



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 9, 1994

Honorable Paul Crosnoe
Bailey County Attorney
1631 West American Boulevard
Muleshoe, Texas 79347

Letter Opinion No. 94-065

Re: Whether section 52.026(c) of the Family Code requires the county sheriff to transport a child to juvenile court proceedings in the absence of an order adopted by the juvenile board and approved by the commissioners court and related question (ID# 22390)

Dear Mr. Crosnoe:

Your predecessor in office asked whether section 52.026(c) of the Family Code requires the county sheriff to transport a child to juvenile court proceedings in the absence of an order adopted by the juvenile board and approved by the commissioners court. Your predecessor also asked whether the duty to transport a child reverts to the juvenile probation officer in the absence of such an order. Section 52.026, which was enacted by the Seventy-third Legislature as Senate Bill 588, provides as follows:

(a) It shall be the duty of the law enforcement officer who has taken a child into custody to transport the child to the appropriate juvenile detention facility if the child is not released to the parent, guardian, or custodian of the child.

(b) If the juvenile detention facility is located outside the county in which the child is taken into custody, it shall be the duty of the sheriff of that county to transport the child to the appropriate juvenile detention facility if the child is not released to the parent, guardian, or custodian of the child.

(c) *On adoption of an order by the juvenile board and approval of the juvenile board's order by record vote of the commissioners court*, it shall be the duty of the sheriff of the county in which the child is taken into custody to transport the child to and from all scheduled juvenile court proceedings and appearances and other activities ordered by the juvenile court.

Fam. Code § 52.026 (enacted by Acts 1993, 73d Leg., ch. 411, § 1) (emphasis added).

A legislative bill analysis of Senate Bill 588 prepared by the House Committee on County Affairs states as follows:

According to Attorney General Opinion No. DM-87, no statute in Texas law fixes any mandatory responsibility on any person or entity for the transportation of juvenile defendants. Section 53.07(d), Family Code, provides for certain courts to authorize payment for the costs of service and some travel expenses for individuals summoned by the court or otherwise required to appear before the court.

Some county juvenile probation agencies or juvenile detention centers report difficulties in transporting juveniles due to shortages of staff or other resources, a lack of staff properly trained to deal with violent or abusive juveniles, and the reluctance of many local law enforcement agencies to provide transportation.

House Comm. on County Affairs, Bill Analysis, S.B. 588, 73d Leg. (1993).

Subsection (c) of section 52.026 clearly predicates the duty of the sheriff in a county in which a child is taken into custody to transport the child to juvenile court proceedings on the adoption of an order by the juvenile board and approval of the juvenile board's order by record vote of the commissioners court. In Attorney General Opinion DM-87, noted in the House Committee on County Affairs bill analysis quoted above, we concluded that the transportation of juvenile defendants to juvenile court proceedings was not among the statutory duties of a sheriff and that a county judge was not authorized to require a sheriff to transport a juvenile defendant to juvenile court proceedings absent clear statutory or constitutional authority. Attorney General Opinion DM-87 (1992) at 2. Because a sheriff has no statutory duty to transport a child to juvenile court proceedings except for that set forth in section 52.026 of the Family Code, we believe that a sheriff may not be required to do so unless all of the procedural requirements of subsection (c) have been satisfied. Therefore, we conclude that the sheriff of a county in which a child is taken into custody is not required to transport the child to juvenile court proceedings absent the adoption of an order by the juvenile board and approval of the juvenile board's order by record vote of the commissioners court.

We next address whether the duty to transport a child reverts to the juvenile probation officer in the absence of such an order. Your predecessor stated that "[p]rior to the adoption of the new statutory provisions, the juvenile probation officer transported all children being handled in the juvenile system. . . . Other than the new provisions of [section 52.026(c) of the Family Code], I have not been able to find any provisions which would change the existing system."

In essence, your predecessor asked whether a juvenile probation officer may be required to transport a child to juvenile court proceedings. He did not identify the statutory basis for "the existing system." Subchapter D of chapter 141 of the Human Resources Code sets forth the minimum standards for juvenile probation officers. The Bailey County juvenile board is governed by chapter 152 of the Human Resources Code, particularly section 152.0151. None of these statutes provides specific guidance with respect to the duties of juvenile probation officers. Section 142.002 of the Human Resources Code, however, authorizes a juvenile board to employ probation officers to provide "juvenile probation services." Section 142.001 defines the term "juvenile probation services" to mean "services provided by or under the direction of a juvenile probation officer in response to an order issued by a juvenile court and under the court's direction," including protective services, prevention of delinquent conduct, diversion, informal adjustment, foster care, counseling, supervision, and diagnostic, correctional, and education services, and "services provided by a juvenile probation department that is related to the operation of a juvenile detention facility." We believe that sections 142.001 and 142.002 require a juvenile probation officer to transport a child to juvenile probation proceedings if so ordered by a juvenile court. We are not aware of any other provision that would require a juvenile probation officer to do so.¹

¹Sections 142.001 and 142.002 of the Human Resources Code fix the responsibility for the transportation of juvenile defendants on juvenile probation officers only when a juvenile court has so ordered. Attorney General Opinion DM-87 (1992) considered whether a sheriff or constable could be ordered to provide such transportation. Because Attorney General Opinion DM-87 did not address whether juvenile probation officers may be required by juvenile courts to provide transportation for juvenile defendants, we do not believe our conclusion here is inconsistent with that opinion.

In the situation addressed in Attorney General Opinion DM-87, the juvenile court was located in county A and the juvenile detention facility was located in county B. We specifically considered whether the sheriff in county A could be ordered to transport juvenile defendants between the juvenile detention facility and the juvenile court. We note that newly-enacted Family Code, section 52.026(b) clearly requires a sheriff in county A to transport juveniles taken into custody in county A to a juvenile detention facility in county B. Furthermore, provided that its procedural requirements are met, section 52.026(c) clearly requires a sheriff in county A to transport such juveniles between the juvenile detention facility in county B and juvenile court proceedings in county A.

S U M M A R Y

Under section 52.026(c) of the Family Code, the sheriff of a county in which a child is taken into custody is not required to transport the child to juvenile court proceedings absent the adoption of an order by the juvenile board and approval of the juvenile board's order by record vote of the commissioners court. Sections 142.001 and 142.002 of the Human Resources Code require a juvenile probation officer to transport a child to juvenile probation proceedings if so ordered by a juvenile court.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee