



**FILE #** ML-38637-96  
**I.D. #** 38637

RECEIVED

FEB 21 1996

**TARRANT COUNTY**

OFFICE OF THE  
 CRIMINAL DISTRICT ATTORNEY

**RQ-879**

Opinion Committee

TIM CURRY  
 CRIMINAL DISTRICT ATTORNEY  
 817/884-1400

- JUSTICE CENTER  
 401 W. BELKNAP  
 FORT WORTH, TX 76196-0201

February 13, 1996

Honorable Dan Morales  
 Attorney General  
 P.O. Box 12548  
 Austin, Texas 78711-2548

**CERTIFIED MAIL # P 583 704 142**

Dear General Morales:

Pursuant to section 402.043 of the Texas Government Code, the Tarrant County Criminal District Attorney's Office respectfully requests a written opinion, on behalf of its client, the Tarrant County Sheriff's Department, regarding the destruction of information on a juvenile detained or taken in custody by a law enforcement agency as mandated by section 58.001(c) of the Juvenile Justice Code (hereinafter referred to as the "Code").<sup>1</sup> TEX. FAM. CODE ANN. § 58.001(c) (Vernon Supp. 1996).

Under the Code, law enforcement agencies and other personnel of the juvenile justice system are to collect information<sup>2</sup>, including but not limited to, the name, date of birth, physical description, fingerprints and photographs of juvenile offenders whose conduct has been delinquent. TEX. FAM. CODE ANN. §§ 58.001(a) & 58.104. However, the information collected by the law enforcement agency or juvenile justice system personnel shall not be forwarded for incorporation into the juvenile justice information system if the child is not referred to juvenile court<sup>3</sup> within ten days after being detained or taken into custody. TEX. FAM. CODE ANN. § 58.001(c). According to section 58.001(c):

---

<sup>1</sup> The Juvenile Justice Code was amended by House Bill 327 in the 1995 Regular Session of the Texas Legislature. See H.B. 327, ch. 262, § 1 et seq., 74th Leg., R.S., 1995 Tex. Sess. Law Serv. 2517 (Vernon) (hereinafter referred to as "H.B. 327"). Most of H.B. 327 went into effect on January 1, 1996. H.B. 327 at 2592.

<sup>2</sup> Section 58.104 of the Code delineates the types of information collected on juvenile offenders. TEX. FAM. CODE ANN. § 58.104.

<sup>3</sup> "Referral to juvenile court" means the referral of a child or a child's case to the office or official, including an intake officer or probation officer, designated by the juvenile court to process children with the juvenile justice system." TEX. FAM. CODE ANN. § 51.02(12).

... If the child is not referred to juvenile court within that time, the law enforcement agency shall destroy all information, - including photographs and fingerprints relating to the child unless the child is placed in a first offender program under section 52.031 or an informal disposition under section 52.03. ... On successful completion by the child of a first offender program under section 52.031 or an informal disposition under section 52.03, the law enforcement agency shall destroy all information, including photographs and fingerprints, relating to the child. (Emphasis added).

TEX. FAM. CODE ANN. § 58.001(c). The time period by which a juvenile offender must be referred to a juvenile court is on or before the tenth (10th) day after the date the child is detained or taken into custody. TEX. FAM. CODE ANN. § 58.001(c).

Based on the reading of section 58.001(c) of the Code, the Tarrant County Sheriff's Department (hereinafter referred to as the "Sheriff's Department") is not sure of how to interpret the phrase "the law enforcement agency shall destroy all information, ..., relating to the child". Does this phrase require the Sheriff's Department to destroy "all records" on a given juvenile offender who has not been referred to juvenile court? Or, in the alternative, should a rule of reason apply as to when the Sheriff's Department must purge its information pertaining to such juvenile offender so that in effect only certain records are destroyed?

In attempting to interpret such statutory language, the Sheriff's Department has discovered several problems and concerns with the mandate imposed by section 58.001(c) of the Code. One of the main areas of concern and difficulty in compliance with this section is how to handle the records in instances when a juvenile and an adult are apprehended by a peace officer, having found to have committed a crime, and are arrested for such violation at the same time. In the completion of the arrest report, both the adult's and the juvenile's name will be listed as well as other information pertaining to both individuals. If such juvenile offender is not referred to a juvenile court, how is the Sheriff's Department suppose to handle the purging of the arrest record? Should the Sheriff's Department take one or more the following steps in order to satisfy section 58.001(c) of the Code:

- (a) destroy the arrest record since the juvenile offender's name and other information is included in such report? or

- (b) alter the arrest record so as to remove any references to the juvenile when such child is not referred to juvenile court after being detained or taken into custody? or
- (c) restructure or develop the arrest record so that the information regarding the juvenile offender and adult are maintained independently?

