

**INITIAL FINDINGS AND RECOMMENDATIONS
OF
THE JUVENILE RECORDS TASK FORCE**

**Presented to the General Assembly and the Governor
February 15, 2008**

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Summary of Findings and Recommendations

1. Juveniles should know the consequences of their acts. Therefore, the Task Force recommends requiring that affected juveniles be given notice that records of their offenses may be maintained and disclosed.
2. Under current law, a juvenile court may expunge only its own records relating to juvenile offenses, while other courts may expunge all public records relating to adult criminal charges. Therefore, the Task Force recommends that the reach of juvenile court expunction powers should be equal to that of other courts.
3. Under current law, juvenile fingerprints are maintained, and juvenile records possibly disclosed, according to the offense juveniles are charged with rather than the ultimate disposition of the case. The Task Force recommends that juvenile fingerprints and records be maintained and disclosed based upon the ultimate disposition of the case, that is, only if a juvenile is actually found guilty of an offense.
4. Current law requires local law enforcement to maintain juvenile fingerprint records based upon the ultimate disposition of a case, which is unworkable because local law enforcement has no way of knowing the ultimate disposition of most cases. Therefore, the Task Force recommends that the law be simplified so that local law enforcement must destroy most juvenile fingerprint records within six months of a juvenile's twenty-first birthday but may retain records of more serious offenders indefinitely.
5. Only the records of serious offenses should follow juveniles into adulthood. Therefore, the Task Force recommends maintaining and disclosing only records of juvenile offenses that would, if committed by an adult, constitute a Class A felony or the Class B felonies of aggravated kidnapping, aggravated robbery, rape, and aggravated sexual battery.
6. It is important to take into account the age of a juvenile at the time of the commission of an offense when determining whether to later disclose records relating to the offense. The Task Force has concluded that such records should be released only if a juvenile is sixteen years or older when the offense is committed.
7. Current law relating to maintenance and disclosure of juvenile records is based on fingerprinting, while technology is developing other methods of identifying an individual. The Task Force recommends clarifying that the law relating to maintenance and disclosure of juvenile records is the same regardless of whether a juvenile is identified by fingerprinting or a more advanced technology, such as DNA testing or retinal scanning.

The Juvenile Records Task Force

For decades judges, lawyers, and others associated with Tennessee's juvenile justice system have in good faith assured juveniles who appear in delinquency proceedings that records associated with those proceedings would remain confidential and would not stigmatize the juveniles later in life. In recent years, however, a growing number of employers, primarily serving various vulnerable populations, has been granted access via fingerprinting to criminal histories of employees and volunteers.

It was probably inevitable that protection of the confidentiality of juveniles' records would collide with the protection of other vulnerable populations. In late 2006, the public learned that the Tennessee Bureau of Investigation (TBI) had released a handful of adults' juvenile arrest records in response to background check requests from employers. As a result, two adults lost their jobs and another experienced difficulty getting licensed as a firefighter.

In June 2007, the Legislature created the Juvenile Records Task Force in response to calls from the media, the general public, and individual stakeholders and advocates to address the issues related to maintenance and confidentiality of juvenile delinquency records. Composed of legislators, juvenile court judges, and members from affected governmental and judicial agencies, the Task Force was charged with examining Tennessee laws relating to the maintenance of juvenile fingerprint and adjudicatory records and the disclosure of juvenile offenses for employment or volunteer purposes. The Task Force was directed to report its findings and recommendations to the General Assembly and the Governor by February 15, 2008.

Following its formation in October 2007, the Task Force met approximately every other week through late January 2008. Its membership reflected a diverse set of viewpoints. In addition, the Task Force received valuable input from other stakeholders, including representatives from the District Attorney's Conference, the Public Defender's Conference, and local law enforcement.

It quickly became clear that the laws and practices surrounding the release of juvenile records were ambiguous, if not conflicting. Some laws appeared to make juvenile records, including fingerprints, confidential, while other laws were being read to authorize the release of some juvenile records to various authorized employers. Similarly, only Davidson and Shelby Counties routinely transmitted many juveniles' booking fingerprints to TBI. The remaining ninety-three counties transmitted juveniles' fingerprints rarely or never. Thus, to the extent that TBI should disclose fingerprints, it was unable to do so for cases from the vast majority of Tennessee's counties.

