STATE OF NEBRASKA

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DON STENBERG
ATTORNEY GENERAL

NO.
STATE OF NEBRASKA
OFFICIAL
SEP 20 1996
DEPT. OF JUSTICE

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

DATE: September 20, 1996

SUBJECT: Retention of Juvenile Fingerprints for AFIS

REQUEST BY: Col. Ron Tussing, Superintendent
Nebraska State Patrol

WRITTEN BY: Don Stenberg, Attorney General
Laurie Smith Camp, Deputy Attorney General

Dear Col. Tussing:

You note that unsolicited juvenile fingerprints are now forwarded to the Nebraska State Patrol's records repository either by mail or by electronic transmission via LiveScan booking station. You ask whether the Patrol can retain such fingerprints for investigation purposes. We conclude that such fingerprints may be retained by the Patrol for the purpose of assisting law enforcement officers, county attorneys, and sentencing judges in the investigation of crimes and the prosecution and sentencing of criminal defendants.

Neb. Rev. Stat. § 43-252 (1993) states:

> (1) The fingerprints of any juvenile less than fourteen years of age, who has been taken into custody in the investigation of a suspected unlawful act, shall not be taken unless the consent of any district, county, associate county, associate separate juvenile court, or separate juvenile court judge has first been obtained.
> (2) If the judge permits the fingerprinting, the fingerprints must be filed by law enforcement officers in files kept separate from those of persons of the age of majority.

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> (3) The fingerprints of any juvenile shall not be sent to a state or federal depository by a law enforcement agency of this state unless: (a) The juvenile has been convicted of or adjudged to have committed a felony; (b) the juvenile has unlawfully terminated his or her commitment to a youth development center; or (c) the juvenile is a runaway and a fingerprint check is needed for identification purposes to return the juvenile to his or her parent.

Neb. Rev. Stat. § 43-2,105 (Supp. 1995) states:

> When the court issues an order setting aside the adjudication under section 43-247, the order shall also require that all records relevant to the adjudication be sealed. Such records shall not be available to the public except upon the order of the court for good cause shown. The court order may include all records of the court, law enforcement officers, county attorneys, or any institution, person, or agency which may have such records. Notice of hearing to set aside the adjudication and seal the records shall be given to the county attorney and any person, agency, or institution that may be affected by such order by delivering by hand or by mailing a copy of the request by registered or certified mail, together with the order of the court which states the time for hearing, to the last-known address of such person, agency, or institution at least ten days before the date for hearing. Any person who fails to comply with the order of the court as provided for in section 43-2,104 or knowingly reveals information covered by such order may be held in contempt of court, <u>except that this section does not prohibit law enforcement agencies from maintaining data to assist law enforcement officers, county attorneys, and sentencing judges in the investigation of crimes and the prosecution and sentencing of criminal defendants.</u> [Emphasis added].

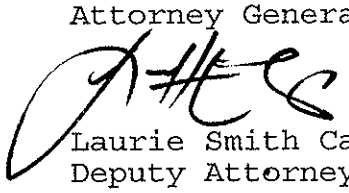
The underlined portion of the above statute was added by LB371 in 1995. Even before the 1995 amendment, the Nebraska Supreme Court recognized that juvenile courts did not have the statutory power to order expungement of records maintained by law enforcement agencies and related to juvenile adjudications. ***In Re Interest of P.L.F.***, 218 Neb. 68 (1984). The Court recognized the "utility of the records for law enforcement purposes" and "the interests of society" when reaching its conclusion. ***Id***. at 70-71.

When unsolicited juvenile fingerprints are received by the Patrol, the Nebraska statutes place no burden on the Patrol to investigate whether or not the party sending the prints complied in all respects with the provisions of § 43-252. Neither do the statutes require the Patrol to destroy prints which may have been sent to the Patrol contrary to the provisions of § 43-252. If the Patrol is aware that the prints are those of a juvenile under 14 years of age, the Patrol should file or electronically code the prints in a manner separate from prints of persons of the age of majority.

We conclude that juvenile fingerprints sent to the Nebraska State Patrol, either through the mail or electronically, can be maintained by the Nebraska State Patrol and can be entered on the Patrol's Automated Fingerprint Identification System (AFIS) database for the purpose of assisting law enforcement officers, county attorneys, and sentencing judges in the investigation of crimes and the prosecution and sentencing of criminal defendants.

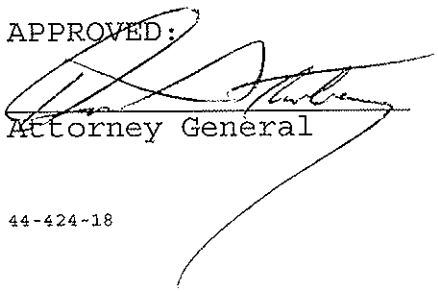
Sincerely,

DON STENBERG
Attorney General



Laurie Smith Camp
Deputy Attorney General

APPROVED:



Attorney General

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