Note from the Attorney General's Office:

1987 Op. Att'y Gen. No. 87-010 was clarified by
1990 Op. Att'y Gen. No. 90-099.

OPINION NO. 87-010

Syllabus:

1. Where no fingerprints or photographs of a juvenile have been taken in connection with a first-time drug or alcohol offense, a law enforcement agency may share with other law enforcement agencies or local schools personal information regarding such offenses by a juvenile, as the law enforcement agency deems such sharing appropriate to carry out its duties and to promote the goals of R.C. Chapter 2151, including the prevention and control of juvenile delinquency.

2. If a law enforcement officer or other authorized person takes photographs and fingerprints of a

juvenile taken into custody for a first-time drug or alcohol offense, records of that custody and of the photographs and fingerprints may be disclosed only as permitted by R.C. 2151.313.

3. A public school may not forward personal information regarding the first-time use of drugs or alcohol by a student on school property to local law enforcement agencies without the consent of the student's parent or guardian, or the student, where appropriate.

4. Private schools that are subject to 20 U.S.C. § 1232g may not forward personal information regarding the first-time use of drugs or alcohol by a student on school property to local law enforcement agencies unless the information is lawfully subpoenaed or the school obtains the consent of the student's parent or guardian, or the student, where appropriate.

5. Private schools that are not subject to 20 U.S.C. § 1232g may forward personally identifiable information regarding the first-time use of drugs or alcohol by students on school property to local law enforcement agencies or to other schools.

To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 27, 1987

I have before me your opinion request in which you ask whether law enforcement agencies and schools may share among themselves records containing personal information about juveniles who are chemical abuse offenders. As I understand the facts,[1] within your community is an organization comprised of members of various civic and public groups, including law enforcement agencies, schools, and the juvenile court, who hope to work together to reduce chemical abuse among young people. You stated that first-time youthful chemical abuse offenders are usually not formally charged. The law enforcement agency or school that initially investigates, however, keeps records of the violation. The civic organization approves of this technique, but recommends sharing information so that second or third-time chemical abusers are not treated as first-time users simply because they are apprehended in a different jurisdiction each time. You have asked me to specifically address the following questions about the sharing of these records:

> (1) In those instances involving first-time chemical abuse offenders where no formal charges are brought, may law enforcement agencies share their reports on such incidents with other law enforcement agencies and/or with school officials without violating any rights of

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[1] At the suggestion of a member of your staff, a member of my staff spoke with a Toledo Police Officer who is assigned to the Youth Services Division and who is aware of the relevant facts in this situation.

> confidentiality and/or civil rights of the youth involved?
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> (2) If the first-time violation occurs on school property, may the school forward its record of the incident to local law enforcement agencies?

Statutes governing public records, juvenile records, and school records do restrict disclosure of this type of information. As I will discuss further below, however, I do not believe that the disclosure contemplated would give rise to a tort action for invasion of privacy or violate any so-called constitutional privacy right.

The state statutes and procedural rules governing juvenile courts encourage crime prevention and informal solutions to juvenile cases. For example, R. Juv. P. 9 provides:

> (A) Court action to be avoided. In all appropriate cases formal action should be avoided and other community resources utilized to ameliorate situations brought to the attention of the court.
>
> (B) Screening; referral. Information that a child is within the court's jurisdiction may be informally screened prior to the filing of a complaint to determine whether the filing of a complaint is in the best interest of the child and the public.

In addition, R.C. 2151.11 provides that the juvenile court may take active steps to prevent juvenile crime:

> A juvenile court may participate with other public or private agencies of the county served by the court in programs which have as their objective the prevention and control of juvenile delinquency. The juvenile judge may assign employees of the court, as part of their regular duties, to work with organizations concerned with combatting conditions known to contribute to delinquency, providing adult sponsors for children who have been found delinquent, and developing wholesome youth programs. (Emphasis added.)

Further, R.C. 2151.40 authorizes the juvenile court to actively seek the aid of public officials, institutions, and agencies to further the objects of R.C. Chapter 2151:

> Every county, township, or municipal official or department, including the prosecuting attorney, shall render all assistance and co-operation within his jurisdictional power which may further the objects of sections 2151.01 to 2151.54 of the Revised Code. All institutions or agencies to which the juvenile court sends any child shall give to the court or to any officer appointed by it such information concerning such child as said court or officer requires. The court may seek the co-operation of all societies or organizations having for their object the protection or aid of children.
>
> ....

Thus, the goal of the community organization you mention -- to reduce juvenile chemical abuse by avoiding formal charges for drug offenses when appropriate and by enlisting the cooperation of (among others) the juvenile court, law enforcement agencies,

and schools -- is perfectly consistent with the goals of Ohio's juvenile court system. I turn now to an examination of the relevant statutes to determine whether current law prohibits law enforcement agencies from sharing information with other law enforcement agencies and with schools in order to carry out their duties and to effect the goals of R.C. Chapter 2151.

I must first determine whether the records about which you ask are "public records," which may be properly disclosed to any person, upon request. R.C. 149.43(B) reads:

> All public records shall be promptly prepared and made available for inspection to any member of the general public at all reasonable times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units shall maintain public records in such a manner that they can be made available for inspection in accordance with this division. (Emphasis added.)

Only certain records, however, qualify as "public records." R.C. 149.011(G) provides:

> "Records" includes any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

R.C. 149.43(A) provides:

> (1) "Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation, and parole proceedings ... trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law.
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> (2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:
>
> > (a) The identity of a suspect who has not been charged with the offense to which the record pertains or of an information source or witness to whom confidentiality has been reasonably promised .... (Emphasis added.)

The informal law enforcement records that you describe in your letter "[pertain] to a law enforcement matter of a criminal, quasi-criminal, civil or administrative nature," and the release of the records would identify "a suspect who has

not been charged with the offense to which the record pertains." The records thus qualify as "confidential law enforcement investigatory records," and are therefore not "public records." Accordingly, a law enforcement agency is not required to release records of this type to members of the general public. The question remains, however, whether a law enforcement agency may, if it desires, release such records to other law enforcement agencies or to school districts.

If records contain "personal information" and if they are maintained in an information "system" by a "local agency," their disclosure may be regulated by R.C. Chapter 1347, which governs access to and maintenance and disclosure of information in so-called "personal information systems." See R.C. 1347.01 (defining the quoted terms). See also, e.g., R.C. 1347.05 (setting forth duties of every state or local agency that maintains a personal information system); R.C. 1347.08 (providing for inspection of information maintained in a personal information system). Although the information contained in the informal records you describe may be "personal information" as defined for purposes of R.C. Chapter 1347, law enforcement agencies are exempt from the requirements of R.C. Chapter 1347 under R.C. 1347.04, which provides:

> (A)(1) Except as provided in division (A)(2) of this section, the following are exempt from the provisions of this chapter:
>
> (a) Any state or local agency, or part of a state or local agency, that performs as its principal function any activity relating to the enforcement of the criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals;[2]

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[2] In contrast, law enforcement officers are not specifically exempted from the statute that limits access to sealed records of juvenile convictions. R.C. 2151.358 requires the sealing of records or expungement of names from files of juveniles who have been adjudged rehabilitated or not guilty, respectively. The court may allow inspection of sealed records "only upon application by the person who is the subject of the sealed records and only by the persons that are named in his application." R.C. 2151.358(E). In addition, the statute provides that in certain circumstances, state officers or employers can be charged with a misdemeanor for releasing sealed or expunged information:

> An officer or employer of the state or any of its political subdivisions who knowingly releases, disseminates, or makes available for any purpose involving employment, bonding, licensing, or education to any person or to any department, agency, or other instrumentality of the state, or of any of its political subdivisions, any information or other data concerning any arrest, complaint, trial, hearing, adjudication, or correctional supervision, the records of which have been expunged or sealed pursuant to this section, is guilty of divulging confidential information, a misdemeanor of the fourth degree.

