

OPINION NO. 84-023**Syllabus:**

Pursuant to R.C. 2151.352, a child, his parents, custodian, or other persons in loco parentis, if indigent, is entitled to be represented in all juvenile proceedings by a public defender in accordance with the comprehensive system set forth in R.C. Chapter 120, regardless of whether the outcome of the proceeding could result in a loss of liberty.

**To: Randall M. Dana, Public Defender, Office of the Ohio Public Defender,
Columbus, Ohio**
By: Anthony J. Celebrezze, Jr., Attorney General, May 11, 1984

I have before me your request for my opinion in which you raise the following issue:

Is the representation at hearings in juvenile court of indigent children, their parents, custodians, or other persons in loco parentis of such children controlled by sections 2151.352 and 2151.353 of the Ohio Revised Code or is it controlled by sections 120.06(A)(2), 120.16(A)(3), 120.26(A)(3), and 120.33 of the O.R.C.?

In your correspondence, you indicate that this question arises out of the fact that the juvenile courts have jurisdiction over five types of proceedings related to children. Two of these proceedings relate to the determination of whether a child is unruly, R.C. 2151.022 and R.C. 2151.354, or delinquent, R.C. 2151.02 and R.C. 2151.355. The other three proceedings involve a determination of whether a child is abused, R.C. 2151.031, neglected, R.C. 2151.03, or dependent, R.C. 2151.04. As to the first two types of proceedings, you have indicated that a determination of whether a child is unruly or delinquent may result in incarceration of the juvenile, R.C. 2151.354 and R.C. 2151.355. Such potential for incarceration would satisfy the requirement of a loss of liberty and therefore entitle the juvenile to be represented by the county public defender under R.C. 120.16(A)(3). As to the last three types of proceedings, the court, upon a finding that a child is abused, neglected, or dependent, may order a variety of dispositions including taking the child from the custody of his parents and placing the child in the custody of the state, R.C. 2151.353. In your correspondence you indicate that no one can be incarcerated as a result of a court determination in an abuse, dependency, or custody case and, therefore, the child is not entitled to be represented by a county public defender under R.C. 120.16(A)(3).

R.C. Chapter 120 creates a comprehensive system for providing legal representation for indigent persons. The provision of legal representation is accomplished through four structures: a state public defender, R.C. 120.04-120.06, a county public defender system, R.C. 120.13-120.18, a joint county public defender system, R.C. 120.23-120.26 and a system of appointed counsel, R.C. 120.33. In specific, R.C. 120.16(A)(3) provides in pertinent part: "The county public defender shall represent, when designated by the court, juveniles. . . and all other persons. . . in any proceeding the outcome of which could result in the loss of liberty." Similar language is contained in R.C. 120.06(A)(2) (powers and duties of state public defender), R.C. 120.26(A)(3) (powers and duties of joint county public defender), and are made applicable to appointed counsel systems through R.C. 120.33. Under the four aforementioned systems, therefore, the existence of a potential loss of liberty is essential to triggering the provision of legal representation.

R.C. Chapter 120 is not, however, the sole source of authority for the provision of legal representation for indigent persons. The Ohio Rules of Juvenile Procedure provide for counsel in all proceedings. Ohio R. Juv. Pro. 4(A) states:

Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. When the complaint alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child.

The requirements imposed in Rule 4(A) are further recognized in R.C. 2151.352, which provides in part:

A child, his parents, custodian, or other person in loco parentis of such child is entitled to representation by legal counsel at all stages of the proceedings and if, as an indigent person, he is unable to

employ counsel, to have counsel provided for him pursuant to Chapter 120. of the Revised Code. If a party appears without counsel, the court shall ascertain whether he knows of his right to counsel and of his right to be provided with counsel if he is an indigent person. The court may continue the case to enable a party to obtain counsel or to be represented by the county public defender or the joint county public defender and shall provide counsel upon request pursuant to Chapter 120. of the Revised Code. Counsel must be provided for a child not represented by his parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each of them. (Emphasis added.)

Under these provisions, the right to counsel is broader than required by *In re Gault*, 387 U.S. 1 (1976), which mandated counsel only in delinquency cases from which commitment could result. If a child is brought before the juvenile court for a hearing to determine whether the child is delinquent, unruly, dependent, neglected, or a juvenile traffic offender, and if the child and his parents are indigents, such child and his parents are entitled to have counsel provided pursuant to R.C. Chapter 120. If the complaint alleges the child is an abused child, the court must appoint an attorney to represent the interests of the child. Rule 4(A).

That R.C. 2151.352 operates so as to enable indigent children, their parents, custodians, or other persons in loco parentis, to be afforded the assistance of the state public defender, county public defender, joint county public defender or appointed counsel is apparent from an analysis employing well accepted rules of statutory construction. R.C. 2151.352 and R.C. Chapter 120 must be read *in pari materia*, giving full effect to both if possible. See generally *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956). Such reading leads to the conclusion that, although R.C. Chapter 120 generally requires the potential for the loss of liberty as an essential element prior to the provisions of legal counsel for indigents, R.C. 2151.352 specifically expands the right to counsel for indigents in juvenile court proceedings. Furthermore, as R.C. 2151.352 is relevant to the specific provision of counsel in juvenile court matters, to the extent that any conflict exists between R.C. 2151.352 and R.C. Chapter 120, the general must give way to the specific. See generally R.C. 1.51; *Cincinnati v. Bossert Machine Co.*, 16 Ohio St. 2d 76 (1968), 243 N.E.2d 105, cert. denied, 394 U.S. 998 (1969). Therefore, the requirement contained in R.C. 2151.352 that an indigent person has the right to have counsel provided for him pursuant to R.C. Chapter 120 does not operate to limit the right of counsel to only those proceedings in which there exists a potential loss of liberty but operates to afford counsel for indigent persons in all juvenile proceedings in accordance with the comprehensive system for providing legal representation contained in R.C. Chapter 120. The reference to R.C. Chapter 120 in R.C. 2151.352 is not a reference to the circumstances which give rise to the provision of counsel, but rather, is a reference to the mechanisms for providing counsel.

It is, therefore, my opinion, and you are advised, that pursuant to R.C. 2151.352, a child, his parents, custodian, or other persons in loco parentis, if indigent, is entitled to be represented in all juvenile proceedings by a public defender in accordance with the comprehensive system set forth in R.C. Chapter 120, regardless of whether the outcome of the proceeding could result in a loss of liberty.