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September 6, 1988

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ATTORNEY GENERAL OPINION NO. 88-130

Winston Barton
Secretary, State Department of
Social and Rehabilitation Services
Docking State Office Building
Sixth Floor
Topeka, Kansas

Re: Minors--Kansas Code for Care of Children; General
Provisions--Chronic Runaways; Placement in Secure
Facilities

Synopsis: In chronological order, the following must occur before a court may authorize placement in a secure facility pursuant to L. 1988, Ch. 138, §8(e): 1) The child must have run from a court ordered or designated placement at least twice; 2) the child must be adjudicated as a child in need of care for having so run; 3) the court must enter an order directing the child to remain in a specified placement, following the procedures set forth in L. 1988, Ch. 138, §8(a); 4) the child must violate this order; 5) upon the filing of an application pursuant to L. 1988, Ch. 138, §8(b), a hearing on the violation must be held and the court must make the determinations required in L. 1988, Ch. 138, §8(e). A subsection 8(e) court order authorizing placement in a secure facility expires 60 days after it is issued. The court may grant two extensions of such authorization, up to 60 days each, upon rehearing pursuant to K.S.A. 38-1564. The secure placement authorized by L. 1988, Ch. 138, §8(e) may not be in an adult jail except when a juvenile detention facility located therein, in quarters separated by sight and sound from adult

prisoners, is used to hold the child for not more than 24 hours, including time spent therein pursuant to subsections 8(c) and (d). Cited herein: K.S.A. 1987 Supp. 38-1502, K.S.A. 38-1527, 38-1528, 38-1542, 38-1543, all as amended by L. 1988, Ch. 138; K.S.A. 38-1556; 38-1563; and L. 1988, Ch. 138, §8.

* * *

Dear Secretary Barton:

As Secretary for the State Department of Social and Rehabilitation Services, you request our opinion interpreting 1988 Senate Bill No. 557 (L. 1988, Ch. 138). Specifically, you seek clarification of the events and procedures which must occur before a child may be placed in a secure facility pursuant to subsection 8(e) of the bill.

L. 1988, Ch. 138, §8 provides in part:

"(a) Valid court order. During proceedings under this code, the court may enter an order directing a child who is the subject of the proceedings to remain in a present or future placement if:

"(1) The court makes a finding that the child has been adjudicated to be a child in need of care pursuant to subsection (a)(10) of K.S.A. 38-1502 and amendments thereto;

"(2) the child and the child's guardian ad litem are present before the court at the time the order is entered; and

"(3) the child and the child's guardian ad litem are given adequate and fair warning, both orally and in writing, of the consequences of violation of the order and a copy of such warning is recorded in the official file of the case.

"(b) Application. Any person may file with the court a verified application for a determination that a child has violated

an order entered pursuant to subsection (a) and for an order authorizing the holding of such child in a secure facility as provided by this section. Such application shall state the applicant's belief that the child has violated a valid court order entered pursuant to subsection (a) and the specific facts which are relied upon to support the belief.

. . . .

"(e) Hearing on violation of order; authorization. The court shall hold a hearing on an application filed pursuant to subsection (b) within 24 hours following the child's being taken into custody, if the child admits the allegations of the application, or within 72 hours following the child's being taken into custody, if secure detention of the child is ordered pursuant to subsection (d). Notice of the time and place of such hearing shall be given orally or in writing to the child's parents, any legal custodian of the child and the child's guardian ad litem. Upon such hearing, the court may enter an order awarding custody of the child to the secretary, if the secretary does not have legal custody of the child, and authorizing the secretary to place the child in a secure facility if the court determines that:

"(1) The child has been adjudicated to be a child in need of care pursuant to subsection (a)(10) of K.S.A. 38-1502 and amendments thereto;

"(2) the child has violated a valid court order entered pursuant to subsection (a);

"(3) the child has been provided at the hearing with the right to: (A) Have the alleged violation in writing and served upon the child a reasonable time before the hearing; (B) a hearing before the court on the issue of placement in a

secure facility; (C) an explanation of the nature and consequences of the proceeding; (D) a guardian ad litem pursuant to K.S.A. 38-1505 and amendments thereto; (E) confront and present witnesses; (F) have a transcript or record of the proceedings; and (G) appeal; and

"(4) there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

"The authorization to place a child in a secure facility pursuant to this subsection shall expire 60 days, including Saturdays, Sundays and legal holidays, after it is issued. The court may grant extensions of such authorization for two additional periods not exceeding 60 days, including Saturdays, Sundays and legal holidays, upon rehearing pursuant to K.S.A. 38-1564 and amendments thereto. Payment by the secretary to a secure facility for child care services provided pursuant to this subsection shall be paid only upon receipt by the secretary of a copy of a valid court order."

While there are several scenarios which may result in secure placement pursuant to subsection 8(e), we will attempt to set forth the very least that must occur.

