January 9, 2003

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

SYLLABUS: 2003-004

1. If a juvenile court commits to the temporary custody of a public children services agency a child who has been adjudicated to be unruly or delinquent pursuant to R.C. 2151.354(A)(1) or R.C. 2152.19(A)(1), respectively, the duration of the temporary custody order is subject to the time limitations set forth in R.C. 2151.353(F) and R.C. 2151.415.

2. A juvenile court retains jurisdiction over a child who has been adjudicated to be unruly or delinquent until the child attains twenty-one years of age, and may continue to make dispositional orders with respect to the child until that time, regardless of whether the court's order of temporary custody has expired under the time limitations set forth in R.C. 2151.353(F) and R.C. 2151.415.

January 9, 2003

OPINION NO. 2003-004

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

Dear Prosecutor Baxter:

You have asked whether a juvenile court's award of temporary custody of an unruly or delinquent child to a county department of job and family services is subject to the time limitations found in R.C. 2151.353.

You have explained that the Erie County Department of Job and Family Services (department) is frequently granted temporary custody of juveniles who have been adjudicated unruly or delinquent by the Erie County Court of Common Pleas, Juvenile and Domestic Relations Division (court).[1] *See generally* R.C. 2151.011(A)(1)(a); R.C. 2301.03(N). Such disposition is made by the court pursuant to R.C. 2151.354(A)(1), for children who have been adjudicated unruly,[2] or R.C. 2152.19(A)(1) (formerly R.C. 2151.355),[3] for children who have been adjudicated delinquent.[4] R.C. 2151.354(A)(1) and R.C. 2152.19(A)(1) authorize a juvenile court to make any order of disposition for an unruly or delinquent child that it is authorized by R.C. 2151.353 to make for the care and protection of an abused, neglected, or dependent child. *See generally In re Kessler*, 90 Ohio App. 3d 231, 628 N.E.2d 153 (Huron County 1993).

---

[1] A county department of job and family services may serve as a county's public children services agency. R.C. 5153.01; R.C. 5153.02(B). *See* R.C. 5153.16(A)(3) (a public children services agency must "[a]ccept custody of children committed to the public children services agency by a court exercising juvenile jurisdiction").

[2] *See* R.C. 2151.022 (describing who is an "unruly child").

[3] *See* Sub. S.B. 179, 123rd Gen. A. (2000) (eff. April 9, 2001, with pertinent sections discussed herein effective Jan. 1, 2002).

[4] *See* R.C. 2151.011(B)(12); R.C. 2152.02(F) (describing who is a "delinquent child").

R.C. 2151.353--One-Year Limitation on Temporary Custody Orders

Therefore, we turn to an examination of R.C. 2151.353 and the orders of disposition authorized therein. Division (A)(2) of R.C. 2151.353 authorizes a juvenile court to commit to the temporary custody of a public children services agency a child who has been adjudicated to be abused, neglected, or dependent. Thus, a court is also authorized, pursuant to R.C. 2151.354(A)(1) and R.C. 2152.19(A)(1), to commit to the temporary custody of a public children services agency a child who has been adjudicated unruly or delinquent. *See* R.C. 2151.011(B)(44) (defining "[t]emporary custody" to mean "legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement"). *See also* R.C. 2151.011(B)(19) (defining "[l]egal custody" to mean "a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities").

Division (F) of R.C. 2151.353 provides that, "[a]ny temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care,[5] except that, upon the filing of a motion pursuant to section 2151.415 of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section" (footnote added). Thus, R.C. 2151.353(F) limits the duration of a temporary custody order to one year. However, R.C. 2151.415 allows for the extension of such order.

R.C. 2151.415--Extensions of Temporary Custody Orders

Division (A) of R.C. 2151.415 requires a public children services agency that has been given temporary custody of a child "pursuant to section 2151.353 of the Revised Code," to file a motion, no later than thirty days prior to the date for termination of custody, requesting that the court make any one of six disposition orders regarding the child.[6] One such order is for the

---

[5] Shelter care is temporary care in a physically unrestricted facility. R.C. 2151.011(B)(50). Generally speaking, a child who is taken into custody, after a complaint is filed or otherwise, may be placed in shelter care pending the adjudicatory hearing, and in some cases, until the dispositional hearing is held. R.C. 2151.28; R.C. 2151.31(C).

[6] R.C. 2151.353(E)(2) and R.C. 2151.415(F) authorize a public children services agency, among others, to request at any time that the court modify or terminate any order of disposition issued pursuant to R.C. 2151.353(A) or R.C. 2151.415. *See also* R.C. 2151.417(A) (any court that issues a disposition order pursuant to R.C. 2151.353 or R.C. 2151.415 may review at any

extension of temporary custody. R.C. 2151.415(A)(6).[7] The court may extend the temporary custody order for a period of up to six months. R.C. 2151.415(D)(1). Prior to the end of this extension, the agency must file a motion with the court again requesting the issuance of one of the six orders of disposition, including an extension of temporary custody for an additional period of up to six months. R.C. 2151.415(D)(2). The court may not grant an agency more than two extensions of temporary custody. R.C. 2151.415(D)(4). Prior to the end of the second extension, the agency must request that the court issue one of the orders of disposition, other than an order of temporary custody. R.C. 2151.415(D)(3).

