

OPINION NO. 77-063

Syllabus:

1. In accordance with R.C. 5119.64, et seq., juvenile runaways who are apprehended by law enforcement officials may not be placed in juvenile detention facilities even though suitable shelter is unavailable. However, if such a youth is determined to be a delinquent child as defined in R.C. 2151.02, an unruly child as defined in R.C. 2151.022, or a juvenile traffic offender as defined in R.C. 2151.021, he may

be processed through the juvenile justice system and placed in a juvenile detention facility.

2. A law enforcement official may hold a runaway juvenile against his will, provided his detention or care is required to protect the person or property of others or those of the child, or because the child may abscond or be removed from the jurisdiction of the court, or because he has no parents, guardian or custodian or other person able to provide supervision and care for him.

To: Arthur M. Elk, Ashland County Pros. Atty., Ashland, Ohio
By: William J. Brown, Attorney General, October 12, 1977

Your request for my opinion poses the following questions:

1. May juvenile runaways who are apprehended by law enforcement officials be placed in detention facilities until the parents arrive or until suitable shelter becomes available?
2. May a law enforcement official hold a runaway juvenile against the juvenile's will or must all sheltering of these runaways be on a voluntary, noncoercive basis?

R.C. 5119.64 is pertinent in part as follows:

The mental health and retardation board established under Chapter 340 of the Revised Code is responsible for the enforcement of applicable federal requirements and rules of the board adopted under section 5119.66 of the Revised Code for the safety and effectiveness of facilities and programs of shelters for runaways located in the county.

(A) Runaway minor means any minor, whether a resident or nonresident of the state, who is separated from a person having responsibility for his care or education, and appears to be in need of emergency housing and other services. . .

(B) 'Shelter for runaways' means a facility that offers to provide and does provide to the public, crises short-term counseling and temporary emergency housing for runaway minors.

In addition, R.C. 5119.65, provides in pertinent part as follows:

No person, organization, or public or private agency shall operate a shelter for runaway minors, except the children services board or county department of

welfare which has assumed the administration of a child's welfare, unless such person, organization or agency complies with sections 5119.64 to 5119.68 of the Revised Code and rules of the mental health and retardation board adopted thereunder. . . .

Furthermore, R.C. 5119.66, provides in pertinent part as follows:

Each community mental health and retardation board shall adopt rules governing shelters for runaways, reflecting the intent of Title III of the "Juvenile Justice and Delinquency Prevention Act of 1974", 88 Stat. 1109, 42 U.S.C. 5701, as amended, and regulations adopted thereunder. . . .

These statutes indicate that the community board of mental health and retardation is now responsible for adopting rules governing shelters for runaway juveniles in their county. Furthermore, the children services board or county department of welfare shall operate the shelters for runaway juveniles in the county.

Although it is unnecessary to include a comprehensive analysis of Title III of the "Juvenile Justice and Delinquency Prevention Act of 1974", commonly known as the Runaway Youth Act, it is necessary to understand the philosophy and intent of the Act.

42 U.S.C. 5701, eff. 9-7-74, reflects the philosophy of the Act, as follows:

The Congress hereby finds that:

(1) the number of juveniles who leave and remain away from home without parental permission has increased to alarming proportions, creating a substantial law enforcement problem for the communities inundated, and significantly endangering the young people who are without resources and live on the street;

* * * * *

(3) Many such young people, because of their age and situation, are urgently in need of temporary shelter and counseling services;

(4) The problem of locating, detaining and returning runaway children should not be the responsibility of the already overburdened police departments and juvenile justice authorities;

(5) . . . it is the responsibility of the Federal Government to develop accurate

reporting of the problem nationally and to develop an effective system of temporary care outside the law enforcement structure.

45 C.F.R. §1351 *et seq.*, is designed to implement the Runaway Youth Act. 45 C.F.R. §1351.10 provides in pertinent part:

(a) The purpose of this subpart is to assist states, localities, and non-profit private agencies to develop local facilities to deal primarily with the immediate needs of runaway youth in a manner which is outside the law enforcement structure and the juvenile justice system. See 42 U.S.C. §5711.

45 C.F.R. §1351.14(f) sets forth the programmatic goals of the Runaway Youth Act as follows:

- (1) alleviating the problems of runaway youth;
- (2) reuniting youth with their families and encouraging the resolution of intrafamily problems through counseling services;
- (3) strengthening family relationships and encouraging stable living conditions for youth;
- (4) helping youth decide upon a future course of action.
See 42 U.S.C. 5715.

It seems clear that the Federal Runaway Youth Act is not punitive in nature. Rather, it is designed to provide special assistance to states, localities and non-profit private agencies to develop temporary shelter care facilities for runaway youths as well as counseling services for the youths and their families to alleviate the problems of runaway youths outside the juvenile justice system.

The Ohio General Assembly, in order to participate in the federal assistance program, enacted R.C. 5119.64, *et seq.*, to comply with the Federal Runaway Youth Act. These statutes are designed to reflect the philosophy and intent of the federal act by providing that the community mental health and retardation board and the children services board or county department of welfare are responsible for the sheltering of runaway juveniles outside the juvenile justice system.