R.C. 2151.358(J).

> ....
> (2) .... A part of a state or local agency that does not perform, as its principal function, an activity relating to the enforcement of the criminal laws is not exempt under this section. (Emphasis and footnote added.)

Most, if not all, "parts" of most law enforcement agencies perform as their "principal function" activities relating to the enforcement of the criminal laws. However, in large law enforcement agencies, one or more "parts" of the agency could be solely engaged in enforcing juvenile laws or in keeping records of juvenile offenses and thus might fall outside of the law enforcement exemption to R.C. Chapter 1347 pursuant to R.C. 1347.04(A)(2). There is some question whether working for the enforcement of juvenile laws is the same as working for the enforcement of criminal laws for purposes of R.C. Chapter 1347. The juvenile court system, for example, is purposely classified as a non-criminal system. See, e.g., In re C., 43 Ohio Misc. 98, 334 N.E.2d 545 (C.P., Juv. Div. Ross County 1975); 1984 Op. Att'y Gen. No. 84-077 at 2-254 ("The activities of a juvenile court are only incidentally related to enforcing the criminal laws. Its principal functions relate to the supervision and care of juveniles"). If a part of a law enforcement agency does not perform, as its principal function, an activity relating to the enforcement of criminal laws, it must adhere to the provisions of R.C. Chapter 1347.

I need not decide whether enforcing juvenile laws is equivalent to enforcing criminal laws for the purposes of R.C. Chapter 1347; the facts as I understand them indicate that the provisions of R.C. Chapter 1347, without more, would not prevent law enforcement agencies from sharing information with other law enforcement agencies or with schools. R.C. 1347.05(H) provides that a local agency that maintains a personal information system shall: "[c]ollect, maintain, and use only personal information that is necessary and relevant to the functions that the agency is required or authorized to perform by statute, ordinance, code, or rule, and eliminate personal information from the system when it is no longer necessary and relevant to those functions." In addition, R.C. 1347.07 provides that "[a] state or local agency shall only use the personal information in a personal information system in a manner that is consistent with the purposes of the system."

Prevention of juvenile drug and alcohol abuse is a function that law enforcement agencies are "required or authorized to perform by statute, ordinance, code, or rule" pursuant to R.C. 1347.05(H) because law enforcement officers and others in the juvenile justice system are authorized to enforce the laws and encouraged to use various means to prevent and control juvenile delinquency. See, e.g., R.C. 737.11, R.C. 2151.40, R.C. 2151.11, and R. Juv. P. 9. Further, law enforcement officers are acting in accordance with the purposes of the personal information system and thus R.C. 1347.07 so long as they share the information with schools and other law enforcement agencies in a reasonable effort to prevent juvenile drug and alcohol abuse.

In addition to R.C. Chapter 1347, law enforcement agencies must comply with applicable records provisions of R.C. Chapter 2151, which governs juvenile courts. R.C. 2151.313 deals specifically with the disclosure of certain juvenile records and provides that fingerprints and photographs of a juvenile may not be taken in the investigation of any violation of law

without the consent of the juvenile judge, except that law enforcement officers may take fingerprints and photographs in cases in which a juvenile is arrested or otherwise taken into custody for the commission of an act that would be a felony if committed by an adult, if there is probable cause to believe that the juvenile may have been involved in the commission of the act. Once fingerprints and photographs are taken, R.C. 2151.313 strictly controls the distribution, disclosure, and storage of these materials, and also of the records of the arrest or custody that led up to the fingerprints and photographs being taken. R.C. 2151.313(D) summarizes the prohibitions against the use and distribution of juvenile fingerprints and photographs, and provides:

> (D) No person shall knowingly do any of the following:
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> (1) Fingerprint or photograph a child in the investigation of any violation of law other than as provided in division (A)(1) or (2) of this section;
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> (2) Retain fingerprints or photographs of a child obtained or taken under division (A)(1) or (2) of this section, copies of any such fingerprints or photographs, or records of the arrest or custody that was the basis of the taking of any such fingerprints or photographs other than in accordance with division (B) of this section;
>
> (3) Use or release fingerprints or photographs of a child obtained or taken under division (A)(1) or (2) of this section, copies of any such fingerprints or photographs, or records of the arrest or custody that was the basis of the taking of any such fingerprints or photographs other than in accordance with division (B) or (C) of this section.

