

OPINION NO. 89-107**Syllabus:**

1. Where a runaway juvenile or a delinquent juvenile is returned to this state from another state which is a party to the Interstate Compact on Juveniles, under R.C. 2151.56, art. IV(b) or R.C. 2151.56, art. V(b), respectively, the State of Ohio is responsible for payment of such return transportation costs.
2. Where the State of Ohio is responsible for the payment of transportation costs under R.C. 2151.56, art. IV(b) or R.C. 2151.56, art. V(b), the person or entity with legal custody of such juvenile is the party within the state which is responsible for the transportation costs of the juvenile's return, unless the juvenile court, in its disposition of a delinquent juvenile under R.C. 2151.355(A), transferred the responsibility for the physical care and custody of the delinquent juvenile to another person or entity, which is then responsible for the payment of such costs.

To: Geno Natalucci-Persichetti, Director, Department of Youth Services, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1989

I have before me your opinion request concerning the meaning of the word "state," as used in R.C. 2151.56, art. IV(b) and art. V(b), part of the Interstate Compact on Juveniles. As stated in your letter, R.C. 2151.56 makes the state to which a juvenile runaway, escapee or absconder is returned responsible for payment of the transportation costs of such return. Concerning this portion of the compact, you specifically ask: "What party of that State is responsible for such payment, e.g., the court having jurisdiction over the youth, the Department of Youth Services, a foster home where the youth was placed, etc.[]"

Pursuant to R.C. 2151.56, the Governor is authorized to execute an interstate compact dealing with juveniles. As stated in R.C. 2151.56, art. I: "It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes."

R.C. 2151.56, art. IV, concerning the return of runaways, states in pertinent part: "the *state* to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return," R.C. 2151.56, art. IV(b) (emphasis added). You also ask about R.C. 2151.56, art. V which governs the return of escapees and absconders. Pursuant to R.C. 2151.56, art. V(b), "the *state* to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return" (emphasis added). As used in R.C. 2151.56, the word "state" is defined as, "any state, territory or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico," R.C. 2151.56, art. III. Thus, pursuant to R.C. 2151.56, arts. IV(b) and V(b), as between the state which returns the juvenile and the state to which the juvenile is returned, the latter is responsible for the transportation costs of such juvenile's return.

You specifically question, however, in light of such broad definition of the word "state," which entity within the state is responsible for the transportation costs referred to in R.C. 2151.56, art. IV(b) and art. V(b). This concern appears to arise from the provisions of R.C. 2151.56, art. VIII, which discusses the responsibility for costs under the compact, as follows:

(a) That the provisions of Articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b), or VII(d) of this compact.

Although R.C. 2151.56, arts. IV(b) and V(b) refer only generally to the state to which a juvenile is returned as the entity responsible for the payment of the transportation costs of the juvenile's return under the compact, R.C. 2151.56, art. VIII(a) makes it clear that the compact does not alter the internal relationships among the departments, agencies, and officers of a party state or between a party state and its subdivisions as to the responsibility for, or the payment of, costs. Thus, where a juvenile or delinquent juvenile is returned to Ohio under R.C. 2151.56, art. IV(b) or art. V(b), although the State of Ohio is responsible for the transportation costs of such return, the entity within the state which is responsible for the payment of the child's return transportation costs is determined by applicable Ohio law governing the circumstances in which such return is accomplished.

I will first examine R.C. 2151.56, art. IV, concerning the return of runaways, which states in part:

(a) That the parent, guardian, person or agency entitled to *legal custody* of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court¹ in the demanding state for the issuance of a requisition for his return....The petition shall be

¹ Pursuant to R.C. 2151.23(A)(6), the juvenile court has exclusive original jurisdiction under the Interstate Compact on Juveniles in R.C. Chapter 2151.

verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based....The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile....In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody.... (Emphasis and footnote added.)

Pursuant to R.C. 2151.56, art. IV(a), the juvenile court may, in response to the petition of the legal custodian of a juvenile,² issue to the appropriate court or executive authority of another state where the child is alleged to be located a written requisition for the juvenile's return. Where a proceeding is pending for the adjudication of a juvenile as a delinquent, dependent, or neglected juvenile at the time he runs away, the court may issue a requisition for his return, with or without the consent of the legal custodian.

As used in R.C. Chapter 2151, "legal custody" means:

a legal status which vests in the custodian the *right to have physical care and control of the child and to determine where and with whom he shall live, and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education, and medical care,* all subject to any residual parental rights, privileges, and responsibilities.³ An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court. (Emphasis and footnote added.)

