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EXTRADITION ACT, UNIFORM—MINOR UNDER EIGHTEEN YEARS OF AGE—ADMITTED TO BOYS' INDUSTRIAL SCHOOL OR GIRLS' INDUSTRIAL SCHOOL—JUVENILE COURT COMMITMENT—ESCAPE—FLEES TO ANOTHER STATE—MAY NOT BE RETURNED TO OHIO—SECTIONS 109-1 TO 109-32 G. C.

SYLLABUS:

A minor under eighteen years of age who, after having been admitted to either the Boys' Industrial School or the Girls' Industrial School under commitment by a juvenile court escapes therefrom and flees to another state, may not be returned to this state under the provisions of the Uniform Extradition Act.

Columbus, Ohio, November 20, 1946

Hon. Frazier Reams, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

> "May we have your opinion on the question of whether minors under commitment by juvenile courts to our correctional schools, that is, the Boys' Industrial School and the Girls' Industrial School, are subject to extradition from other states in which they may be in custody as parole violators or escapees.
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> A boy 17 years of age who escaped from the Boys' Industrial School was apprehended in Detroit on a detainer issued by the institution. Michigan officials contended that the boy could be returned to Ohio only through extradition proceedings, unless he agreed to waive extradition which he refused.
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> It has never been the policy of this Department to attempt extradition in cases of minors committed to our institutions by the juvenile courts."

It should be noted at the very outset that the views herein expressed are not to be considered as antangonistic to the position that apparently has been taken by officials of the state of Michigan. However, I am not informed as to what particular official, or officials, are involved nor the reasons for the conclusion that seems to have been reached. My opinion cannot, of course, have any controlling effect upon any Michigan official. Therefore all that can be done is to set forth herein the views that I have upon the subject and perhaps to indicate what seems to me to be the appropriate procedure under the circumstances.

Your attention will first be directed to the Uniform Criminal Extradition Act which is contained in Sections 109-1 to 109-32, General Code, both inclusive. Section 109-3, General Code, provides:

> "No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or

> by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; *or by a copy of a judgment of conviction or a sentence imposed in execution thereof,* together with a statement by the executive authority of the demanding state that the person claimed *has escaped from confinement or has broken the terms of his bail, probation or parole.* The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand." (Emphasis added.)

Obviously the term "has escaped from confinement or has broken the terms of his bail" must refer to confinement pending an appeal from a judgment of conviction or bail given after conviction and sentence.

With regard to what constitutes an "offense" for which extradition is authorized see 35 C. J. S. 322, wherein it is stated:

> "The offenses for which a person may be extradited include every offense made punishable by the law of the state in which it was committed, from the highest to the lowest in the grade of offenses, including misdemeanors and statutory crimes. It is immaterial whether the offense charged is a crime under the laws of the state of asylum."

In your request for my opinion you have inquired about extradition of "minors". It will be assumed for the purposes of this opinion that in the use of the aforementioned word you intended to refer to persons under eighteen years of age and especially in view of the fact that the boy mentioned is seventeen years old. Being of such age he is a "child" within the meaning of the juvenile court code which is contained in Sections 1639-1 to 1639-61, General Code, both inclusive. In this connection Section 1639-1, General Code, provides in part as follows:

> "The words 'judge', 'judge of the juvenile court,' 'juvenile judge' or 'juvenile court,' used in this chapter or under the laws of this state, shall be construed to mean the judge or the court exercising the powers and jurisdiction conferred in this chapter.
>
> The word 'child' includes any child under eighteen years of age, except that wherever reference is made in this chapter to a crippled or otherwise physically handicapped child the word 'child' shall include any person under twenty-one years of age.

(a) The word 'adult' includes any person eighteen years of age, or over, who is not a 'child' within the meaning of this act."

Since a "child" may be found to be a "delinquent child" as hereinafter demonstrated, it is pertinent at this point to direct attention to Section 1639-2, General Code, which reads in part as follows:

"For the purpose of this chapter, the words 'delinquent child' includes any child:

1. Who violates any law of this state, the United States, or any ordinance or regulation of a subdivision of the state."

In this connection Section 1639-16, General Code, which deals with the jurisdiction of juvenile courts, reads in part as follows:

"(a) The court shall have exclusive original jurisdiction under this chapter or under other provisions of the General Code:

(1) Concerning any child who is (1) delinquent, (2) neglected, (3) dependent, crippled, or otherwise physically handicapped. * * *

(d) The court shall have jurisdiction to hear and determine the case of any child duly certified to the court according to law by any court of competent jurisdiction, and to make disposition of said child in accordance with the provisions of this chapter."

