SURVEILLANCE, RECORDING, AND CONFIDENTIALITY IN MONTANA'S LIBRARIES

MONTANA STATE LIBRARY SUMMER 2025

These materials are designed to provide information regarding areas of the law and best practices concerning the identified topics. These materials are not intended to be a rendering of legal advice. The reader of these materials should request legal advice from an attorney on specific legal inquiries.

INTENDED OUTCOMES

This session provides library leaders foundational guidance about the legal and operational issues related to surveillance, recording, and confidentiality in Montana's libraries. Emerging and ongoing issues are presented so participants complete the session with renewed confidence in handling these matters.

QUESTION: WHAT MONTANA LAWS ADDRESS SURVEILLANCE AND RECORDING IN LIBRARIES?

CONSTITUTIONAL RIGHT OF PRIVACY

- Article II, Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.
- Article II, Section 15. Rights of persons not adults. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

AUDIO AND VIDEO SURVEILLANCE

- 45-5-223. Surreptitious visual observation or recordation -- place of residence -- public place -- exceptions. Summary: This statute details the criminal violations associated with filming an individual without their knowledge in a private residence and in a public place. It helps guide public agencies by ensuring public location surveillance is conducted with notification and not in a way that captures private conduct.
- **45-8-213. Privacy in communications.** (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:
 - (c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation; or
 - (2) (a) Subsection (1)(c) does not apply to:
 - (i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;
 - (ii) persons speaking at public meetings;
 - (iii) persons given warning of the transcription or recording. If one person provides the warning, either party may record.

FACIAL RECOGNITION PROHIBITED

- 44-15-104. Prohibition of continuous facial surveillance. (1) A state or local government agency, law enforcement agency, public employee, or public official may not obtain, retain, possess, access, request, contract for, or use continuous facial surveillance.
 - (2) The use of facial recognition technology for facial verification, including any resulting data, may not be used to aid or assist in any type of continuous facial surveillance.
- 44-15-105. Prohibition of facial recognition technology. (1) Except as provided in 44-15-106 and 44-15-108, a state or local government agency, law enforcement agency, public employee, or public official may not:
 - (a) obtain, retain, possess, access, request, or use facial recognition technology or information derived from a search using facial recognition technology;
 - (b) enter into an agreement with a third-party vendor for any purpose listed in subsection (1)(a); or
 - (c) install or equip a continuous facial surveillance monitoring camera on public buildings or on public roads and highways of this state, except as provided in 46-5-117.

FACIAL RECOGNITION PERMITTED

- 44-15-108. Use of facial recognition technology by state and local government agencies -- when permitted -- restrictions on use -- exemption. (1) A state or local government agency may use, or contract with a third-party vendor for the use of, facial verification if the state or local government agency first provides a written use and privacy policy regarding facial recognition technology. The written policy must include, at a minimum:
 - (a) the specific purpose for facial verification by the state or local government agency;
 - (b) the length of term for which facial biometric data is being collected or stored; and
 - (c) notice that facial biometric data may not be collected on an individual without prior written consent by the individual.
 - (2) The state or local government agency must include an option for access to services without the use of facial verification.
 - (3) A third-party vendor who is contracted with a state or local government agency shall provide a copy of its written policies in accordance with 44-15-109 for use with the notice requirement outlined in subsection (1).
 - (4) A state or local government agency shall report the use of facial recognition technology pursuant to subsection (1) to the information technology board created in 2-15-1021.

NON-SURVEILLANCE LIBRARY RECORDINGS

Section 40-6-701 – Interference with fundamental parental rights restricted – cause of action. (2) All fundamental parental rights are exclusively reserved to the parent of a child without obstruction or interference by a government entity, including but not limited to the rights and responsibilities to do the following: consent before a government entity makes an audio or video recording of the child, unless the audio or video recording is made during or as part of: (vi) an event open to the public, including but not limited to a public performance, an athletic competition, and any preparation, dress rehearsal, or practice for an event open to the public...

Summary

- The exception permits library staff as agents of a government entity to take such footage without parental consent if the event is open to the public. A policy can help define these expectations.
- Library staff and volunteers should be clearly identified during public events through their nametag or other emblem to reassure parents the person taking pictures is a library staff member.
- There should be a posting at public events where footage may be taken to notify those present that the event may be recorded to address the possible dispute over what is a "an event open to the public" since that phrase isn't defined in the bill.
- All footage, recording, or images will be stored in a responsible manner preferably on publicly owned servers so the recording cannot be misused or can be deleted if requested by a parent.
- Libraries may also consider a policy provision and related form stating that if footage, recordings, or images will be posted to the internet or used in any type of public advertisement or announcement, securing parental consent for such usage shall occur. This may be some extra work but it is an effective method of public engagement and parental reassurance.

PATRON RECORDINGS

- Libraries are a designated public forum so patrons may engage in speech within the expectations set by the government agency which has established or manages the forum.
- Patrons have rights consistent with the nature of the public library as a designated forum for access to information and other resources provided by the library.
- Recording a public space can be considered protected speech however like other types of speech.
- Recording must be completed in a manner that doesn't interfere with other patrons' rights or the operations of the library as set forth in the law, policy, and library mission.
- Each patron has a right to a safe and welcoming library setting and library staff have an obligation to deliver library services any conduct that prevents or restricts these rights and obligations can be redirected.

