

Note from the Attorney General's Office:

1950 Op. Att'y Gen. No. 50-1901 was overruled by 1958 Op. Att'y Gen. No. 1958-2016.

1901

COMMON PLEAS COURT JUDGE—MAY NOT PROCEED TO HEAR AND PRONOUNCE SENTENCE ON AN ADULT GUILTY OF ACTING IN A WAY TENDING TO CAUSE DELINQUENCY OF A MINOR—EXCEPTION, SUCH CIRCUMSTANCES AS ARE PROVIDED IN SECTION 1639-7, PARAGRAPH 2, G. C.

SYLLABUS:

A judge of the court of common pleas may not proceed to hear and pronounce sentence on an adult guilty of acting in a way tending to cause the delinquency of a minor, except under such circumstances as are provided in paragraph two of Section 1639-7 of the Juvenile Court Code.

Columbus, Ohio, June 16, 1950

Hon. Robt. A. Carton, Prosecuting Attorney
Coshocton County, Coshocton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Please advise at your earliest convenience whether the common pleas court may proceed to hear and pronounce sentence on

an adult guilty of acting in a way tending to cause the delinquency of a minor in violation of G. C. 1639-45 without any reference whatsoever to the juvenile court where a complaint alleging delinquency of said minor has been filed in the juvenile court and the juvenile court authorities are investigating the facts and making a complete study of the case.

The several provisions of the Juvenile Court Act seem to be in conflict in so far as this question is concerned. The jurisdiction of the juvenile court is set forth in G. C. 1639-16. Paragraph (b) thereof uses the words 'original jurisdiction' with reference to certain misdemeanors of adults, as distinguished from the words 'exclusive original jurisdiction' used in paragraph (a) with reference to children. This section of the General Code, therefore, would seem to admit of the concurrent original jurisdiction of the common pleas court over offenses based on G. C. 1639-45. Confusion arises when G. C. 1639-16 is considered in connection with G. C. 1639-39 and G. C. 1639-40. G. C. 1639-39 begins: 'In cases against an adult under the provisions of *this chapter*, any person may file with the clerk of the court exercising the powers and jurisdiction conferred in *this chapter* etc.' (Emphasis ours) 'This chapter', it seems, must mean all of G. C. 1639-, which is the Juvenile Court Act, and which includes G. C. 1639-45. 'The court exercising the powers and jurisdiction conferred in this chapter', it seems, can only mean the juvenile court, since the common pleas court has its powers and jurisdiction conferred elsewhere in the General Code."

Your attention is invited to Section 1639-7 of the General Code, which reads as follows:

"The juvenile court, or court of common pleas, division of domestic relations of any county, separately and independently created, established and functioning as such by law, shall have and exercise the powers and jurisdiction conferred in this chapter. Except in counties in which there now is, or may hereafter be created, a separate and independent juvenile court or court of domestic relations, there is hereby established and created within the probate court, a juvenile court, presided over by the probate judge, which shall be a court of record, and which shall exercise such powers and jurisdiction. The judge of such court shall receive such compensation as may be provided by law.

Whenever the judge of the court exercising the powers and jurisdiction conferred in this chapter is absent from the county, or is unable to attend court, or the volume of cases pending in court necessitates it, and upon the request of said judge, the presiding judge of the common pleas court shall assign a common pleas judge of the county to act in his place or in conjunction with him. In the event no such common pleas judge is available

for said purpose, the chief justice of the supreme court of Ohio shall assign a common pleas judge, a juvenile judge or a probate judge from some other county to act in the place of such judge or in conjunction with him, who shall receive such compensation and expenses for his services as is provided by law for judges assigned to hold court in courts of common pleas.”

(Emphasis mine.)

The first paragraph of the above quoted section states which courts shall exercise the powers and jurisdiction conferred in this chapter and the second paragraph of the above quoted section states when a court other than the juvenile court shall exercise the powers and jurisdiction conferred by the Juvenile Court Act, Section 1639 et seq. Since you cite no circumstance to bring this case under this latter provision, it is presumed that none exists.

Your attention is further invited to Section 1639-39 of the General Code, which reads as follows:

“In cases against an adult under the provisions of this chapter, *any person may file with the clerk of the court exercising the powers and jurisdiction conferred in this chapter*, an affidavit, setting forth briefly, in plain and ordinary language, the charges against the accused, and he shall be tried thereon, and in such prosecution an indictment by the grand jury on information by the prosecuting attorney shall not be required. The clerk shall issue a warrant for the arrest of the accused, who, when arrested, shall be taken before the judge and tried according to the provisions of this chapter.

“The affidavit may be amended at any time before or during the trial.

“The judge of the juvenile court in his discretion may bind over to the grand jury the defendant in any case against an adult under the provisions of this chapter, where the act complained of constitutes a felony.”

(Emphasis mine.)

You will note that this section deals only with courts having power and jurisdiction conferred under the Juvenile Court Act, and is therefore not applicable to other courts, as they do not exercise any power or jurisdiction under this chapter.

Section 1639-16 of the General Code, reads in part as follows:

“(a) The court shall have *exclusive original jurisdiction* under this chapter or under other provisions of the General Code:

1. Concerning any child who is (1) delinquent, (2) neglected, (3) dependent, crippled, or otherwise physically handicapped.

* * * (b) The court shall have *original jurisdiction* to determine all cases of misdemeanors charging adults (1) with contributing to, encouraging, or tending to cause by any act or omission, the delinquency, neglect or dependency of any child;
* * *”
(Emphasis mine.)

In the case of *In re Cooper*, 134 O. S. 40, Myers, J., comments on the meaning of the above quoted section, at page 46, stating:

“That section says that court shall have exclusive original jurisdiction ‘concerning any child who is (1) delinquent, (2) neglected, (3) dependent, or (4) crippled.’ The foregoing language clearly means exclusive original jurisdiction ‘concerning any child’ from the standpoint of the child. The part relating to adults is found in subdivision 3b of Section 1639-16 and reads as follows: ‘The court shall have original jurisdiction to determine all cases of misdemeanors charging adults’ with offenses toward minors. Here the word ‘exclusive’ is not used. It will be observed therefore that exclusive jurisdiction is only conferred by the Juvenile Court Code with respect to offenses from the standpoint of the child.”

Thus, while the juvenile court has exclusive jurisdiction from the standpoint of the child (Section 1639-16(a)), this court also has original jurisdiction as to “all cases of misdemeanors charging adults with contributing to, encouraging, or tending to cause by any act or omission, the delinquency, neglect or dependency of any child * * *”. (Section 1639-16(b).)

It is therefore my opinion that a judge of the court of common pleas may not proceed to hear and pronounce sentence on an adult guilty of acting in a way tending to cause the delinquency of a minor except under such circumstances as provided in paragraph two of Section 1639-7 of the Juvenile Court Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.