

Opinion No. 87-29

July 1, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Bill Primm, Assistant Attorney General

TO: Les Williams, District Attorney, Ninth Judicial District, Curry County Courthouse, Clovis, N.M. 88101

QUESTIONS

Is a law enforcement agency prohibited by the Children's Code, the Arrest Record Information Act or any other law of the State of New Mexico from releasing to the public the names of juveniles who have been arrested for criminal acts, and the charges for which they were arrested?

CONCLUSIONS

No.

ANALYSIS

In 1972 the New Mexico legislature enacted a provision under the Children's Code, sections 32-1-1 to 32-1-29, 32-1-31 to 32-1-38.1 and 32-1-39 to 32-1-53 NMSA 1978, which provided in part:

Law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution, or the interest of national security requires, or the court otherwise orders in the interest of the child, these records and files shall not be open to public inspection nor their contents disclosed to the public.

Laws of 1972, Chap. 97, Sec. 41. This provision was repealed, however, the following year. Laws of 1973, Chap. 195, sec. 3. Such express repeal indicates the legislature's intent on this matter. *State v. Davis*, 65 N.M. 128, 333 P.2d 613 (1958). The legislature specifically considered whether a child's law enforcement records should be public records and decided to remove the restrictions on their disclosure. We do not believe the Children's Code prohibits the release of the names of juveniles who have been arrested for criminal acts or of the charges for which they have been arrested.

Our conclusion is supported by the fact that the legislature gradually has eliminated restrictions on public access to other information about children who have committed criminal acts. In 1972, the law excluded the general public from hearings on petitions under the Children's Code. Laws of 1972, Chap. 97, section 28(B). In 1973, the public

was permitted to attend hearings on delinquency petitions that concerned a child who previously had been adjudicated delinquent. Laws of 1973, Chap. 195, section 1. At present, all delinquency proceedings are open to the general public unless "the court in its discretion after a finding of exceptional circumstances deems it appropriate to conduct a closed delinquency hearing." Section 32-1-31(B) NMSA 1978. And except for social records, records in proceedings involving delinquency also are not confidential under the Children's Code. Records are confidential, however, in proceedings involving a child in need of supervision, neglect, or abuse. Section 32-1-44 NMSA 1978.

It is true that section 32-1-39 of the Children's Code prohibits the name of a child from appearing in the record of appeal from a children's court judgment. The legislature's concern about nondisclosure of a juvenile's identity on appeal could be attributed to the potentially longer lasting effect of printing the child's name in a published opinion in the New Mexico Reports. Moreover, section 32-1-39 applies to appeals from all judgments of the children's court, including those involving abuse and neglect and child in need of supervision cases, in which the hearings are closed to the public under section 32-1-31(B).

The Arrest Record Information Act, sections 29-10-1 to 29-10-8 NMSA 1978, does not prohibit release of the information, at least at the time of a juvenile's arrest. The Act applies only to information about arrests that have resulted in a "negative disposition." Section 29-10-3 NMSA 1978. "Negative disposition" means that (i) criminal proceedings have resulted in the defendant being found not guilty; (ii) a prosecutor has elected not to refer a matter for prosecution; or (iii) criminal proceedings have been postponed indefinitely. Section 29-10-3. The Act's purpose is to protect against inaccurate, incomplete information being disseminated. Section 29-10-2 NMSA 1978. It does not prohibit release of timely, accurate information when a juvenile is arrested for a criminal act.

Finally, the Public Records Act, sections 14-3-1 to 14-3-16, 14-3-18 NMSA 1978, does not prohibit release of the information. The Act provides that citizens of the State have a right to inspect any public records of the State, with certain exceptions not applicable here. The citizens' right to know is the rule, and secrecy is the exception. State ex. rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

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