

The State of South Carolina



Opinion

Office of the Attorney General

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October 29, 1985

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Dear Chief Strom:

In a letter to this Office you indicated that the newly-formed Missing Person Information Center, which was created pursuant to Act No. 98 of 1985, is formulating procedures regarding the handling of missing person cases. You specifically questioned the authority of law enforcement officers to pick up children seventeen years of age and under, which is consistent with the definition of "missing child" in Act No. 98 of 1985, who have been reported as missing to the referenced Center. You indicated that you are distinguishing such a situation from those instances in which a pick-up order has been issued by a family court judge.

Based upon my review, there are no provisions in Act No. 98 of 1985 which specifically authorize a law enforcement officer to pick up a child reported missing to the Center. This Office in a prior opinion dated October 28, 1980 dealt with the authority of a law enforcement officer to take a juvenile into custody where the juvenile commits a criminal offense. The opinion referenced the fact that the criteria which governs the taking into custody of a child for committing a crime is basically the same as that governing the arrest of an adult. The opinion stated:

- (a) juvenile may be taken into custody without a warrant for a criminal offense only where the offense has been committed in the presence of the arresting officer or where the arresting officer has observed

REQUEST LETTER

J. P. Strom, Chief
Page 2
October 29, 1985

facts and circumstances which give him probable cause to believe that a misdemeanor has been freshly committed. A juvenile may be taken into custody without a warrant where the arresting officer has reasonable grounds to believe that a felony has been committed and that the juvenile committed it.

(i)n 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 a juvenile into custody. See also: Minor v. State, 517 P. 2d 183 (1973)

While the criteria for taking a child who commits a crime into custody is basically the same as that for an adult, the United States Supreme Court has also determined that certain basic constitutional protections applicable to adults also apply to juveniles. Schall v. Martin, U.S. _____, 81 L.Ed.2d 207 (1984); In re Gault, 387 U.S. 1 (1967). However, while recognizing such constitutional protections, the Court has also held that the Constitution does not require differences in the treatment of juveniles be eliminated.

The Court has also noted that the State has "... a *parens patriae* interest in preserving and promoting the welfare of the child." Santosky v. Kramer, 455 U.S. 745 at 766 (1982). Referencing such interest of the State, the Court in Schall referenced that typically a juvenile proceeding is "fundamentally different" from an adult criminal proceeding in that "informality" and "flexibility" characterizes juvenile proceedings.

Consistent with the determination that juveniles in some situations must be treated differently, it has been recognized that there must be flexibility in authorizing those instances in which juveniles may be picked up. It has been noted that some statutes provide that a law enforcement officer is authorized to take a juvenile into custody upon the belief that the juvenile is neglected, dependent, incorrigible, or delinquent. As to such statutes,

"... on the ground that juvenile proceedings are not criminal, and that their purpose is not punitive, it has been held that such a

statute authorizes a form of protective custody to which the general law of arrest does not apply, and that it is unnecessary that the child be committing a misdemeanor in the officer's presence, or that the officer have probable cause to believe that the child has been involved in the commission of a felony. 47 Am.Jur.2d Juvenile Courts, Etc., Section 35, p. 1013.

One court has recognized that its state's statutes authorize several bases for taking a child into custody. In Vasquez v. State, 663 S.W.2d 16 (1983), the Texas Court of Appeals noted that pursuant to Section 52.01 of the Texas Family Code, a child may be taken into custody pursuant to an order of the juvenile court, pursuant to the laws of arrest, in situations where there are reasonable grounds to conclude that the child has engaged in delinquent conduct or conduct indicating a need for supervision, or by a probation officer if the child has violated a condition of his probation. See also: In re Moton 242 So.2d 849 (1970).

The Uniform Juvenile Court Act in Section 13 provides that a child may be taken into custody pursuant to a court order, pursuant to the laws of arrest, by a law enforcement officer if reasonable grounds exist to believe that the child is suffering from an illness or an injury or is in immediate danger from his surroundings and that such removal is necessary, or by a law enforcement officer if there are reasonable grounds to believe that a child has run away. See: 47 Am.Jur.2d, Juvenile Courts, Etc., Section 35, pp. 244-245 (Supp.)

