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You have requested an opinion from this Office that addresses the following issue:

Are the law enforcement records related to a criminal case involving a juvenile whose case in adjudicated in criminal court open to public inspection and/or copying pursuant to the Tennessee Public Records Act?

#### I. Background Information

On December 3, 2009, a public records request was made to the Knox County Sheriff's Department by a representative for a local media outlet for the following:

- 1) the video or audio taped interrogation of Amanda Dawn McGhee, conducted by the Knox County Sheriff's office at the Richard L. Bean Juvenile Detention Center on or around July 2, 2007 and played in open court on February 25, 2008;
- 2) a recording of the 911 call or calls placed by relatives of Alisa McGhee at or around 2:45 p.m. on July 1, 2009; and
- 3) Amanda McGhee's booking shot.

It is the understanding of this Office that on or around July 1, 2007, Amanda McGhee, who at the time was 15 years of age, was arrested and charged with murdering her father and stepmother. From approximately July 2007, until February 2008, Ms. McGhee remained in the custody of the Knox County Juvenile Court. In late February 2008, a transfer hearing was held and Ms. McGhee's case was transferred to criminal court for prosecution. On April 9, 2008, Ms. McGhee was indicted on two (2) counts of first degree murder and on July 20, 2009, Ms. McGhee pled guilty in criminal court to two (2) counts of second degree murder.

Because Ms. McGhee's case was transferred to criminal court for prosecution pursuant to Tenn. Code Ann. Section 37-1-134, it is the opinion of this Office that the law enforcement records and files related to the investigation of this case are public records.

#### II. Analysis

Traditionally in this country, juvenile court proceedings and juvenile records have been afforded more confidentiality than those proceedings and records related to cases adjudicated in criminal court. Generally, juvenile proceedings and records are shielded from public scrutiny in an effort to effectuate the goal of the juvenile court system, which is treatment and rehabilitation. The Tennessee Court of Appeal, in *State v. James*, said the following:

we recognize that the statutes creating the juvenile courts afford juveniles more privacy than other litigants because juvenile proceedings are intended to shield juveniles from the taint of criminality and because the purpose of juvenile proceedings is treatment and rehabilitation rather than punishment.

*State v. James*, 1995 WL 468433 at \* 5 (Tenn. Ct. App. August 9, 1995).

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The Ninth Circuit Court of Appeals said the following in a recent opinion relative to the public's ability to access federal proceedings and records related to juveniles:

The norm in juvenile delinquency adjudications is closed proceedings and sealed records. Such confidentiality has historically been one of the most significant factors differentiating juvenile adjudications, which are designed to be rehabilitative, from adult criminal proceedings, which are designed to be punitive.

*United States v. Juvenile Male*, 2010 WL 10970 at \*9 (9<sup>th</sup> Cir. January 5, 2010).

While juvenile delinquency proceedings are traditionally adjudicated in juvenile court, the Tennessee General Assembly, like many other state and federal legislative bodies, acknowledged through legislation that there are times when certain acts committed by juveniles warrant being adjudicated in criminal court. Tenn. Code Ann. Section 37-1-134 provides the basis upon which a juvenile in Tennessee can be transferred from juvenile court and tried as an adult in criminal court. The provision reads:

- (a) After a petition has been filed alleging delinquency based on conduct that is designated a crime or public offense under the laws, including local ordinances, of this state, the court, before hearing the petition on the merits, may transfer the child to the sheriff of the county to be held according to law and to be dealt with as an adult in the criminal court of competent jurisdiction. The disposition of the child shall be as if the child were an adult if:
- (1) The child was sixteen (16) years or more of age at the time of the alleged conduct, or the child was less than sixteen (16) years of age if such child was charged with the offense of first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping or an attempt to commit any such offenses. The district attorney general may not seek, nor may any child transferred under the provisions of this section receive, a sentence of death for the offense for which the child was transferred;
  - (2) A hearing on whether the transfer should be made is held in conformity with §§ 37-1-124, 37-1-126 and 37-1-127;
  - (3) Reasonable notice in writing of the time, place and purpose of the hearing is given to the child and the child's parents, guardian or other custodian at least three (3) days prior to the hearing; and
  - (4) The court finds that there are reasonable grounds to believe that:
    - (A) The child committed the delinquent act as alleged;
    - (B) The child is not committable to an institution for the developmentally disabled or mentally ill; and
    - (C) The interests of the community require that the child be put under legal restraint or discipline.
- (b) In making the determination required by subsection (a), the court shall consider, among other matters:
- (1) The extent and nature of the child's prior delinquency records;
  - (2) The nature of past treatment efforts and the nature of the child's response thereto;
  - (3) Whether the offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
  - (4) Whether the offense was committed in an aggressive and premeditated manner;
  - (5) The possible rehabilitation of the child by use of procedures, services and facilities currently available to the court in this state; and
  - (6) Whether the child's conduct would be a criminal gang offense, as defined in § 40-35-121, if committed by an adult.

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Based upon the fact that Ms. McGhee's case was ultimately adjudicated in criminal court, it is assumed that the abovementioned factors were considered and the enumerated procedure followed.

With regard to the public's right to access records related to a juvenile whose case has been transferred from juvenile court to criminal court, the court in *United States v. Juvenile Male* said the following:

Historically, information from juvenile adjudications has been made public only when a juvenile's case is transferred to adult criminal court for *punitive purposes*. . . In certain circumstances, courts transfer such cases to adult court, shifting the juvenile out of a rehabilitative system entirely and into a punitive one. . . A court's decision to send a juvenile to adult court is thus based in part on a prediction that rehabilitation is improbable. A decision that a juvenile is beyond rehabilitation is a decision to expose him to the punitive elements of adult court, including the publication of his criminal record.

*Male Juvenile*, 2010 WL 10970 at \*11.

It is the opinion of this Office that it is not only the juvenile's criminal record that is accessible to the public once a case is transferred from juvenile court to criminal court, but it is all of the records related to the case that are not made confidential by a provision within the law. Tenn. Code Ann. Section 37-1-154, which is the provision within the Code that addresses access to law enforcement records related to juveniles and juvenile court proceedings and the provision directly related to the records at issue, makes it clear that law enforcement records related to cases adjudicated in juvenile court are generally not accessible to the public, while those records related to cases that are transferred to criminal court are accessible. The pertinent part of the provision reads:

- (a) Unless a charge of delinquency is transferred for criminal prosecution under § 37-1-134, the interest of national security requires or the court otherwise orders in the interest of the child, the law enforcement records and files shall not be open to public inspection or their contents disclosed to the public; but inspection of the records and files is permitted by:
  - (1) A juvenile court having the child before it in any proceeding;
  - (2) Counsel for a party to the proceeding;
  - (3) The officers of public institutions or agencies to whom the child is committed;
  - (4) Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties; and
  - (5) A court in which such child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which such child is committed, or by a parole board in considering such child's parole or discharge or in exercising supervision over such child.

As stated previously, it is assumed that the provisions of Tenn. Code Ann. Section 37-1-134 were adhered to and as such, it is the opinion of this Office that the provision cited above allows for the public to inspect and/or receive copies of the law enforcement records related to a juvenile when the juvenile's case has been transferred from juvenile court to criminal court.

For the abovementioned reasons, it is this Office's opinion that the law enforcement records requested by Jupiter Entertainment are public records that should be made available to a representative from Jupiter as promptly as possible.

Please feel free to call me at (615) 401-7891 if you have any further questions.

Elisha D. Hodge  
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