With respect to your first question, the Ohio General Assembly enacted R.C. 5119.64 *et seq.*, to reflect the intention of the Federal Runaway Youth Act which is the development of local facilities as temporary shelters to deal primarily with the needs of runaway youths in a manner which is outside the juvenile justice system.

45 C.F.R. §1351.1(i) defines "juvenile justice system" as, but not limited to, juvenile courts, law enforcement, pro-

bation, parole, correctional institutions, and detention facilities (emphasis added).

Therefore, it seems clear that runaway youths who are apprehended by law enforcement officials may not be placed in juvenile detention facilities. Rather, they must be placed in temporary shelters for runaway youths which are under the supervision of the community board of mental health and retardation and the children services board or the county department of welfare.

In addition, the federal Runaway Youth Act sets forth specific requirements for local agencies in providing shelter care facilities for runaway youths.

42 U.S.C. 5712 provides in pertinent part:

(b) . . . Each house -

. . .

(2) shall have a maximum capacity of no more than 20 children, with a ratio of staff to children of sufficient portion to assure adequate supervision and treatment;

(3) shall develop adequate plans for contacting the child's parents or relatives and assuring the safe return of the child according to the best interests of the child . . .

. . .

(5) shall develop an adequate plan for aftercare counseling.

It seems clear that the local agencies must provide temporary shelter care facilities for runaway youths which comply with the specific requirements of the federal Runaway Youth Act. They may not place runaway youths in juvenile detention homes as such detention facilities are not outside the juvenile justice system, nor are they likely to be in compliance with the requirements of the act.

It must be noted, however, that a runaway youth may be placed in a detention home under some circumstances. If law enforcement officials determine that such a youth may also be a delinquent child as defined in R.C. 2151.02 or an unruly child as defined in R.C. 2151.022 or a juvenile traffic offender as defined in R.C. 2151.021, he may be processed through the juvenile justice system and placed in a juvenile detention facility.

A delinquent or unruly child or a traffic offender may be processed through the juvenile justice system and placed in a juvenile detention home. R.C. 2151.312 provides in pertinent part as follows:

(A) A child alleged to be delinquent, unruly or a juvenile traffic offender

may be detained only in the following places:

- (1) a certified foster home or a home approved by the court;
- (2) a facility operated by a certified child welfare agency;
- (3) a detention home or center for delinquent children which is under the direction or supervision of the court or other public authority or of a private agency and approved by the court;
- (4) Any other suitable place designated by the court.

A child may be detained in jail or other facility for detention of adults only if the facility in division (A) (3) of this section is not available and the detention is in a room separate and removed from those for adults. . . .

With respect to your second question, the philosophy and intent of the federal Runaway Youth Act and R.C. 5119.64 et seq., seem to indicate that the sheltering of runaway youths shall be on a voluntary, noncoercive basis. It is not punitive in nature, but rather it is designed to alleviate the problems of youths through temporary shelter care and counseling of the youths and their families.

It should be noted, however, that R.C. 2151.31 provides in pertinent part as follows:

A child may be taken into custody

(D) by a law enforcement officer or duly authorized officer of the court when there are reasonable grounds to believe that the child has run away from his parents, guardian or other custodian.

A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the complaint unless his detention or care is required to protect the person and property of others or those of the child, or because the child may abscond or be removed from the jurisdiction of the court or because he has no parents, guardian or custodian or other person able to provide supervision and care for him . . .

In addition, R.C. 5153.28 provides in pertinent part as follows:

Boards of township trustees, the superintendent of any county home, and other officers and employees of any county, municipal corporation, or other political subdivision of the state shall make a report to the county children services board or county department of welfare respecting any child in the county coming to their attention, deemed to be in need of public care.

These statutes seem to indicate that a law enforcement official has the duty to make a report to the county children services board or county department of welfare respecting any child in need of public care. Furthermore, such official has the authority to take a runaway juvenile into custody. He may place the youth in a "shelter for runaways" against his will if detention or care is required to protect the person and property of the youth or others, or because the youth may abscond or be removed from the jurisdiction of the court or because the youth has no person able to provide supervision and care for him.

In specific answer to your questions, it is my opinion and you are so advised that:

1. In accordance with R.C. 5119.64, et seq., juvenile runaways who are apprehended by law enforcement officials may not be placed in juvenile detention facilities even though suitable shelter is unavailable. However, if such a youth is determined to be a delinquent child as defined in R.C. 2151.02, an unruly child as defined in R.C. 2151.022, or a juvenile traffic offender as defined in R.C. 2151.021, he may be processed through the juvenile justice system and placed in a juvenile detention facility.

2. A law enforcement official may hold a runaway juvenile against his will, provided his detention or care is required to protect the person or property of others or those of the child, or because the child may abscond or be removed from the jurisdiction of the court, or because he has no parents, guardian or custodian or other person able to provide supervision and care for him.