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Opinion Committee

JAMES WARREN SMITH JR.

COUNTY ATTORNEY  
FRIO COUNTY

CERTIFIED RECEIPT NO.: P 564 144 784

September 2, 1997

The Attorney General of Texas  
Supreme Court Building  
Attn: Opinions Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

RR-990  
FILE # ML-39755-97  
I.D. # 39755

Re: Request for attorney general's opinion pursuant to V.T.C.A., Government Code, Section 402.043

Dear Sir/Ma'am:

Pursuant to referenced statute, I am requesting an attorney general's opinion. I will first set out the questions, then the facts, the law that I think is applicable and my conclusion.

QUESTION:

If a juvenile who is 16 years of age is convicted in a Constitutional County Court of perjury pursuant to V.T.C.A., Penal Code, Section 37.02 (a jailable misdemeanor) and is sentenced to jail by the County Judge but his jail sentence is suspended and is placed on probation for a certain length of time under the supervision of Frio Community Supervision and Corrections Department; but the Community Supervision and Corrections Department rejects the supervision because the individual is not an adult and wasn't certified pursuant to the Texas Juvenile Justice Code to stand trial as an adult, how then can this juvenile defendant be supervised on probation?

FACTS:

As stated in the question, my office and the Supervision and Corrections Department were at an impasse as to how this juvenile would perform his community supervision.

THE LAW:

Pursuant to the Juvenile Justice Code, an individual under 17 may still be under a criminal court's jurisdiction, to-wit: a person may be charged with perjury, with traffic offenses, offenses punishable by fine only and certain alcohol violations as well as being certified to stand trial as an adult for certain felonies (if the sanction levels in the Juvenile Justice Code, so mandates) or if the individual meets the criteria for the determinate sentencing procedure as also set out in the Code.

Re: Request for attorney general's opinion pursuant to V.T.C.A., Government Code, Section 402.043

Furthermore, Section 8.07(a), V.T.C.A., Penal Code, sets out an exception for criminal proceedings against a juvenile charged with perjury. Section 51.03(c), V.T.C.A., Juvenile Justice Code, also exempts perjury as an offense that a criminal court would have jurisdiction over a juvenile offender.

Professor Dawson's excellent treatise, Texas Juvenile Law, 4th Edition, has a discussion on this subject and I quote from page 35 in the treatise:

"Perjury, Penal Code Section 37.02, is a jailable misdemeanor. Aggravated perjury, Penal Code, Section 37.03, is a felony. Therefore, under Section 51.03(a)(1), each would be delinquent conduct, and would subject a child offender to the exclusive jurisdiction of the juvenile court. However, because of the combined effect of Section 51.03(c) and Section 8.07 of the Penal Code the criminal court also has jurisdiction. Thus, there is *concurrent jurisdiction* in the juvenile court and the criminal court over a person who commits perjury or aggravated perjury while between the ages of 10 and 17. Perjury and aggravated perjury are the only criminal offenses for which either a juvenile court or a criminal court has jurisdiction without a prior transfer order from the other court.

"Why is perjury given this unique status? Article 1, Section 5 of the Texas Constitution provides that the oath required of a witness testifying in any judicial proceeding, civil or criminal, must be taken 'subject to the pains and penalties of perjury.' There is case law that suggest that since juvenile proceedings are nominally civil, not criminal, a witness who would be subject *only* to juvenile proceedings for lying under oath might not be a competent witness under that constitutional provision. See *Santillian v. State*, 182 S.W. 2d 812 (Tex. Crim.App. 1944). That, in turn, might mean that a juvenile could not testify in any court proceedings. Rather than incur such a catastrophic risk, the Family Code gives the criminal courts concurrent jurisdiction over those offenses in order to leave no doubt that persons of juvenile court age, if otherwise competent witnesses, may testify under the constitutional qualifying provision."

Although I have not been able to find any statute or rule concerning the "mixing" of juvenile and adult probationers, when (as in the case of juveniles placed on probation after conviction in a criminal court for the offense of perjury) they report to a community supervision and corrections department on a periodic basis as a reasonable and lawful term and condition of their probation. I can only through an analogy state that a juvenile offender, if he/she is detained, must be taken to a designated place of custody (see V.T.C.A., Juvenile Justice Code, Section 52.02) unless the juvenile is released to his/her parents. Furthermore Section 51.12(c), Juvenile Justice Code, mandates two requirements in order for a detention facility to be certified by the juvenile court and juvenile board as a place of detention for juveniles: a) separation from adult requirements (seperated from sight and sound) and b) meet minimum child-care standards.

#### MY CONCLUSION:

Although criminal courts and juvenile courts have concurrent jurisdiction over juvenile offenders charged with perjury, the juvenile cannot be supervised by the community supervision and corrections department because the juvenile would of necessity be exposed to misdemeanor and felonious probationers when they report monthly to the department.

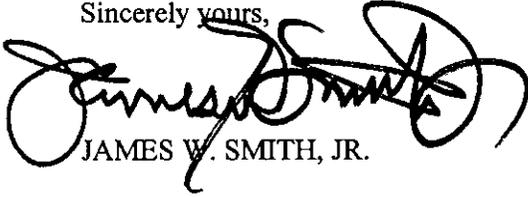
Page 3

Re: Request for attorney general's opinion pursuant to V.T.C.A., Government Code, Section 402.043

Therefore, one solution might be that even though the juvenile is convicted in adult criminal court of a perjury offense, his/her community supervision would be under the offices of the county's juvenile probation department.

I would certainly appreciate any guidance on this problem that your office may provide.

Sincerely yours,



JAMES W. SMITH, JR.

JWSJr/ymm

xc: Files

xc: The Hon. Carlos A. Garcia  
Frio County Judge  
Frio County Courthouse  
Pearsall, Texas 78061

xc: Mr. Santiago Montemayor  
Frio Community Supervision & Corrections Department  
Pearsall, Texas 78061

xc: Ms. Jenny Shafer  
Chief, Frio County Juvenile Probation Office  
Frio County Courthouse  
Pearsall, Texas 78061