

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

November 16, 2018

Mr. John Davis, Executive Director
Department of Human Services
Post Office Box 352
Jackson, Mississippi 39205-0352

Re: Clarification on Section 37-11-29(2) and Section 43-21-259 of the Mississippi Code Annotated

Dear Mr. Davis:

Attorney General Hood is in receipt of your request for an official opinion, and it has been assigned to me for research and reply.

Background and Issues Presented

Your request states:

Our office recently received a request from a local school to release the felony records of juveniles who are under the jurisdiction of a Youth Court and in the custody of the Division of Youth Services (DYS). The school district argues that a juvenile's felony records should be released automatically in accordance with Miss. Code Ann. Section 37-11-29(2).

Miss. Code Ann. Section 37-11-29(2) provides, in pertinent part, "whenever any person who shall be an enrolled student in any school or educational institution in this state supported in whole or in part by public funds, or who shall be an enrolled student in any private school or educational institution, is arrested for, and lawfully charged with, the commission of any crime and convicted upon the charge for which he was arrested, or convicted of any crime charged against him after his arrest and before trial, the office or law enforcement department of which the arresting officer is a member, and the justice court judge and any circuit judge or court before whom such student is tried upon said charge or charges, shall make or cause to be made a report thereof to the superintendent or the president or chancellor, as the case may be, of the

school district or other educational institution in which such student is enrolled.”

However, in accordance with Miss. Code Ann. Section 43-21-259, any records, including valid and invalid complaints, and the contents thereof maintained by the Department of Human Services, or any other agency, shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261. Section 43-21-261 provides that records involving children shall not be disclosed, other than to necessary staff of the youth court or a Court-Appointed Special Advocate (CASA) volunteer that may be assigned in an abuse and neglect case, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure.

In 1993, the Office of the Attorney General issued an opinion regarding a similar issue. At that time, the Attorney General’s Office opined that if the juvenile is under the jurisdiction of the youth court, Section 43-21-261 governs the release of the juvenile records. Therefore, “a youth court judge may authorize release of information to the schools concerning juvenile records of any student when the judge finds that such disclosure is required for the public safety and finds that the health or safety of that student or other students in the school may be affected if the information is not made available to school officials.” Op. Atty. Gen. No. 93-0779, Bennett, November 3, 1993.

Should MDHS DYS comply with Miss. Code Ann. Sections 43-21-259 and 43-21-261 when releasing juvenile records?

Response

Section 37-11-29(2) does not, in our opinion, conflict with Sections 43-21-259 and 43-21-261 of the Mississippi Code.

As you note, Miss. Code Ann. Section 37-11-29(2) states, in pertinent part:

(2) Whenever any person who shall be an enrolled student in any school or educational institution in this state supported in whole or in part by public funds, or who shall be an enrolled student in any private school or educational institution, is arrested for, and lawfully charged with, the commission of any crime **and convicted upon the charge for which he was arrested, or convicted of any crime charged against him** after his arrest and before trial, the office or law enforcement department of which the arresting officer is a member, and the justice court judge and any circuit judge or court before whom such student is tried upon said charge

or charges, shall make or cause to be made a report thereof to the superintendent or the president or chancellor, as the case may be, of the school district or other educational institution in which such student is enrolled.

(Emphasis added.)

It is important to note that Miss. Code Ann. Section 43-21-259 and Section 43-21-261 are part of the Youth Court Records Statutes. Section 43-21-259 prescribes that all youth court records are confidential, and Section 43-21-261 sets forth the conditions for which disclosure of youth court records will be made.

In MS AG Op., Beckett (May 22, 1998), this office opined that:

Section 37-11-29 cannot apply to students who are in the jurisdiction of the youth court since the youth court does not “try” or “convict” youths; it adjudicates them as delinquents. The courts specifically mandated in the section to provide information to the school officials are the justice court and the circuit court; there is no mention of the youth court.

The Beckett opinion correctly states that the courts which are specifically mandated to provide information to school officials are the justice court and circuit court. The statute requires the office or law enforcement department that the arresting officer is a member of, as well as the justice court judge or circuit court judge before whom the student is tried, to disclose information in accordance with the other parameters laid out in Miss. Code Ann. Section 37-11-29. The statute makes no mention of the youth court, or for that matter, the Division of Youth Services. Therefore, we conclude that Miss. Code Ann. Section 37-11-29 does not apply to the Division of Youth Services.

Further, this office has previously opined in MS AG Op., Bennett (November 3, 1993):

Sec[ti]on 43-21-261 provides that records involving children shall not be disclosed, other than to necessary staff of the youth court, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed. Sec. 43-21-105(d) defines “child” as “a person who has not reached his eighteenth birthday.” Sec. 43-21-255 . . . includes law enforcement records in the records which may not be released except as provided in Section 43-21-261. Therefore records held by law enforcement agencies involving juveniles under age 18 could not be released to the schools pursuant to Section 37-11-29 without also following the provisions of Section 43-21-261,

However, Sec[ti]on 43-21-261 provides, in pertinent part:

. . . Such court orders for disclosure shall be limited to those

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instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety, or the functioning of the youth court and then only to the following persons: (Emphasis added).

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(g) To any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health or safety of a child and that such disclosure is in the best interests of the child.

It is our opinion that a youth court judge may authorize release of information to the schools concerning juvenile records of any student when the judge finds that such disclosure is required for the public safety and finds that the health or safety of that student or other students in the school may be affected if the information is not made available to school officials.

OFFICIAL OPINION
As stated above, Section 37-11-29 does not apply to students who are under the jurisdiction of the youth court, nor does it apply to the Division of Youth Services. The Division of Youth Services should not release any information pertaining to students attending any school or educational institution unless it is doing so pursuant to Section 43-21-259 and Section 43-21-261.

If we can be of further assistance, do not hesitate to call us.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben
Special Assistant Attorney General