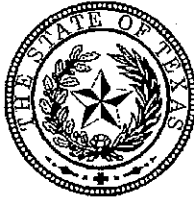


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SEP 17 2010

OPINION COMMITTEE



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SEP 15 2010

OPEN RECORDS DIVISION

**PAUL JOHNSON**  
CRIMINAL DISTRICT ATTORNEY

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**RQ-0917-GA**

September 7, 2010

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

FILE # MJ-46583-10  
I.D. # 46583

Dear General Abbott:

On behalf of the Denton County Community Supervisions and Corrections Department, we wish to request your opinion concerning the release of information obtained during a presentence investigation to CPS. Specifically, we seek answers to the following questions:

1. Whether information in or obtained in connection with a presentence investigation report may be released to CPS for the protection of a child under the care of a defendant under investigation.
2. Whether a community supervision officer who makes a report to CPS is immune from civil and criminal liability under 261.106 of the Family Code for making that report;

Article 42.12, Section 9 of the Code of Criminal Procedure provides for the preparation and submission of presentence investigation reports in certain circumstances. Under subsection (a) of the Section, supervision officers directed to submit reports must "report to the judge in writing on the circumstances of the offense with which the defendant is charged, the amount of restitution necessary to adequately compensate a victim of the offense, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the judge." Additionally, the report "must contain a proposed client supervision plan describing programs and sanctions that the community supervision and corrections department would provide the defendant if the judge suspended the imposition of the sentence or granted deferred adjudication." *Id.*

Under Subsection (c), the judge is precluded from viewing the report, and the contents of the report may not be disclosed to any person unless:

- (1) the defendant pleads guilty or nolo contendere or is convicted of the offense;  
or
- (2) the defendant, in writing, authorizes the judge to inspect the report.

Under subsection (j) of Section 9, a report and "all information obtained in connection with a presentence investigation" are confidential and may be released only to certain persons under the circumstances enumerated in the section. For example, subsection (d) provides that, absent a waiver, the defendant and his counsel must be permitted to read the report at least 48 hours prior to sentencing, while subsection (f) permits the prosecutor to view the all information made available to the defendant. The report and information may also be released, under subsection (j)(3), "as directed by a judge for the effective supervision of the defendant." Section 9 makes no provision for the release of PSI information to CPS.

The Department wishes to know whether a supervision officer may release, prior to plea and sentencing, information in or obtained in connection with a PSI report to CPS for the purpose of alerting CPS that a child is in danger of being abused or neglected. One example of such information might be a urinalysis result showing the child's guardian to be under the influence of illegal narcotics. Specifically, the Department asks whether the officer who makes such a report would be immune from liability under Family Code Section 261.106. Section 261.106(a) provides:

- (a) A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from civil or criminal liability that might otherwise be incurred or imposed.

Additionally, the Department seeks clarification of 261.106(b), which provides:

- (b) Immunity from civil and criminal liability extends to an authorized volunteer of the department or a law enforcement officer who participates at the request of the department in an investigation of alleged or suspected abuse or neglect or in an action arising from an investigation if the person was acting in good faith and in the scope of the person's responsibilities. . . .

The Department interprets this provision as limiting immunity only for the law enforcement personnel described in subsection (b). In other words, the immunity provided in subsection (a) would apply to a community supervision officer who makes a report of his own volition and regardless of whether making that report is within the scope of his responsibilities. We ask your opinion as to whether this interpretation of 261.106(b) is correct.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Moira Schilke". The signature is written in black ink and is positioned above the printed name and title.

Moira Schilke

Assistant District Attorney