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**RECEIVED**  
AUG 20 2015  
**OPINION COMMITTEE**

**JERI YENNE**  
CRIMINAL DISTRICT ATTORNEY  
BRAZORIA COUNTY

August 17, 2015

FILE # ML-47792-15  
I.D. # 47792

**RQ-0046-KP**

The Honorable Ken Paxton  
Attorney General, State of Texas  
ATTN: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Enforcement of Truancy Court Orders

Dear General Paxton:

I write today regarding differing interpretations involving two sections of recently enacted House Bill 2398, relating to repeal of criminal truancy and creation of civil truancy provisions under Texas Family Code Chapter 65. The provisions of House Bill 2398 addressed in this letter are effective starting September 1, 2015. Both issues relate to new Chapter 65, Subchapter F of the Texas Family Code, which more generally addresses enforcement of orders issued by the new civil truancy court.

1) Texas Family Code Section 65.251

Section 65.251(b) reads as follows:

**If a child fails to obey an order issued by a truancy court under Section 65.103(a) or a child is in direct contempt of court and the child has failed to obey an order or has been found in direct contempt of court on two or more previous occasions, the truancy court, after providing notice and an opportunity for a hearing, may refer the child to the juvenile probation department as a request for truancy intervention, unless the child failed to obey the truancy court order or was in direct contempt of court while 17 years of age or older.**

Act of June 18, 2015, 84th Leg., R.S., H.B. 2398, § 27 (to be codified at Tex. Fam. Code § 65.251(b)) (emphasis added). Our office has encountered two interpretations regarding under what circumstances a truancy court may refer a child to the juvenile probation department. One reading of the above section suggests that a child failing to obey an order or having been found in direct contempt of court on two or more previous occasions is only a prerequisite for referring a child to the juvenile probation department when the child is found in direct contempt of court. If this reading holds, then a truancy court could refer a child directly to the juvenile probation department if that child fails to obey an order issued by the truancy court under Section 65.103(a) of the Texas Family Code, without need of the child previously failing to obey an order or having been found in direct contempt on two or more previous times.

A second interpretation of this section posits that a child must fail to obey an order or be found in direct contempt of court on two or more previous occasions prior to being referred to the juvenile probation department if the child **either** fails to obey an order under Section 65.103(a) or if the child is found in direct contempt of court. Under this interpretation, the truancy court could not refer a child directly to the juvenile probation department if the child failed to obey a Section 65.103(a) order, but instead would require a child to first fail to comply with a prior order or be found in direct contempt of court on two or more previous occasions. Each statutory construction can be broken down as follows:

**Breakdown of Section 65.251(b):**

Phrase A	"If a child fails to obey an order issued by a truancy court under Section 65.103(a)..."
Phrase B	"...or a child is in direct contempt of court..."
Phrase C	"...and the child has failed to obey an order..."
Phrase D	"...or has been found in direct contempt of court on two or more previous occasions..."

**When a truancy court may refer a child to juvenile probation department:**

**Interpretation #1**

A only
B + C
B + D

**Interpretation #2**

A + C
A + D
B + C
B + D

Act of June 18, 2015, 84th Leg., R.S., H.B. 2398, § 27 (to be codified at Tex. Fam. Code § 65.251(b)). Our office respectfully requests that the Attorney General's Office determine if a child may be directly referred to a juvenile probation department by a truancy court when that child only fails to obey an order issued under Section 65.103(a) of the Texas Family Code, or if the child is required to first fail to obey an order or have

been held in direct contempt on two or more previous occasions prior to referral to a juvenile probation department.

2) Texas Family Code Section 65.252

The second issue relates to new Section 65.252 of the Texas Family Code. Section 65.252 details juvenile court proceedings following referral by a juvenile probation department. Under this section, juvenile court prosecutors “shall determine if probable cause exists” to believe a child engaged in either direct contempt of court or failure to obey a court order. Act of June 18, 2015, 84th Leg., R.S., H.B. 2398, § 27 (to be codified at Tex. Fam. Code § 65.252(a)). Following this determination, the prosecutor “shall determine whether to request an adjudication” if there is probable cause. *Id.* The juvenile court “shall conduct a hearing” to determine whether a child engaged in either contempt of an order issued by the truancy court or engaged in direct contempt. *Id.*

Should a juvenile court find that the child committed contempt of a truancy court order or direct contempt of court, the juvenile court must order the child to comply with the truancy court’s orders, forward a copy of the order to the truancy court within five days, and admonish the child regarding ramifications of possible subsequent referrals, including the possibility of a delinquent conduct charge and a detention hearing. *Id.* (to be codified at Tex. Fam. Code § 65.252(b)). The juvenile court shall enter an order requiring the child to continue complying with the truancy court’s order and notify the truancy court within five days if the prosecutor determines there is not probable cause or if the juvenile probation department determines that “extenuating circumstances” caused the truancy referral from the school district. *Id.* (to be codified at Tex. Fam. Code § 65.252(c)).

Section 65.252(d) further states, “This section does not limit the discretion of a juvenile prosecutor or juvenile court to prosecute a child for conduct under Section 51.03.” *Id.* (to be codified at Tex. Fam. Code § 65.252(d)). Section 51.03 of the Texas Family Code defines delinquent conduct and conduct indicating a need for supervision in Texas juvenile courts. As amended by House Bill 2398, it defines delinquent conduct as, among other things, “conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in...a truancy court.” *Id.* (to be codified as an amendment to Tex. Fam. Code § 51.03(a)).

Section 65.252(d) suggests a prosecutor or juvenile court has the discretion to prosecute a child for delinquent conduct as now defined under Texas Family Code section 51.03 for contempt resulting from violation of a lawful order of the truancy court. This would include the first instance in which a child is referred to the juvenile court from a truancy court. However, Section 65.252(a)–(c) indicates that a child referred to a juvenile court from a truancy court in the first instance must eventually be referred back to the truancy court and admonished of possible future delinquent conduct charges and detention hearings. *See id.* (to be codified as Tex. Fam. Code. § 65.252(b)) (stating that a child must be admonished, orally and in writing, of possible future delinquent conduct charges and detention hearings).

Our office asks that the Attorney General's Office determine whether a prosecutor and juvenile court must comply with Section 65.252(a)–(c) of the Texas Family Code in the first instance of a child's referral from truancy to juvenile court, or whether a prosecutor and juvenile court maintain discretion under Section 65.252(d) to prosecute the child for delinquent conduct at any time.

Thank you for your attention to this matter and for addressing these two issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeff Yenne".

Jeff Yenne  
Criminal District Attorney  
Brazoria County District Attorney's Office