CHILDREN VISITING THE LIBRARY

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 children in Montana's libraries. Emerging and ongoing issues are presented so participants complete the session with renewed confidence in handling these matters.

QUESTION: WHAT LAWS ADDRESS CHILDREN IN LIBRARIES?

CONSTITUTIONAL FOUNDATIONS

- The United States and Montana Constitutions guarantee rights to access to information.
 - United States Constitution, Amendment 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
 - Montana Constitution, Article II, Section 7. Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

CONSTITUTIONAL FOUNDATIONS

- The Montana Constitution provides express rights to minors.
 - Article II, section 15, Montana Constitution. 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.
- The Montana Constitution guarantees each person's right to 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.

PARENTAL ENGAGEMENT LAWS

- 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: (c) direct the upbringing of the child;
 - (3) Except for law enforcement, an employee of a government entity may not encourage or coerce a child to withhold information from the child's parent and may not withhold from a child's parent information that is relevant to the physical, emotional, or mental health of a child.
- Section 22-1-309 Free Public Libraries Specifically states a library board of trustees "shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library." To that end, The library board of trustees of every public library shall, "adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law."

LIBRARY RECORDS CONFIDENTIALITY ACT

- 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, <u>according to</u> <u>procedures and forms giving written consent as determined by the library</u>; or
 - (b) <u>an order issued by a court of competent jurisdiction</u>, 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.
- The application of the Library Records Confidentiality Act will differ between school libraries and public libraries.

BOARD AND STAFF RESPONSIBILITIES

- Section 22-1-309 Free Public Libraries "The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall..."
- Section 22-1-707 Public Library District "(1) The board of trustees of a public library district shall..."
- Ethical and Legal Responsibilities
 - Board members and employees are required to follow the laws governing library operations as well as the expectations for public officials.
 - Board members and employees must use public funds purposes specified in law and consistent with library's mission.
 - Board members and employees shall not engage in official or criminal misconduct by ignoring, acting outside, or operating otherwise inconsistently with the law.
 - Board members and employees should be mindful of the potential for negligent conduct by failing to honor a duty to the public or specific patrons or by not providing a safe and effective library setting.
 - Certain statutes may provide immunity protection but only if law is honored.
 - Insurance coverage for the library or partner local government should have details on conduct and operations, as well.

QUESTION: HOW DO THESE LAWS AND CONCEPTS APPLY TO LIBRARY OPERATIONS?

POLICY FUNDAMENTALS

- Sound library policies governing children and families adopted in a manner consistent with law will:
 - support the mission of the library to be a place to access information for patrons of all ages.
 - balance and protect the rights of each patron to access information in a confidential manner while in a safe and welcoming facility.
 - refer to the patron conduct policies to ensure coordination between the documents.
 - tailor any conduct and behavior restrictions to the mission of the library.
 - ensure compliance with applicable criminal and non-discrimination laws.
 - honor the rights and responsibilities of parents with regard to raising children.
- 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 establishing expectations for children visiting the library 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 will include a reference to the staff's role and authority in:
 - managing the library space and collections and identifying specific children's areas;
 - directing individuals using the facility,
 - detailing the obligations of parents, caregivers, guardians,
 - enforcing the policy consisting with the mission.
- A patron conduct policy may include a reference to how personal conduct in the library area can be redirected or restricted if disruptive to other patrons.

POLICY PROVISIONS - EXAMPLES

Children and Minors in the Library

- The Library shall establish methods for patrons of all ages to visit and utilize the Library, its collections, programs, and services in a manner which honors 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.
- Library staff are not responsible for routine supervision, transportation, or care of children and minors present on Library property.
- Library staff are authorized to administer or assist a child or minor present on Library in the event the child or minor is experiencing an illness, episode, or other emergency.
- Children and minors must be under the direct supervision of a parent, caregiver, or guardian while present on Library property if the child or minor is unable to safely utilize the Library, its collections, programs, and services, without disrupting other patrons or otherwise interfering with Library operations.
- Unattended children determined by Library staff to be unable to safely utilize the Library as established in this policy shall be redirected to the child's parent, caregiver, or guardian. If the parent, caregiver, or guardian, is not present on Library property, the Library staff is authorized to contact appropriate authorities.
- For the purposes of this policy "unattended" means a child who is not within the sight and vocal contact of the child's parent, caregiver, or guardian and "child" means a person who is under the age of 14 years old and a "minor" is a person under the age of 18 years old.

POLICY PROVISIONS - EXAMPLES

Children and Minors in the Library, continued

- Any damage to Library property resulting from use of the library by a child or minor will be invoiced to responsible parent, caregiver, or guardian with expectation for payment within 30 days.
- Parents, caregivers, and guardians assume all risk associated with a child's or minor's presence on Library property. Any injury sustained by a child or minor on Library property may be assigned to the parent consistent with the definition of comparative negligence in Montana law.
- A child's or minor's use of the Library shall:
 - comply with all applicable library conduct and behavior policies.
 - not interfere with or otherwise disrupt the library's operations or library staff's duties or obligations regarding operation of the library.
 - be consistent with all library staff directives.
- The Director or designated employee is authorized to interpret and implement this policy including the exclusive authority to resolve grievances or disputes about the implementation of this policy by Library staff.

ADDITIONAL MATTERS TO CONSIDER

Issuance of a Library Card

- Public libraries have the authority to establish age by which a person may secure a library card with or without parental participation.
- The age of the library card holder may determine when and how a parent can access a child's library records.
- Libraries have to take into consideration the role of parents in paying for damaged or lost materials when a card has been issued without the parent's participation.

Confidentiality of Records of Minor Patrons

- Parental engagement statutes have specific provisions about parents providing consent prior to receiving services which may obligate library and school staff to collaborate with parents. Review provisions on recording from previous session.
- Public library policies may determine how parents access a child's library records. These policies will specify compliance with noted statutes and the Library Records Confidentiality Act.
- School policies will likely permit parents to access student information consistent with parents' rights under both Montana and federal law.

Academic libraries that serve dual enrollment students should be mindful of patron access policies.

MONTANA LIBRARY ASSISTANCE HELPLINE



THANK YOU

Contact Information:

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