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Opinion 1088/11

Office of the Attorney General

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February 19, 1988

Honorable David H. Maring, Sr.
Chief Judge
Family Court of the Ninth Judicial Circuit
Post Office Box 934
Charleston, South Carolina 29402

Re: Juvenile Delinquency
Misdemeanor Arrest and Detention

Dear Judge Maring:

You have requested an opinion from this office on the following issue:

Does law enforcement have the authority to arrest/take into custody a minor under the age of seventeen (17) for the commission of a misdemeanor not committed in the officer's presence and hold the minor for forty-eight hours?

I have divided the opinion into two separate inquiries for the purposes of this opinion. The initial inquiry is the authority of a law enforcement officer to take a juvenile into custody for the commission of a misdemeanor not committed in his presence and the second inquiry will be whether the officer can detain a juvenile under these circumstances for up to forty-eight hours.

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I.

South Carolina Code Ann., § 20-7-600 (1976), sets forth "when a child found violating any law or ordinance, or whose surroundings are such as to endanger his welfare, is taken into custody, such taking into custody shall not be termed an arrest." The Code further provides that "the jurisdiction of the [family] court shall attach from the time of such taking into custody." It is clear that the Family Court has jurisdiction "concerning any child ... who is alleged to have violated or attempted to violate any state or local law or municipal ordinance" S.C. Code Ann., § 20-7-400 (1976).

Implicit within § 20-7-400, 600 is the authority of a law enforcement officer to take into custody (arrest) any child under the age of seventeen found to violate any law (felony or misdemeanor) or local law or municipal ordinance. This office has previously opined that a juvenile may be taken into custody without an arrest warrant only where the offense has been committed in the presence of the arresting officer. 1980 Op. Atty. Gen. No. 80-102, p. 154. (Copy of full opinion attached and incorporated herein). Of importance to your inquiry, our office further stated that "in cases of misdemeanors, the officer must view the offense or observe facts and circumstances which give him probable cause to believe a misdemeanor has been freshly committed by the juvenile before he may take the juvenile into custody." The opinion relied upon State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980). A review of the intervening case law and statutory authority reveals there has been no statutory change governing the law of arrest since the publication of the prior opinion. Of critical importance, a juvenile may be taken into custody without a warrant only where there is probable cause to believe that he has freshly committed a criminal or delinquent act, and an arrest predicated on mere suspicion or whim and not on probable cause is most probably invalid.

Admittedly, the United States Supreme Court and the South Carolina Supreme Court have not yet squarely addressed the issue, although the trend is in favor of extending to juveniles those same rights which criminal defendants are

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entitled in the area of arrest. In re Gault, 387 U.S. 1 (1967). See In re Appeal in Pima County, 515 P.2d 600 (1973); Baldwin v. Lewis, 300 F.Supp. 1220 (E.D. Wis. 1969), rev'd on other grounds, 442 F.2d 29 (7th Cir. 1971); Brown v. Fauntleroy, 442 F.2d 838 (D.C. Cir. 1971); Ciulla v. State, 434 S.W.2d 945 (Tex. Ct. App. 1968). Therefore, the better course would be to assume the applicability of the Fourth Amendment to juvenile cases involving violations of law.

In conclusion, we opine that law enforcement has the authority to take in custody a minor for the commission of a misdemeanor not committed in his presence without an arrest warrant only when the facts or circumstances give the officer probable cause to believe that the crime was freshly committed. Any other circumstance would require an arrest warrant when the act was not committed in the officer's presence.

II.

Assuming the minor was properly taken into custody upon an arrest warrant or probable cause set forth above, we submit that the officer has qualified statutory authority to detain the minor for a period up to forty-eight hours, unless otherwise ordered by a Family Court pursuant to Section 20-7-600 and Family Court Rules 35 and 36.

It is the opinion of this office that the law enforcement officer has the authority to have a juvenile taken into custody for allegedly violating any law of this State if certain conditions are met. Pursuant to Section 20-7-600, CODE OF LAWS (1976), upon taking the juvenile into custody, the officer shall notify the parent, guardian, or custodian of the child as soon as possible. Also, the officer taking the child into custody shall immediately notify the authorized representative of the Department of Youth Services, who shall review the facts and the officer's report or petition and any other relevant facts and determine if there is a need for the detention of the child. The officer's written report shall be furnished to the authorized representative of the Department of Youth Services within twenty-four hours from the time the child was taken into custody and such report shall state:

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- (1) The facts of the offense; and
- (2) The reason why the child was not released to the parent.

Unless detention is necessary for the protection of the community or to serve the best interest of the child, according to Section 20-7-600, the child shall be released by the authorized representative of the Department of Youth Services to the custody of his parent or other responsible adult upon their written promise to bring the child to the court at the stated time or at such time as the court may direct. This statute has a proviso, however; if the offense for which the child was taken into custody would be a felony, the child may only be released by the Department of Youth Services with the consent of the adult who took the child into custody. Further, pursuant to Rule 35, Rules of Practice in the Family Courts, when any child is taken into custody and not released to a parent, guardian, or custodian, the custodial officer shall notify the Family Court of such fact as soon as possible but no later than twenty-four hours after detention. It is our opinion that it is implicit in the statutory language that a law enforcement officer has the authority to detain a juvenile prior to being screened by an agent of the Department of Youth Services.

It is important to note that Section 20-7-600 does restrict detentions of juveniles or the conditions of the detention in certain respects. First, it should be noted that a child who is taken into custody (arrested) because of a violation of a law which would not be a criminal offense under the laws of this State if committed by an adult (status offenses) shall not be placed in a detention facility.

Further, no child shall be transported in any police vehicle which also contains adults under arrest. Also, no child shall at any time be placed in a jail or other place of detention for adults, but shall be placed in a room or ward entirely separated from adults. Section 20-7-600 [see CODE OF LAWS of 1976, as amended (1981)].

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I trust this has addressed your inquiry. If you have any questions about this matter, please feel free to contact me.

Sincerely,



Donald J. Zelenka
Chief Deputy Attorney General

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enclosures

(Opinion No. 80-102, 10-28-80 and
Opinion No. 83-72, 9-21-83)

APPROVED BY:



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