R.C. 2151.011(B)(10). The fact that the definition of legal custody includes the right to have physical care and control of the juvenile and to determine where and with whom he shall live, as well as the duty to protect and shelter such juvenile, leads me to conclude that where a juvenile has run away to another state, the transportation costs of his return to such care are the responsibility of the juvenile's legal custodian. I conclude, therefore, that pursuant to state law, the person or entity having legal custody, as defined in R.C. 2151.011(B)(10), of the runaway juvenile who has been returned to Ohio pursuant to R.C. 2151.56, art. IV(a) is responsible for payment of the transportation costs of the juvenile's return.

² The word "juvenile," as used in R.C. 2151.56, art. IV, means "any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor." R.C. 2151.56, art. IV(c).

³ R.C. 2151.011(B)(11) defines residual parental rights, privileges and responsibilities as meaning:

those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including but not necessarily limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

You have also asked which person or entity within the state to which a delinquent juvenile is returned under R.C. 2151.56, art. V(a) is responsible for the transportation costs of such delinquent juvenile's return. Again, as set forth above, R.C. 2151.56, art. V(b) makes the State of Ohio responsible for the payment of the transportation costs of a delinquent juvenile's return under R.C. 2151.56, art. V. The question as to which person or entity within this state is responsible for payment of such costs is, pursuant to R.C. 2151.56, art. VIII, governed by state law.

R.C. 2151.56, art. V(a) states in pertinent part:

[T]he appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile....The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned....Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile....

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this Article.

Unlike art. IV of R.C. 2151.56, art. V allows the "appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped" to go directly to the appropriate court or the executive authority of the state where the delinquent juvenile is alleged to be located and present a requisition for the delinquent juvenile's return. R.C. 2151.56, art. V also allows the appropriate court or executive authority in a state which is party to the compact, acting upon reasonable information that a person is a delinquent juvenile who has absconded or escaped, to take custody of such person without a requisition.

As discussed above, since transportation costs of returning a runaway from another state under R.C. 2151.56, art. IV, may be reasonably necessary to the continuation of the legal custodian's relationship with the juvenile, such costs are, in relation to other persons or entities within this state, the obligation of the legal custodian seeking his return. Under R.C. 2151.56, art. V, however, persons or entities that are responsible for a delinquent juvenile's probation or parole supervision,⁴ as well as authorities with institutional custody of a delinquent juvenile, may seek the child's return. The question then arises as to whether responsibility for the transportation costs of returning a delinquent juvenile under R.C. 2151.56, art. V remain with the person or entity having legal custody of the delinquent juvenile or whether the responsibility lies elsewhere, e.g., with the entity

⁴ As used in the compact, the term "probation or parole" means "any kind of conditional release of juveniles authorized under the laws of the states party hereto." R.C. 2151.56, art. III.

seeking the child's return or the court under whose jurisdiction the child remains. In accordance with R.C. 2151.56, art. VIII, I find it necessary to examine the statutory scheme governing the disposition of delinquent juveniles in Ohio.

For purposes of R.C. 2151.56, a "delinquent juvenile" is "any juvenile who has been adjudged delinquent and who, at the time the provisions of [the Interstate Compact on Juveniles] are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court," R.C. 2151.56, art. III. Pursuant to R.C. 2151.35(A), once a court has adjudicated a child to be a delinquent child, the court may make any order of disposition authorized by R.C. 2151.355, which, in addition to authorizing commitment to the legal custody of the Department of Youth Services, states in part:

(A) If a child is found by the court to be a delinquent child, the court may make any of the following orders of disposition:

- (1) Any order that is authorized by [R.C. 2151.353];
- (2) Place the child on probation under any conditions that the court prescribes....
- (3) Commit the child to the temporary custody of any school, camp, institution, or other facility for delinquent children operated for the care of delinquent children by the county, by a district organized under [R.C. 2151.34 or 2151.65], or by a private agency or organization, within or without the state, that is authorized and qualified to provide the care, treatment, or placement required;

....

(10) Make any further disposition that the court finds proper.⁵
(Footnote added.)

In addition to the dispositional alternatives listed in R.C. 2151.355(A)(2)-(10), R.C. 2151.355(A)(1) authorizes the court to order any dispositional alternative available under R.C. 2151.353, which states in pertinent part:

(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

- (1) Place the child in protective supervision;⁶
- (2) Commit the child to the temporary custody⁷ of a public children services agency, a private child placing agency, either parent,

⁵ Pursuant to Sub. H.B. 166, 118th Gen. A. (1989) (eff. Feb. 14, 1990), R.C. 2151.355 has been amended in a manner which will not alter the conclusions reached in this opinion.

