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OPINION NO. 85-129

Hon. Bobby Tullis
State Representative
Box 277
Mineral Springs, Arkansas 71851

Dear Representative Tullis:

This is in response to your request for an opinion on the following questions:

A juvenile fifteen years of age is taken into custody and charged as an adult for either a felony or a misdemeanor.

Can the juvenile be put in jail with adults?

Can the name and charges of the juvenile be released to the public?

Ark. Stat. Ann. § 45-443 (Repl. 1977) prohibits the publication by the news media of the name or identity of a juvenile who is subject to juvenile proceedings, without written order of the juvenile court. This statute, however, applies only to juvenile proceedings. A juvenile is defined as "any person, whether married or single, who has not yet reached his 18th birthday." Ark. Stat. Ann. § 45-403(1) (Repl. 1977).

Ark. Stat. Ann. § 41-617 (Repl. 1977 and 1983 Cum. Supp.) provides that a person at least 15 years old, but less than 18 years old at the time of the offense, may be charged by the prosecutor either in circuit, municipal or juvenile court. If he is charged in either circuit or municipal court, the court may waive jurisdiction and transfer the case to juvenile court. Ark. Stat. Ann. §§ 45-422 and 605, of course, protect juveniles in custody pursuant to juvenile proceedings from being housed in the same cell with adult convicts in some cases or in the same institution in which they have regular contact with adults charged with or convicted of a crime.

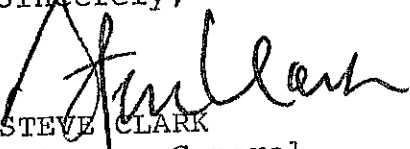
Once a juvenile is charged as an adult, however, the juvenile code and these protections probably do not apply, and the juvenile is treated as an adult for most purposes. The Arkansas Criminal code does not appear to have any provision for the housing of such juveniles separately from adults, prior to conviction.

Under the United States Constitution, however, the state may have a responsibility to protect juvenile defendants from contact with adult suspects or convicts. Jail officials may be liable under 42 U.S.C. § 1983 if a juvenile, placed in a cell or a facility with adult offenders, is physically attacked and it can be shown that the jail officials actually intended to deprive the juvenile of his constitutional rights or because they acted with reckless disregard to his right to be free from violent attacks by other inmates. Branchcomb v. Brewer, 669 F.2d 1297 (8th Cir. 1982). The mere fact that a juvenile is housed with adults in some circumstances could be construed by the court as "reckless disregard" for his safety, or as "punishment" without due process.

If a male juvenile is convicted of a felony and sentenced to the Arkansas Department of Correction, he may be assigned by the Department to a separate facility for youthful male offenders under the age of 21 established by Ark. Stat. Ann. § 46-1101 et. seq. (Repl. 1977).

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Sandra Johnson-Buchanan.

Sincerely,


STEVE CLARK
Attorney General

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