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SPRINGFIELD

December 12, 1977

FILE NO. S-1318

FAMILY LAW:
Application of Statute
Requiring Confidentiality
of Juvenile Records

Honorable Frank X. Yackley
State's Attorney
LaSalle County
Ottawa, Illinois 61350

Dear Mr. Yackley:

You recently requested an interpretation of sub-
section 2-8(3) of the Juvenile Court Act (Ill. Rev. Stat.
1975, ch. 37, par. 702-8(3)). This subsection reads as
follows:

"The records of law enforcement officers
concerning all minors under 17 years of age
must be maintained separate from the records
of arrests and may not be open to public
inspection or their contents disclosed to
the public except by order of the court or

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when the institution of criminal proceedings has been permitted under Section 2-7 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or proceedings on an application for probation."

Your question is whether the clause "the institution of criminal proceedings has been permitted under section 2-7" refers to all the situations in which criminal prosecution is allowed under section 2-7 of the Act, or only to subsection 2-7(3). In my opinion, for the reasons stated below, the quoted words apply to all such situations.

Section 2-7 of the Act (Ill. Rev. Stat. 1975, ch. 37, par. 702-7) authorizes prosecution of minors who were under 17 at the time of the offense charged in several situations: If the minor is charged with a traffic, boating, fishing and game law violation or an offense punishable by fine only (subsection 207(2)); if the person was over 13 at the time of the alleged offense, it was a "crime under the laws of the State", and a designated juvenile judge determines that criminal prosecution should be allowed (subsection 2-7(3)); or if the factors just stated are present and the juvenile files a motion for criminal prosecution (subsection 2-7(5)).

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It might be argued that only the second of these possibilities fits the meaning of the clause "the institution of criminal proceedings has been permitted", especially since the exact wording of section 2-7(3) is "* * * the court may enter an order permitting prosecution under the criminal laws". (Emphasis added.) This argument is refuted by the fact that the last quoted language was added by Public Act 77-2096, effective January 1, 1973. Until then, subsection 2-7(3) provided:

"(3) If a petition alleges commission by a minor 13 years of age or over of an act which constitutes a crime under the laws of this State, the State's Attorney shall determine the court in which that minor is to be prosecuted; however, if the Juvenile Court Judge objects to the removal of a case from the jurisdiction of the Juvenile Court, * * * the matter shall be referred to the Chief Judge of the Circuit for decision and disposition.
* * *"

The words of subsection 2-8(3), "when the institution of criminal proceedings has been permitted under section 2-7", have appeared in the subsection in the statute since its enactment in 1965. The General Assembly cannot have intended the word "permitted" as used in 1965 to refer to

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the word "permitting" which would not be added to the statute until 1972.

Furthermore, the other two situations specified in section 2-7 are situations in which criminal prosecution "has been permitted under section 2-7". In the first situation such prosecution has been permitted by the statute because the case fits certain requirements; in the second it has been permitted by action of the juvenile. I conclude therefore that each of the situations in section 2-7 which allows criminal prosecution also allows disclosure of records under subsection 2-8(3).

St. Louis v. Drolet (1976), 39 Ill. App. 3d 27, has been cited as indicating a contrary result. That case, however, dealt only with the provision, in section 5 of "AN ACT in relation to criminal identification and investigation" (Ill. Rev. Stat. 1976 Supp., ch. 38, par. 206-5), allowing expunction of arrest records for persons not previously convicted who are acquitted or otherwise released without conviction. The case holds only that the expunction provision applies to apprehension of juveniles as well as to arrests of adults.

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The clear mandate of section 2-8(3) of the Juvenile Court Act is that records, even of a juvenile, may be open to the public if criminal proceedings are instituted against the juvenile. Accordingly, it is my opinion that the exceptions in section 2-8(3) of the Juvenile Court Act apply to all the situations in which criminal prosecution is allowed under section 2-7 of the Act.

Very truly yours,

A T T O R N E Y G E N E R A L