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March 25, 2025

Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711

Re: Opinion Request on Detention Hearings of Juveniles

Dear Sir or Madam:

I am requesting an opinion on the clarification of Texas Family Code §54.01 over the proceedings of juvenile detention hearings. Specifically, I am requesting an opinion over when a juvenile is taken into custody without a directive to apprehend or arrest warrant and the scope of authority that is granted to the juvenile probation officer.

The Texas Family Code § 54.01(o) states that:

“The court ... shall find whether there is probable cause to believe that a child taken into custody without an arrest warrant or a directive to apprehend has engaged in delinquent conduct, conduct indicating a need for supervision, or conduct that violates an order of probation imposed by a juvenile court. The court must make the finding within 48 hours, including weekends and holidays, of the time the child was taken into custody.”

Additionally, the Texas Family Code § 54.01(a) provides a detention hearing without a jury shall be held promptly, but not later than the second working day (48 hours) after the child is taken into custody. If a child is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the child is taken into custody. If a detention hearing can be held sooner, it should be, since the law requires in any event, that it be held “promptly”. Pursuant to 54.01(b-1), the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing, unless the court finds that the appointment of counsel is not feasible due to exigent circumstances.

Here, the juvenile probation officer is providing evidence of probable cause to the county judge. He has stated that he then may have the juvenile detained for 48 hours without having to schedule a hearing with the court or notify the prosecutor of the juvenile’s detention. Thus, he is fully assuming that he has the authority to release a juvenile without presenting any evidence

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besides the original probable cause to the court and the juvenile is never appointed legal counsel to represent them by the court.¹

As provided above, a detention hearing shall be promptly scheduled and held once probable cause is found by the court for a juvenile to be taken into custody. My understanding of the Texas Family Code is that a juvenile probation officer is not granted absolute authority in declining to schedule a hearing for the detention. It is at this detention hearing provided under this section that the court then orders the release or continued detention of the juvenile based on the evidence presented and recommendation of the juvenile probation officer. It is not the juvenile probation officer's decision or within his scope of authority on whether the juvenile may be released but it is the court's decision. Additionally, releasing a juvenile from detention is completely circumventing the juvenile's right to legal counsel because the court does not have enough time to appoint counsel prior to the first detention hearing since no detention hearings are scheduled. The court has argued that the juvenile probation officer is granted this authority to release a juvenile under Texas Family Code § 53.02 and that there is no requirement that a detention hearing be scheduled or held once a juvenile is released by the juvenile probation officer.

Is the court correct that a juvenile probation officer, once they show probable cause to the court, may then make the sole decision on when a juvenile may be released from a detention facility as long as the juvenile is released before less than 48 hours? The times this has occurred; the juveniles were being taken into custody for probation violations. Since these are violations of court orders, does this change the detention proceedings laid out in Texas Family Code § 54.01?

My second request for an opinion is in regard to a juvenile probation officer's scope of authority and ability to have ex-parte communications with the presiding judge over a pending case. I have attached the email that the juvenile probation officer sent to an outside legal attorney from a help line that he then forwarded to the presiding judge without the inclusion of the juvenile's legal counsel or myself, the juvenile prosecutor. I did not receive notice of this communication until the next day from the presiding judge, I then promptly forwarded the information to the juvenile's legal counsel. The juvenile probation officer has argued that this is his role and scope of authority within the judicial system to advise the court on what the court is legally able to order on pending motions filed by attorneys.

Is it within the role of a juvenile probation officer to give legal advice to the court on the legality of motions filed by the juvenile prosecutor? Additionally, are these communications considered to be ex-parte and thus, a violation of a juvenile's due process rights if these communications are done without the inclusion of the juvenile's legal counsel or the juvenile prosecutor? Are there any risks of Brady or Michael Morton violations if a juvenile probation

¹ We do not have any attorneys in Bailey County or Parmer County besides the County Attorneys, District Judge, and the District Attorney. Thus, exigent circumstances are usually found by the court for the appointment of legal counsel prior to the first detention hearing.

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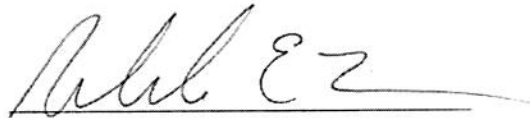
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officer communicates with the presiding judge through email and the prosecutor does not supply this information to the opposing counsel?

Respectfully,



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