



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

January 7, 1975

The Honorable Clayton T. Garrison  
Executive Director  
Texas Parks and Wildlife Department  
John H. Reagan Building  
Austin, Texas 78701

Opinion No. H- 487

Re: Jurisdiction over  
juveniles, 14 to 17  
years of age for  
violation of game and  
fish laws.

Dear Mr. Garrison:

You have requested our opinion concerning jurisdiction over violations of the game and fish laws and the Water Safety Act, V. T. C. S., article 9206 (formerly Penal Code, article 1722a) when the defendant is between 14 and 17 years of age.

The fish and game laws and the Water Safety Act provide for different penalties and jurisdiction for various violations. However, section 8.07(b) of the Texas Penal Code provides that a person under 17 years of age may not be prosecuted for or convicted of any offense other than aggravated perjury, a violation of a traffic ordinance, and driving while intoxicated unless the Juvenile Court waives jurisdiction and certifies him to a District Court for criminal prosecution. Section 54.02 of the Family Code restricts such a waiver and certification to felony cases. Since violations of the fish and game laws or the Water Safety Act are with few exceptions misdemeanors, this certification process will be unavailable as a means for prosecuting persons under 17 years of age for most violations. Nevertheless, this procedure may be utilized when the violation constitutes a felony, which is defined as an offense punishable by confinement in the penitentiary. Penal Code, § 1.07 (14).

Where the offense is a misdemeanor other than those listed above, section 8.07 of the Penal Code in effect requires the case to be brought as a juvenile proceeding under Title III of the Family Code. Unless certified to the District Court violations constituting a felony must also be brought under Title III. Section 51.04 of the Family Code gives the Juvenile Court exclusive jurisdiction over proceedings under Title III. Section 51.03(a) defines delinquent conduct as that which violates a penal law punishable by imprisonment or confinement in jail. Section 51.03(b)(1) specifies conduct

that on three or more occasions violates a penal law of the grade of misdemeanor that are punishable by fine only as "conduct indicating a need for supervision." The question of whether a child has engaged in delinquent conduct or conduct indicating a need for supervision is a matter within the jurisdiction of the Juvenile Court. Sec. 51.04.

You also ask what is the correct procedure for your commissioned officers to follow when they find juveniles in violation of game and fish laws punishable by fine only.

A commissioned officer of the Parks and Wildlife Department is a peace officer, Tex. Code Crim. Proc., art. 2.12(11). A peace officer may arrest a person who commits any offense within his presence. Tex. Code Crim. Proc., art. 14.01(b). A child may be taken into custody pursuant to the laws of arrest. Family Code, sec. 52.01 (a)(2). Alternatively, a child may be issued a warning notice in lieu of taking him into custody, if certain guidelines for such a disposition have been established by the law enforcement agency involved and approved by the juvenile court of the county. See Family Code, sec. 52.01(c); sec. 52.03.

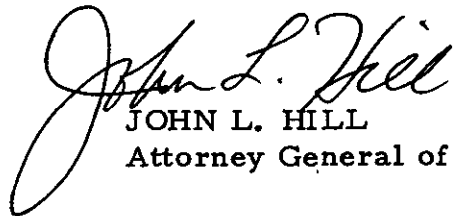
Where the officer takes the child into custody, he shall, without unnecessary delay, take action as specified in Family Code section 52.02. These actions include releasing the child to a parent or guardian upon the adult's promise to bring the child before the juvenile court on request, bringing the child to the office or official designated by the juvenile court, bringing the child to a detention facility designated by the juvenile court, or disposing of the case without referral to court as provided in Family Code section 52.03. Such a disposition can include a conference with the child and his parent, guardian, or custodian.

While a single violation of a game and fish misdemeanor is not a basis on which a child may be determined to be in need of supervision, three occurrences of such conduct do provide a basis for such a determination. Family Code, sec. 51.03. The law enforcement files and records of such violations may be utilized by the juvenile court in subsequent proceedings concerning the child. Family Code, sec. 51.14(d)(1).

S U M M A R Y


Jurisdiction over a minor between 14 and 17 years old for a violation of fish and game misdemeanor offenses is in the Juvenile Courts. The procedure for handling these minors can involve taking the minors into custody. Alternatively, a law enforcement agency may adopt guidelines for disposition of cases involving children without referral to the juvenile court, which guidelines must be approved by the juvenile court of the county. If the minor is taken into custody, the officer, without unnecessary delay, shall take the action specified in article 52.02 of the Family Code.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
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DAVID M. KENDALL, First Assistant

  
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C. ROBERT HEATH, Chairman  
Opinion Committee