A child is not immune from being charged with the commission of an offense for which, if committed by an adult, extradition could be sought. However, when a child is arrested, the *procedure* to be followed is entirely dissimilar to that in the case of an adult. When a "child" is involved the provisions of Section 1639-29, General Code, are to be invoked. That section provides:

"When a child is arrested on and under any charge, complaint, affidavit, or indictment, whether for a felony or a misdemeanor, such child shall be taken directly before the juvenile court. If the child is taken before a justice of the peace, mayor, judge of the police or municipal court or court of common pleas other than a juvenile court, it shall be the duty of such justice of the peace, mayor or such judge of the police or municipal court or court of common pleas to transfer the case to the court exercising the powers and jurisdiction herein provided. The officers having

such child in charge shall take it before the judge of such court, who shall proceed to hear and dispose of the case in the same manner as if the child had been brought before such judge in the first instance. Upon such transfer or taking of such child before such judge, all further proceedisgs upon or under the charge, complaint, information, or indictment shall be discontinued in the court of said justice of the peace, mayor, police or municipal judge or judge of the court of common pleas other than a court exercising the powers and jurisdiction herein conferred, and the case against or relating to such child shall thenceforth be within the exclusive jurisdiction of such court and shall be deemed to be upon a complaint filed in such court as fully as if the appearance of such child had been upon a complaint filed in and a citation or warrant of arrest originally issued out of and by such court."

Under the terms of Section 1639-30, General Code, the court may conduct the hearing above provided for in an informal manner. Furthermore, the general public may be excluded therefrom and only such persons as have a direct interest in the case need be admitted thereto. If the court finds that the child is delinquent, neglected or dependent, it may by order duly entered, proceed to take the action specifically authorized by said Section 1639-30 which provides inter alia:

"1. Place the child on probation or under supervision in its own home or in the custody of a relative or in an institution or in a certified foster home, wherever situate, upon such terms as the court shall determine; provided, however, that the court may place delinquent children on a free or wage basis in uncertified foster homes.

2. Commit the child temporarily or permanently to the division of social administration of the state department of public welfare, or to a county department, board or certified organization, *or to any institution or to any agency in Ohio* or in another state authorized and qualified to provide or secure the care, treatment or placement, required in the particular case.

3. If, in his judgment, it is for the best interest of a delinquent child, the judge may impose a fine upon such child not exceeding twenty-five dollars or costs, or both.

4. Make such further disposition as the court may deem to be for the best interests of the child, except as herein otherwise provided.

5. In case of a male child over sixeen years of age who has committed an act which if committed by an adult would be a felony, the judge may commit such child to the Ohio state reformatory.

Whenever a child commits an act or acts of delinquency before arriving at the age of eighteen years, and the specific complaint thereon is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, the same as if the complaint were filed and hearing held before such child arrived at the age of eighteen years, provided that no child over eighteen years of age at the time of the court hearing may be committed to the boys' or girls' industrial schools.

The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child *shall not be deemed a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court, except as provided in section 1639-32, General Code.* The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding in any other court, except that the judgment rendered and the disposition of such child may be considered by any court only as applies to the matter of sentence or to the granting of probation. Such disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment or application.

Whenever the court shall commit a child to the division, the state department of public welfare or to any department, board, *institution* or agency it shall transmit with the order of commitment an adequate case history of the child and its family."

(Emphasis added.)

The court is not obliged, however, to provide for the care and custody of such child in any one of the five ways above set forth. In lieu thereof it may handle the matter in conformity with the authority granted pursuant to the provisions of Section 1639-32, General Code, and relinquish jurisdiction in favor of the court of common pleas. Said Section 1639-32, General Code, to which attention is now called, provides:

"In any case involving a delinquent child under the provisions of this chapter who has committed an act which would be a felony if committed by an adult, the judge after full investigation and after a mental and physical examination of such child has been made by the bureau of juvenile research, or by some other public or private agency, or by a person or persons, qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety subject to the approval of the judge, for his appearance before the court of

> common pleas at the next term thereof, for such disposition as the court of common pleas is authorized to make for a like act committed by an adult; *or the judge may exercise the other powers conferred in this chapter in disposing of such case.*"
>
> (Emphasis added.)

When the proceeding is in the *court of common pleas,* and the person involved is a male, *if convicted for a crime or offense* he may be committed to the Boys' Industrial School. It is so provided by Section 2085, General Code, which reads:

> "Such youth convicted of a crime or offense, the punishment of which, in whole or part, is confinement in jail or the penitentiary, at the discretion of the court giving sentence, instead of being sent to the jail or penitentiary, may be committed to the boys' industrial school."

I need not specifically decide whether a youth who is committeed to said Boys' Industrial School under the aforementioned section by the *court of common pleas* and is thereafter paroled or escapes therefrom may be extradited as a parolee or an escapee under Section 109-3, General Code, since your inquiry manifestly relates to commitments by juvenile courts. It is clear, however, from the language of said Section 2085 that confinement results thereunder because the youth has committed a crime or offense. Consequently no sound reason seems to exist why a parolee or escapee could not be extradited if there has been a "judgment of conviction or of a sentence imposed in execution thereof" by a court other than a juvenile court as that phrase is to be understood as embodied in said Section 109-3, General Code.

The distinction between proceedings in the court of common pleas wherein a "child" is involved and in the juvenile court are of an entirely diffierent character as will be amply demonstrated. Confinement in an institution, whether by reason of a judgment of conviction or pursuant to the order of a juvenile court, while perhaps amounting to the same thing from the viewpoint of the "child", are nevertheless for separate and distinct purposes. But it is upon this well established and recognized distinction that the answer to your injuiry must pivot. Hence it becomes necessary to consider for a moment the underlying purpose that is to be served by the juvenile court code and the basic reasons for its enactment. In 24 O. Jur. 548 the following statement is found:

> "The Juvenile Court Law is in accordance with the trend of the best modern sociological and juristic thought. Its purpose is to save minors of tender years from prosecution and conviction on charges of misdemeanors and crime, and to relieve them from the consequent stigma attached thereto; to guard and protect them against themselves and evil-minded persons surrounding them; to protect and train them physically, mentally, and morally. It seeks to benefit not only the child, but the community also, by surrounding the child with better and more elevating influences and training it in all that counts for good citizenship and usefulness as a member of society."

Furthermore, as evidenced by Section 1639-59, General Code, the General Assembly itself saw fit to speak on the subject. That section reads:

> "The purpose of this chapter is to secure for each child under its jurisdiction such care, guidance and control, preferably in its own home, as will serve the child's best welfare and the best interests of the state. When a child is removed from its own family, it is the intent of this chapter to secure for such child, custody, care and discipline, as nearly as possible equivalent to that which should have been given by its parents. The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury, and to enforce the legal obligations due to them and from them. To this end this chapter shall be liberally construed."

When deemed for the best interests of the "child" the juvenile court, in the case of a boy, may commit him to the Boys' Industrial School. In this connection Section 1639-30, General Code, which has previously been referred to herein, merely makes reference to "any *institution* * * * in Ohio". However, this just mentioned section must be considered along with Section 2084, General Code, which provides:

> "Male youth, not over eighteen nor under ten years of age having normal mental and physical capacity for intellectual and industrial training may be committed to the boys' industrial school *by the juvenile courts* upon a finding of delinquency as designated by the laws for juveniles. No youth having a contagious or infectious disease shall be so committed."
>
> (Emphasis added.)

In the case of a girl the juvenile court may cause commitment to

be made to the Girls' Industrial School. Section 2101, General Code, which sets forth the purpose for which that institution shall be maintained, reads:

> "The girls' industrial school shall be maintained for the industrial, intellectual and moral training of those admitted to its care *under the laws governing commitments by the juvenile courts;* provided that no girl under twelve nor over eighteen years of age at the time of hearing in the juvenile court, nor any girl coming before the court because of dependency alone shall be committed; and provided further that only such girls as have normal mental and physical capacity for intellectual and industrial training may be committed and admitted to the institution."
>
> (Emphasis added.)

Your attention is also directed to Section 2112, General Code, which provides in part as follows:

> "A girl duly committed to the school shall be kept there, disciplined, instructed, employed and governed under the direction of the department of public welfare, until she has attained the age of twenty-one years or is sooner paroled or discharged under the rules of the department."

A "child" is not committed to either of the aforementioned institutions because of the commission of an offense. Nor was it ever intended that under the juvenile court code the court was to acquire jurisdiction over the crime. In In re Evans, a Minor, 67 O. App. 66, it was held as follows:

> "2. This present act vests the jurisdiction in the Juvenile Court not over the crime, but over the infant. This is jurisdiction, not of the subject-matter, because Section 1639-32, General Code, just cited, provides such jurisdiction, but is of the person of the minor."