Review session on Patron Conduct Policies for more information.

LIBRARY CONFIDENTIALITY ACT

- **22-1-1102. Definitions.** As used in 22-1-1103, the following definitions apply:
 - (1) "Library" means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.
 - (2) "Library records" means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying the names or other personal identifiers of library users. Library records does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general or records that are not retained or retrieved by personal identifier.
- **22-1-1103. Nondisclosure of library records.** (1) No person may release or disclose a library record or portion of a library record to any person except in response to:
 - (a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or
 - (b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.
 - (2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.
 - (3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines.

PUBLIC RECORDS LAWS

- 2-6-1003. Access to public information -- safety and security exceptions
 -- Montana historical society exception. (1) Except as provided in subsections (2) and (3), every person has a right to examine and obtain a copy of any public information of this state.
- (2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.

QUESTION: HOW DO THESE LAWS APPLY TO LIBRARY OPERATIONS?

POLICY FUNDAMENTALS

- Sound library surveillance and recording policies adopted in a manner consistent with law will:
 - support the safety policies and protocols of the library.
 - ensure the library remains a safe and viable place for each employee and patron.
 - balance and protect the rights of each patron to access information in a confidential manner while in a safe and welcoming facility.
 - refers to the patron conduct policy to ensure coordination between the two documents.
 - notifies those present in the building that remaining in the building constitutes consent to be recorded.
 - supports the Library emergency preparedness and response plans and details methods to rely on surveillance in collaboration with first responders to manage emergency situations.
 - detail the process for recordings to occur at public events.
 - specify the expectations for patrons who are recording in a public space.
- When consistently enforced, the policy will legitimize the actions of staff consistent with board intent as specified in the mission.

POLICY COMPONENTS

- The policy will state the mission of the library and justify utilizing surveillance technology consistent with that mission to demonstrate a compelling state interest.
- This mission will typically promote three guiding principles: patron right to access information, staff obligation to operate the library, and board obligation to establish a safe library setting.
 - Example: The Mosaic Public Library serves each member of the community in a welcoming and secure setting as they pursue personal lifelong learning goals.
- The policy must outline how notice of the use of surveillance is provided to those present in areas where the technology is utilized.
- The policy will include a reference to the staff's role in managing the technology as well as a general description of the scope of the technology on issues such as footage maintenance, audio recordings, and facial recognition.
- Another component is who has access to the footage and how requests for footage are processed to comply with public records laws and managed in cases of emergency.
- A public events policy must note how library staff will be identified, how footage at library events is collected and stored, and how consent is required for certain events.
- A patron conduct policy may include a reference to how personal recording in a public setting can be restricted if disruptive to other patrons.

POLICY PROVISIONS - EXAMPLES

Library Surveillance

- The Library shall utilize surveillance technology on Library property to honor the Library's mission to provide a safe and welcoming setting for each Library employee and patron and to protect Library property, facilities, and equipment.
- The surveillance technology shall comply with the Library Patron Confidentiality Act and all other applicable laws, regulations, and policies related to record maintenance, patron and employee privacy, and Library operation.
- The Director or designated employee shall approve appropriate locations for video cameras and management of the system. Camera locations shall not violate the privacy of any patron or employee. Responsibilities governing access to and management of the system will be outlined in the employee's respective job description.
- The Library shall public a notice at the entrances of each Library building as well as distinct areas within or near a building notifying those present of the use of video surveillance.
- CUSTOMIZE: The Library's surveillance technology video recordings shall not include audio recordings or facial recognition technology.
- Video recordings may be preserved and used as part of investigations into allegations of employee or patron misconduct in accordance with any applicable policy or collective bargaining agreement provision.
- Library surveillance footage is not generally considered a public record consistent with its status as a safety and security measure. The Director shall handle requests for footage consistent with applicable law, policy, and emergency response protocols.

POLICY PROVISIONS - EXAMPLES

Patron Conduct

Patrons who are not affiliated with the library engaging in audio, video, or photographic recording of the public areas of the Library building or property shall comply with all applicable policies and laws. Any recording shall not disrupt library operations or interfere with the rights of other patrons to access information. Library staff is authorized to direct a patron to cease recording that disrupts the Library's operations or interferes with a patron's right to access information. Recording for commercial purposes shall only occur with the authorization of the Director consistent with this policy.

Library Events

- Library staff and volunteers are authorized to broadcast and take audio, video, or photographic recordings of publicly held Library-sponsored events and programs and attendees or participants at any Library location or offsite event. Library staff and volunteers shall notify attendees or participants that recording or broadcasting may occur and that continued presence at the event constitutes consent to appear in the recording or broadcast. When recording an individual patron or group present in the Library at an event not considered public, Library staff or volunteers will secure verbal consent before recording individuals present.
- News media shall notify the Director or designated staff prior to broadcasting or recording in the Library or at a Library event to ensure coordination with event logistics, library operations, and patron rights.

MONTANA LIBRARY ASSISTANCE HELPLINE



THANK YOU

Contact Information:

helpline@mtlib.org