Application of Time Limitations to Unruly and Delinquent Children

Thus, an order of temporary custody may continue for a maximum of two years from the time the complaint was filed or the child was placed in shelter care. You wish to know whether the time limitations in R.C. 2151.353 and R.C. 2151.415 apply to orders of temporary custody committing children who have been adjudicated unruly or delinquent, as well as those who have been adjudicated abused, neglected, or dependent.

You asked a similar question that was addressed in 1999 Op. Att'y Gen. No. 99-041, specifically, whether a county department of human services (now called county department of job and family services), which has temporary custody of an unruly or delinquent child, is required to develop and file with the court a case plan pursuant to R.C. 2151.412 and hold semiannual reviews pursuant to R.C. 2151.416, and whether the juvenile court is required to hold

---

time the child's custody arrangement and determine whether any changes should be made thereto); R.C. 2151.417(B) (if a court issues a dispositional order pursuant to R.C. 2151.353, the court has continuing jurisdiction over the child and may amend a dispositional order at any time upon its own motion or that of an interested party); R.C. 2151.417(C)-(J) (a court that issues a dispositional order pursuant to R.C. 2151.353 must hold periodic review hearings to, *inter alia*, review the child's custody arrangement); 1999 Op. Att'y Gen. No. 99-041 at 2-259 ("periodic reviews are required whenever a child is placed into the temporary custody of a public children services agency, whether the court's initial examination of the child's condition was based on complaints of unruliness or delinquency or on allegations of abuse, neglect, or dependency").

[7] The other orders of disposition a court may make under R.C. 2151.415(A) are to: (1) return the child home and to the custody of the child's parents, guardian, or custodian without any restrictions; (2) return the child home under protective supervision; (3) place the child in the legal custody of a relative or other interested individual; (4) permanently terminate the parental rights of the child's parents; and (5) place the child in a planned permanent living arrangement. *See generally* R.C. 2151.011(B)(36) (defining "[p]lanned permanent living arrangement") and R.C. 2151.011(B)(39) (defining "[p]rotective supervision"). Furthermore, the court is authorized to make any of the dispositional orders specified in R.C. Chapter 2152 or R.C. 2151.354 for a delinquent or unruly child, respectively.

periodic reviews pursuant to R.C. 2151.417. In answering all three questions in the affirmative, the opinion examined the language and purpose of the statutory requirements (and related juvenile rules), as well as the legislative history, noting that, "[w]hether a child is placed into the temporary custody of the county department of human services as an unruly or delinquent child or because of abuse, neglect, or dependency, the department has legal responsibility for the child's safety and welfare." *Id.* at 2-258.[8] Addressing whether R.C. 2151.417 (periodic review hearings by juvenile courts), applied to dispositional orders regarding unruly or delinquent children, the opinion rejected the argument that R.C. 2151.417 is inapplicable to a dispositional order governing an unruly or delinquent child simply because "it is made by statutory cross-reference to R.C. 2151.353, rather than directly pursuant to that provision." *Id.* at 2-258. The opinion concluded instead that "the better reading is that a dispositional order is made 'pursuant' to R.C. 2151.353 for purposes of R.C. 2151.417(C) when the making of such an order is authorized by the reference to R.C. 2151.353 appearing in R.C. 2151.354(A)(1) or [R.C. 2152.19(A)(1)]," and the "result of such a reading is that periodic reviews are required whenever a child is placed into the temporary custody of a public children services agency, whether the court's initial examination of the child's condition was based on complaints of unruliness or delinquency or on allegations of abuse, neglect, or dependency." *Id.* at 2-258 and 2-259.

Applying the same analysis, we likewise conclude that, although R.C. 2151.353 and R.C. 2151.415 refer to orders of temporary custody issued pursuant to R.C. 2151.353, the statutes' limitations on the duration of a temporary custody order apply, by virtue of the cross-reference to R.C. 2151.353 in R.C. 2151.354 and R.C. 2152.19, to orders governing children who have been adjudicated unruly or delinquent.

To elaborate, we note that Ohio R. Juv. P. 14(A) states that "*[a]ny* temporary custody order issued" (emphasis added) shall terminate within one year, subject to the appropriate extensions. Rule 14 thus expressly applies the time limitation on temporary custody to all temporary custody orders, while there is nothing in statute or rule that expressly restricts application of the time limitations or otherwise indicates they would not apply to children who have been adjudicated unruly or delinquent. *Cf.* Ohio R. Juv. P. 36(A) ("[a] court that issues a dispositional order *in an abuse, neglect, or dependency case* may review the child's placement or custody arrangement, the case plan, and the actions of the public or private agency implementing that plan at any time"); 1999 Op. Att'y Gen. No. 99-041 at 2-259 n.7.