That case was decided February 12, 1941 since which date the juvenile court code has undergone amendment. See 119 O. L. 731; 121 O. L. H. B. 463. There is no reason, however, to believe that these amendments have changed the situation in any respect whatever and that the court now has jurisdiction over the crime.

A conclusion of similar purport was reached by the court in Dendy v. Wilson, 142 Texas 460, 179 S, W. (2d) 269, 151 A. L.R. 1217 (de-

cided March 29, 1944) wherein there was involved a juvenile court act of striking similarity to that of this state. It was pointed out therein that a juvenile court, which was specially created by a statute and providing for the disposition to be made of delinquent children, is not a criminal court and that juvenile delinquency statutes are not criminal in nature. In construing said act it said:

> "This act does not undertake to convict and punish a child for the commission of a crime. It defines a 'delinquent child,' and this definition furnishes the basis for proceedings against such a child under the Act. The only issue to be determined at the trial is whether the juvenile is a 'delinquent child' within the meaning of the Act.
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> The act created juvenile courts with special jurisdiction over delinquent children. A juvenile court is not a criminal court. It is a special court created by statute, and the statute specifically provides what disposition may be made of a 'delinquent child' *until he or she reaches the age of 21 years.* The purpose of the statute is to get away from the old method of handling minors charged with offenses, and to place such minors with suitable persons or in suitable institutions or agencies authorized to take care of minors, for a certain period of time." (Emphasis added.)

I have recently had occasion to pass upon a question somewhat analagous to that presented in your inquiry. See Opinion No. 395 dated August 18, 1945, wherein I held, as disclosed by the third paragraph of the syllabus thereof, as follows:

> "3. A person, who may be a child under eighteen years of age, charged with a crime in this state and who fled to another state may be returned to this state upon requisition of the Governor, as provided in the Uniform Extradition Act (Sections 109-1 to 109-31, both inclusive, General Code). Upon the return of such person if he was a child at the time the crime was committed, he should be taken before the juvenile judge or, if taken before any other court, such other court is required to transfer the case to the juvenile judge and discontinue all further proceedings against the accused, as provided in Section 1639-29, General Code."

The factual situation giving rise to that opinion should be noted in order that there may be no misunderstanding as to the scope thereof. The child had fled from this state *before* the mental and physical examination had been made that is contemplated by Section 1639-32, General Code. In

other words, the escape and flight to another state came about without the juvenile court having had an opportunity to decide whether the child *should be turned over to the court of common pleas.* Accordingly, the extent to which the court had exercised jurisdiction was of a most limited nature and did not involve a final determination and it was still within the power of the court to *relinquish* jurisdiction in favor of the court of common pleas wherein the child could be tried for the offense that had been committed. No action had been taken that could possibly be construed as extinguishing or wiping out of existence the charge upon which the arrest had been made. In the instance referred to in your request the juvenile court exercised jurisdiction to the extent of ordering the child committed to the Boys' Industrial School and that fact is of paramount importance.

Before summarizing I might point out it would seem to me that the return of the boy in question could perhaps be secured through means other than extradition. It is said in Bleier v. Crouse, Supt., 13 O. App. 69, 74:

> "The fundamental principle of the juvenile acts is conservation of the child. In the exercise of the power of *parens patriae* the Legislature has established the juvenile court and delegated to it certain of its powers."
>
> See also in Matter of Veselich, 22 O. App. 528; Conte v. Shriner, etc., 30 O. L. A. 193.

I am not aware of any provision in law that would require a parent to institute extradition proceedings to secure the return of a seventeen year old boy who had gone to another state in order to compel the boy to return to this state. Hence I can see no good reason why a boy who has been declared to be a "delinquent child" and is in the custodial care of this state must be extradited to secure his return to the institution involved.

In your inquiry you have advised that the boy in question was apprehended in Michigan "on a detainer issued by the institution" which in this instance was obviously the Boys' Industrial School. You have further advised that it has never been the policy of the Department of Public Welfare to attempt extradition in cases of minors committed to institutions. The logical inference to be drawn is that it has never been felt there is any particular reason why extradition should even be at-

tempted. However, I have not been called upon to express any definite opinion as to the right of the institution in question, which is maintained by this state, to secure the return of the boy in question by means other than extradition. Hence further discussion of the subject need not be engaged in.

In specific answer to your question it is my opinion that a minor under eighteen years of age, who after having been admitted to either the Boys' Industrial School or the Girls' Industrial School under commitment by a juvenile court, escapes therefrom and flees to another state, may not be returned to this state under the provisions of the Uniform Extradition Act.

Respectfully,

HUGH S. JENKINS
Attorney General