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OPINION COMMITTEE



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OFFICE OF COURT ADMINISTRATION

DAVID SLAYTON
Administrative Director

RQ-1136-CA

July 10, 2013

By Certified Mail, Return Receipt Requested

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Opinion Regarding the Confidentiality of Records in Fine-Only Misdemeanor Cases involving Children

Dear Attorney General Abbott:

As Administrative Director of the Office of Court Administration (OCA), I respectfully request your opinion on an important juvenile justice matter. Specifically, the issue involves the confidentiality of records in fine-only misdemeanor cases involving children.

Background

Prior to 2011, the records of fine-only misdemeanor cases involving children were not confidential. The situation could well be labeled as one of no confidentiality.

This changed in 2011. The 82nd Legislature passed House Bill 961 which made these records confidential in non-traffic cases *if* the judgment was satisfied.¹ Essentially, House Bill 961 created a situation of conditional confidentiality.

In its 83rd Regular Session, the Texas Legislature returned to this issue. Three relevant bills were passed and signed. Two of the bills (Senate Bill 393 and Senate Bill 394) broaden the universe of confidential non-traffic, fine-only misdemeanors involving children. Specifically, the bills make confidential the records of deferred disposition cases that result in charges being dismissed. Thus, these two bills produce a situation of expanded conditional confidentiality.

¹ Three relevant statutes were created: (1) Article 45.0217, Code of Criminal Procedure; (2) Article 44.2811, Code of Criminal Procedure; and (3) Section 58.00711, Family Code.

The third new bill (HB 528) goes further than the two other new bills. House Bill 528 makes confidential the records in all non-traffic, fine-only misdemeanor cases involving children once the child is charged with an offense. Thus, all such cases will be confidential - regardless of the result. The bill creates a situation of total confidentiality.²

Possible Conflict between the New Bills

As noted above, Senate Bills 393 and 394 call for the expansion of confidentiality to cases of deferred disposition in which dismissals are ultimately granted. House Bill 528, on the other hand, essentially expands confidentiality to all cases in which charges are filed. Some observers and legal analysts consider the bills to be in irreconcilable conflict. They believe the provisions of Senate Bills 393 and 394 limit confidentiality to the situations envisioned under expanded conditional confidentiality. They feel that the situation of total confidentiality produced under House Bill 528 exceeds those limits.

Thus, our **first question** for you is whether HB 528 irreconcilably conflicts with Senate Bills 393 and 394.

Assuming there is a Conflict

Assuming there is an irreconcilable conflict, OCA believes that Senate Bill 393 would control over House Bill 528. Senate Bill 393 was passed by the Legislature on May 23, 2013. The Legislature passed House Bill 528 one day earlier – May 22, 2013. Senate Bill 394 was passed by the Legislature on May 16, 2013. All three bills were signed by Governor Perry on the same date – June 14, 2013.

Section 311.025 of the Government Code³ speaks to which statute is to be given effect if statutes are in irreconcilable conflict. According to this provision, “the statute latest in date of enactment prevails.” Thus, we understand that Senate Bill 393 would control over House Bill 528 because Senate Bill 393 was the latest bill passed by the Legislature. Our **second question**, conditioned on your office finding an irreconcilable conflict between the bills, is whether Senate Bill 393 would control over House Bill 528.

Assuming there is not a Conflict

Senate Bills 393 and 394 both go into effect on September 1, 2013. House Bill 528 does not go into effect until January 1, 2014.

If the bills are not in irreconcilable conflict, OCA believes that Senate Bills 393 and 394 should be given effect beginning on the effective date of the two bills – September 1, 2013. Thus, expanded conditional confidentiality will become the rule of law on that date. On January 1, 2014, House Bill 528 and its rule of total confidentiality will become the rule of law.

² Note: None of the conditions of confidentiality prohibit the release of records to: (1) judges and court staff; (2) criminal justice agencies for criminal justice purposes; (3) the Department of Public Safety; (4) the attorney for a party; (5) the child defendant; and (6) the defendant’s parent, guardian, or managing conservator.

³ Part of the Code Construction Act.

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Our **third question** assumes that House Bill 528 does not irreconcilably conflict with Senate Bills 393 and 394. Proceeding on this assumption, our third question has two parts. First, will the expanded conditional confidentiality provisions of the Senate Bill 393 and 394 go into effect on September 1, 2013? Second, will the total confidentiality provisions of House Bill 528 supplant the provisions of Senate Bills 393 and 394 on January 1, 2014?

Our **fourth question** also assumes there is no irreconcilable conflict and that, therefore, House Bill 528 will become effective on January 1, 2014. Proceeding on this assumption, our fourth question also has two parts. First, will all non-traffic, fine-only cases involving children in justice and municipal courts need to be closed to the public? Second, can the dockets in such cases be publicly posted?

Closing Statement

The Texas Municipal Courts Education Center and the City of Houston Municipal Courts Department have contacted OCA regarding the issues we have raised and may be interested in submitting briefs on the matter.

Thank you for your assistance. We look forward to your opinion in this matter.

Sincerely,

A handwritten signature in black ink that reads "David Slayton". The signature is written in a cursive, slightly slanted style.

David Slayton