On the other hand the Task Force discovered that in some respects juveniles' rights were underprotected. Juveniles received no notice of possible disclosure of delinquency records. To the contrary, well-meaning key players in the juvenile justice system, including judges and lawyers, routinely assured juveniles that their records would be confidential and could not harm them later in life. Juvenile Courts lacked the authority to expunge juvenile delinquency adjudications to the same extent that other courts could expunge adult criminal charges. Perhaps

most importantly, juvenile fingerprints were maintained and possibly disclosed based upon the offense charged rather than the subsequent adjudication of the charge. TBI and local law enforcement might know, for example, that a juvenile had been charged with attempted murder, but they would never learn whether the charge had been dismissed, the juvenile had been found not guilty, the juvenile had pled guilty to a far lesser charge, or any other possible disposition of the case.

Finally, the Task Force discovered that current law provided inadequate guidance as to fingerprint maintenance not only to TBI but also to local law enforcement. In particular, local law enforcement was required to maintain juveniles' fingerprints for varying periods of time depending on the severity of the ultimate adjudicated offense, but knew only the charged offense and had no way to obtain the adjudicated offense. Thus, local law enforcement might maintain juvenile arrest fingerprints for years, unsure whether or when to dispose of them.

The findings and recommendations that follow represent the Task Force's best effort to address three overarching issues. The first of these is the tension between society's desire to protect juveniles from lifelong consequences for their foolish mistakes and society's simultaneous desire to protect vulnerable populations from individuals who as juveniles manifest a real threat their security. The second is the need for statewide uniformity and guidance to TBI and local law enforcement in the maintenance and disclosure of juvenile records. The third is ensuring that juveniles receive both fair notice and fair consequences in the juvenile justice system.

Findings and Recommendations

Finding & Recommendation # 1

Finding: Juveniles are entitled to notice of the possible future use of their records. Affected juveniles in Tennessee currently are not given notice of the possible use of their records; to the contrary, they are routinely led to believe that their delinquency arrests, charges, and adjudications are confidential and can never be used against them.

Recommendation: The Task Force recommends amending Tenn. Code Ann. § 37-1-133 to require juvenile courts to give notice to affected juveniles that their fingerprints and adjudications will be forwarded to TBI and disclosed by TBI to authorized agencies, which may prevent juveniles' subsequent employment by or association with such agencies.

Finding & Recommendation # 2

Finding: The juvenile court's expungement powers should be broadened so that the juvenile court can expunge not only its own records but also other public records, just as adult courts are empowered to do. Current law permits a juvenile court to expunge only its own records related to an adjudication of juvenile delinquency. A juvenile court may not, however, order other public records expunged. This contrasts with adult expunction in two important respects. First, a juvenile's adjudication may be expunged, while an adult's conviction may not be. Second, all public records relating to an adult's charge may be expunged, while only the juvenile court's own records relating to a child's adjudication may be expunged.

Recommendation: The Task Force recommends amending Tenn. Code Ann. § 37-1-153(f) to add language giving a juvenile court the same power to expunge public records that other courts possess. This change gives juveniles the same assurance that adults have that their records have been expunged. The Task Force favors retaining current requirements that a juvenile delinquency adjudication may only be expunged after the individual is at least eighteen years of age; is at least one year removed from the last delinquency adjudication and has maintained responsible conduct in the previous year; has never been found guilty of certain criminal or sexual offenses as an adult or a juvenile; and can persuade the juvenile court that expunction is in the best interest of both the juvenile and the community.

