

County of Nueces

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FILE # ML-22777-93
I.D.# 22777

October 11, 1993

Honorable Dan Morales
Attorney General for the State of Texas
P.O. Box 12548 - Capitol Station
Austin, TX 78711-2548

RQ-628

Attention: Opinions Committee

RE: Request for Attorney General's Opinion: Code of Criminal Procedure, Article 15.27 Notification to Schools Required (House Bill 23, Effective September 1, 1993)

Dear General Morales:

Effective September 1, 1993, the Texas Code of Criminal Procedure was amended adding Article 15.27. Notification to Schools Required. This amendment is made pursuant to enactment of House Bill 23 which was signed by the Governor on June 9, 1993 with an effective date of September 1, 1993. I have attached as Exhibit "A" a copy of Article 15.27 in its entirety.

The new Article 15.27 essentially provide that law enforcement agencies and prosecuting attorneys are required to give notification to school districts of arrests, convictions or adjudications of delinquent conduct of individuals enrolled as students in the district.

The article provides that law enforcement agencies "shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled or believed to be enrolled of that arrest or detention within twenty-four (24) hours after the arrest or detention, or on the next school day." The article goes on to provide for written notification within seven (7) days after the oral notice is given.

Honorable Dan Morales
Request for Opinion
Page 2
October 11, 1993

Our question goes to what information or how much information regarding the arrest is a law enforcement agency authorized or required to give to the school district.

Some have interpreted the statute to authorize the law enforcement agency to inform the school district only that the student has been arrested, and nothing more. "Hello, this is Corpus Christi Police Department John Doe, a student in your school district, has been arrested." This interpretation is supported by Ms. Lisa Capers, general counsel for the Texas Juvenile Probation Commission.

In an opposing view, the law enforcement agency should be authorized to provide more information related to the arrest, including the offense and any details which might be pertinent to the school district's maintenance of security. For example, where the arrest is for gang-related or assaultive behavior, the school administrator might take appropriate measures to prevent contact between the arrested individual and rival gang members or an alleged assault victim who is also a student at the school.

We note that the list of offenses for which the notification applies ranges from capital murder to a terroristic threat, which is a Class A misdemeanor, and includes sexual assault and first degree burglary among the many other offenses listed. Reasonably, by notification of the arrest alone, the school official is placed on notice that the student has been arrested for "serious" criminal conduct, but this begs the question: What should the administrator do with this information?

The act gives due regard to the sensitive nature of the information and makes provision for maintaining the confidentiality as well as preserving the presumption of innocence for the arrested student. The purpose of the act, however, seems to be to provide school administrators with adequate notice of potential security risks to afford them an opportunity to make appropriate provisions. In fact, at paragraph (g) the new law provides:

"On receipt of a notice under this article, a school official may take the precautions necessary to prevent further violence in the school, on school property or at school sponsored or school related activities on or off school property, but may not penalize a student solely because notification is received about the student."

It would not seem reasonable for a school administrator to take the same precautions with respect to a student who was

Honorable Dan Morales
Request for Opinion
Page 3
October 11, 1993

arrested for burglary of a habitation as he would take for a student arrested for sexual assault of a fellow student.

In meetings and conversations with school officials, I find they would like to have as much information as possible to make their facilities as secure as they can. Law enforcement officers, on the other hand, want to take every precaution to protect the confidentiality rights of the arrested juvenile student.

I am attaching as Exhibit "B" an abused copy of a portion of a legislative overview prepared by the Texas Juvenile Probation Commission, which indicates at the top of page two that the law enforcement agent should notify the school only of the arrest or detention and should not give out any information on the alleged offense. I am not in possession of any information related to the legislative history of this act, and I have found no helpful statutory or case law guidance.

We would appreciate your rendering an opinion in this matter, and we thank you for your time, attention and cooperation.

Yours truly,



Carl E. Lewis
County Attorney

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