NO. 7

JUVENILE DELINQUENCY - Retention of records under Youth Court Act amendments of 1987;

JUVENILES - Scope of record-sealing requirements under Youth Court Act;

YOUTH COURT ACT - Record-sealing requirements and exceptions;

MONTANA CODE ANNOTATED - Sections 41-5-601, 41-5-604, 41-5-604(5);

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 74 (1984).

HELD: Youth court records concerning a youth proceeded against as or found to be a delinquent youth are not confidential and thus not subject to the sealing requirements of the Youth Court Act as amended by chapter 515, 1987 Montana Laws.

March 8, 1989

Ted O. Lympus
Flathead County Attorney
P.O. Box 1516
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Dear Mr. Lympus:

You have requested my opinion on the following question:

Within the record-sealing requirements of the Youth Court Act, what is the meaning of the language added to section 41-5-604(5), MCA, during the 1987 legislative session that created an exception from sealing for those records "to which access must be allowed under 41-5-601"?

The resolution of your request necessitates an examination of 1987 amendments that affected both the record-sealing and confidentiality provisions of the Youth Court Act. These amendments were generally part of the 1987 Montana Laws, chapter 515, and passed by the Fiftieth Legislature as House Bill 470. Under section 41-5-604(5), MCA, as modified, the sealed records requirement which generally extends to all youth court records does "not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601." Your question concerns the meaning of the term "records" to which section 41-5-601, MCA, mandates access.

Prior to enactment of House Bill 470, section 41-5-601, MCA, provided in full:

Publicity. (1) No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a delinquent youth or youth in need of supervision except as provided in subsection (2).

(2) When a petition is filed under 41-5-501, publicity may not be withheld as to the identity of any youth formally charged with or proceeded against or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult.

Thus, prior to 1987 publicity was prohibited in both a proceeding to find a youth delinquent and a proceeding to find a youth in need of supervision, except in the case of a delinquency proceeding in which the youth was alleged to have committed an offense punishable as a felony if committed by an adult.

Section 41-5-601, MCA (1985), as quoted above, was amended in 1987 by a combination of two legislative bills. For purposes of this opinion, analysis of the modification of subsection (1) of section 41-5-601, MCA, by section 12 of House Bill 470 is most significant. The amended subsection presently reads:

Confidentiality. (1) No information shall be given concerning a youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a youth in need of supervision.

§ 41-5-601(1), MCA (1987). Comparing the prior language quoted in the preceding paragraph, the heading "Publicity" was changed to "Confidentiality." Additionally, the phrase "identity of" the youth was modified to "information ... concerning" a youth. Most importantly, the bar against disseminating information concerning proceedings to find a youth delinquent was deleted.

The legislative deletion of the publicity prohibition for delinquency proceedings has the effect of opening access to these matters. In an exhibit that the sponsors of House Bill 470 prepared to explain their bill to the 1987 House and Senate Judiciary Committees, the amendments to section 41-5-601, MCA, were described as follows:

Revises publicity provisions to open all court proceedings regarding youths charged as delinquents (except for a transfer hearing). Continues to prohibit publicity regarding youths in need of supervision.

Minutes, House Judiciary Committee, February 17, 1987, Exhibit A at 2. I conclude that when the 1987 Legislature amended section 41-5-604(5), MCA, to enlarge the sealing exception to records "to which access must be allowed under section 41-5-601," the intent was to not seal the records related to delinquency proceedings, since these proceedings were deliberately opened by contemporaneous amendments within House Bill 470 to section 41-5-601, MCA.

A separate 1987 amendment to section 41-5-601, MCA, of the Youth Court Act provided access for school officials to information about youthful drug and alcohol offenders. Chapter 462, section 4 of the 1987 Montana Laws added a subparagraph (4) to section 41-5-601, MCA, that reads in its entirety:

(4) The identity of any youth who admits violating or is adjudicated as having violated 45-5-624 [minor in possession of alcohol] or 45-9-102 [criminal possession of dangerous drugs] may be disclosed by youth court officials to the administrative officials of the school in which the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

Arguably, the "access" exception to record sealing found within section 41-5-604(5), MCA, could be interpreted to cover the access to these drug and alcohol offense records described in section 41-5-601, MCA. However, the quoted language is narrowly drawn and specifically directs disclosure of only the youth's identity and, presumably, the nature of his offense to school officials. Furthermore, the last sentence of the subparagraph expressly prohibits any further disclosure. I conclude that the drafters of House Bill 470 did not contemplate that the expanded record-sealing exception of section 41-5-604(5), MCA, would allow disclosure of the information described in the distinct legislative amendments presently embodied in section 41-5-601(4), MCA. For similar reasons, I conclude that a further amendment, codified as subsection (3) to section 41-5-601, MCA, which grants a victim the right to know the identity and disposition of a youth does not create an exception to the record-sealing requirements in section 41-5-604, MCA, unless independently mandated by section 41-5-601(1), MCA.

Summarizing my analysis, prior to 1987 the Youth Court Act specifically prohibited publicity about a youth proceeded against as or found to be a youth in need of supervision or a delinquent youth, except where the underlying offense would be punishable as a felony if the youth were an adult. Following the 1987 amendments, confidentiality provisions were retained only with regard to a youth proceeded against or found to be a youth in need of supervision. I conclude that the Legislature intended to open

access to delinquent youth proceedings and the record-sealing exception set forth in section 41-5-604(5), MCA, was modified to allow disclosure of those proceedings.

THEREFORE, IT IS MY OPINION:

Youth court records concerning a youth proceeded against as or found to be a delinquent youth are not confidential and thus not subject to the sealing requirements of the Youth Court Act as amended by chapter 515, 1987 Montana Laws.

Sincerely,

MARC RACICOT
Attorney General