We also note that the juvenile court has several other choices in crafting an order of disposition with regard to a child who has been adjudicated unruly or delinquent. By utilizing

---

[8] *See* Paul C. Giannelli, *Ohio Juvenile Law* § 26:5, at 323 (2002) ("it is arguable that whenever a court treats a delinquent child as an abused, neglected, or dependent child pursuant to R.C. 2151.355(A)(1) [now R.C. 2152.19(A)(1)], the statutory requirements imposed in the latter proceedings apply. For instance, it is clear that a case plan must be prepared and maintained for a delinquent child who is in the temporary or permanent custody of an appropriate agency").

one of the options available for children not so adjudicated, placement in the temporary custody of a public children services agency, the court must be deemed to recognize the provisional, impermanent nature of the arrangement and the desirability in that case of returning the child home or to another permanent living arrangement.[9]

Jurisdiction of the Juvenile Court

Although a temporary custody order is limited to a maximum of two years, Sub. S.B. 179 now provides that the juvenile court retains jurisdiction over a child who has been adjudicated unruly or delinquent until the child attains twenty-one years of age. R.C. 2151.011(B)(5) (unruly); R.C. 2152.02(C)(6) (delinquent).[10] In *In re Young Children*, 76 Ohio St. 3d 632, 669 N.E.2d 1140 (1996), the court made clear that an agency's temporary custody of a child and the court's jurisdiction over a child are two separate matters, and that the termination of a temporary custody order after the expiration of a statutory time limit does not divest a juvenile court of jurisdiction to enter dispositional orders with respect to the child.

In *In re Young Children*, the court stated that R.C. 2151.353(E)

> was intended to ensure that a child's welfare would always be subject to court review. That is, given that a child, by virtue of being before the court pursuant to R.C. Chapter 2151, was at risk of some harm, the General Assembly provided for the child's safety and welfare by ensuring that the juvenile court would retain jurisdiction over the child through the age of majority. R.C. Chapter 2151 places no limitation on this general jurisdiction.
>
> … although the court has continuing jurisdiction, temporary custody terminates when the sunset date passes without a filing pursuant to R.C. 2151.415(A). However, because the court retains jurisdiction over the child, it

---

[9] One of the goals of recent juvenile justice legislation has been to minimize the length of time that children under the jurisdiction of a juvenile court spend in temporary care and to ensure that the juvenile courts and children services agencies work towards returning children to their own home or another permanent, family-like setting. *See In re Carroll*, 124 Ohio App. 3d 51, 705 N.E.2d 402 (Greene County 1997); *In re Collier*, 85 Ohio App. 3d 232, 619 N.E.2d 503 (Athens County 1993); 1999 Op Att'y Gen. No. 99-041.

[10] With regard to a child who has been adjudicated abused, dependent, or neglected, division (E)(1) of R.C. 2151.353 and division (E) of R.C. 2151.415 provide that a court must retain jurisdiction over any such child until he reaches eighteen years of age, or twenty-one years of age if the child is disabled, or until the child is adopted and a final decree of adoption is issued. *See also* R.C. 2151.417(B). *See generally In re Kessler*, 90 Ohio App. 3d 231, 628 N.E.2d 153 (Huron County 1993). A court may also retain jurisdiction over a child and continue an order of disposition "for a specified period of time to enable the child to graduate from high school or vocational school." R.C. 2151.353(E); R.C. 2151.415(E).

> may make further dispositional orders as it deems necessary to protect the child. We believe the General Assembly granted continuing jurisdiction to the courts for just this reason.
>
> This holding allows the juvenile court to assess each situation on its merits and does not mandate the return of children to a situation from which they originally needed protection solely because the agency charged with their care missed a filing deadline. Thus, we hold that when the sunset date has passed without a filing pursuant to R.C. 2151.415 and the problems that led to the original grant of temporary custody have not been resolved or sufficiently mitigated, courts have the discretion to make a dispositional order in the best interests of the child.

Id. at 637-38, 669 N.E.2d at 1144. *See also In re Kessler* (the juvenile court had continuing jurisdiction over the case of a child, who had been adjudicated unruly and placed in a foster home pursuant to R.C. 2151.354(A)(1) and R.C. 2151.353(A)(2), until she reached the age of twenty-one since she was physically disabled). Although the facts before the court in *In re Young Children* involved an agency with temporary custody that had failed to seek an extension more than thirty days prior to the expiration of the original order as provided in R.C. 2151.415, there is nothing to suggest that the court's reasoning and holding are not also applicable to the situation where an agency has filed for, and been granted, the two extensions of temporary custody allowed by R.C. 2151.415, and the maximum two-year period has expired.

In conclusion, it is my opinion, and you are advised that:

1. If a juvenile court commits to the temporary custody of a public children services agency a child who has been adjudicated to be unruly or delinquent pursuant to R.C. 2151.354(A)(1) or R.C. 2152.19(A)(1), respectively, the duration of the temporary custody order is subject to the time limitations set forth in R.C. 2151.353(F) and R.C. 2151.415.

2. A juvenile court retains jurisdiction over a child who has been adjudicated to be unruly or delinquent until the child attains twenty-one years of age, and may continue to make dispositional orders with respect to the child

until that time, regardless of whether the court's order of temporary custody has expired under the time limitations set forth in R.C. 2151.353(F) and R.C. 2151.415.

Respectfully,

BETTY D. MONTGOMERY
Attorney General