Finding & Recommendation # 3

Finding: Juvenile records should only be released according to the actual outcome of the case rather than the original charge. Under current law, adult fingerprints are taken at booking and mailed to TBI, as are juvenile fingerprints when authorized by law or court order. TBI eventually gets the ultimate disposition of any adult criminal case. However, law enforcement agencies, including TBI, get only the arrest or booking fingerprints in a delinquency case; the actual disposition remains confidential. Thus, TBI and local law enforcement records show what a juvenile was originally charged with, not what actually later happened to the charge. They do not reveal, for example, whether a charge was prosecuted or dropped, whether the juvenile was

found guilty of the original charge or a lesser charge, or whether a juvenile was found innocent of the charge. In contrast, TBI receives disposition cards for adults, so that TBI records show the ultimate disposition for adult criminal cases. This can work unfairly against a juvenile. For example, an employer who is authorized to access TBI records may not hire a potential employee who was charged as a juvenile with a very serious offense because the employer never learns that the charge was dropped, the juvenile pleaded guilty to a much more innocuous offense, or the juvenile was found innocent.

Recommendation: The Task Force recommends amending Tenn. Code Ann. § 8-4-115 to require that a juvenile's arrest fingerprints be transmitted by local law enforcement to the juvenile court rather than to TBI. The juvenile court may then only transmit the fingerprints to TBI when the fingerprints are accompanied by an adjudication that the juvenile has committed certain serious offenses at the age of sixteen or older. Thus, employers will only be able to access the records of juveniles who are actually found guilty of, not merely charged with, a serious offense.

Finding & Recommendation # 4

Finding: Current law governing maintenance of juvenile fingerprint records has proved unworkable and needs amendment and simplification. As noted above, local law enforcement has no way of knowing the actual outcome of criminal charges. Yet Tenn. Code Ann. § 37-1-155(b) sets out a complicated scheme that requires local law enforcement to know the actual outcome in order to properly maintain arrest or booking fingerprints. For example, if a juvenile is charged with a misdemeanor but not adjudicated delinquent, local law enforcement must destroy any fingerprints and photographs. If the juvenile is charged with a felony but not adjudicated delinquent, local law enforcement must maintain photographs and fingerprints until the juvenile turns eighteen. If the juvenile is adjudicated delinquent on a felony offense or on a misdemeanor offense committed at the age of fourteen or older, local law enforcement retains photographs and fingerprints permanently. If a child is adjudicated delinquent on a misdemeanor offense committed under the age of fourteen, local law enforcement must maintain photographs and fingerprints until the juvenile turns eighteen. Meeting these requirements would be burdensome even if local law enforcement knew the actual outcome of the case. Under current law, meeting these requirements is impossible.

Recommendation: The Task Force recommends amending Tenn. Code Ann. § 37-1-155(b) to require local law enforcement to destroy all delinquency records within six months after the individual turns eighteen, unless the individual has been adjudicated to have committed at the age of sixteen or over certain serious offenses, namely, all Class A felonies, as well as the Class B felonies of aggravated kidnapping, aggravated robbery, rape, and aggravated sexual battery.. In that case, local law enforcement has the discretion to destroy the records or maintain them indefinitely, subject to any expunction order of the juvenile court. All records must be confidential and used for law enforcement purposes only, or as otherwise provided by law.

Finding & Recommendation # 5

Finding: Only serious offenses should merit transmission to TBI for subsequent release to authorized agencies. Under current law, juveniles must be fingerprinted when charged with a felony offense and may be fingerprinted when charged with a misdemeanor offense. It is possible, then, that TBI may receive fingerprints for not only serious offenses, but also relatively minor offenses. The Task Force has concluded that juveniles should not risk being followed for life by minor offenses, but only for major offenses, particularly those against the person of a victim.

Recommendation: The Task Force recommends amending Tenn. Code Ann. § 37-1-133(a) to clarify that the juvenile court will transmit to TBI only adjudications of commission of certain serious offenses, namely, all Class A felonies, as well as the Class B felonies of aggravated kidnapping, aggravated robbery, rape, and aggravated sexual battery.

Finding & Recommendation # 6

Finding: Current law makes no clear distinction for disclosure of records based on the age of a juvenile at the time of the commission of an offense. The juvenile court is a “court of second chance” whose mission is to rehabilitate rather than punish young offenders, and the Task Force has concluded that consistent with that mission it makes sense to disclose juvenile adjudications only when the juvenile commits the act at the age of sixteen or older. While there may be some argument to disclose records for truly heinous acts committed by a juvenile of a younger age, such offenses will generally be transferred to criminal court for trial of the juvenile as an adult, in which case the records will be made public in any event.

