

**OPINION NO. 70-015****Syllabus:**

If the county adult detention facility is designed with a space which is enclosed on all sides, that is distinct, set apart and disconnected so that no child over the age of fifteen placed in that space will come in contact or communication with any adult convicted of or arrested for a crime and the public interest and safety require the detention of such child when a delinquent detention facility is not available, the use of such adult facility is authorized by the Revised Code.

To: B. Edward Roberts, Marion County Pros. Atty., Marion, Ohio  
By: Paul W. Brown, Attorney General, February 10, 1970

Your recent request for my opinion in substance is whether Juvenile Detention Quarters in a county jail which are entirely separate and apart from the area in which adult persons are confined will comply with the provisions of the Juvenile Code, particularly, Section 2151.312 (A), Revised Code.

Section 2151.312 (A), supra, reads, in 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 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. The court may order that a child over the age of fifteen years be detained in a jail in a room separate and removed from adults if public safety and protection reasonably require such detention."

The juvenile court system was established with a philosophy containing certain definite objectives and purposes to be fulfilled with each child under the age of eighteen in violation of the Juvenile Code. They are expressed in Section 2151.01, Revised Code, as follows:

"Sec. 2151.01. 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."

To understand the full meaning of Section 2151.312, supra, it must be read in conjunction with Section 2151.34, Revised Code. Section 2151.34, supra, reads, in 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 such child can come in contact or communication with any adult convicted of crime or under arrest and charged with crime. All children under eighteen years of age, when confined in such places of juvenile detention, shall not be detained for a period to exceed ninety days during which time a social history can 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."

It is apparent that a general rule has been established by this Section and Section 2151.01, supra, which requires that no child shall be placed in or committed to any prison, jail, or lockup whether or not the facility is used for adults nor shall come in contact or communicate with any adult who is arrested for a crime or has been convicted of a crime. An exception to this general rule has been established by Section 2151.312, supra. Since this is an exception, the General Assembly has set up certain requirements to be met before a juvenile court may place a child in a facility used for the detention of adults. All the requirements for the exception are set forth in detail in the following paragraphs:

A child who is fifteen years of age and under may not be placed in any jail, prison, or lockup.

A child who is over the age of fifteen years may, if all the other requirements are satisfied, be placed in a jail, lockup, or prison.

Section 2151.34, supra, provides for the establishment of detention homes and what will be provided by each home. This section, in pertinent part, is as follows:

"Upon the advice and recommendation of the judge, the board of county commissioners shall provide, \* \* \*, a place to be known as a detention home, \* \* \*, and not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent, neglected children, or juvenile traffic offenders may be detained until final disposition. \* \* \*"

(Emphasis added.)

This section also provides that the homes shall have a nonpunitive neutral atmosphere with educational and recreational requirements, and profitable leisure-time activities. Section 2151.312 (A), supra, requires that a delinquent detention home must not be available before an adult detention facility can be used. When this requirement is read in conjunction with Section 2151.34, supra, and the purposes of the juvenile court system, the intent is clear that the use of a section of an adult detention facility is to be used only on a temporary basis until a detention home is built, upon the advice of the judge.

Another requirement is found in the use of the word "detention" by the General Assembly in this section. Detention has been defined by Section 2151.011, Revised Code, to have the following meaning:

"'Detention' means the temporary care of children in restricted facilities pending court adjudication or disposition."

(Emphasis added.)

By the use of this word in Section 2151.312 (A), supra, the court is authorized to confine a child under the section in an adult detention facility only until the disposition order is made by the court concerning the child.

The purposes of the Juvenile Code provide that the child shall remain in the custody of the parents unless there is a necessity of the child's welfare or the public interest requires the state to assume the custody of the child. This purpose has been incorporated into Section 2151.312 (A), supra, as the requirement for the usage of an adult detention facility. This section allows the usage of such facility only if the public safety and protection are reasonably required.

After all the above requirements have been met, the adult detention facility must be so designed so that when a child is placed in such facility, he is located in a room that is separate and removed from adults. Black's Law Dictionary, Fourth Edition, on page 1494 has defined "room" to mean:

"A space for occupancy or use enclosed on all sides, as in a building or apartment, frequently named for use to which it is put as bedroom, dining room, toolroom. \* \* \*"

(Emphasis added.)

"Separate" and "removed" imply a general meaning of distinct, disconnected, remote from something, to isolate, divide and to set apart. The use of the words "room", "separate", and "removed" by the General Assembly as a requirement before allowing the use of an adult detention facility fits under the remaining general

rule established by Section 2151.34, supra, which says that no child shall be brought into a police station, vehicle, or other place where a child can come in contact or communication with any adult convicted of a crime or under arrest and charged with a crime. With the usage of these words the Ohio General Assembly has, in fact, made an exception only to the first part of the general rule as set forth on page two.

The requirements established by Section 2151.312 (A), supra, for the use of an adult detention facility for the detention of children are summarized as follows:

- (A) The child must be over the age of fifteen.
- (B) There must not be a delinquent detention home or center available.
- (C) The child must be confined only for the purposes of detention.
- (D) The public safety and protection must reasonably require such detention.
- (E) The detention must be in a room that is separate and removed from adults.

It is, therefore, my opinion and you are so advised that if the county adult detention facility is designed with a space which is enclosed on all sides, that is distinct, set apart and disconnected so that no child over the age of fifteen placed in that space will come in contact or communication with any adult convicted of or arrested for a crime and the public interest and safety require the detention of such child when a delinquent detention facility is not available, the use of such adult facility is authorized by the Revised Code.