

OPINION NO. 77-006

Syllabus:

1. Am. H.B. No. 1196 effective August 9, 1976, does not operate to prohibit the co-mingling of pre-adjudicated and post-adjudicated youth confined in a district detention home.

2. The Ohio Youth Commission may pursuant to R.C. 5139.281 adopt a rule requiring the separation of an adjudicated delinquent where extraordinary circumstances make such separation necessary for the care, treatment or training of such youth, or where necessary to insure the safety of that youth, or any other youth in the detention home.

To: William K. Willis, Director, Ohio Youth Commission, Columbus, Ohio

By: William J. Brown, Attorney General, February 23, 1977

Your request for my opinion poses the following questions:

(1) Does Am. H.B. 1196 and the statutes contained therein intend that the co-mingling of pre-adjudicated and post-adjudicated youth not occur under any circumstances?

(2) Does Am. H.B. 1196 and the statutes contained therein intend that co-mingling of pre-adjudicated and post-adjudicated youth be permitted under limited circumstances?

(3) Does the language of Section 5139.281 of the Ohio Revised Code authorize the Ohio Youth Commission to adopt rules which would have the effect of prohibiting the co-mingling of pre-adjudicated and post-adjudicated youth?

Your first two questions ask, in effect, whether anything in Am. H.B. No. 1196, effective 8/9/76, may be construed as authority for, or a prohibition against, the co-mingling of pre-adjudicated youth and post-adjudicated youth. Your final question is whether R.C. 5139.281, which was enacted by Am. H.B. No. 1196, authorizes the Ohio Youth Commission to prohibit such co-mingling.

Am. H.B. No. 1196 was enacted by the General Assembly for the stated purpose of authorizing "state assistance for the operation of regional detention facilities and to permit approved facilities to provide both detention and post-adjudication rehabilitation services." (Emphasis added.) To this end the General Assembly amended R.C. 2151.34 *et seq.* to authorize detention homes to receive children for both pre-adjudication and post-adjudication confinement and to apply for state assistance. With

respect to your questions, R.C. 2151.34 may be set out in pertinent part as follows:

"No child under eighteen years of age shall be placed in or committed to any prison, jail, or lockup, nor shall such child be brought into any police station, vehicle, or other place where the child can come in contact or communication with any adult convicted of crime or under arrest and charged with crime. A child may be confined in a place of juvenile detention for a period not to exceed ninety days, during which time a social history may be prepared to include court record, family history, personal history, school and attendance records, and such other pertinent studies and material as will be of assistance to the juvenile court in its disposition of the charges against such juvenile offenders.

". . .

"The county or district detention home shall be maintained as provided in sections 2151.01 to 2151.54 of the Revised Code. In any county in which there is no detention home, or which is not served by a district detention home, the board of county commissioners shall provide funds for the boarding of such children temporarily in private homes. Children who are alleged to be or have been adjudged, delinquent, unruly, dependent, neglected, abused, or juvenile traffic offenders, may, after complaint is filed, be detained in such detention home or certified foster homes until final disposition of their case. The court may arrange for the boarding of such children in certified foster homes or in uncertified foster homes for a period not exceeding sixty days, subject to the supervision of the court, or may arrange with any county department of welfare which has assumed the administration of child welfare, county children services board, or certified organization to receive for temporary care children within the jurisdiction of the court. A district detention home approved for such purpose by the youth commission under section 5139.281 of the Revised Code may receive children committed to its temporary custody under section 2151.355 of the Revised Code and provide the care, treatment, and training required.

"In case a detention home is established as an agency of the court, or a district detention home is established by the courts of several counties as hereinbefore provided, it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron in a non-punitive neutral atmosphere. . . .

". . ."

R.C. 2151.355 provides in part as follows for the disposition of child found to be delinquent:

"If a child is found to be a delinquent child, the court may make any of the following orders of disposition:

"(A) Any order which is authorized by section 2151.353 of the Revised Code;

". . .

