November 21, 1996

The Honorable William F. Schenck
Greene County Prosecuting Attorney
45 N. Detroit Street
Xenia, Ohio 45385

SYLLABUS: 96-061

1. R.C. 2919.25, which prohibits domestic violence, applies to a juvenile as any other criminal provision applies to a juvenile — that is, as a possible source of an allegation of delinquency in juvenile court, and not as part of any possible criminal proceeding.

2. The provisions of R.C. 2935.03(B)(3)(b) establishing arrest as the preferred course of action in domestic violence situations are not applicable to juveniles.

3. A child who is alleged to be delinquent because of a domestic violence offense may be placed in any setting authorized by R.C. 2151.312(A).

4. Because a proceeding against a juvenile in juvenile court is not a criminal proceeding, such a proceeding cannot be the basis for a temporary protection order issued under R.C. 2919.26.

5. If a peace officer determines that the detention or shelter care of a child appears to be required as provided in R.C. 2151.31(C) and Juvenile Rule 7(A), the peace officer is required by R.C. 2151.311(A) and Juvenile Rule 7(B) to bring the child to the court or deliver the child to a place of detention or shelter care designated by the court. A peace officer who determines that the detention or shelter care of a child appears to be required may contact the juvenile court by telephone to determine the place of detention or shelter care to which to deliver the child.

6. R.C. 2151.311(A)(1), R.C. 2151.314(A), and Juvenile Rule 7(B) do not authorize the release of a child to the peace officer who took the child into custody.

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OPINION NO. 96-061

The Honorable William F. Schenck
Greene County Prosecuting Attorney
45 N. Detroit Street
Xenia, Ohio 45385

Dear Prosecutor Schenck:

I have received your letter concerning the application of domestic violence statutes to juvenile offenders. Your letter raises several questions, which I have rephrased as follows:

1.Does R.C. 2919.25, which prohibits domestic violence, apply to juvenile offenders?

2.Taking into consideration R.C. 2151.31(B)(1), does the preferred arrest policy established by R.C. 2935.03(B)(3)(b) apply to juvenile offenders?

3.Does R.C. 2935.03 override the authority of a juvenile court to determine pursuant to R.C. 2151.345 which children may be placed in a detention home and to determine pursuant to R.C. 2151.31(C) and Juvenile Rule 7 the criteria for placement in detention?

4.Does R.C. 2151.312(A) authorize a juvenile court to place children charged with domestic violence in placements other than detention?

5.Does a juvenile court have jurisdiction under R.C. 2919.26 to consider and grant or deny temporary protection orders filed by a family or household member against a juvenile offender? If a juvenile court issues a temporary protection order prohibiting the juvenile from returning to the home while the case is pending and the child is not kept in detention, is the parent/custodian who resides in the house legally accountable for the child's care and supervision?

6.If a peace officer takes custody of a child pursuant to R.C. 2151.311 and Juvenile Rule 7 for an alleged violation of R.C. 2919.25, must the juvenile court initially accept the child from the law enforcement agency and determine an appropriate placement, or can the court determine approval or rejection of admission via telephone communication with the peace officer?

7.Do R.C. 2151.311(A)(1), R.C. 2151.314(A), and Juvenile Rule 7(B) authorize the detention staff to release the child to the officer who took the child into custody?

Your letter indicates that your questions arose as a result of 1994 legislation that established a preferred arrest policy for domestic violence situations and expanded the provisions for granting temporary protection orders. *See* 1993-1994 Ohio Laws, Part III, 5451 (Am. Sub. H.B. 335, eff. Dec. 9, 1994); 1996 Op. Att'y Gen. No. 96-014. The basic issue raised by your letter is whether juvenile offenders are subject to the same procedures and enforcement provisions that apply to adult domestic violence offenders. Your questions arise because Ohio law does not treat juvenile offenders as criminals but, instead, deals with them through a program of juvenile courts that is directed toward their rehabilitation and protection. *See* R.C. 2151.01, .358(H); *In re T.R.*, 52 Ohio St. 3d 6, 15, 556 N.E.2d 439, 448-49, *cert. denied*, 498 U.S. 958 (1990); R. Juv. Proc. 1(B); 1990 Op. Att'y Gen. No. 90-101, at 2-442.

Let us consider, first, whether R.C. 2919.25, which prohibits domestic violence, applies to juvenile offenders. R.C. 2919.25 provides that no person shall knowingly cause or attempt to cause physical harm to a family or household member, R.C. 2919.25(A); no person shall recklessly cause serious physical harm to a family or household member, R.C. 2919.25(B); and no person shall by threat of force knowingly cause a family or household member to believe that the person will cause imminent physical harm to the family or household member, R.C. 2919.25(C).

