



RQ-765

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CERTIFIED MAIL
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Opinion Committee

Hon. Dan Morales
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

SJS
ML-30471-94
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Attention: Opinion Committee

Ladies and Gentlemen:

Harris County Justice of the Peace Tony Polumbo and Harris County Sheriff, Johnny Klevenhagen, have requested advice regarding the following questions as they pertain to their respective duties:

1. Does a justice of the peace have jurisdiction to try a person 17 years of age for a Class C misdemeanor which was filed when the person was less than 17 years of age?
2. What procedures must be followed to effect the arrest of a juvenile charged with a Class C misdemeanor who has turned 17 years of age at the time of arrest?
3. Should the law enforcement officer effecting an arrest of the 17-year old defendant follow procedures specified in articles 15.17 and 45.27 of the Code of Criminal Procedure or those specified in Title 3 of the Family Code?
4. If a justice of the peace is not immediately available, is the officer arresting the defendant who was charged with a Class C misdemeanor prior to turning 17 years of age, authorized, pending a hearing before a magistrate, to incarcerate the defendant in an adult jail facility once the defendant turns 17 years old?
5. If a justice of the peace is not immediately available, may the officer detaining the defendant, arrested pursuant to a capias pro fine, who has turned 17 years of age either at the time of conviction or during the time that the judgment remains unsatisfied, incarcerate him/her in an adult jail facility pending a hearing before a magistrate?

First Assistant: Marsha L. Floyd • Bureau Chiefs: James E. McKnight, Admin. Services, Jerry B. Schank,
David R. Hurley • Division Chiefs: Dori A. Wind, Anthony F. Loria, Mary J. McKerall;
Rock W.A. Owens, Frank E. Sanders, Richard S. Hill, Rosalinda Garcia

6. Is a juvenile, who was convicted of a Class C misdemeanor who has turned 17 years of age during the time that the judgment remains unsatisfied and who either willfully refuses to pay the fine or costs or who willfully refuses to participate in community service work, subject to confinement in jail until the judgment is discharged pursuant to the provisions of articles 43.03 or 45.52 of the Texas Code of Criminal Procedure?
7. Should the records relating to a Class C misdemeanor filed against a juvenile in the justice courts be sealed or otherwise remain confidential?
8. Should the records relating to a Class C misdemeanor disposed of after the juvenile reaches the age of 17 years be sealed or otherwise remain confidential?
9. If the justice of the peace issues a warrant for the arrest of a juvenile on a Class C misdemeanor, may an outstanding warrant be entered into a centralized database, the Justice Information Management System (JIMS), created and maintained by Harris County with the information being accessed by other local law enforcement agencies?
10. May a justice of the peace issue a capias pro fine for a defendant who committed a Class C misdemeanor offense prior to attaining the age of 17?
11. For a juvenile charged with a Class C misdemeanor who has turned 17 years of age either at the time of conviction or during the time that the judgment remains unsatisfied, what procedures may be followed by the justice court to collect the judgment?
12. Whether a justice of the peace may record an abstract of judgment against a juvenile convicted of a Class C misdemeanor or a juvenile charged with a Class C misdemeanor who has turned 17 years of age either at the time of conviction or during the time that the judgment remains unsatisfied in an attempt to collect unpaid fines and costs?
13. May the justice of the peace accept a plea or proceed to trial without the presence of the 17-year old defendant's parent or legal guardian?
14. May a justice of the peace grant a deferral of proceedings to a juvenile who is unable to pay the court costs pursuant to art. 45.54 of the Texas Code of Criminal Procedure?

15. If a juvenile fails to appear as required by a written notice to appear contained within a citation, may the justice of the peace wait until the juvenile reaches the age of 17 years before issuing the arrest warrant?
16. If a juvenile fails to discharge the judgment when required to pay at a later date or in installments or to perform community service as required, may the justice of the peace wait until the juvenile reaches the age of 17 years before issuing a *capias pro fine*?

Please supply us with your opinion on the questions presented.
A memorandum brief is attached.

Sincerely,

MIKE DRISCOLL
County Attorney



By MARILYN BARNES
Assistant County Attorney

Attachment