



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

March 7, 1947

Hon. George T. Thomas Opinion No. V-77
County Attorney
Howard County
Big Spring, Texas

Re: Whether or not a girl of 17 years of age who has been married may be tried for crime under the general penal statutes, or should be treated in law as a "delinquent child".

Dear Sir:

We beg to acknowledge receipt of your letter making request for an opinion by this department on the above titled subject matter, your letter being as follows:

"Is a girl who is 17 years of age, but who has been married, to be tried and punished under the general penal statutes as a grown person for offenses which she commits, or is she a "delinquent child" and to be tried and treated as such."

Chapter 204, Senate Bill No. 44 of the 48th Legislature, at its Regular Session, (Vernon's Codification of the Civil Statutes, Art. 2338-1), is a comprehensive law upon the subject of delinquent children.

Among its provisions are the following:

"Sec. 3. The term 'delinquent child' means any female person over the age of ten (10) years and under the age of eighteen (18) years and any male person over the age of (10) years and under the age of seventeen (17) years. * * * "

"Sec. 12. If during the pendency of a criminal charge or indictment against any person in any other court than a Juvenile Court, it shall be ascertained that said person is a female over the age of ten (10) years and under the age of eighteen (18) years, or is a male person over

the age of ten (10) years and under the age of seventeen (17) years, at the time of the trial for the alleged offense, it shall be the duty of such court to transfer such case immediately together with all papers, documents and testimony connected therewith, to the Juvenile Court of said county. * * *."

"Sec. 13. No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of a crime in any court. * * *"

"Sec. 17. No female person over the age of ten (10) years and under the age of eighteen (18) years, or any male person over the age of ten (10) years and under the age of seventeen (17) years, shall be placed or committed to any compartment of any jail or lock-up in which persons over juvenile age are incarcerated or detained; * * *."

Moreover, by that act the juvenile proceeding is made a civil proceeding, appeals in which are to be taken to the Court of Civil Appeals, and may be carried to the Supreme Court by writ or error or upon certificate as in other civil cases, (Sec. 21), and the proceeding is declared to be "in the nature of a guardian method." (Sec. 25).

The article contains no exception to the above emphatic classifications.

Article 4625 of the Revised Civil Statutes declares that:

"Every female under the age of twenty-one (21) years who shall marry in accordance with the laws of this state, shall, from and after the time of such marriage, be deemed to be of full age and shall have all the rights and privileges to which she would have been entitled had she been at the time of her marriage of full age."

From a consideration of these two statutes (both of which you have cited in your request) it is clear, we think, there is no conflict between them. If there should be irreconcilable conflict, however, the Delinquent Child Act being the later, would, by implication repeal the former statute insofar as the conflict extended.

It is clear, however, that the only effect of Article 4625 is to emancipate any female of marriageable age from the disabilities of minority upon her marriage. It has been held that this is true even though the marriage was in law a void marriage. (See Barkley vs. Dumke, 87 S. W. 1147).

We express no opinion upon the right of the state to maintain a prosecution against the delinquent female after she arrives at the age of eighteen (18) years. That question is not before us, and we understand such a question is now pending under submission in the Court of Criminal Appeals.

SUMMARY

(1) A female seventeen (17) years of age, who is married, does not thereupon become subject to a criminal prosecution. (Vernon's Civil Statutes, Art. 2338-1)

(2) Article 4625 of the Revised Civil Statutes providing "that females under 21 years of age upon marriage are deemed to be of full age, and shall have the rights and privileges to which she would have been entitled had she been at time of marriage of full age", has no bearing upon the question of crime by a delinquent juvenile. (Art. 2338-1, Sec. 3, Vernon's Civil Statutes).

APPROVED MAR. 7, 1947

Price Daniel
ATTORNEY GENERAL
APPROVED OPINION COMMITTEE
BY BWB, CHAIRMAN

OS:acm:mj

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

Ocie Speer
Ocie Speer
Assistant