Recommendation: The Task Force recommends amending Tenn. Code Ann. § 37-1-133(a) to clarify that a child must be sixteen years of age or older at the time of the commission of the offenses listed for transmission of records to TBI.

Finding & Recommendation # 7

Finding: Current law applies primarily to fingerprints alone. However, technology is advancing rapidly and other methods of identification are emerging, such as DNA and retinal scanning. The future will no doubt bring more. The Task Force hopes to make the law as flexible as possible to anticipate future developments in technology.

Recommendation: The Task Force recommends amending Tenn. Code Ann. § 37-1-155(a)(1) to clarify that the section applies not only to fingerprints but also to other scientific methods of technology, including, but not limited to, DNA testing and retinal scanning.

Existing Statutes With Proposed Changes Tracked

Tenn. Code Ann. § 8-4-115:

Standardized booking procedures; development; funding; audits; noncompliance

(a)(1) The comptroller of the treasury, in consultation with the Tennessee bureau of investigation, the Tennessee sheriff's association, the Tennessee association of chiefs of police, and the Tennessee corrections institute, developed standardized booking procedures which include:

(A) A photograph of the arrestee;

(B) Two (2) sets of fingerprint cards, properly completed and mailed to the Tennessee bureau of investigation. However, in the case of juvenile arrestees the fingerprint cards shall be delivered to the juvenile court, which shall cause the fingerprint cards to be transmitted to the Tennessee bureau of investigation only upon an adjudication that the juvenile committed, at age sixteen (16) or older, one or more of the offenses enumerated in Tenn. Code Ann. § 37-1-133;

(C) Delivery to the appropriate local law enforcement agency of a completed judgment order signed by a judge to be used by the local law enforcement agency for completion of an R-84 Disposition Card, except as provided in this subdivision (a)(1)(C). A local law enforcement agency and a clerk of court can collaborate on an automated process for the electronic submission of final dispositions for criminal cases to the Tennessee bureau of investigation. After a law enforcement agency and a clerk of court have implemented an automated process for the electronic submission of final dispositions for criminal cases, and have had the process certified by the Tennessee bureau of investigation, all final dispositions shall be reported electronically. Upon implementation of an automated process for the electronic submission of final dispositions for criminal cases, the delivery to the local law enforcement agency of a completed judgment order signed by a judge to be used by the local law enforcement agency for completion of an R-84 Disposition Card, and the submission by the local law enforcement agency of a completed R-84 Disposition Card to the Tennessee bureau of investigation are no longer required. In the case of a juvenile adjudicated delinquent for committing at age sixteen (16) or older one of the offenses enumerated in Tenn. Code Ann. § 37-1-133, the juvenile court shall cause the R-84 Disposition Cards and fingerprint cards to be submitted in tandem to the Tennessee bureau of investigation;

(D) An arrest report; and

(E) Delivery to the appropriate court clerk office of a warrant or capias for offense containing the state control number assigned by the law enforcement agency upon the arrest of an individual to be recorded in the court information system of the court clerk office.

(2) Notwithstanding the provisions of § 8-8-201 or § 38-3-122 to the contrary, it shall be the duty of the law enforcement agency responsible for maintaining the arrested person's booking records to take the two (2) full sets of fingerprints from such person as required by such sections.

(3) Where individuals are arrested multiple times for a violation of § 39-17-310, the offense of public intoxication, the arresting officer shall note on the arrest report that fingerprints are on file for this individual pursuant to § 38-3-122(a).

(4) Compliance with these standardized booking procedures shall be the basis for the comptroller of the treasury determining compliance with the fingerprinting requirements of §§ 8-8-201(35) and 38-3-122. The Tennessee corrections institute and the law enforcement training academy shall train correctional personnel in municipal, county and metropolitan jurisdictions in the application of these standardized booking procedures.

(b) The respective county or municipal legislative body shall appropriate funds for the respective sheriff's office or police department, including funds for personnel and supplies which are sufficient to comply with the provisions of this section.

