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RQ-0021-JC

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FEB 09 1999

Honorable John Cornyn
Attorney General of Texas
Care of Elizabeth Robinson
Chair Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-40658-99 Opinion Committee
I.D. # 40658

January 29, 1999

RE: What Court has jurisdiction over a person who violates a justice court order under Tex. Educ. Code Ann. § 25.094(c) (Vernon 1996) after they have reached their seventeenth birthday?

Dear Mrs. Robinson,

The Brazoria County District Attorney's Office has recently received a question regarding the jurisdiction of a juvenile court to hear a contempt proceeding against an individual who violates a justice court order after reaching the age of seventeen. After careful review, this office believes that there is a conflict in the law and requests your assistance in ending this conflict.

School attendance is mandatory for children who are at least six years old through those who have not yet reached their eighteenth birthday. See Tex. Educ. Code Ann. § 25.085 (Vernon Supp. 1998). A violation of mandatory attendance is a crime punishable as a class C misdemeanor. See Tex. Educ. Code Ann. §

25.094(f) (Vernon 1996). This crime is prosecuted in the justice court for the precinct in which the child resides or in which the school is located. See Tex. Educ. Code Ann. § 25.094(b) (Vernon 1996). Upon finding that a child has committed the offense, the justice court may enter an order that includes one or more of the requirements listed in Tex. Fam. Code Ann. § 54.021(d) (Vernon 1997). See Tex. Educ. Code Ann. § 25.094(c) (Vernon 1996). If the justice court subsequently finds that the child has violated the order, it shall transfer the complaint against the child with all pleadings and orders, to a juvenile court for the County in which the child resides. See Tex. Educ. Code Ann. § 25.094(d) (Vernon 1996). The juvenile court shall conduct an adjudication hearing under Tex. Fam. Code Ann. § 54.03 (Vernon 1997).

A fault in the enforcement mechanism for compulsory attendance comes into play when an individual who is seventeen years old violates the terms of an order of a justice court. See Tex. Educ. Code Ann. § 25.094(c) (Vernon 1996). The enforcement statute lists that the case shall be transferred to a juvenile court for adjudication. See Tex. Educ. Code Ann. § 25.094(b) (Vernon 1996). The juvenile courts do not, however, have jurisdiction to adjudicate an individual who has reached their seventeenth birthday at the time of the offense. The Jurisdictional section of the Family Code states:

This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time he engaged in the conduct, and the juvenile court has exclusive original jurisdiction over proceedings under this title. (emphasis added).
Tex. Fam. Code Ann. § 51.04(a) (Vernon 1997).

The Family Code defines a child as follows:

A Child means a person who is:

(A) ten years of age or older and under 17 years of age; or

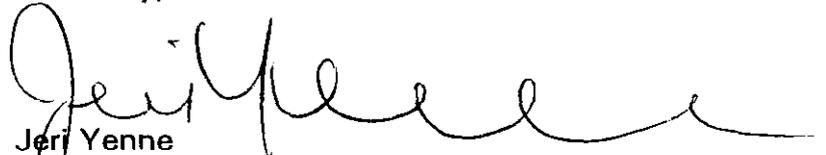
(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Tex. Fam. Code Ann. § 51.02(2) (Vernon 1997).

Thus, it appears that there is no remedy for a person who is over seventeen years of age when they violate a standing order of a justice court. The statute explicitly requires that the case be transferred to a juvenile court upon violation of order issued under § 25.094(c) and the juvenile court has no jurisdiction over the seventeen year old offender. As the education code requires the State to prosecute those under eighteen years of age who fail to attend school, what is the appropriate court to handle the offense?

We thank you in advance for your assistance in this matter. If we can give you any further information on this matter to aid in your evaluation, please contact Donald Stephens at (409) 849-5711 Ext. 1230.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeri Yenne", written in a cursive style.

Jeri Yenne
District Attorney of Brazoria County