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November 21, 2016

ATTORNEY GENERAL OPINION NO. 2016-19

Eric R. Yost
Sedgwick County Counselor
525 North Main, Suite 359
Wichita, KS 67203-3731

Re: Minors—Revised Kansas Juvenile Justice Code—Juvenile Taken Into Custody, When; Procedure

State Departments; Public Officers and Employees—Juvenile Justice Authority—Juvenile Intake and Assessment System; Dispositional Alternatives; Custody of Child; Conditions of Release

Synopsis: A juvenile intake and assessment center never obtains legal custody over a juvenile brought to the center by a law enforcement officer. Cited herein: K.S.A. 2016 Supp. 38-2201; 38-2202; 38-2301; 38-2302; 38-2330; 38-2346; K.S.A. 75-7001; K.S.A. 2016 Supp. 75-7023; 77-201.

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Dear Mr. Yost:

As Sedgwick County Counselor, you ask our opinion on the legal authority of a juvenile intake and assessment center (JIAC) with respect to a juvenile brought to the JIAC by a law enforcement officer. Specifically, you ask: “[d]oes JIAC ever obtain legal custody that would permit JIAC to transport youth or make medical decisions?” For the reasons described below, we believe the answer to your question is no.

The JIAC is a component of the juvenile justice system, and its role is outlined within the Kansas Revised Juvenile Justice Code¹ and the statutes governing the Kansas Juvenile

¹ K.S.A. 2016 Supp. 38-2301 *et seq.*

Justice Authority.² None of those statutes define the legal term “custody,” so we construe it according to its appropriate legal meaning,³ which is “[t]he authority to make significant decisions on a child’s behalf, including decisions about education, religious training, and healthcare.”⁴ We also believe the definition found within K.S.A. 2016 Supp. 38-2202(h),⁵ though not controlling with respect to your question, is helpful in understanding the general nature of legal custody:

“Custody” whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

A law enforcement officer is authorized to take a juvenile⁶ into custody in certain circumstances, such as when the juvenile commits any offense in the officer’s view.⁷ When a juvenile is taken into custody by a law enforcement officer, the juvenile “shall be brought without unnecessary delay to an intake and assessment worker if an intake and assessment program exists in the jurisdiction”⁸ When a law enforcement officer delivers a juvenile to an intake and assessment worker, that officer has a duty to furnish the intake and assessment worker “with all of the information in the officer’s possession pertaining to the juvenile, the juvenile’s parent or other persons interested in or likely to be interested in the juvenile and all other facts and circumstances which caused the juvenile to be arrested or taken into custody.”⁹

The JIAC’s duties are prescribed by K.S.A. 2016 Supp. 75-7023. Once a juvenile taken into custody by a law enforcement officer is brought to the JIAC, an intake and assessment worker “shall complete the intake and assessment process, making release

² K.S.A. 75-7001 *et seq.*

³ See K.S.A. 2016 Supp. 77-201 *Second* (“Words and phrases shall be construed according to the context and the approved usage of the language, but technical words and phrases, and other words and phrases that have acquired a peculiar and appropriate meaning in law, shall be construed according to their peculiar and appropriate meanings.”).

⁴ Black’s Law Dictionary (10th Ed. 2014) (defining “legal custody”).

⁵ This statute is part of the Revised Kansas Code for Care of Children, K.S.A. 2016 Supp. 38-2201 *et seq.*, which governs the procedures for child in need of care (CINC) cases, and does not apply to the Kansas Revised Juvenile Justice Code.

⁶ Under the Kansas Revised Juvenile Justice Code, “juvenile” means “a person to whom one or more of the following applies, the person: (1) Is 10 or more years of age but less than 18 years of age; (2) is alleged to be a juvenile offender; or (3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.” K.S.A. 2016 Supp. 38-2302(n).

⁷ K.S.A. 2016 Supp. 38-2330(a). Other circumstances include when the law enforcement officer has a warrant commanding that the juvenile be taken into custody, and when the officer has probable cause to believe the juvenile has committed an act which, if committed by an adult, would constitute a felony. See K.S.A. 2016 Supp. 38-2330(a)(2) and (a)(4)(A).

