



Cherokee County

RUSK, TEXAS
75785

CRAIG D. CALDWELL
COUNTY ATTORNEY

Date: 16 Mar 07

To: Dan Paden, PETA
VIA FAX ONLY: 757-622-0457

From: Craig D. Caldwell

Re: Your fax of 15 Mar 07

Dear Mr. Paden:

Thank you for the above referenced fax.

I am enclosing Section 58.007 from the Family Code of the State of Texas. This Section prohibits me as a prosecuting attorney from releasing information to you about a case involving a juvenile.

The only thing I am willing to say is that this case is being handled in an appropriate manner.

Respectfully yours,

Craig D. Caldwell

enclosure

Chapter 58. Records; Juvenile Justice Information System

§ 58.007

identifiable information has agreed not to disclose it to a third party, other than another juvenile justice agency.

(d) A juvenile justice agency that receives educational information under this section shall destroy all information when the child is no longer under the jurisdiction of a juvenile court.

Comment

This section implements the federal FERPA provisions authorizing the sharing of otherwise confidential educational records with juvenile justice officials. There is also a provision in Education Code § 37.084 that is reciprocal to this provision. The educational information must be provided to assist only in pre-adjudication decisions in the juvenile process. A juvenile justice agency is authorized to disclose criminal history information to schools under a local agreement.

§ 58.006. Destruction of Certain Records

The court shall order the destruction of the records relating to the conduct for which a child is taken into custody, including records contained in the juvenile justice information system, if:

- (1) a determination that no probable cause exists to believe the child engaged in the conduct is made under Section 53.01 and the case is not referred to a prosecutor for review under Section 53.012; or
- (2) a determination that no probable cause exists to believe the child engaged in the conduct is made by a prosecutor under Section 53.012.

Comment

This section requires the automatic destruction, not just sealing, of records when a determination of no probable cause is made by intake or by the prosecutor.

§ 58.007. Physical Records or Files

(a) This section applies only to the inspection and maintenance of a physical record or file concerning a child and the storage of information, by electronic means or otherwise, concerning the child from which a physical record or file could be generated and does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B. This section does not apply to a record or file relating to a child that is:

- (1) required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state;
- (2) maintained by a municipal or justice court; or
- (3) subject to disclosure under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997.

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney for a party to the proceeding;

(4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored by electronic means or otherwise concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

(d) The law enforcement files and records of a person who is transferred from the Texas Youth Commission to the institutional division or the pardons and paroles division of the Texas Department of Criminal Justice may be transferred to a central state or federal depository for adult records on or after the date of transfer.

(e) Law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

(f) If a child has been reported missing by a parent, guardian, or conservator of that child, information about the child may be forwarded to and disseminated by the Texas Crime Information Center and the National Crime Information Center.

(g) For the purpose of offering a record as evidence in the punishment phase of a criminal proceeding, a prosecuting attorney may obtain the record of a defendant's adjudication that is admissible under Section 3(a), Article 37.07, Code of Criminal Procedure, by submitting a request for the record to the juvenile court that made the adjudication. If a court receives a request from a prosecuting attorney under this subsection, the court shall, if the court possesses the requested record of adjudication, certify and provide the prosecuting attorney with a copy of the record.

(h) The juvenile court may disseminate to the public the following information relating to a child who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located for the purpose of apprehension:

(1) the child's name, including other names by which the child is known;

(2) the child's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(3) a photograph of the child; and

(4) a description of the conduct the child is alleged to have committed, including the level and degree of the alleged offense.

(i) In addition to the authority to release information under Subsection (b)(5), a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.

Comment

This section deals with physical records other than the information contained in the statewide Juvenile Justice Information System. Examples would be offense or incident