

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171

<http://www.ago.vermont.gov>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

December 31, 2020

Chair White, Senate Government Operations Committee
Chair Copeland Hanzas, House Government Operations Committee
Vermont General Assembly
115 State Street
Montpelier, VT 05633-5301

Sent via email jwhite@leg.state.vt.us and scopelandhanzas@leg.state.vt.us

Dear Chair White and Chair Copeland Hanzas,

We write to request that the Legislature consider clarifying the law concerning the confidentiality of records regarding a juvenile who is potentially entering Vermont's criminal justice system. The goal of this clarification would be to harmonize the approach taken with regards to juveniles under the jurisdiction of family court with the Vermont Public Records Act. To ensure the trust of the public, law enforcement must honor the public's right to know—but it must not do so at the expense of the confidentiality owed to young people in juvenile court. There are times when these obligations compete, and law enforcement must make judgment calls about when to be transparent and when to protect young people.

The law is clear that government records related to public safety and security are matters of public record, subject only to the exceptions of the Public Records Act, such as [1 V.S.A. § 317\(c\)\(5\)\(A\)](#). In fact, the Public Records Act explicitly provides that "records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in [23 V.S.A. § 2302](#); and records reflecting the charge of a person *shall be public*." [§ 317\(c\)\(5\)\(B\)](#) (emphasis added).

The law is also clear that law enforcement information regarding individuals subject to the jurisdiction of the family court in juvenile proceedings is confidential. *See* [33 V.S.A. §§ 5110, 5117](#).

The confusion arises when law enforcement entities generate records regarding a young person before that person is subject to family court jurisdiction. A plain reading of the law suggests that these are public records (subject to an exception such as [§ 317\(c\)\(5\)\(A\)](#)) because the person is not yet under the jurisdiction of family court, and because the Public Records Act provides that such records are public.

There could be times, however, when a young person will inevitably become subject to family court jurisdiction but is not yet. For example, law enforcement could choose to charge a young person with an offense for which initial jurisdiction lies in family court. *See, e.g.,* [33 V.S.A. §§ 5102\(2\)\(C\), 5201\(c\) and \(d\)](#). Once that decision is made, a young person may not technically be subject to the jurisdiction because the charge is yet to be filed—but the jurisdiction and its accompanying confidentiality protections are inevitable. There are other times that law enforcement records are

generated where there will never be jurisdiction in family court. For example, law enforcement could decide not to charge a person with any offense, so no jurisdiction will attach, or to charge an offense for which initial jurisdiction could lie in adult court. *See, e.g.*, [33 V.S.A. §§ 5102\(2\)\(C\), 5201\(c\), 5280\(b\)](#). There are still other instances when no decision about charging has been made and law enforcement's legal obligations are even murkier.

This gray area in the law has become a source of confusion. In following the dictates of the Public Records Act (especially [§ 317\(c\)\(5\)\(B\)](#)), in some cases law enforcement could be undermining the confidentiality protections owed to juveniles under Title 33. On the other hand, in trying to protect juveniles, law enforcement could be contravening the Public Records Act.

We ask for clarity on when the confidentiality protections arise for young people who are the subject of law enforcement records. The aim should be for law enforcement to be comfortably within the bounds of the law while protecting both the public's right to know and the privacy of Vermont's young people.

The Attorney General's Office is happy to work with legislative counsel and the committees of jurisdiction to propose language to clarify this law. We remain committed to transparency and the goal of protecting adolescents.

Thank you for your consideration.

Respectfully,



David Scherr

Cc: Commissioner Michael Schirling, Michael.Schirling@vermont.gov
Colonel Matthew Birmingham, Matthew.Birmingham@vermont.gov
Chittenden County State's Attorney Sarah George, Sarah.George@vermont.gov
Charity Clark, Chief of Staff, Charity.Clark@vermont.gov
Josh Diamond, Deputy Attorney General, Joshua.Diamond@vermont.gov