Before a court may authorize the secretary of social and rehabilitation services (secretary) to place a child in a secure facility for up to 60 days, or longer with appropriate grants of extension, it must determine that the child violated a valid court order entered pursuant to subsection 8(a) (i.e. the child ran from the court ordered placement), that the requirements of subsection 8(e)(3) were met, and that "there is no less restrictive alternative appropriate to the needs of the juvenile and the community." L. 1988, Ch. 138, §8(e)(4). Subsection 8(a) sets forth the steps a court must follow in issuing a placement order sufficient to meet the subsection 8(e) requirements. Pursuant to subsection 8(a), the court must, in addition to assuring the protections specified in L. 1988, Ch. 138, §8(a)(2) and (3), make a finding that the child has been adjudicated as a child in need of care (CINC) pursuant to K.S.A. 1987 Supp. 38-1502(a)(10),

as amended by L. 1988, Ch. 138, §1. To adjudicate a child as a CINC pursuant to K.S.A. 1987 Supp. 38-1502(a)(10), as amended, the court before which the proceedings are conducted must find that the child has run at least twice from a "court ordered or designated placement." (Emphasis added.) L. 1988, Ch. 138, §8(a) provides that the court order authorized by that subsection may be entered "[d]uring proceedings under this code." Thus, we see no reason why this court order could not be entered at the 38-1502(a)(10) adjudicatory hearing. See K.S.A. 38-1556. At this point, the child has demonstrated a propensity to run and need not be given one more "free" run.

As stated previously, the court must find at the 38-1502(a)(10) adjudicatory hearing that the child has run at least twice from a court ordered or designated placement. Though usually this will be a run from a placement ordered by the court pursuant to adjudication of the child (K.S.A. 38-1556 and 38-1563), a child may find himself in a court designated placement even before any court proceedings have been commenced. (Although there is no definition of the term "court designated placement" in the code, we presume the legislature contemplated a designation by administrative order of an administrative judge for children picked up in his or her particular district.) For example, K.S.A. 38-1527(b), as amended by L. 1988, Ch. 138, §5, authorizes a law enforcement officer to take a child into custody when the officer has probable cause to believe that the child is a CINC and there are reasonable grounds to believe inaction would result in harm befalling the child. "Child in need of care" is defined at K.S.A. 1987 Supp. 38-1502(a), as amended by L. 1988, Ch. 138, §1. Neither K.S.A. 38-1527(b) nor K.S.A. 1987 Supp. 38-1502(a) require the child to have been adjudicated as a CINC before an officer may take the child into custody. A child taken into custody pursuant to K.S.A. 38-1527(b), as amended, if not delivered to the custody of the child's parents or processed under the interstate compact on juveniles, must "forthwith be delivered to a facility or person designated by the secretary or to a court designated shelter facility, court services officer or other person." K.S.A. 38-1528(a) as amended by L. 1988, Ch. 138, §6 (emphasis added). See also K.S.A. 38-1528(c). Thus, a child who runs twice from such a placement, regardless whether previously adjudicated as a CINC, may be adjudicated pursuant to K.S.A. 1987 Supp. 38-1502(a)(10), as amended.

In chronological order, the following must occur before a court may authorize placement in a secure facility pursuant to

L. 1988, Ch. 138, §8(e): 1) The child must have run from a court ordered or designated placement at least twice; 2) the child must be adjudicated as a CINC for having so run; 3) the court must enter an order directing the child to remain in a specified placement, following the procedures set forth in L. 1988, Ch. 138, §8(a); (4) the child must violate this order; (5) upon the filing of an application pursuant to L. 1988, Ch. 138, §8(b), a hearing on the violation must be held and the court must make the determinations required in L. 1988, Ch. 138, §8(e). A subsection 8(e) court order authorizing placement in a secure facility expires 60 days after it is issued. The court may grant two extensions of such authorization, up to 60 days each, upon rehearing pursuant to K.S.A. 38-1564.

Finally, you question whether a secure facility may be an adult jail. The term "secure facility" is defined at K.S.A. 1987 Supp. 38-1502(h), as amended by L. 1988, Ch. 138, §1, as:

"[A] facility which is operated or structured so as to ensure that all entrances and exists from the facility are under the exclusive control of the staff of the facility . . . or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility, other than a juvenile detention facility, shall be in a city or county jail." (Emphasis added.)

This definition, together with subsection 8(e), appear to allow placement of a child in a city or county jail if a juvenile detention facility is located therein. However, L. 1988, Ch. 138, §8(f) places limitations on the types of facilities used pursuant to a subsection 8(e) order:

"Nothing in [section 8] shall authorize placement of a child in a juvenile detention facility, except that a child may be held in any such facility which, if in an adult jail, is in quarters separated by sight and sound from adult prisoners:

. . . .

"(2) when ordered by a court pursuant to subsection (e), for not more than 24 hours

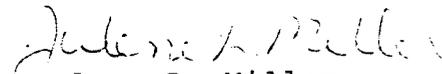
following the hearing provided for by that subsection, except that nothing in this subsection shall allow a child to be held in an adult jail for more than 24 hours." (Emphasis added.)

Thus, the secure placement authorized by subsection 8(e) may not be in an adult jail except when a juvenile detention facility separated by sight and sound from adult prisoners is located therein, and then only for a maximum of 24 hours. [Anytime spent in an adult jail pursuant to subsection (c) or (d) is to be included in this maximum limit]. Further, secure placement pursuant to subsection 8(e) may not be in any other juvenile detention facility for more than 24 hours following a subsection 8(e) hearing. Other sections in the code for care of children which authorize detention of a child in a secure facility, which may be a juvenile detention facility located in an adult jail in quarters separated from the adult prisoners, are K.S.A. 38-1528, 38-1542 and 38-1543, as amended by L. 1988, Ch. 138, §§6, 7 and 10 respectively.

Very truly yours,



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RTS:JLM:jm