

OPINION NO. 70-143

Syllabus:

A judge of a juvenile court may not commit a child who has been found to be a delinquent child, or a juvenile traffic offender, to the county jail upon the failure, refusal, or inability of such child to pay a fine and court costs.

To: David A. Cutright, Ross County Pros. Atty., Chillicothe, Ohio
By: Paul W. Brown, Attorney General, October 15, 1970

I have before me your request for my opinion regarding the following question:

May a judge of a juvenile court commit a child who has been found to be a delinquent child or a juvenile traffic offender to the county jail upon the failure, refusal, or inability of such child to pay a fine and court costs?

Section 2151.355, Revised Code, relating to the disposition of a delinquent child in general, provides:

"If the 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;

"(B) Place the child on probation under such conditions as the court prescribes;

"(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 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;

"(E) Commit a male child sixteen years of age or over who has committed an act which if committed by an adult would be a felony to a maximum security institution operated by the department of mental hygiene and correction, for the training and rehabilitation of such delinquent children;

"(F) Impose a fine not to exceed fifty dollars and costs;

"(G) Suspend or revoke the operator's or chauffeur's license issued to such child, or suspend or revoke the registration of all motor vehicles registered in the name of such child;

"(H) Make such disposition as authorized by section 2947.25 of the Revised Code, if the child would come within the purview of such section if he were an adult;

"(I) Make any further disposition as the court finds proper."

Section 2151.356, Revised Code, relating in particular to the disposition of a juvenile traffic offender, provides:

"If the child is found to be a juvenile traffic offender the court may make any of the following orders of disposition:

"(A) Impose a fine not to exceed fifty dollars and costs;

"(B) Suspend the child's operator's or chauffeur's license or the registration of all motor vehicles registered in the name of such child for such period as the court prescribes;

"(C) Revoke the child's operator's or chauffeur's license or the registration of all motor vehicles registered in the name of such child;

"(D) Place the child on probation;

"(E) Require the child to make restitution for all damages caused by his traffic violation or any part thereof.

"If after making such disposition the court finds upon further hearing that the child has failed to comply with the orders of the court and his operation of a motor vehicle constitutes him a danger to himself and to others, the court may make any disposition authorized by section 2151.355 of the Revised Code."

Recently passed legislation has dealt in depth with the question of incarceration for nonpayment of fines and court costs. Amended Substitute Senate Bill No. 460 (effective September 3, 1970). The bill provides for amending certain enumerated sections of the Revised Code relative to imprisonment of persons for such nonpayment and the monetary credit

given for such imprisonment.

Chapter 2151, Revised Code, concerns juvenile courts. Section 2151.23 (A), Revised Code, gives the juvenile courts exclusive original jurisdiction in questions concerning delinquent children and juvenile traffic offenders. Amended Substitute Senate Bill 460, supra, does not cite any sections within Chapter 2151, supra. Consequently, its applicability is limited to proceedings other than those under that chapter, and it is not determinative in juvenile court matters with respect to delinquent children and juvenile traffic offenders.

Further, a reading of Section 2151.01, Revised Code, clearly defines the intent of Chapter 2151, supra.

Section 2151.01, Revised Code, provides:

"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;

"(C) To achieve the foregoing purposes, whenever possible, in a family environment, separating the child from its parents only when necessary for his welfare or in the interests of public safety;

"(D) To provide judicial procedures through which Chapter 2151. of the Revised Code is executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced."

Moreover, Section 2151.34, Revised Code, provides in part:

"* * * 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 such child can come in contact or communication with any adult convicted of crime or under arrest and charged with crime. * * *

Chapter 2151, supra, does provide for incarceration of adult persons upon the nonpayment of fines or court costs resulting from a court finding of neglect or mistreatment of a child. Section 2151.99 (B), Revised Code. However, the chapter does not expressly provide for similar handling of children who fail to pay as ordered to by the juvenile court.

In light of the legislative intent of Chapter 2151, supra, and the quoted portion of Section 2151.34, supra, it is my belief that the legislative purpose was to exclude children from such treatment.

It is, therefore, my opinion and you are advised that a judge of a juvenile court may not commit a child who has been found to be a delinquent child, or a juvenile traffic offender, to the county jail upon the failure, refusal, or inability of such child to pay a fine and court costs.