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OPINION COMMITTEE

March 28, 2013

FILE # ML-47247-13
I.D. # 47247

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

Via Certified Mail, Return Receipt Requested

RQ-1119-GA

Dear General Abbott:

Pursuant to Texas Government Code, § 402.043, I am respectfully submitting this request for the Attorney General's opinion concerning clarification for § 58.0071 of the Texas Family Code.

The Texas Legislature passed § 58.071 et seq. of the Texas Family Code regarding the destruction of juvenile records and files. § 58.071 reads as follows:

(a) In this section:

(1) "Juvenile case" means:

(A) a referral for conduct indicating a need for supervision or delinquent conduct; or

(B) if a petition was filed, all charges made in the petition.

(2) "Physical records and files" include entries in a computer file or information on microfilm, microfiche or any other electronic storage media.

(b) the custodian of physical records and files in a juvenile case may destroy the records

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and files if the custodian duplicates the information in the records and files in a computer file or information on microfilm, microfiche, or any other electronic storage media.

(c) The following persons may authorize, subject to Subsections (d) and (e) and any other restriction the person may impose, the destruction of the physical records and files relating to a closed juvenile case:

- (1) a juvenile board in relation to the records and files in the possession of the juvenile probation department;
- (2) the head of a law enforcement agency in relation to the records and files in the possession of the agency; and
- (3) a prosecuting attorney in relation to the records and files in the possession of the prosecuting attorney's office.

(d) The physical records and files of a juvenile case may only be destroyed if the child who is the respondent in this case:

- (1) is at least 18 years of age and:
 - (A) the most serious allegation was conduct indicating a need for supervision;
 - (B) the most serious allegation was conduct indicating a need for supervision and there was not an adjudication; or
 - (C) the referral or information did not relate to conduct indicating a need for supervision or delinquent conduct and the juvenile court or the court's staff did not take action on the referral or information for that reason;
- (2) is at least 21 years of age and:
 - (A) the most serious allegation adjudicated was delinquent conduct that violated a penal law of the grade of misdemeanor; or

- (B) the most serious allegation was delinquent conduct that violated a penal law of the grade of misdemeanor or felony and there was not an adjudication; or
- (3) is at least 31 years of age and the most serious allegation adjudicated was delinquent conduct that violated a penal law of the grade of felony.
- (e) If a record or file contains information relating to more than one juvenile case, information relating to each case may only be destroyed if:
- (1) The destruction of the information is authorized under this section; and
- (2) The information can be separated from information that is not authorized to be destroyed under this section.
- (f) This section does not affect the destruction of physical records and files authorized by the Texas State Library Records Retention Schedule.

TEX. FAMILY CODE 58.071

The issue is that subsection (b) and subsections (d) and (e) appear to conflict with one another. Subsection (b) appears to authorize the destruction of juvenile records if the records are stored electronically, however, subsections (d) and (e) appear to only authorize the destruction of records based on the set forth criteria. To that extent, these subsections appear to conflict with each other.

QUESTIONS PRESENTED

1. Can the custodian of physical records and files in a juvenile case destroy the “hard copy” original paper records and files in a juvenile case at any time if that information in the records and files are duplicated and stored in a computer file or in on microfilm, microfiche or any other electronic storage media at any time, or is this provision only applicable once the factors set forth in subsections (d) and (e) are satisfied?

ARGUMENT & AUTHORITIES

The primary issue is the apparent conflict between subsections (b) and (d) and (e). Subsection (b) implies that if the records are scanned in, then the hard copy physical records may be destroyed at any time. However, subsections (d) and (e) are quite clear in setting the parameters of when juvenile records may be destroyed. This office is requesting the Attorney General's opinion as to: (1) whether or not the physical, original, paper records of a juvenile case may ever be destroyed and (2), if the answer to question one is "yes," then at one time and under what conditions may these records be destroyed?

This office is looking forward to your response to this request for your opinion on the foregoing questions. Please let me know if you would like any further briefing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeri Yenne".

JERI YENNE

Criminal District Attorney
Brazoria County, Texas