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Legal Opinion 2018-023

TO: Mike Brady, Scott Hoffman, Mike Colyer, Chris Odlin, Richard Stepper, Laurie Clark, Department Attorney

FROM: Jim Nugent, City Attorney

DATE November 14, 2018

RE: Meaning of public criminal justice information pursuant to Montana Criminal Justice Information Act of 1979.

FACTS:

Recently, there was some discussion concerning what constituted public criminal justice information. This legal opinion is intended to provide a reminder as to what Montana state law states constitutes public criminal justice information.

ISSUE:

Are initial offense reports public criminal justice information?

CONCLUSION:

Pursuant to subsection 44-5-103(13)(e)(ii) MCA information originated by a criminal justice agency in initial offense reports is public criminal justice information.

LEGAL DISCUSSION:

The Montana Criminal Justice Information Act of 1979 is set forth in title 44, chapter 5, MCA. Section 44-5-103 MCA sets forth numerous definitions of terms utilized in the Montana Criminal Justice Information Act of 1979.

The term “public criminal justice information” is defined in subsection 44-5-103(13)(e)(i) MCA as meaning:

- (13) “Public criminal justice information means:
 - (a) information made public by law;
 - (b) information of court records and proceedings;

- (c) information of convictions, deferred sentences, and deferred prosecutions;
- (d) information of post-conviction proceedings and status;
- (e) information originated by a criminal justice agency, including:
 - (i) initial offense reports;
 - (ii) initial arrest records;
 - (iii) bail records; and
 - (iv) daily jail occupancy rosters;
- (f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or
- (g) statistical information.”

Pursuant to subsection 23.12.202 PUBLIC CRIMINAL JUSTICE INFORMATION, of the Administrative Rules of Montana (ARM) also identify initial offense reports as being public criminal justice information stating as follows:

“23.12.202. PUBLIC CRIMINAL JUSTICE INFORMATION (1) Pursuant to the Criminal Justice Information Act, 44-5-101 through 44-5-602, MCA, initial offense reports and initial arrest records are public criminal justice information.”

Section 23.12.203 “INITIAL OFFENSE REPORTS” of the Administrative Rules of Montana (ARM) provides guidance as to what initial offense reports should contain as well as what they should not contain stating as follows:

“23.12.203 INITIAL OFFENSE REPORTS

- (1) Initial offense reports should contain the following:
 - (a) the general nature of the charges against the accused;
 - (b) the offense location;
 - (c) the name, age, and residence of the accused;
 - (d) the name of the victim, unless the offense charged was a sex crime; and
 - (e) the identity of a witness unless the witness has requested confidentiality.
- (2) Initial offense reports should not contain:
 - (a) driver’s license numbers;
 - (b) social security numbers;
 - (c) medical records, including but not limited to, mental health records and records relating to drug and alcohol addiction or treatment;
 - (d) with respect to the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507, MCA, any information other than the offense location that may directly or indirectly identify the victim; and
 - (e) with respect to the victim of any offense other than those described in (2)(d) who requests confidentiality, any information other than the offense location that may directly or indirectly disclose the address, telephone number, or place of employment of the victim or a member of the victim’s family.”

Note that section 23.12.203 ARM quoted above identifies what “should” and “should not” be included in an initial offense report. Some inherent discretion must exist with respect to the use of the terms “should” and “should not”; so that law enforcement can take other action to protect the safety, health, general welfare and wellbeing of others, such as victims or members of a victim’s family. For example with respect to what should not be included in an initial offense report, there might be other information that should be withheld pertaining to a victim or members of a victim’s family, such as what school(s) members of a victim’s family attend. Thus, in the sound prudent judgment of law enforcement, there is some inherent ability to exercise some discretion as to what other information might be excluded or omitted from an initial offense report.

CONCLUSION:

Pursuant to subsection 44-5-103(13)(e)(i) MCA information originated by a criminal justice agency in initial offense reports is public criminal justice information.

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/s/ Jim Nugent

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