⁸ K.S.A. 2016 Supp. 38-2330(d)(1). “‘Juvenile intake and assessment worker’ means a responsible adult trained and authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.” K.S.A. 2016 Supp. 38-2302(r).

⁹ K.S.A. 2016 Supp. 38-2330(d)(2).

and referral determinations”¹⁰ The juvenile intake and assessment worker is required to collect certain information from the juvenile, including the juvenile’s criminal history, abuse history, substance abuse history, and the results of any assessment instruments.¹¹

After completion of the intake and assessment process for such juvenile, the intake and assessment worker “may”¹² unconditionally release the juvenile to the custody of the juvenile’s parent, legal guardian or “another appropriate adult;”¹³ conditionally release the juvenile to the custody of the juvenile’s parent, legal guardian or another appropriate adult if the worker believes that it would be in the child’s best interest so long as certain conditions are met;¹⁴ or deliver the juvenile to a shelter facility or licensed attendant care facility.¹⁵

If the intake and assessment worker determines that release to a shelter or licensed attendant care facility is appropriate, the juvenile shall be delivered “along with the law enforcement officer’s written application. The shelter facility or licensed attendant care facility shall then have custody as if the child had been directly delivered to the facility by the law enforcement officer”¹⁶

The JIAC worker may also “[r]efer the child¹⁷ to the county or district attorney for appropriate proceedings to be filed or refer the child and family to the secretary for children and families for investigations in regard to the allegations”¹⁸ and/or “[m]ake recommendations to the county or district attorney concerning immediate intervention programs which may be beneficial to the juvenile.”¹⁹ If the jurisdiction has in place a written agreement between the court, the county or district attorney, and the JIAC director that establishes immediate intervention programs by which a juvenile may avoid prosecution, a JIAC worker may also be authorized to take other action prescribed by statute.²⁰

¹⁰ K.S.A. 2016 Supp. 75-7023(c).

¹¹ K.S.A. 2016 Supp. 75-7023(d).

¹² K.S.A. 2016 Supp. 75-7023(e). Effective January 1, 2017, this statute states that the JIAC worker “*shall* make *both* a release and a referral determination” See L. 2016, Ch. 102, § 22 (emphasis added).

¹³ K.S.A. 2016 Supp. 75-7023(e)(1).

¹⁴ K.S.A. 2016 Supp. 75-7023(e)(2).

¹⁵ K.S.A. 2016 Supp. 75-7023(e)(3).

¹⁶ *Id.*

¹⁷ K.S.A. 2016 Supp. 75-7023 uses the terms “juvenile” and “child” interchangeably.

¹⁸ K.S.A. 2016 Supp. 75-7023(e)(4).

¹⁹ K.S.A. 2016 Supp. 75-7023(e)(5). Effective January 1, 2017, the JIAC worker is *required* to refer the juvenile’s case to an immediate intervention program; the county or district attorney; or the secretary for children and families. See L. 2016, Ch. 102, § 22.

²⁰ Local immediate intervention programs may be developed to allow a JIAC worker to make direct referrals to those programs, issue a summons directing the juvenile to appear before the court, directly purchase services for the juvenile and the juvenile’s family, and direct the release of a juvenile prior to a detention hearing if the JIAC worker has reason to believe the juvenile will appear for further proceedings and is not dangerous to self or others. K.S.A. 2016 Supp. 38-2346 (a)(1) through (4).

The above summarizes the authority and duties of the JIAC. Notably, no provision of the Kansas Revised Juvenile Justice Code or K.S.A. 2016 Supp. 75-7023 ever grants the JIAC custody over a juvenile delivered to the center for intake and assessment. The only authority for the JIAC to transport a juvenile is found within K.S.A. 2016 Supp. 75-7023(e)(3), which allows the JIAC to “deliver” the juvenile to a shelter or licensed attendant care facility. No statute authorizes the JIAC to make decisions concerning medical care and treatment for the juvenile.

Rather, the JIAC’s role is temporary and limited to assessing the circumstances of each individual juvenile, determining which placement and referral option is in the best interest of that juvenile, and, if applicable, taking limited action as permitted by a local immediate intervention agreement. Accordingly, in the absence of a statute to the contrary, it is our opinion that a JIAC never obtains custody over a juvenile delivered to the JIAC by a law enforcement officer.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

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