A juvenile who violates a law that would be a crime if committed by an adult is classified as a "delinquent child." R.C. 2151.02; *see also* R.C. 2151.011(B)(1); *In re Burgess*, 13 Ohio App. 3d 374, 469 N.E.2d 967 (Preble County 1984). A child who is alleged to be delinquent comes within the jurisdiction of the juvenile court and is not considered to be an alleged criminal.[1] R.C. 2151.23(A)(1), .25, .358(H); *Wright v. State*, 69 Ohio App. 3d 775, 591 N.E.2d 1279 (Franklin County 1990), *motion to certify overruled*, 58 Ohio St. 3d 701, 569 N.E.2d 505 (1991). Thus, R.C. 2919.25, which prohibits domestic violence, applies to a juvenile as any other criminal provision applies to a juvenile — that is, as a possible source of an allegation of delinquency in juvenile court, and not as part of any possible criminal proceeding.

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[1] An exception exists when a case involving a juvenile alleged to be a delinquent child is transferred for criminal prosecution to the court that would have had jurisdiction of the offense if it had been committed by an adult. R.C. 2151.26; *see also* R.C. 2151.011(B)(1), .23(H); R. Juv. Proc. 30. Such a procedure occurs after a complaint alleging delinquency has been filed, *see* R.C. 2151.26-.27, and is not addressed in this opinion.

We may now turn to the question whether, in light of R.C. 2151.31(B)(1), the preferred arrest policy established by R.C. 2935.03(B)(b) applies to juvenile offenders. The preferred arrest policy states that it is the "preferred course of action in this state" that a peace officer[2] "arrest and detain" a person until a warrant can be obtained if: (1) the peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order or consent agreement has been committed;[3] and (2) the peace officer has reasonable cause to believe that a particular person is guilty of committing the offense.[4] If there are reasonable grounds for believing that members of a family or household have committed the offense against each other, the preferred arrest policy applies to the primary physical aggressor. R.C. 2935.03(B)(3)(b). The preferred arrest policy calls for a peace officer to arrest and detain an individual in a domestic violence situation. It is apparent from the language of the statute that the term "arrest and detain" applies to individuals who may be charged with a crime and, therefore, that it does not apply to juveniles. *See generally Wright v. State*, 69 Ohio App. 3d at 781, 591 N.E.2d at 1283 (wrongful imprisonment statute "is written strictly in adult criminal language" and does not apply to juveniles).

Although a juvenile may be taken into custody, the juvenile is not subject to arrest and detention as a criminal.[5] As referenced in your letter, R.C. 2151.31(B)(1) states expressly that "[t]he taking of a child into custody is not and shall not be deemed an arrest except for the purpose of

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[2] For purposes of this opinion, the term "peace officer" refers to those peace officers who are described in R.C. 2935.03(B)(1) and are subject to the provisions of R.C. 2935.03(B)(3), including by reference peace officers described in R.C. 2935.03(A). R.C. 2935.03(A)-(B); *see also* 1996 Op. Att'y Gen. No. 96-014, at 2-57 n.1.

[3] The preferred arrest policy established by R.C. 2935.03(B)(3)(b) applies to the offense of domestic violence as defined in R.C. 2919.25 and the offense of violating a protection order or consent agreement as defined in R.C. 2919.27. *See* R.C. 2935.03(B)(1), .03(B)(3). Because you have asked about an alleged violation of R.C. 2919.25, this opinion addresses that type of offense.

[4] Each agency, instrumentality, or political subdivision whose peace officers are described in R.C. 2935.03(B)(1) is required to adopt written policies and procedures for the peace officers to follow in implementing R.C. 2935.03(B)(3). R.C. 2935.032. This opinion discusses only the preferred arrest policy established by statute and not the possible variations that may be adopted in policies of particular agencies, instrumentalities, or political subdivisions.

[5] When the words "arrest" and "detain" are used in connection with juvenile proceedings, they refer to taking a juvenile into custody and holding a juvenile in a place designated by the juvenile court. *See, e.g.*, R.C. 2151.25 ("[w]hen a child is arrested under any charge, complaint, affidavit, or indictment for a felony or a misdemeanor, proceedings regarding the child initially shall be in the juvenile court in accordance with [R.C. Chapter 2151]"); *Ridgeway v. Union County Comm'rs*, 775 F. Supp. 1105 (S.D. Ohio 1991) (arrest and detention of a juvenile believed to have committed a felony drug offense were in accord with the Ohio Rules of Juvenile Procedure). *See generally* R.C. 2151.312.

determining its validity under the constitution of this state or of the United States." Thus, a juvenile may not be taken into custody unless the taking into custody is constitutional under the provisions of the Ohio Constitution and the United States Constitution governing arrest. For other purposes, taking a juvenile into custody is not deemed an arrest. Moreover, a juvenile is never found "guilty." Instead, he or she is found to be delinquent. Therefore, the provisions of R.C. 2935.03(B)(3)(b) establishing arrest as the preferred course of action in domestic violence situations are not applicable to juveniles.

