

1981 S.C. Op. Atty. Gen. 74 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-50, 1981 WL 96576

Office of the Attorney General

State of South Carolina

Opinion No. 81-50

May 27, 1981

**\*1 SUBJECT: Confidentiality of Family Court Records—Access by U. S. Probation officers.**

U. S. Probation Officers are required to prepare a presentence report on a defendant before the District Court. In order to obtain information on a defendant from a Family Court, an order releasing juvenile conviction records would have to be obtained from the Family Court Judge in each case.

TO: Louis L. Rosen  
Assistant Director  
South Carolina Court Administration

**QUESTION:**

U. S. Probation Officers are required, by [Rule 32, Federal Rules of Criminal Procedure](#), to prepare a presentence report on a defendant before the U. S. District Court. By statute, records of juvenile convictions in the Family Court cannot be released by the Court nor by Various state agencies involved without permission of the Family Court. Your letter, in response to an inquiry from Cameron B. Littlejohn, Jr., Assistant United States Attorney, requested an opinion as to whether or not a general order, issued by the Chief Family Court Judge of each circuit, could allow officers access to the records without each case having to be examined individually and a separate order issued.

**OPINION:**

In the absence of a statute or rule of court to the contrary, Probation Officers will have to obtain an order from a Family Court Judge in each case to have access to conviction records of a defendant. This applies to records kept by the Family Court, the Department of Youth Services, and the Department of Juvenile Placement and Aftercare. [Section 14–21–30, CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#), as amended.

The Family Court Act in several instances provides for the separation of juvenile delinquency cases from criminal cases involving adults. The general intent from the statute appears to be that juveniles should be treated separately from adults; that an adjudication of their delinquency should not have the same permanent effect that a conviction for a criminal act would have for an adult; and that records of juvenile convictions held by the family Court and the various state agencies coming into contact with the juvenile should be kept confidential.

Examples of this may be found in several sections of the Act. [Section 14–21–590, CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#), as amended, deals with the arrest, custody, transportation, and release of juveniles charged with delinquent acts. In Subsection C it is provided that transportation of juveniles shall be done separately from the transportation of adults charged with criminal acts. Subsection D requires that peace officers' records of arrests and other involvement with juveniles be kept separately from adult records, and not be opened to public inspection, except as to those governmental agencies authorized by the Family Court Judge to have access. [Section 14–21–610 of the CODE](#) requires that Family Court hearings be held separately from hearings involving adults, and be held without a jury. Section 14–21–620(b) provides that no adjudication of the status of a child, including delinquency, should be deemed a conviction, nor should the adjudication operate to impose civil disabilities

ordinarily resulting from convictions. Further, that Section states that the disposition of a juvenile's criminal case, or the evidence presented in court at the disposition hearing, should not be allowed to disqualify the child from a future Civil Service application or appointment.

**\*2** In addition, at least one of the more recent amendments, enacted with the establishment of the Judicial Circuit Family Court System, is consistent with the above Sections. Section 14–21–420, which provides for the Judges, their reporters and secretaries, also states in Subsection D:

Records in the family court concerning juveniles shall be kept confidential as prescribed in Act 1195 of 1968 [appearing in the parent volume as Chapter 21 of Title 14.]

As far as can be determined, there is one exception to the general rule regarding the treatment of juveniles. [Section 14–21–510, CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#), as amended, provides that when a criminal case involving a juvenile is transferred to the Court of General Sessions, where the child may be tried as an adult, those rights commonly associated with adult cases, including a preliminary hearing and bail, shall be granted, and, further, the confidentiality provisions of [Section 14–21–30 of the CODE OF LAWS](#) shall not apply.

[Section 14–21–30 of the CODE](#), as amended in 1980, sets forth the basic confidentiality requirements that deal with juvenile conviction records in the Family Courts, and that apply to the Court, the Department of Youth Services, and the Department of Juvenile Placement and Aftercare. That Section provides that such records are confidential, and access to them may only be had by persons having a legitimate interest, and then only by authorization of the Family Court Judge:

The court shall make and keep records of all cases brought before it and shall devise and cause to be printed such forms for social and legal records and such other papers as may be required. The official juvenile records of the courts, the Department of Youth Services and the Department of Juvenile Placement and Aftercare shall be open to inspection only by consent of the judge to persons having a legitimate interest but shall always be available to the legal counsel of the juvenile. All information obtained and social records prepared in the discharge of official duty by an employee of the court, Department of Youth Services and Department of Juvenile Placement and Aftercare shall be confidential and shall not be disclosed directly or indirectly to anyone, other than the judge or others entitled under this chapter and Chapters 15 and 17 of Title 24 to receive such information unless and until otherwise ordered by the judge. Provided, however, that such records shall be open to inspection without the consent of the judge where the records are necessary to defend against an action initiated by a juvenile. The name, identity or picture of any child under the jurisdiction of the court, pursuant to Article 5 of Chapter 21 of this title, shall not be made public by any newspaper, radio or television station except as authorized by order of the court nor shall the fingerprints of any child be taken without any order from the judge; provided, however, that the Department of Youth Services may fingerprint a juvenile upon his commitment to a juvenile correctional institution; provided, further, such fingerprints shall remain confidential information and shall not be transmitted to files of the State Law Enforcement Division or the Federal Bureau of Investigation.

**\*3** More specifically, [section 14–21–30](#) may be broken down as follows. It concerns the three agencies and their employees that produce records used in Family Court proceedings: the Family Court, the Department of Youth Services, and the Department of Juvenile Placement and Aftercare. These three entities produce two types of records that are protected by the Section, official juvenile records, and ‘all information obtained and social records prepared in the discharge of the official duty by an employee of’ the Court, the Department of Juvenile Placement and Aftercare, or the Department of Youth Services. Those records are accessible as follows:

1. to the Family Court Judge;
2. to the legal counsel of the juvenile;
3. to persons entitled to access under Title 24, Chapters 15 and 17 of the CODE OF LAWS OF SOUTH CAROLINA;

4. When necessary to defend an action brought by the juvenile; or
5. to persons having a legitimate interest in the records, by consent of the Family Court Judge.

Of course, records produced by the Court, the Department of Juvenile Placement and Aftercare, or the Department of Youth Services which do not fall into either of the two categories above, would be accessible without the permission of the Family Court Judge. However, there can be no dispute that the dispositional status of the juvenile by the Family Court falls within either of the two protected categories of records.

A review of the provisions of Chapters 15 and 17 of Title 24 of the CODE OF LAWS does not provide special access to Family Court records by law enforcement agencies, absent authorization by the Family Court Judge. Chapter 15 of Title 24, found at Sections 24-15-10 *et seq.*, deals with the Department and the Board of Youth Services. Chapter 17 of Title 24, found at Section 24-17-10, *et seq.*, consists of the Interstate Compact on Juveniles.

Finally, at present there does not appear to be a statute or rule of court authorizing the Chief Judge of each Circuit Family Court the power to issue a 'blanket' order granting the access sought. The Chief Judges are directed to perform such administrative duties as may be prescribed by the Chief Justice of the Supreme Court of South Carolina. Section 14-21-420, CODE OF LAWS OF SOUTH CAROLINA (1976), as amended.

Therefore, in accordance with the provisions of [Section 14-21-30 of the CODE OF LAWS](#), and absent a statute or rule of court to the contrary, law enforcement officers, such as those individuals employed by the U. S. Probation Office, will have to present to the Court information establishing themselves as persons with a legitimate interest entitled to access to the Family Court records, and obtain a court order granting them such access in each individual case.

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