None of these steps, however, address how the law enforcement agency is to record information to indicate that the adult was not apprehended alone but a child was also present. Further, if the Sheriff's Department is to destroy all references to a juvenile who is not referred to juvenile court or completes a first offender program or on informal disposition, how can the records be disposed of without directly impacting the prosecution of the adult offender's case in our present court system? Similar concerns may also develop when there is more than one juvenile is apprehended and detained or taken into custody by peace officers. There is the possibility that one or more of the juvenile offenders apprehended is not referred to juvenile court, at that point, how is the Sheriff's Department suppose to maintain and destroy its records in response to section 58.001(c)? In addition to the arrest record, the Sheriff's Department is likely required under the existing language of this statutory provision to purge all information on the juvenile in the following other types of records:

- (1) Master Index records.
- (2) Offense reports.
- (3) Witness reports, affidavits and statements. (In some cases, there may be multiple defendants, including co-defendants).
- (4) Co-actor (adult or juvenile) statement of facts.
- (5) National Crime Reporting (NCR) reports.
- (6) Uniform Crime Reports (UCR) backup reporting information.
- (7) Log sheets.
- (8) Daily dispatcher reports.
- (9) 9-1-1 Log, Service Number database and incident number.
- (10) Officer/Patrolman daily logs and field notes.
- (11) AFIS print files.
- (12) Actor/Custody/Prisoner Activity report.
- (13) Reading of Juvenile's Rights records by deputy, field signed documents and officer information sheets.
- (14) Damage reports to vehicle or property, risk management reports, and officer injury reports.
- (15) Property Inventory reports, including property room inventory, evidence property inventory, vehicle inventory, vehicle pull sheets, costs of

- removing vehicle reports (actor and/or driver) and disposing of property/evidence.
- (16) Officer field activity reports, including arrest and release in field records.
  - (17) Medical Examiner's Office records, including trace evidence, evidence file, evidence tags, evidence cards and evidence envelopes.

Though this list is lengthy, it likely does not include every type of record that registers information pertaining to the juvenile offender but rather, is a large representative sample of the many different records maintained by the Sheriff's Department concerning juveniles. Is the Sheriff's Department required to destroy the information on the juvenile in all of these records in order to comply with the statutory language of section 58.001(c) of the Code?

If the Sheriff's Department is required to destroy all records, how is the destruction to take place in light of the various ways that records can be stored and maintained with the advancement of technology. Today, information is no longer maintained solely on paper and may be maintained on computer disks. In some instances, glass disks are used to store information. How should the Sheriff's Department go about handling the destruction of such records in accordance with the mandatory language contained in section 58.001(c) of the Code. To the extent that only portions of records should be altered, it should be recognized that some law enforcement agencies may incur tremendous expenses to alter, write-over or rewrite the records because of the system utilized to record and maintain its various record-keeping responsibilities. Is there a time frame as to when such records should be destroyed to satisfy the statutory requirements of the Code?

The purging of all information on a child detained or taken into custody but not referred to juvenile court directly impacts on other components of the Sheriff's Department's operations. If the Sheriff's Department is to dispose of all the information pertaining to a juvenile, then how should the following issues be handled by this law enforcement agency:

- (1) Tracking to verify if the juvenile is a first offender for the first offender program?
- (2) Unable to evaluate continuing contacts with police and/or suspicious activity?

- (3) Loss of civil lawsuit information, such as, false arrests, liability, not advised of rights, use of excessive force and other civil rights violations?
- (4) Loss of leads in homicide, rape, robbery, and other major case investigations without fingerprints and other data?
- (5) Future missing person identification, for instance, for unidentifiable persons found?
- (6) Handling of hospital records relative to arrests where there are injuries that are or may not be relative to the case but were incidental to the arrest?
- (7) Tracking for the year-end certification report to the Juvenile Board to demonstrate that juvenile offender files were destroyed when the child is not referred to a juvenile court on or before the tenth day after the date the child is detained or taken into custody?
- (8) Handling of local, regional and the Texas Department of Safety fingerprints files?
- (9) Handling of fingerprints identified by the Medical Examiner of an unknown child as a result of a disaster or homicide?
- (10) Computer tracking information on forfeitures, including court minutes, court orders and disposition records?
- (11) Testimony of officers or other law enforcement personnel when responding to questions on the witness stand about an adult's or juvenile's companions or other individuals involved in a crime. Is the officer required to state that he/she recalls the information or in the alternative, state that such information may not be disclosed pursuant to section 58.001(c) of the Code?

Under the reforms of the Code, the Sheriff's Department further inquires whether it is permissible for it or the Police Department to operate first offender programs. Or, is the Juvenile Board of the county required to grant permission to another type of organization to operate the first offender program?

Section 58.001(c) of the Code mandates the removal of all references to a juvenile actor /offender not referred to juvenile court following the child's detention or

General Morales  
February 13, 1996  
Page Six

taking into custody. If a law enforcement agency, such as the Sheriff's Department, is required to comply with this statutory provision, in effect, it will lose control over its property, alter written evidence, destroy the integrity of affidavits and other records, which may ultimately impede the criminal conviction of companion cases, where more than one person is filed as an adult or juvenile in the district court. Furthermore, if such information on a juvenile is destroyed upon completion of a first offender program or informal disposition, there will be no way for the Sheriff's Department to determine if a child has been first offender or not. In effect, a juvenile could possibly have the option to participate in a first offender program on more than one occasion without the existence of the records to demonstrate to the contrary.

For all the issues raised above, we respectfully request a written opinion regarding the interpretation of section 58.001(c) of the Juvenile Justice Code as to whether all records are to be destroyed if a juvenile is not referred to juvenile court within the prescribed time period or does the rule of reason apply so that only certain records are to be destroyed. Enclosed is the required brief in response to this request.

If you need additional information, please write the undersigned at the address on the letterhead above or call at (817) 884-1233.

Sincerely,



Tim Curry  
Criminal District Attorney  
Tarrant County, Texas

TC/lmf  
Enc.

cc: Sheriff David Williams  
Chief Deputy Hank Pope  
Marvin Collins, Chief, Civil Division