

VOLUME NO. 40

OPINION NO. 35

CONVICTIONS - Availability for public inspection when part of "record or index";

CRIMINAL INFORMATION DISSEMINATION - Convictions, deferred prosecutions or deferred sentences;

CRIMINAL INFORMATION DISSEMINATION - "Original documents" available for public inspection;
CRIMINAL INFORMATION DISSEMINATION - "Record or index" information publicly available;
DEFERRED PROSECUTIONS - Availability for public inspection when part of "record or index";
DEFERRED SENTENCES - Availability for public inspection when part of "record or index";
PUBLIC CRIMINAL JUSTICE INFORMATION - "Original documents" available for public inspection;
MONTANA CODE ANNOTATED - Sections 1-2-107, 44-5-103, 44-5-103(12), 44-5-301.

- HELD: 1. Before entries concerning convictions, deferred prosecutions, or deferred sentences, which are contained in a "record or index," as such term is used in section 44-5-301, MCA, may be withheld from public inspection, two conditions must be met: (1) The involved conviction record must reflect only misdemeanors or deferred prosecutions, and (2) the conviction record must reflect no convictions of any kind for a period of five years from the last conviction, excluding convictions for traffic, regulatory, or fish and game offenses.
2. The nondissemination provisions of section 44-5-301(1)(b), MCA, apply to information concerning convictions, deferred prosecutions, or deferred sentences derived from a "record or index" which is compiled by name or universal identifier from a manual or automated system.
3. All "public criminal justice information," as that term is defined in section 44-3-101(12), MCA, is available under section 44-5-301(2), MCA, for public inspection from the originating criminal justice agency.

24 February 1984

Jim Nugent
City Attorney
201 West Spruce Street
Missoula MT 59801

Dear Mr. Nugent:

You have requested my opinion concerning the proper construction of section 44-5-301, MCA. I have phrased your questions as follows:

1. What are the conditions under which the nondissemination provisions of section 44-5-301(1)(b), MCA, apply?
2. To which documents or information do the nondissemination provisions of section 44-5-301(1)(b), MCA, apply?
3. Which documents and information are available from the originating criminal justice agency at any time under section 44-5-301(2), MCA?

Section 44-5-301, MCA, reads:

Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

The Montana Supreme Court has not construed section 44-5-301, MCA, and thus ordinary principles of statutory construction must be applied. Accordingly, "[t]he primary tool for ascertaining intent is the plain meaning of the words used." Dorn v. Board of Trustees, 40 St. Rptr. 348, 352, 661 P.2d 426, 430 (1983). Those words, moreover, "must be reasonably and logically interpreted according to grammatical and statutory rules." State Bar v. Krivec, 38 St. Rptr. 1322, 1324, 632 P.2d 707, 710 (1981) (citation omitted). The term "and" is, therefore, ordinarily read conjunctively unless its context demands otherwise. 73 Am. Jur. 2d Statutes § 241 (1974). Finally, "[i]n the absence of anything in the statute clearly indicating an intention to the contrary, where the same word or phrase is used in different parts of a statute, it will be presumed to be used in the same sense throughout." 82 C.J.S. Statutes § 348 (1953).

With reference to your first question a literal reading of section 44-5-301(1)(b), MCA, establishes two conditions precedent to nondissemination of "record or index" information otherwise available to the public under section 44-5-301(1)(a), MCA: (1) The involved conviction record must reflect only misdemeanors or deferred prosecutions, and (2) the conviction record must reflect no convictions of any kind for a period of five years from the last conviction, excluding convictions for traffic, regulatory, or fish and game offenses. The term "misdemeanor" is not defined in section 44-5-103, MCA, but it should be assigned the same meaning used in section 45-2-101(36), MCA. See § 1-2-107, MCA.

Concerning your second question, the term "record or index" in section 44-5-301(1)(b), MCA, refers to any record or index "compiled by name or universal

identifier from a manual or automated system." The only information publicly available from such a "record or index" are entries concerning convictions, deferred prosecutions, or deferred sentences, and the dissemination restrictions in section 44-5-301(1)(b), MCA, apply to that information.

Finally, section 44-5-301(2), MCA, makes publicly available from the originating criminal justice agency all "public criminal justice information," as that term is defined in section 44-5-103(12), MCA. As stated above, sections 44-5-301(1)(a) and (b), MCA, govern the public availability of information from a "record or index" compilation. The term "original documents," as used in sections 44-5-301(1)(b) and (2), MCA, does not include the "record or index" compilation but rather refers to original documents falling within the scope of "public criminal justice information."

THEREFORE, I IS MY OPINION:

1. Before entries concerning convictions, deferred prosecutions, or deferred sentences, which are contained in a "record or index," as such term is used in section 44-5-301, MCA, may be withheld from public inspection, two conditions must be met: (1) The involved conviction record must reflect only misdemeanors or deferred prosecutions, and (2) the conviction record must reflect no convictions of any kind for a period of five years from the last conviction, excluding convictions for traffic, regulatory, or fish and game offenses.
2. The nondissemination provisions of section 44-5-301(1)(b), MCA, apply to information concerning convictions, deferred prosecutions, or deferred sentences derived from a "record or index" which is compiled by name or universal identifier from a manual or automated system.
3. All "public criminal justice information," as that term is defined in section 44-3-101(12), MCA, is available under section 44-5-301(2),

MCA, for public inspection from the
originating criminal justice agency.

Very truly yours

MIKE GREELY
Attorney General