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1. CHILDREN AND ADULTS—SECTION 1639-41 G. C. REFERS TO BOTH—CHARGED WITH VIOLATION OF ANY PROVISIONS OF CHAPTER 8, TITLE IV, PART FIRST, GENERAL CODE OF OHIO.
2. CHILD, DELINQUET—ALLEGED TO HAVE COMMITTED ACT, WHICH WOULD BE A FELONY, IF COMMITTED BY AN ADULT—JUVENILE JUDGE CAN NOT ORDER SUCH CHILD TO ENTER INTO RECOGNIZANCE FOR APPEARANCE BEFORE COURT OF COMMON PLEAS—CHILD SUBJECT TO FULL INVESTIGATION, MENTAL AND PHYSICAL EXAMINATION—SECTION 1639-32 G. C.
3. PERSON WHO MAY BE CHILD UNDER EIGHTEEN YEARS OF AGE—CHARGED WITH CRIME IN THIS STATE—FLED TO ANOTHER STATE—MAY BE RETURNED UPON REQUISITION OF GOVERNOR—UNIFORM EXTRADITION ACT—SECTIONS 109-1 TO 109-31 G. C.—IF SUCH PERSON A CHILD AT TIME CRIME COMMITTED, HE SHOULD BE TAKEN BEFORE JUVENILE JUDGE—IF BEFORE ANY OTHER COURT, SUCH COURT REQUIRED TO TRANSFER CASE TO JUVENILE JUDGE AND DISCONTINUE FURTHER PROCEEDINGS AGAINST ACCUSED—SECTION 1639-29 G. C.

SYLLABUS:

1. Section 1639-41, General Code, refers to both children and adults charged with the violation of any of the provisions of Chapter 8, Title IV, Part First of the General Code of Ohio.

2. Under the provisions of Section 1639-32, General Code, when a child alleged to be delinquent is said to have committed an act which would be a felony if committed by an adult, the juvenile judge can not order such child to enter into a recognizance for his appearance before the court of common pleas for such disposition as the court of common pleas is authorized to make for a like act committed by an adult until after a full investigation and after a mental and physical examination has been made as provided in such section.

3. A person, who may be a child under eighteen years of age, charged with a crime in this state and who fled to another state may be returned to this state upon requisition of the Governor, as provided in the Uniform Extradition Act (Sections 109-1 to 109-31, both inclusive, General Code). Upon the return of such person, if he was a child at the time the crime was committed, he should be taken before the juvenile judge or, if taken before any other court, such other court is required to transfer the case to the juvenile judge and discontinue all further proceedings against the accused, as provided in Section 1639-29, General Code.

Columbus, Ohio, August 18, 1945

Hon. Ralph J. Bartlett, Prosecuting Attorney
Columbus, Ohio

Dear Sir:

In your request for my opinion, after quoting from Sections 1639-41, 1639-32 and 1639-30, General Code, in the order just set forth, you then said:

“This office requests your opinion on the following propositions:

(1) Under Section 1639-41 G. C., does the term ‘person’ include a delinquent child under 18 years of age unless Section 1639-32 G. C. has been complied with.

(2) If the delinquent child has fled to another state before the mental and physical examination of such child has been made as required under Section 1639-32 G. C., can the judge order such child to enter into a recognizance for his appearance before the Court of Common Pleas, as provided in Section 1639-32 G. C.?

(3) In view of Section 109-23 G. C., what authority is there under the extradition laws of this state to return a delinquent child under 18 years of age to Ohio from another state

for prosecution, either as a delinquent child or a person charged with a felony?

Inasmuch as we now have a delinquent child held by the police authorities in California for the Ohio courts, I earnestly request that this opinion be delivered to us forthwith."

The above mentioned sections are part of an act passed by the Ninety-second General Assembly in 1937 "To revise, consolidate and codify the juvenile laws of the state of Ohio by enacting sections 1639-1 to 1639-69, General Code, inclusive." The initial sections of the act are confined to definitions of various terms. Section 1639-1, General Code, provides in part that:

"The word 'child' includes any child under eighteen years of age.

The word 'adult' includes any person eighteen years of age or over."

Section 1639-41, General Code, which gives rise to your first question, reads:

"When a person charged with the violation of any of the provisions of this chapter has fled to another state, or territory, and the governor has issued a requisition for such person, the board of county commissioners shall pay from the general expense fund of the county to the agent designated in such requisition, all necessary expenses incurred in pursuing and returning such prisoner so charged."