⁶ R.C. 2151.011(B)(16) defines "protective supervision," as used in R.C. Chapter 2151, as meaning:

an order of disposition pursuant to which the court permits [a]...delinquent child...to remain in the custody of his parents, guardian, or custodian and stay in his home, subject to any conditions and limitations upon the child, his parents, guardian, or custodian, or any other person that the court prescribes, including supervision as directed by the court for the protection of the child.

⁷ "Temporary custody," as used in R.C. Chapter 2151, is defined in R.C. 2151.011(B)(13) as meaning:

legal custody of a child who is removed from his home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement. (Emphasis added.)

a relative residing within or outside the state, or a probation officer for placement in a certified foster home or approved foster care;

(3) Award legal custody⁸ of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child;

(4) Commit the child to the permanent custody⁹ of a public children services agency or private child placing agency....

(5) Place the child in long-term foster care¹⁰ with a public children services agency or private child placing agency.... (Footnotes added.)

It is apparent that once a child is adjudicated a delinquent child, the court has numerous dispositional alternatives. Under several alternatives, e.g., R.C. 2151.353(A)(1) (protective supervision) and R.C. 2151.355(A)(2) (placing the child on probation¹¹ "under any conditions that the court prescribes"), the court may allow the child to remain in his home, R.C. 2151.353(A)(1), or in the home of his parent, guardian or custodian, R.C. 2151.355(A)(2), subject to outside supervision or other conditions or limitations. In such situations, it would appear that if the court-imposed supervision or other limitations or conditions imposed by the court altered the legal custodian's right "to have physical care and control of the child...[or] the right and duty to protect...and to provide him with food [and] shelter," R.C. 2151.011(B)(10), the responsibility for payment of the child's return transportation costs would shift to the person or entity to which such rights and duties were transferred. Otherwise, because the term "legal custody," as discussed above, encompasses such rights and duties with respect to a delinquent juvenile, the responsibility for the delinquent juvenile's return transportation costs would appear to remain with the legal custodian, regardless of who initiates the proceedings for the delinquent juvenile's return under R.C. 2151.56, art. V.

⁸ See R.C. 2151.011(B)(10) (discussed above, defining "legal custody").

⁹ R.C. 2151.011(B)(12) defines "permanent custody," for purposes of R.C. Chapter 2151, as meaning:

a legal status which vests in a public children services agency or a private child placing agency, all parental rights, duties, and obligations...and divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.

¹⁰ "Long-term foster care" is defined in R.C. 2151.011(B)(25) as meaning in part:

an order of a juvenile court pursuant to which both of the following apply:

(a) Legal custody of a child is given to a public children services agency or a private child placing agency without the termination of parental rights;

(b) The agency is permitted to make an appropriate placement of the child and to enter into a written long-term foster care agreement with a foster care provider or with any other person or agency with whom the child is placed.

¹¹ For purposes of R.C. Chapter 2151, R.C. 2151.011(B)(15) defines "probation" as meaning:

a legal status created by court order following an adjudication that a child is delinquent...whereby the child is permitted to remain in the parent's, guardian's, or custodian's home subject to supervision, or under the supervision of any agency designated by the court and returned to the court for violation of probation at any time during the period of probation.

As a final matter, I note that, R.C. 2151.57 provides for the Governor's designation, with the advice and consent of the senate, of a compact administrator who, "acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact." Further, pursuant to R.C. 2151.59, "[t]he compact administrator, subject to the approval of the director of budget and management, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder."¹² To my knowledge, however, no such arrangements have yet been made.

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. Where a runaway juvenile or a delinquent juvenile is returned to this state from another state which is a party to the Interstate Compact on Juveniles, under R.C. 2151.56, art. IV(b) or R.C. 2151.56, art. V(b), respectively, the State of Ohio is responsible for payment of such return transportation costs.
2. Where the State of Ohio is responsible for the payment of transportation costs under R.C. 2151.56, art. IV(b) or R.C. 2151.56, art. V(b), the person or entity with legal custody of such juvenile is the party within the state which is responsible for the transportation costs of the juvenile's return, unless the juvenile court, in its disposition of a delinquent juvenile under R.C. 2151.355(A), transferred the responsibility for the physical care and custody of the delinquent juvenile to another person or entity, which is then responsible for the payment of such costs.

¹² R.C. 2151.58 empowers the compact administrator to enter into supplementary agreements with appropriate officials of other states under the compact.