(c)(1) The comptroller of the treasury shall audit or cause to be audited under provisions of title 4, chapter 3, part 3 and title 6, chapter 56, part 1, on an annual basis the sheriff's office or police department to determine whether or not such law enforcement agency is in compliance with the requirements of this section, including but not limited to, two (2) full sets of classifiable fingerprints taken at arrest and the maintenance by the arresting agency of at least an eighty-five percent (85%) retention rate by the Tennessee bureau of investigation of such fingerprints. If the comptroller of the treasury determines that a particular sheriff's office or police department is not in compliance with §§ 8-8-201(35), 38-3-122 and this section, the comptroller of the treasury, within thirty (30) days of such determination, shall notify such sheriff or police chief and the Tennessee peace officer standards and training commission of such noncompliance.

(2) Such sheriff or police chief shall show cause to the Tennessee peace officer standards and training commission within thirty (30) days of notification why such sheriff or police chief should not be found to be in noncompliance with the requirements of §§ 8-8-201(35) and 38-3-122. If the appropriate sheriff or police chief does not respond or show good cause within thirty (30) days, the Tennessee peace officer standards and training commission shall forthwith decertify the appropriate sheriff or police chief and impound the supplement provided for such sheriff or police chief in § 38-8-111. The Tennessee peace officer standards and training commission shall notify the comptroller of the treasury and both the sheriff and county commission or the police chief and city council of such action.

(3) The burden shall be on such sheriff or police chief to demonstrate compliance to the Tennessee peace officer standards and training commission and if such sheriff or police chief is found to be in compliance with the provisions of this section within sixty (60) days after decertification, the Tennessee peace officer standards and training commission shall rescind the decertification order and cause any salary supplement impounded to be returned to the appropriate sheriff or police chief except for one twelfth (1/12) of the annual supplement.

(4) The provisions of subdivisions (c)(2) and (c)(3) become effective for fingerprints taken or required to be taken on or after July 1, 1999.

(d) In addition to any proceeding under the provisions of chapter 47 of this title, the sheriff or police chief may be removed from office in accordance with the provisions of this section. The comptroller of the treasury shall forward a copy of reports of noncompliance with provisions of this section by the sheriff or police chief to the district attorney general having jurisdiction and to the attorney general and reporter. The district attorney general and the attorney general and reporter shall each review the report and determine if there is sufficient cause for further investigation. If further investigation indicates willful misfeasance, malfeasance or nonfeasance by the sheriff or police chief, the district attorney general shall proceed pursuant to chapter 47 of this title, to remove the sheriff or police chief from office. The provisions of this subsection (d) become effective for fingerprints taken or required to be taken on or after July 1, 1999.

(e) At least annually the comptroller of the treasury's office shall send to each county mayor, sheriff, mayor and chief of police a notice advising them of the provisions of this section, including the penalty for noncompliance with §§ 8-8-201(35), 38-3-122 and 38-8-111(g).

(f) Prior to purchasing an electronic fingerprint imaging system, the sheriff or municipal police department shall obtain certification from the Tennessee bureau of investigation that such equipment is compatible with the Tennessee bureau of investigation's and the federal bureau of investigation's integrated automated fingerprint identification system.

(g) Subject to the approval of the general assembly, a portion of the funds derived from the additional privilege tax levied on all criminal cases instituted in this state as provided for in § 67-4-602(g), may be appropriated to the Tennessee bureau of investigation for the purchase, installation, maintenance, and line charges of electronic fingerprint imaging systems.

(h) Upon establishment of an automated system for final disposition reporting, clerks of court shall submit final disposition reports electronically to the Tennessee bureau of investigation. Jurisdictions that submit final disposition reports electronically will cease the submission of R-84 Disposition Cards upon advisement from the Tennessee bureau of investigation. The submission of an electronic final disposition report shall have the same force and effect as the submission of a R-84 Disposition Card.

(i) Any automated court information system being used or developed on or after July 1, 2005, including, but not limited to, the Tennessee court information system (TnCIS) being designed pursuant to § 16-3-803(h), shall ensure that an electronic file of final disposition data will be reported to the Tennessee bureau of investigation. The form, general content, time, and manner of submission of the electronic file of final disposition data will comply with the rules and regulations prescribed by the Tennessee bureau of investigation.