The word "person" is not defined in the act. In the absence of a statutory definition, it must be presumed that it should be given its ordinary and natural meaning or signification. In its ordinary and natural meaning, the word "person" refers to a human being, an individual or natural person as distinguished from an animal or thing. It does not designate the age of the human being, however, but refers alike to children and adults. This meaning appears entirely in accord with the general intent of the section, for the chapter deals with violations by both children and adults. For example, Section 1639-45, General Code, provides that "Whoever abuses a child or aids, abets, induces, causes, encourages or contributes toward the dependency, neglect or delinquency, as herein defined, of a child or a ward of the court, or acts in a way tending to cause delinquency in such child, or who aids, abets, induces, causes or encourages a

child or a ward of the court, committed to the custody of any person, department, public or private institution, to leave the custody of such person, department, public or private institution, without legal consent," shall be fined, imprisoned, or both. Such violations might be committed by a "child" as well as an "adult." The same is true of the violations described in Section 1639-46, General Code, relating to the neglect and mistreatment of children, concerning which Section 1639-47, General Code, provides in part that "When an *adult* is convicted * * * for any violation of the provisions of the next preceding section," showing that the legislature recognized that there might be both "child" and "adult" violations of Section 1639-46, General Code. Had the legislature intended that the word "person" as used in Section 1639-41, General Code, should not apply to persons under eighteen years of age, it seems probable that the word "adult" would have been chosen, inasmuch as it has been defined in Section 1639-1, General Code.

Coming now to your second question, it would, of course, be impossible to require a child who has fled to another state to enter into a recognizance for his appearance before the court prior to his return to this state, but, assuming he returns or is returned to Ohio, your question is at what stage of the proceedings may such recognizance be ordered. Section 1639-32, General Code, dealing therewith, reads as follows:

"In any case involving a delinquent child under the provisions of this chapter who has committed an act which would be a felony if committed by an adult, the judge after full investigation and after a mental and physical examination of such child has been made by the bureau of juvenile research, or by some other public or private agency, or by a person or persons, qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety subject to the approval of the judge, for his appearance before the court of common pleas at the next term thereof, for such disposition as the court of common pleas is authorized to make for a like act committed by an adult; or the judge may exercise the other powers conferred in this chapter in disposing of such case."

The section appears to carry its own limitations. It applies only to cases involving a "delinquent" child as distinguished from a "neglected" or "dependent" child, as defined in Sections 1639-2, 1639-3 and 1639-4, General Code, and then only if the act committed would constitute a felony if it had been committed by an adult. If such conditions are present,

the judge may order the recognizance only after a full investigation and after the required mental and physical examination has been made. While this section has sometimes been said to contain discretionary matter, the discretion appears to be in the course of procedure to be followed. The delinquent child may either be turned over to the common pleas court "for such disposition as the court of common pleas is authorized to make for a like act committed by an adult," or the juvenile judge may dispose of the case himself under the powers conferred upon him by the Juvenile Court Act. Since you state that no formal charges have been filed, it is assumed that there has not been a full investigation and that the mental and physical examination of such child has not yet been made. It therefore appears that the judge is without authority to order the recognizance.

Your third question deals with the extradition laws of this state with respect to a delinquent child. In a subsequent communication which you have forwarded to me, you state that the particular child giving rise to your request for my opinion when under eighteen years of age was involved in two burglaries in which personal property valued at several hundred dollars was stolen and that he was also involved in passing several forged checks. Shortly thereafter, the boy fled to another state where he has been picked up by the authorities at the request of the local police department, but no formal charges have been filed. It further appears from your statement that he reached the age of eighteen years after the above mentioned burglaries were committed and the forged checks passed.

Section 109-22, General Code, requires the Governor of Ohio to issue a warrant when demanding a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state. Section 109-23, General Code, to which you have referred, provides in part as follows:

"When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its Commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting

attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.”

It is evident that Sections 109-22 and 109-23, General Code, are concerned with the return to this state of a person charged with crime as distinguished from a child who may be charged with being delinquent. The boy with whom you are directly concerned might well be charged with crime, in which event you are empowered to make written application to the Governor for a requisition for his return to Ohio, as provided in Section 109-23, General Code. Upon being returned to this state, he should be taken before the juvenile judge or, if taken before any other court, such other court is required to transfer the case to the juvenile judge and discontinue all further proceedings against him, authority therefore being found in Section 1639-29, General Code, which reads:

“When a child is arrested on and under any charge, complaint affidavit, or indictment, whether for a felony or a misdemeanor, such child shall be taken directly before the juvenile judge; if the child is taken before a justice of the peace, judge of the police or municipal court or court of common pleas other than a juvenile court, it shall be the duty of such justice of the peace or such judge of the police or municipal court or court of common pleas to transfer the case to the court exercising the powers and jurisdiction herein provided. The officers having such child in charge shall take it before the judge of such court, who shall proceed to hear and dispose of the case in the same manner as if the child had been brought before such judge in the first instance. Upon such transfer or taking of such child before such judge, all further proceedings upon or under the charge, complaint, information or indictment shall be discontinued in the court of said justice of the peace, police or municipal judge or judge of the court of common pleas other than a court exercising the powers and jurisdiction herein conferred, and the case against or relating to such child shall thenceforth be within the exclusive jurisdiction of such court and shall be deemed to be upon a complaint filed in such court as fully as if the appearance of such child had been upon a complaint filed in and a citation or warrant of arrest originally issued out of and by such court.”