Divisions (A)(1) and (2) of R.C. 2151.313 describe the very limited circumstances in which fingerprints and photographs of a juvenile may be taken: only with a judge's consent, or when the juvenile is arrested or taken into custody for committing an act that would be a felony if committed by an adult and there is probable cause to believe that the juvenile may have been involved in the commission of the act.[3] The divisions also enumerate strict procedures to be followed in maintaining the fingerprints and photographs. Division (B) of R.C. 2151.313 provides for the retention of fingerprints and photographs, copies of fingerprints and photographs, and records of the arrest or custody that was the basis for taking the fingerprints or photographs for certain periods of time and for their destruction by the court at the end of such periods if no action has been brought against the child in relation to

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[3] Although certain chemical abuse offenses would be felonies if committed by adults, see e.g., R.C. 2925.02, 2925.03, and 2925.11, the informality of the "arrest" process you describe leads me to believe that fingerprints or photographs are usually not taken.

I note that R.C. 2151.14 also limits the availability of certain juvenile court records, and provides that its probation department investigatory records shall not be made public. R.C. 2151.14 states in part: "The reports and

the act for which the fingerprints and photographs were taken. Division (C) of R.C. 2151.313 limits access to and use of fingerprints and photographs of juveniles, and of the records of the arrest or custody that was the basis of the taking of the fingerprints or photographs.

Because R.C. 2151.313(D)(3) protects from disclosure only fingerprints and photographs, copies of fingerprints and photographs, and "records of [an] arrest or custody that was the basis of the taking of any ... fingerprints or photographs," I find that the statute does not forbid the disclosure of records of an arrest or custody that was not the basis of the taking of any fingerprints and photographs. I presume that fingerprints and photographs are usually not taken in connection with the drug offenses in question, so that the records with which you are concerned are usually not subject to R.C. 2151.313(D). Of course, if at any time law enforcement officers do take fingerprints and photographs, the custody and disclosure requirements of R.C. 2151.313, governing both the fingerprints and photographs and the records of the arrest or custody that was the basis for the taking of the fingerprints or photographs, would apply.

Thus, law enforcement agencies may share their informal records on first-time chemical abusers with schools and with other law enforcement agencies without violating the guidelines in R.C. Chapter 1347, R.C. 149.43, or R.C. 2151.313 (unless fingerprints and photographs are taken). I am aware of no other statutes that would limit the ability of law enforcement agencies to share this information. Accordingly, I find that law enforcement agencies may share information on first-time juvenile chemical abusers with other law enforcement agencies and with schools, as the law enforcement agencies find such sharing appropriate to fulfill their duties, including promotion of the goals of R.C. Chapter 2151.

I turn now to the question whether a public or private school may forward its informal records on first-time chemical abusers to local law enforcement agencies. First of all, some question exists as to whether public schools are authorized to maintain records of students who are suspected of drug or alcohol abuse. R.C. 3319.32, which enumerates the records that boards of education are required to maintain, does not require records of disciplinary violations. Further, R.C. 1347.05(H), which provides guidelines for maintenance of personal information systems, limits the types of information that a public agency may maintain:

> Every state or local agency that maintains a personal information system shall:
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> ....
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> (H) Collect, maintain, and use only personal

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records of the [probation] department shall be considered confidential information and shall not be made public." It has been held that this provision applies to memoranda concerning informal cases that are made and kept in the juvenile court's social files. See In re Douglas, 11 Ohio Op. 2d 340, 164 N.E.2d 475 (Juv. Ct. Huron County 1959). In the situation you describe in your letter, law enforcement officers keep informal records of first-time chemical abusers in law enforcement files; no information is put on file with the juvenile court. Accordingly, these records need not be kept confidential under R.C. 2151.14.