"(C) Commit the child to the temporary custody of any school, camp, institution or other facility for delinquent children operated for the care of such children by the county by a district organized under section 2151.34 or 2151.65 of the Revised Code, or by a private agency or organization, within or without the state, which is authorized and qualified to provide the care, treatment, or placement required;

"(D) Commit the child to the legal custody of the Ohio youth commission;

". . . ."

It may initially be noted that nothing in the above sections mandates the separation of pre-adjudicated youth and post-adjudicated youth when both are confined pursuant to the statutes in the same detention home. Nor does there appear to be a basis for inferring such a requirement. To the contrary it appears that the co-mingling of pre-adjudicated and post-adjudicated youth, if not expressly contemplated, is at least implicitly sanctioned by the statutes in point. Such a view is consistent with R.C. 2151.01 which sets forth the General Assembly's intent with respect to the implementation of R.C. Chapter 2151:

"The sections in Chapter 2151. of the Revised Code, with the exception of those sections providing for the criminal prosecution of adults, shall be liberally interpreted and construed so as to effectuate the following purposes:

"(A) To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code;

"(B) To protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefor a program of supervision, care, and rehabilitation;

See also R.C. 2151.358, which provides for expungement of the record of a delinquent or an unruly child. That section states in part that:

"The judgment rendered by the court under this chapter shall not impose any of the civil disabilities ordinarily imposed by conviction of a crime in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court except as provided by this chapter."
(Emphasis added.)

In view of the above discussed statutes, it appears clear that the General Assembly has not intended to prohibit in every instance the co-mingling of pre-adjudicated and post-adjudicated youth, solely because of an adjudication of delinquency.

You have further questioned, however, whether the language of R.C. 5139.281 authorizes the Ohio Youth Commission to adopt a rule establishing such a prohibition. That section was enacted as part of Am. H.B. No. 1196, supra, and reads as follows:

"The Youth Commission shall adopt rules prescribing the manner of application for financial assistance under this section for the operation and maintenance of a district detention home established under section 2151.34 of the Revised Code, and prescribing minimum standards of operation, including criteria for programs of education, training, counseling, recreation, health, and safety, and qualifications of personnel with which a home shall comply as a condition of eligibility for such assistance. . . .

"The commission shall adopt any necessary rules for the care, treatment, and training in a district detention home of children found to be delinquent and committed to the home by the juvenile court under section 2151.355 of the Revised Code, and may approve for such purpose any home that is found to be in compliance with such rules.

". . . ."

This language reflects a broad general grant of power to the Ohio Youth Commission to establish rules for the operation of a district detention home, including criteria for safety, as well as for the care, treatment and training of adjudicated delinquents committed to the home pursuant to R.C. 2151.355. As discussed above, the General Assembly has by statute expressed an intention that a youth found by a juvenile court to be delinquent is not by reason of that adjudication a criminal, and the public interest is in removing the taint of criminality from children committing delinquent acts. R.C. 2151.01; R.C. 2151.358. For these reasons I must conclude that the

Ohio Youth Commission may not, pursuant to R.C. 5139.281 prohibit the co-mingling of pre-adjudicated and post-adjudicated youth solely because of such adjudication of delinquency.

The specific needs of an individual youth, who has been adjudged delinquent, may, however, require special consideration and treatment. In such cases the Youth Commission may, pursuant to R.C. 5139.281, require the separation of such youth for purposes of care, treatment or training or to insure the safety of either that youth or any other youth in the detention home.

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

1. Am. H.B. No. 1196, eff. August 9, 1976, does not operate to prohibit the co-mingling of pre-adjudicated and post-adjudicated youth confined in a district detention home.

2. The Ohio Youth Commission may pursuant to R.C. 5139.281 adopt a rule requiring the separation of an adjudicated delinquent where extraordinary circumstances make such separation necessary for the care, treatment or training of such youth, or where necessary to insure the safety of that youth or any other youth in the detention home.