Tenn. Code Ann. § 37-1-133:

Effect of disposition order; use in other courts; infamous crimes

(a) An order of disposition or other adjudication in a proceeding under this part is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment, except when otherwise authorized by law or when a juvenile is adjudicated to have committed at age sixteen (16) or older one or more of the following offenses: any Class A felony, and/or the Class B felonies of aggravated kidnapping, aggravated robbery, rape, and aggravated sexual battery. The Tennessee bureau of investigation shall release any such adjudication(s) in its possession to any requesting agency that is authorized by state or federal law to submit fingerprints to the Tennessee bureau of investigation and/or the federal bureau of investigation for employment or licensing purposes.

(b) When a child is adjudicated to have committed any offense listed in subsection (a) or before the child pleads guilty to the commission of any such offense, the juvenile court must notify the child that the child's adjudication and fingerprints will be forwarded to the Tennessee bureau of investigation, and that absent a subsequent expunction, the adjudication and fingerprints will be disclosed to authorized agencies and may prevent the child's employment or other connection with an authorized agency.

(c) A child shall not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of a crime, except as provided in § 37-1-134.

(d) The disposition of a child and evidence adduced in a hearing in juvenile court may not be used against such child in any proceeding in any court other than a juvenile court, whether before or after reaching majority, except in dispositional proceedings after conviction of a felony for the purposes of a pre-sentence investigation and report.

(e) A child found to be delinquent shall be exempt from the operation of laws applicable to infamous crimes, and such child shall not be rendered infamous by the judgment of the juvenile court in which such child is tried.

Tenn. Code Ann. § 37-1-153:

Inspection of court files and records

(a) Except in cases arising under § 37-1-146, all files and records of the court in a proceeding under this part are open to inspection only by:

(1) The judge, officers and professional staff of the court;

(2) The parties to the proceeding and their counsel and representatives;

(3) A public or private agency or institution providing supervision or having custody of the child under order of the court;

(4) A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court; and

(5) With permission of the court, any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court.

(b) Notwithstanding the provisions of subsection (a), petitions and orders of the court in a delinquency proceeding under this part shall be opened to public inspection and their content subject to disclosure to the public if:

(1) The juvenile is fourteen (14) or more years of age at the time of the alleged act; and

(2) The conduct constituting the delinquent act, if committed by an adult, would constitute first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping.

(c) Notwithstanding the provisions of this section, if a court file or record contains any documents other than petitions and orders, including, but not limited to, a medical report, psychological evaluation or any other document, such document or record shall remain confidential.

(d)(1) Except as otherwise permitted in this section, it is an offense for a person to intentionally disclose or disseminate to the public the files and records of the juvenile court, including the child's name and address.

(2) A violation of this subsection (d) shall be punished as criminal contempt of court as otherwise authorized by law.

(e) Notwithstanding other provisions of this section, where notice is required under § 49-6-3051, an abstract of the appropriate adjudication contained in the court file or record shall be made and provided to the parent, guardian, or other custodian of the juvenile, including the department, and

this abstract shall be presented to the school in which the juvenile is, or may be, enrolled, in compliance with § 49-6-3051.

(f)(1) Notwithstanding the provisions of any law to the contrary, any person who is tried and adjudicated delinquent by a juvenile court may subsequently petition the juvenile court for expunction of all public records to the full extent that § 40-32-101 authorizes other courts to expunge such records, court files and records. The court may order all or any portion of the requested expunction if, by clear and convincing evidence, the court finds that the petitioner:

(A)(i) Is currently eighteen (18) years of age or older;

(ii) Is at least one (1) year removed from the person's most recent delinquency adjudication; and

(iii) Has never been convicted of a criminal offense as an adult, has never been convicted of a criminal offense following transfer from juvenile court pursuant to § 37-1-134, and has never been convicted of a sexual offense as defined in § 40-39-202, whether in juvenile court, following transfer from juvenile court pursuant to § 37-1-134, or as an adult;

(B) Has maintained a consistent and exemplary pattern of responsible, productive and civic-minded conduct for one (1) or more years immediately preceding the filing of the expunction petition; or

(C) The juvenile has made such an adjustment of circumstances that the court, in its discretion, believes that expunction serves the best interest of the child and the community.