> information that is necessary and relevant to the functions that the agency is required or authorized to perform by statute, ordinance, code, or rule, and eliminate personal information from the system when it is no longer necessary and relevant to those functions.

Local boards of education get their disciplinary and rule-making powers from two statutes: R.C. 3313.20, which provides in pertinent part that "[t]he board of education shall make such rules as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises;" and R.C. 3313.47, which provides that a board of education "shall have the management and control of all the public schools ... in its respective district." The question then becomes whether regulating drug or alcohol use is a function that public schools are "authorized to perform by statute" for purposes of R.C. 1347.05(H). I conclude that boards of education are authorized to regulate student drug and alcohol consumption. I have opined that, pursuant to R.C. 3313.20, a board of education may adopt rules that allow the administration of breathalyzer testing for alcohol consumption in certain circumstances. 1983 Op. Att'y Gen. No. 83-012. In that opinion, I noted the legal prohibitions against alcohol use by minors and concluded:

> Clearly, a board of education might reasonably conclude that the use of alcoholic beverages by students would have a detrimental effect on the morals of the student body, substantially disrupt the proper discipline and government of the students, and endanger the physical health and well-being of the students. Thus, I would consider the use of intoxicating beverages by students a proper concern of a board of education and a matter which the board might reasonably regulate.

Op. Att'y Gen. No. 83-012 at 2-53.

Juvenile drug and alcohol abuse are each regulated by statute, See e.g., R.C. 2925.02 and R.C. 4301.631. Thus, they are proper concerns of a board of education and matters which the board might reasonably regulate under R.C. 3313.20. Accordingly, because the board of education may regulate the area of alcohol and drug abuse, it may maintain records of suspected violations of these regulations under R.C. 1347.05(G).

R.C. 1347.07 allows state and local agencies to use the personal information in their personal information systems "in a manner that is consistent with the purposes of the system." This statute could allow public schools to share disciplinary records with local law enforcement agencies and other schools, as long as the public schools were acting to prevent student drug and alcohol abuse. I need not address this issue, however, because other statutes forbid the release of these records.[4]

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[4] For the same reason, I need not decide whether disciplinary records can be shared under 20 U.S.C. § 1232g, which conditions certain funds for educational institutions on parents' rights to inspect, review, and approve access to school records.

As noted, R.C. 149.43 requires the disclosure of "public records," and defines a "public record" in part as a record "kept by any public office, including ... school district units," with certain exceptions. The records you describe are kept by a school district and, therefore, are public records that must be made available to the general public, see R.C. 149.43(B), unless they come within one of the exceptions to the definition of "public record." R.C. 149.43(A)(1) expressly excludes from the definition of "public record" "records the release of which is prohibited by state or federal law." R.C. 3319.321 contains provisions explicitly prohibiting the disclosure of certain information held by public schools:

> (B) No person shall release, or permit access to, personally identifiable information other than directory information concerning any pupil attending a public school, for purposes other than those identified in division (C) or (E) of this section, without the written consent of the parent, guardian, or custodian of each such pupil who is less than eighteen years of age, or without the written consent of each such pupil who is eighteen years of age or older.
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> (1) For purposes of this section, "directory information" includes a pupil's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, date of graduation, and awards received.
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> (2) Except for directory information and except as provided in division (E) of this section, information covered by this section that is released shall only be transferred to a third or subsequent party on the condition that such party will not permit any other party to have access to such information without written consent of the parent, guardian, or custodian, or of the pupil who is eighteen years of age or older.
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> ....
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> (C) Nothing in this section shall limit the administrative use of public school records by a person acting exclusively in his capacity as an employee of a board of education or of the state or any of its political subdivisions, any court, or the federal government, and nothing in this section shall prevent the transfer of a pupil's record to an educational institution for a legitimate educational purpose. However, except as provided in this section, public school records shall not be released or made available for any other purpose .... The provisions of this division regarding the administrative use of records by an employee of the state or any of its political subdivisions or of a court or the federal government shall be applicable only when the use of the information is required by state statute adopted before November 19, 1974, or by federal law.
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> ....
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> (E) A principal or chief administrative officer of a public school or any employee of a public school who is authorized to handle school records, shall provide access to a student's records to a law enforcement officer who indicates that he is conducting an investigation and that the student is or