The next question for consideration is whether R.C. 2935.03 overrides the authority of a juvenile court to determine pursuant to R.C. 2151.345 which children may be placed in a detention home and to determine pursuant to R.C. 2151.31(C) and Juvenile Rule 7 the criteria for placement in detention. R.C. 2151.345 grants juvenile courts the authority to determine the admission of children to a district detention home. R.C. 2151.31 and Juvenile Rule 7 provide that a child taken into custody may be placed in detention[6] or shelter care[7] prior to the court's final order of disposition only in specified circumstances: (1) if detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm; (2) if the child may abscond or be removed from the jurisdiction of the court; (3) if the child has no parent, guardian, custodian, or other person able to provide supervision and care and return the child to the court when required; or (4) if an order for placement in detention or shelter care has been made by the court. R.C. 2151.31(C); R. Juv. Proc. 7(A).

Your apparent concern is that the juvenile court's authority to determine juvenile placements may be affected by the preferred arrest policy or by R.C. 2935.03(B)(3)(f), which states that a peace officer, in determining whether to make an arrest for a domestic violence offense, "shall not consider as a factor any possible shortage of cell space at the detention facility to which the person will be taken subsequent to his arrest or any possibility that the person's arrest might cause, contribute to, or exacerbate overcrowding at that detention facility or at any other detention facility." As discussed above, the preferred arrest policy does not apply to juvenile offenders, who are taken into custody as alleged delinquent children, rather than being arrested for crimes. Thus, it is unnecessary to respond more specifically to this question, as the law is inapplicable to juvenile offenders.

Let us look now to the question whether R.C. 2151.312(A) authorizes a juvenile court to place children charged with domestic violence in placements other than detention. R.C. 2151.312(A) lists various settings in which an alleged delinquent child may be placed, including a certified family foster home or a home approved by the court, a facility operated by a certified child welfare agency, a detention home, or any other suitable place designated by the court. *See also* R.C. 2151.34; R.C. 2151.345. Therefore, in response to your third and fourth questions, a child who is

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[6] "'Detention' means the temporary care of children in restricted facilities pending court adjudication or disposition." R.C. 2151.011(B)(3).

[7] "'Shelter' means the temporary care of children in physically unrestricted facilities pending court adjudication or disposition." R.C. 2151.011(B)(4).

alleged to be delinquent because of a domestic violence offense may be placed in any setting authorized by R.C. 2151.312(A).

You have also raised some questions concerning temporary protection orders issued under R.C. 2919.26. A temporary protection order may be granted pursuant to R.C. 2919.26 "as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46," when an alleged offender is charged with domestic violence or certain other offenses involving a member of the family or household. R.C. 2919.26(A)(1). Even as the adult criminal language of R.C. 2935.03(B)(3)(b) indicates that the preferred arrest policy is not applicable to juveniles, so also the adult criminal language of R.C. 2919.26 indicates that temporary protection orders may not be issued against juveniles who are alleged to be delinquent because of the commission of domestic violence offenses. The statute states, for example, that a temporary protection order issued as a pretrial condition of release "[i]s effective only until the disposition of the criminal proceeding arising out of the complaint upon which it is based." R.C. 2919.26(E)(2). Because a proceeding against a juvenile in juvenile court is not a criminal proceeding, such a proceeding cannot be the basis for a temporary protection order issued under R.C. 2919.26. Therefore, it is not necessary to provide further response to your questions concerning temporary protection orders.

Let us now address your concerns about the placement of a juvenile who is taken into custody as an alleged delinquent child for the alleged commission of an act of domestic violence. Even though a juvenile is considered a delinquent child rather than a criminal and is not subject to being arrested under the preferred arrest policy, the juvenile is subject to being taken into custody for various reasons.[8] R.C. 2151.31 and Juvenile Rule 6 state specifically that a juvenile may be taken into custody pursuant to the law of arrest. R.C. 2151.31(A)(2); R. Juv. Proc. 6(A)(2). *See generally In re Therklidsen*, 54 Ohio App. 2d 195, 376 N.E.2d 970 (Franklin County 1977). Therefore, a juvenile may be taken into custody when there are reasonable grounds to believe that the domestic violence law has been violated and reasonable cause to believe that the juvenile has committed the violation. *See* R.C. 2151.02; R.C. 2935.03(B). *See generally Ridgeway v. Union County Comm'rs*, 775 F. Supp. 1105, 1111 (S.D. Ohio 1991).