(2) Nothing in this subsection (f) shall be construed to apply to any law enforcement records, files, fingerprints or photographs pertaining to any delinquency adjudication.

Tenn. Code Ann. § 37-1-155:

Fingerprints; photographs; destruction; audio and video recordings; exception

(a)(1) This section applies not only to fingerprints but also to other scientific methods of establishing an individual's identity, including, but not limited to, DNA testing or retinal scanning. References to fingerprints or fingerprinting shall be read to include such other identification methods. No child shall be fingerprinted or photographed in the investigation of delinquent acts without the permission of the court, unless the child is charged with a delinquent act that, if committed by an adult, would constitute a felony, in which case the child shall be fingerprinted and photographed at the time the child is taken into custody and such fingerprint file may be maintained in an automated fingerprint identification system. Such fingerprint file and photograph shall only be accessible to law enforcement officers, except as provided in § 37-1-154, and shall be maintained separate and apart from adult fingerprint files. The custody and maintenance of those fingerprints and photographs shall be the responsibility of the agency taking the child into custody.

(2) Law enforcement agencies shall not disclose such fingerprint or photograph files, except as permitted under § 37-1-154.

(b)(1) A child's local law enforcement records, files, fingerprints and photographs records shall be destroyed within six (6) months after the individual reaches twenty-one (21) years of age, unless the individual was adjudicated to have committed, at the age of sixteen (16) or older any Class A felony, and/or the Class B felonies of aggravated kidnapping, aggravated robbery, rape, and aggravated sexual battery, in which case the local law enforcement has the discretion to maintain or destroy such information after the individual reaches the age of twenty-one (21).:

~~(A) If the child is charged with a misdemeanor offense and is not adjudicated a delinquent child; or~~

~~(B) If a petition alleging delinquency is not filed or the case is transferred to the juvenile court as provided in § 37-1-109.~~

~~(2) If the child is charged with a felony and is not adjudicated a delinquent child, the fingerprint and photograph records shall be maintained until the subject reaches eighteen (18) years of age. The record is then subject to expunction at the direction of the court.~~

~~(3) If the child is adjudicated a delinquent child on a felony offense, the fingerprint and photograph records shall be maintained permanently.~~

~~(4) If the child is adjudicated a delinquent child on a misdemeanor offense, the fingerprint and photograph records shall be maintained until the child reaches eighteen (18) years of age, or permanently if the child was fourteen (14) years of age or older when the offense was committed.~~

(§2) All fingerprint and photograph records maintained pursuant to the authority of this section shall be confidential and used for law enforcement purposes only, or as otherwise permitted by law.

(c) If latent fingerprints are found during the investigation of an offense and a law enforcement officer has probable cause to believe that they are those of a particular child, such officer may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the child is not referred to the court or the case is dismissed, the fingerprints shall be immediately destroyed.

(d) If during the investigation of an offense, a law enforcement officer receives a description of the offender and such law enforcement officer has reasonable suspicion to believe that the description is that of a particular child, such officer may photograph the child regardless of age or offense for purposes of identification. However, nothing in this subsection (d) shall be deemed as authorizing an unconstitutional seizure of a child for purposes of obtaining a photograph.

(e)(1) Notwithstanding any other law to the contrary, a law enforcement officer, while acting in the course of official duties, may photograph, make a video recording or make an audio recording of a juvenile in the following circumstances:

(A) the juvenile is in the process of committing an offense;

(B) the law enforcement officer is conducting field sobriety tests based upon suspicion that the juvenile is driving under the influence of an intoxicant; or

(C) the juvenile is the victim of an offense and consents to photographing or recording. However, any photograph or recording of the victim taken pursuant to this subdivision (e)(1)(C) shall be taken solely for use as evidence in the case being investigated and not for any other purpose except as is already provided in this section.

(2) The photograph or recording shall be made solely for use as evidence, and if no charges are brought against the juvenile within the applicable statute of limitations for the offense under investigation, the photograph or recording shall be destroyed unless a court of competent jurisdiction orders otherwise.

(3) Notwithstanding any other law to the contrary, the photograph or recording shall not be considered a public record and shall not be released to the public except by order of the court having jurisdiction over the charges brought against the juvenile.