Provisions of this State's Children's Code, Sections 20-7-10 et seq. of the Code, also provide for taking a child into custody in certain situations. 1/ Section 20-7-600 (a) states in part:

(w)hen 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 jurisdiction of the ... (family) ... court shall attach from the time of such taking into custody....

1/ Pursuant to Section 20-7-30 (1) of the Children's Code, a "child" is defined as a person under the age of eighteen.

J. P. Strom, Chief
Page 4
October 29, 1985

Section 20-7-610 (a) further provides that:

(a) law enforcement officer may take a child into protective custody without the consent of parents, guardians, or others exercising temporary or permanent control if:

- (1) he has probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the child's life or physical safety.
- (2) Parents, guardians, or others exercising temporary or permanent control over the child are unavailable or do not consent to the child's removal from their custody.
- (3) There is not time to apply for a court order pursuant to Section 20-7-736.

As to the question raised by you as to whether a law enforcement officer is authorized to pick up a child who has been reported as missing with the Center, certain provisions of Sections 20-7-600 and 20-7-610 appear to be relevant. Consistent with the October 20, 1984 opinion, Section 20-7-600 authorizes the taking into custody of a child "found violating any law or ordinance." ^{2/} Such provision also authorizes the taking into custody of a child when the child's "surroundings are such as to endanger his welfare." Obviously, such criteria is subjective and exactly what "surroundings" may endanger a child's welfare are not capable of being summarily listed.

A similarly subjective basis for taking a child into protective custody is authorized by Section 20-7-610. By such provision, a child can be taken into protective custody without

^{2/} In addition to those criminal statutes and ordinances applicable to all individuals generally, certain State statutes specifically provide for offenses involving minors only. See, e.g., Section 20-7-330 (minor gaining admission to theater by falsely claiming to be eighteen); Section 20-7-340 (malicious injury to property by a minor); Section 20-7-350 (playing or loitering in a billiard room by a minor without parental consent); Section 20-7-360 (playing a pinball machine); Section 20-7-370 and 20-7-380 (purchase of beer, wine, and liquor by a minor).

J. P. Strom, Chief
Page 5
October 29, 1985

the consent of individuals exercising control over the child in situations of "abuse or neglect" where there is "an imminent danger to the child's life or physical safety."

Pursuant to Section 20-7-2080 of the Code, this State contracted to enter the "Interstate Compact on Juveniles." As to runaway children, who have not been adjudicated delinquent or been the subject of any proceedings in a court, certain provisions of the Compact are relevant. Subsection 4 states:

(u)pon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his custody, such juvenile may be taken into custody without a requisition and brought before a judge

Subsection 5 states:


(u)pon 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 requisition. But in such event, he must be taken forthwith before a judge

Referencing the above, it is clear that in addition to the authority to take a child into custody where the child commits a crime, pursuant to Sections 20-07-600 and 20-7-610, a child may be taken into custody in the other situations, such as where the child's welfare, life, or physical safety is endangered. Also, as noted, the Interstate Compact on Juveniles specifically references the situation involving a runaway child. Such instances appear to be relevant to your question concerning the authority of a law enforcement officer to pick up a child reported missing to the Missing Person Information Center. However, because of the limited circumstances where a child may be taken into custody and the fact that such authority as presently exists deals with subjective determinations by law

J. P. Strom, Chief
Page 6
October 29, 1985

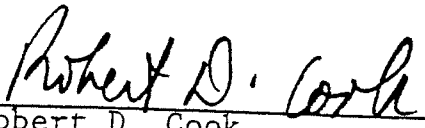
enforcement officers, clarification or expanded authority should be sought by legislation. Of course, any such legislation would have to withstand constitutional scrutiny.

Sincerely,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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