You have asked whether the juvenile court must initially accept the child from the law enforcement agency and determine an appropriate placement, or whether the court can determine approval or rejection of admission via telephone communication with the peace officer. If a peace officer determines that the detention or shelter care of a child appears to be required as provided in

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[8] R.C. 2151.31 and Juvenile Rule 6 list the ways in which a child may be taken into custody. They include: (1) pursuant to an order of the court; (2) pursuant to the law of arrest; (3) to prevent physical or emotional harm to the child from illness or injury, from the surroundings, or from abuse or neglect; (4) if the child has run away; (5) if the child's conduct, conditions, or surroundings are endangering the child's health, welfare, or safety; (6) if, during court proceedings, there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction or will not be brought before the court; and (7) where immediate placement in shelter care is in the best interest and welfare of the child. R. Juv. Proc. 6(A); *see also* R.C. 2151.31(A).

R.C. 2151.31(C) and Juvenile Rule 7(A), the peace officer is required by R.C. 2151.311(A) and Juvenile Rule 7(B) to bring the child to the court or deliver the child to a place of detention or shelter care designated by the court.[9] When a child is brought before the court or delivered to a place of detention or shelter care designated by the court, the intake or admissions officer or other authorized officer of the court is required to make an investigation and to release the child to the child's parent, guardian, or other custodian, unless detention or shelter care is required under R.C. 2151.31 and Juvenile Rule 7(A). R.C. 2151.314(A); R. Juv. Proc. 7(D). If detention or shelter care is required, the admissions officer in a shelter or detention facility receiving the child is instructed to "admit the child to the facility or place the child in some appropriate facility." R. Juv. Proc. 7(D)(2).

Existing provisions of statute and rule do not provide for a determination via telephone communication on the question whether the child will be admitted to detention or shelter care. It is reasonable to conclude, however, that a peace officer who determines that the detention or shelter care of a child appears to be required may contact the court by telephone to determine the place of detention or shelter care to which to deliver the child.

Your final question asks whether certain provisions of statute or rule authorize detention staff to release a child to the officer who took the child into custody. The referenced provisions — R.C. 2151.311(A)(1), R.C. 2151.314(A), and Juvenile Rule 7(B) — require a child to be released to the child's parent, guardian, or other custodian unless detention or shelter care appears to be required under R.C. 2151.31 and Juvenile Rule 7(A) and, if the child is not released, require a prompt hearing to determine whether detention or shelter care is required. R.C. 2151.311(A)(1), R.C. 2151.314(A), and Juvenile Rule 7(B) do not authorize the release of a child to the peace officer who took the child into custody.

For the reasons discussed above, it is my opinion and you are advised:

1. R.C. 2919.25, which prohibits domestic violence, applies to a juvenile as any other criminal provision applies to a juvenile — that is, as a possible source of an allegation of delinquency in juvenile court, and not as part of any possible criminal proceeding.

2. The provisions of R.C. 2935.03(B)(3)(b) establishing arrest as the preferred course of action in domestic violence situations are not applicable to juveniles.

3. A child who is alleged to be delinquent because of a domestic violence offense may be placed in any setting authorized by R.C. 2151.312(A).

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[9] Before taking this action, a peace officer taking a child into custody may hold the child for processing purposes in a jail, workhouse, or other place holding adult offenders or alleged offenders for a limited period under certain conditions. R.C. 2151.311(C).

4. Because a proceeding against a juvenile in juvenile court is not a criminal proceeding, such a proceeding cannot be the basis for a temporary protection order issued under R.C. 2919.26.

5. If a peace officer determines that the detention or shelter care of a child appears to be required as provided in R.C. 2151.31(C) and Juvenile Rule 7(A), the peace officer is required by R.C. 2151.311(A) and Juvenile Rule 7(B) to bring the child to the court or deliver the child to a place of detention or shelter care designated by the court. A peace officer who determines that the detention or shelter care of a child appears to be required may contact the juvenile court by telephone to determine the place of detention or shelter care to which to deliver the child.

6. R.C. 2151.311(A)(1), R.C. 2151.314(A), and Juvenile Rule 7(B) do not authorize the release of a child to the peace officer who took the child into custody.

Respectfully,

BETTY D. MONTGOMERY
Attorney General