The fact that the boy has now arrived at the age of eighteen years does not deprive the juvenile court of jurisdiction, for Section 1639-30, General Code, provides in part:

“Whenever a child commits an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, the same as if the complaint and hearing were held before such child arrived at the age of eighteen years.”

After the juvenile judge has assumed jurisdiction, the provisions of Section 1639-32, General Code, which section has been quoted above, apply as in all other such cases, and after full investigation and a mental and physical examination the juvenile judge may either exercise the powers conferred upon him by Section 1639-1, et seq., General Code, or he may order the child to enter into a recognizance for his appearance before the court of common pleas.

Some question appears to exist as to the meaning of that portion of Section 1639-30, General Code, which says that a child shall not be charged with or convicted of a crime in any court, except as provided in Section 1639-32, General Code. Section 1639-30, General Code, deals with the conduct of hearings in the juvenile court and the procedure in that court. The paragraph thereof to which you refer reads:

“No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of a crime in any court, except as provided in section 1639-32, General Code. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application.”

When such provisions are read together with the previously quoted portions of Section 1639-29, General Code, requiring that where any child charged with crime appears before any court other than the juvenile court, all further proceedings shall be discontinued and the child transferred to the juvenile court, we must conclude that the intention is to refer all child cases to the juvenile court. In the juvenile court, in accordance with Section 1639-32, General Code, there must first be a

“full investigation” and “a mental and physical examination of such child,” after which the judge may elect to order the child to appear before the court of common pleas “for such disposition as the court of common pleas is authorized to make for a like act committed by an adult.” But if he elects to proceed under the powers conferred by the Juvenile Court Act, the child can not “be charged with or convicted of a crime.” The only determination which the juvenile judge may make is whether a child is delinquent, neglected, crippled or dependent. Obviously, such a determination would not be conviction of a crime. It therefore appears that any person, whether he be a child or an adult, may be originally charged with a crime. But when brought before any court and it is found that the accused was a “child” at the time the crime was committed, the criminal charge is immediately discontinued and the child transferred to the juvenile court where the inquiry is whether the child is delinquent unless the juvenile court elects to relinquish its jurisdiction by transferring the case to the court of common pleas as provided in Section 1639-32, General Code, in which case there would be a charge of crime and possibly a conviction. However, we are not here concerned with the jurisdiction of the several courts at the time an accused is brought before them, but rather the right of the State of Ohio under existing laws to compel the return to this state of one believed to have been involved in a crime, for lawful proceedings after his return. This right is not barred by the provisions of Section 1639-30, General Code.

It would indeed be an anomalous situation if a child under the age of eighteen could commit an act which, if committed by an adult, would perchance constitute murder in the first degree, and then by the simple expedient of stepping across the state line before apprehension avoid the consequences of his act. While the Juvenile Court Act of this state may have been designed to afford a measure of protection not afforded to adults, it can hardly be said it was the legislative intent a child should be protected to the extent that the right to seek his return from the asylum state should be denied.

Since the boy whose acts prompted your inquiry has been involved in crimes for which he may be charged and extradited as aforesaid, it is unnecessary to decide at this time if Section 1639-41, General Code, authorizes the Governor to issue a requisition for the return of a “child”

against whom a complaint has been filed, as provided in Section 1639-23, General Code, stating that such child is delinquent.

In specific answer to your inquiry, it is my opinion that:

1. Section 1639-41, General Code, refers to both children and adults charged with the violation of any of the provisions of Chapter 8, Title IV, Part First of the General Code of Ohio.

2. Under the provisions of Section 1639-32, General Code, when a child alleged to be delinquent is said to have committed an act which would be a felony if committed by an adult, the juvenile judge can not order such child to enter into a recognizance for his appearance before the court of common pleas for such disposition as the court of common pleas is authorized to make for a like act committed by an adult until after a full investigation and after a mental and physical examination has been made as provided in such section.

3. A person, who may be a child under eighteen years of age, charged with a crime in this state and who fled to another state may be returned to this state upon requisition of the Governor, as provided in the Uniform Extradition Act (Sections 109-1 to 109-31, both inclusive, General Code). Upon the return of such person, if he was a child at the time the crime was committed, he should be taken before the juvenile judge or, if taken before any other court, such other court is required to transfer the case to the juvenile judge and discontinue all further proceedings against the accused, as provided in Section 1639-29, General Code.

Respectfully,

HUGH S. JENKINS

Attorney General