may be a missing child, as defined in section 2901.30 of the Revised Code.

Although you do not state in your letter exactly what information is contained in the informal records you describe, I presume that the records contain at least the students' names and the fact that the students have been identified as possible chemical abusers. Such information would qualify as "personally identifiable information" as that term is used in R.C. 3319.321.

Information concerning drug offenses is not included as "directory information" under R.C. 3319.321 and, thus, may not be disclosed without the written consent of the parent, guardian, or custodian of the pupil, or of the pupil himself if he is eighteen or older, unless such disclosure is permitted under R.C. 3319.321(C) or (E). R.C. 3319.321(C) provides for the administrative use of public school records by a person acting exclusively in his capacity as an employee of a political subdivision, but only when use of the information is required by state statute adopted before November 19, 1974, or by federal law. I am aware of no state statute or federal law that would require disclosure of the information in question to a law enforcement officer under this provision. R.C. 3319.321(E) provides for disclosure of public school records to a law enforcement officer who indicates that the student is or may be a missing child. It is my understanding that your request does not relate to the disclosure of information in such circumstances.

Therefore, R.C. 3319.321 prohibits the release of the records in question by a public school to a law enforcement agency unless consent is obtained. A public school may, however, effect the goal of sharing knowledge about first-time chemical abusers in one of two ways. The school could release the information to the local law enforcement agencies with the consent of the child or his parent or guardian (per R.C. 3319.321), or it could call the appropriate law enforcement agency to investigate any future cases of suspected chemical abuse. See R.C. 2151.27 (filing sworn complaints against juveniles), R.C. 2151.31 (apprehension, custody, and detention of juveniles), R.C. Chapter 2935 (detention; arrest), R.C. 2925.11 (drug abuse), R.C. 4301.631 (prohibitions; minors under 19 years may not purchase or consume any beer or intoxicating liquor in any public place). In this way, the law enforcement agencies would have the necessary information about the youths involved in suspected chemical abuse and could legally share that information among all relevant police departments in accordance with their duties and to effect the goals of R.C. Chapter 2151.

Although private schools must submit an annual report to the state board of education, see R.C. 3301.14, the term "public school" is used in R.C. 3319.321, indicating that private schools are not subject to its provisions. See generally e.g. 1933 Op. Att'y Gen. No. 1409, p. 1290. Furthermore, private schools are not "public offices" as that term is used in R.C. 149.43, nor are they "state or local agencies" for purposes of R.C. Chapter 1347. Accordingly, private schools need not follow the dictates of R.C. 3319.321, R.C. 149.43, or R.C. Chapter 1347.

I note, however, that some private schools that receive federal funding may be subject to 20 U.S.C. § 1232g, which

conditions certain funds for educational institutions on parents' rights to inspect, review and approve access to school records. 20 U.S.C. § 1232g(b)(1) provides that schools may lose certain federal funds if they release (except in accordance with state statutes adopted prior to November 19, 1974 and other exceptions inapplicable here) personally identifiable information other than directory information without the written consent of the student's parents, if the student is a minor, or of the student, if the student is an adult. Information may also be released in compliance with a judicial order or pursuant to a lawfully issued subpoena according to 20 U.S.C. § 1232g(b)(2)(B). Even in those instances, however, the school must notify the parents and the students before releasing the information.

