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STATE of TEXAS
HOUSE of REPRESENTATIVES

Harold V. Dutton, Jr.
District 142

November 21, 2016

The Honorable Ken Paxton
Attorney General of Texas
209 W. 14th Street
Austin, Texas 78701

Dear General Paxton:

As the Chair of the House Juvenile Justice and Family Issues Committee, I respectfully request a formal opinion from you regarding the following questions:

- (1) Does statutory authority currently exist for municipal courts to report convictions of juveniles to the Texas Department of Public Safety for drug paraphernalia offenses; and
- (2) If so, can drug paraphernalia convictions of juveniles be reported in either the paraphernalia or drug category for juveniles convicted in municipal courts or must the paraphernalia conviction be reported as delinquent conduct under Section 51.03 of the Texas Family Code?

All courts in Texas, including municipal courts, are required to report convictions by offense to the Texas Department of Public Safety (DPS) within seven (7) days from the judgment date. Typically, these reports of convictions to DPS are required as they may impact driver's license suspension as a part of the sentencing. However, DPS has refused to accept reports from municipal courts for convictions of juveniles for drug paraphernalia unless such convictions are categorized under delinquent conduct. Such a requirement by DPS is problematic for convictions of juveniles in municipal court because municipal courts do not appear to have statutory authority to make findings against juveniles for delinquent conduct.

Reports from municipal courts of juvenile convictions for paraphernalia offenses are returned to the particular municipal court with the notation to change the listing of these convictions to the delinquent conduct category.

The DPS requirement is problematic for several reasons: (a) as mentioned above, a municipal court does not have statutory authority to make delinquent conduct findings; (b) a conviction for drug paraphernalia is a Class C misdemeanor whereas a delinquent conduct finding is, at the very least, a Class B offense; (c) under current Texas law, a delinquent conduct finding equates to a finding of guilt in an adult court; and, (d) a delinquent conduct finding against a juvenile can be used to enhance a sentence when the juvenile becomes an adult and thereafter is convicted of a criminal offense. The DPS

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Committees:

Juvenile Justice and Family Issues, Chair
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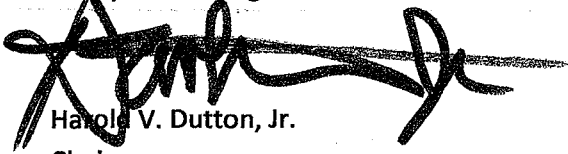
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requirement that delinquent conduct, as defined under Section 51.03 of the Texas Family Code, be reported for a juvenile convicted in a municipal court only of drug paraphernalia creates a criminal record for a juvenile even though the juvenile was guilty in the municipal court of a fine only offense and was not found to be delinquent.

Finally, as I understand from Rep. Giovanne Capriglione, municipal courts in Colleyville and Keller Merged have refused to permit the listing of drug paraphernalia convictions of juveniles as delinquent conduct convictions. I am certain that other municipal courts in Texas face an identical dilemma creating an impossibility for Texas municipal courts to comply with DPS reporting requirements.

I appreciate your assistance and if you need additional information, please contact me.

Best personal regards,



Harold V. Dutton, Jr.

Chairman

House Committee on Juvenile Justice and Family Issues

CC: Rep. Giovanni Capriglione