

## Opinion No. 73-39

April 24, 1973

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. Jose Cruz Castellano, Jr. District Attorney First Judicial District Mr. Antonio Anaya Children's Court Attorney Office of the District Attorney First Judicial District P.O. Box 2041 Santa Fe, New Mexico 87501

### QUESTIONS

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1. Are law enforcement records involving "children" now open for public inspection?
2. If the answer to question number one is "yes," to what extent can the public have access to the actual law enforcement records and to what extent can such information be used in news stories?
3. If the answer to question number one is "yes," and in the event the public is not entitled to see the actual law enforcement records themselves involving "children," does the public have a right to know the contents of such records (e.g., names, addresses, charges and other information involving children), and to what extent can such information be used in news stories?
4. Are social and legal records such as court records, including petitions, motions, orders, decrees, medical records, psychological records, etc., regarding new charges filed against "children," open for public inspection, for:
  - (a) children previously adjudicated to be delinquent?
  - (b) children with no previous delinquency adjudication?
5. In the event the answer to question number one is "yes," and the answer to question number 4b is "no," is it legal to make public the names, addresses, charges, and other such information surrounding offenses involving children using "law enforcement records" even though such information cannot be made public from "social and legal records"?
6. Is it possible that, for a first offender child, the name and address of the child as well as the charges on which he was arrested could legally be made public from "law enforcement records" as a result of the repeal of former Section 13-14-41, N.M.S.A., 1953 Compilation, but yet, because of the restrictions in the newly amended Section 13-14-42, if the child was subsequently acquitted, his name or address or other "identifying" remarks could not be reported in any news accounts of an acquittal? In

other words, because of repeal of Section 13-14-41, is it legally possible that news reporters could advise the public of the name of a child and the charges filed against him, using law enforcement records, but could not advise the public that the child was acquitted because of the secrecy provisions of Section 13-14-42?

## CONCLUSION

1. See analysis.
2. See analysis.
3. See analysis.
4. See analysis.
5. See analysis.
6. See analysis.

## OPINION

### {\*76} ANALYSIS

The Children's Code [§§ 13-14-1 to 13-14-45, N.M.S.A., 1953 Comp. (1972 Interim Supp.)] was enacted in 1972 to effectuate the following legislative purposes:

A. to preserve the unity of the family whenever possible and to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of the Children's Code;

B. consistent with the protection of the public interest, to remove from children committing delinquent acts the consequences of criminal behavior {\*77} and to substitute therefor a program of supervision, care and rehabilitation;

C. to achieve the foregoing purposes in a family environment whenever possible, separating the child from his parents only when necessary for his welfare or in the interests of public safety;

D. to separate clearly in the judicial and other processes affecting children under the Children's Code the neglected child, the child in need of supervision and the delinquent child, and to provide appropriate and distinct dispositional options for treatment and rehabilitation of these children; and

E. to provide judicial and other procedures through which the provisions of the Children's Code are executed and enforced and in which the parties are assured a fair

hearing and their constitutional and other legal rights recognized and enforced." Section 13-14-2, **supra**.

Pursuant to such purposes, Section 13-14-41, **supra**, provided that law enforcement records and files concerning a child be kept separate from the records and files of arrests of adults, and such records and files not be open to public inspection nor their contents disclosed to the public.

Section 13-14-42, **supra**, further provided for inspection of social and legal records of all probationers by only limited classes of persons, and set the offense for those disclosing information in violation of the law as a misdemeanor punishable by imprisonment in the county jail for a maximum of one year and/or the imposition of a \$ 1,000 fine. Further, under Section 13-14-28(B), **supra**, the general public was excluded from all hearings on petitions under the Children's Code "except in hearings to declare a person in contempt of court."

However, the 1973 New Mexico State Legislature found it necessary to amend the "secrecy" provisions of the Children's Code and so enacted Chapter 195, Laws of 1973, with an emergency clause. Thus as of March 27, 1973, the following changes have been made in the Children's Code: First, under Section 13-14-28(B), **supra**, the public may attend hearings on petitions under the Children's Code if the hearing is held in connection with proceedings on a child alleged to be delinquent if that child has previously been adjudicated a delinquent. Under the Code, the only hearings closed to the public are hearings on "first offender" alleged delinquent children and hearings on children alleged to be neglected or in need of supervision. Second, because Section 13-14-41, **supra**, was repealed by Chapter 195, **supra**, all information pertaining to a child that appears in law enforcement agency records is open to the public. Third, the offense for those violating "secrecy" provisions of the Children's Code is now only a petty misdemeanor. Section 13-14-42(D), **supra**.

With consideration of these recent changes in the Children's Code, we will proceed with a discussion of your questions:

(1-3) As stated above, all information pertaining to a child that appears in law enforcement agency records is open to the public and is subject to no publication restraint.

(4) While social, medical and psychological records concerning a child are open to inspection by only limited classes of persons, court and legal records concerning a child are open to the public if the child is one who has previously been adjudicated a delinquent. But even court and legal records are closed on first offender alleged delinquents and all alleged neglected or in-need-of-supervision children. Also, accredited members of the press may have access to all court and legal records, but may disclose identifying information only if the child is alleged to be delinquent and has previously been adjudged delinquent.

(5) The press may publish the name and other identifying information of the child alleged to be delinquent (even when he is a first offender) if the name is obtained from law enforcement records.

(6) Because of the repeal of Section 13-14-41, it is possible that news reporters could advise the public of the name of a child and the charges filed against him, using law enforcement records, but could not advise the public that the child was acquitted because of the secrecy provisions of Section {~~\*78~~} 13-14-42, **supra**, pertaining to court records

We further note that accredited members of the press and members of the bar may attend all hearings on proceedings under the Children's Code, but are restricted from disclosing information that would identify the child or his family **unless** the proceeding is one for alleged delinquency and the child involved has previously been adjudicated a delinquent.

By: Leila Andrews

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