Thus, federal and state statutes afford limited protection to juvenile law enforcement records, and greater protection to juvenile school records. I must next determine whether any common law privacy right protects the records from disclosure.

Ohio law allows a tort action for invasion of the right to privacy. The Ohio Supreme Court has defined the right of privacy as "the right of a person to be let alone, to be free from unwarranted publicity, and to live without unwarranted interference by the public in matters with which the public is not necessarily concerned." Housh v. Peth, 165 Ohio St. 35, 133 N.E.2d 340 (1956)(Syllabus, paragraph one).

In a 1984 appellate case, an "innocent bystander" who was arrested in a police drug raid of a tavern brought an unsuccessful invasion of privacy suit against the television station that repeatedly broadcast a videotape of the arrest that showed him being led away from the scene in handcuffs. Penwell v. Taft Broadcasting Co., 13 Ohio App. 3d 382, 469 N.E.2d 1025 (Fayette County 1984). The plaintiff in Penwell claimed that the station's repeated broadcasting of the arrest videotape invaded his right to privacy. The court applied the following test:

> One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of privacy, if the matter publicized is of a kind that:
>
> > (a) would be highly offensive to a reasonable person, and
> > (b) is not of legitimate concern to the public.

Penwell, 13 Ohio App. 3d at 384, 469 N.E.2d at 1027 (quoting Restatement (Second) of Torts § 652D (1977)). The court found that the arrest was not a private matter of another because it was an act of the police, not of the plaintiff-innocent bystander, and because it occurred in a public place. Id. The court also noted that the arrest was "a matter with which the public had a legitimate concern." Id. Of course, the success or failure of any future suit by a student claiming that the sharing of information of a chemical abuse offense among law enforcement agencies and schools was an invasion of privacy would depend upon the particular facts of the case. Nevertheless, it appears that such a suit would be unsuccessful for at least two reasons.

First, a law enforcement agency or school that merely shares its information with other law enforcement agencies or

schools would not be "publicizing" the information. In a recent appellate case, the Franklin County Court of Appeals, citing with approval Restatement (Second) of Torts § 652D, defined "publicity" as it applies to invasion of privacy cases: "'Publicity' means communicating the matter to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge as opposed to 'publication' as that term of art is used in connection with liability for defamation as meaning any communication by the defendant to a third person." Killilea v. Sears, Roebuck & Co., 27 Ohio App. 3d 163, 166, ____N.E.2d____ (Franklin County 1985). In the situation that you have presented, it is assumed that the law enforcement agency or school would share information concerning drug offenders only to the extent necessary to make the information available to the appropriate school and law enforcement officials. There is no reason to believe that the law enforcement agency or school would share the information with "so many persons that the matter must be regarded as substantially certain to become one of public knowledge." Even if the offenses were to become public knowledge, however, such an offense would probably be considered a matter of legitimate concern to the public. The Penwell court noted that even "persons who are so unfortunate as to be present at the scene of a crime are regarded as properly subject to the public interest ...." Penwell, 13 Ohio App. 3d at 385, 469 N.E.2d at 1028 (citing Restatement (Second) of Torts § 652D, Comment f (1977)). Accordingly, students who were found to be drug offenders would be even more properly subject to the public interest than innocent bystanders, and law enforcement actions relating to their offenses would probably be considered matters of legitimate concern to the public.[5]

Thus, I believe that a law enforcement agency or school would not violate a student's privacy rights by sharing information about chemical abuse offenses with other law enforcement agencies and with local school districts. As stated above, statutes that govern public records, juvenile records, and school records, however, place certain restrictions on the disclosure of this type of information.

The only other possible protection for records of juvenile chemical abuse offenses is the so-called constitutional right of privacy. Although no court has found that a constitutional privacy right protects arrest records, federal courts have addressed the issue of whether a constitutional right of privacy protects certain juvenile court records. The United States Court of Appeals for the Sixth Circuit was asked to decide whether disclosure of juvenile court records violates

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[5] Because I believe that the issues mentioned would be dispositive in the event of a lawsuit, I do not need to address the question whether the commission of a chemical abuse offense is a public or private affair. The Penwell court's opinion suggests, however, that the arrest would be a public matter. The court noted that "the publication was of the appellant's arrest in a public place .... [F]urther ... the acts published were not those of the appellant, but those of the law enforcement authority directed against the appellant." 13 Ohio App. 3d at 384, 469 N.E.2d at 1028. The same reasoning could be applied to the "publication" of law enforcement action relating to a student drug offense.

any existing constitutional right of privacy in J.P. v. DeSanti, 653 F.2d 1080 (6th Cir. 1981). In DeSanti, juveniles brought a class action against the employees of the juvenile court responsible for compiling, maintaining and distributing to other governmental and social agencies so-called social histories of juveniles brought before the court. The juveniles alleged that disclosure of their social histories violated their constitutional right to privacy, as well as R.C. 2151.14, which requires that juvenile court probation department records be kept "confidential." See footnote 3, supra. The court refused to rule on the state law issue and disputed that a general "right to privacy" exists. The DeSanti court cited a Supreme Court decision in which the Court denied that a respondent's constitutional privacy rights prohibited police from circulating the fact of his shoplifting arrest to merchants. The Supreme Court held that "'personal rights found in [the] guarantee of personal privacy must be limited to those which are "fundamental" or "implicit in the concept of ordered liberty."'" Id. at 1088 (quoting Paul v. Davis, 424 U.S. 693, 713 (1976)). Holding that no constitutional right was violated, the court stated: "[N]ot all rights of privacy or interests in nondisclosure of private information are of constitutional dimension, so as to require balancing government action against individual privacy .... [P]rotection of [the juveniles'] privacy rights here must be left to the states or the legislative process." Id. at 1091.

The "social history" that the juveniles were concerned about is defined in R. Juv. P. 2(21):"'Social History' means the personal and family history of a child or any other party to a juvenile proceeding and may include the prior record of the person with the juvenile court or any other court." The disclosure contemplated in the situation you describe in your letter -- that of information about possible first-time chemical abuse -- involves public behavior and appears to be less intrusive than the disclosure discussed in DeSanti, which included prior juvenile court records as one possible element of the information. Based upon the DeSanti case, I conclude that any privacy interests in the information about which you are concerned are not of constitutional dimension, and that records of juvenile offenses are not protected by the Constitution from the limited disclosure contemplated in this situation.

Therefore, it is my opinion, and you are hereby advised that:

1. Where no fingerprints or photographs of a juvenile have been taken in connection with a first-time drug or alcohol offense, a law enforcement agency may share with other law enforcement agencies or local schools personal information regarding such offenses by a juvenile, as the law enforcement agency deems such sharing appropriate to carry out its duties and to promote the goals of R.C. Chapter 2151, including the prevention and control of juvenile delinquency.

2. If a law enforcement officer or other authorized person takes photographs and fingerprints of a juvenile taken into custody for a first-time drug or alcohol offense, records of that custody and of the photographs and fingerprints may be disclosed only as permitted by R.C. 2151.313.

3. A public school may not forward personal information regarding the first-time use of drugs or alcohol by a student on school property to local law enforcement agencies without the consent of the student's parent or guardian, or the student, where appropriate.

4. Private schools that are subject to 20 U.S.C. § 1232g may not forward personal information regarding the first-time use of drugs or alcohol by a student on school property to local law enforcement agencies unless the information is lawfully subpoenaed or the school obtains the consent of the student's parent or guardian, or the student, where appropriate.

5. Private schools that are not subject to 20 U.S.C. § 1232g may forward personally identifiable information regarding the first-time use of drugs or alcohol by students on school property to local law enforcement agencies or to other schools.