STATE OF NEBRASKA

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NO.
STATE OF NEBRASKA
OFFICIAL
OCT 21 1997
DEPT. OF JUSTICE

DATE: October 20, 1997

SUBJECT: Authority of a probation officer to take a juvenile into custody based upon a violation of probation.

REQUESTED BY: Carol Schoenleber, Probation Administrator

WRITTEN BY: Don Stenberg, Attorney General
David Arterburn, Assistant Attorney General

You have asked several questions regarding the authority of a probation officer to take a juvenile into custody based upon a violation of probation. It is our opinion that under appropriate circumstances as defined by statute, a probation officer does have said authority. Neb. Rev. Stat. § 29-2266(2) provides:

> Whenever a probation officer has a reasonable cause to believe that a probationer has violated or is about to violate a condition of his probation and that the probationer will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall arrest the probationer without a warrant and may call on any peace officer to assist him. Whenever a probationer is arrested, with or without a warrant, he shall be detained in a jail or other detention facility.

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It is our opinion that this provision does not exclusively apply to adult offenders. While Neb. Rev. Stat. § 29-2260(1) states that the disposition of a person adjudicated under 43-247(1), (b), (3)(b), or (4) will be controlled by the Nebraska Juvenile Code, there is no provision which limits the post-disposition custodial powers of the probation officer to adults alone.

When the foregoing statutes are read in concert with the juvenile code, the answer becomes more clear. Neb. Rev. Stat. § 43-253 discusses the powers of a probation officer with regard to temporary custody. It provides (among other things) that when a juvenile has been taken into custody by a peace officer pursuant to Neb. Rev. Stat. § 43-248 to 43-250, the child may be delivered to a probation officer. The probation officer may then make a preliminary determination as to whether the juvenile should be released to the custody of a parent or guardian or should be further detained in order to protect the child or prevent flight from the jurisdiction.

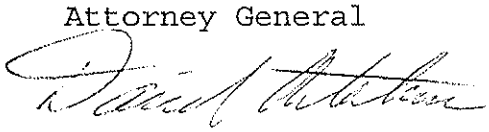
In our view, only a strained reading of these statutes would allow a probation officer to detain a nonadjudicated juvenile pending further hearings by a juvenile court, while making the same officer powerless to detain a juvenile on probation who has violated, or is about to violate, his or her probation ***and*** can be reasonably expected to either flee the jurisdiction or place lives or property in danger. Indeed, if a probation officer has reasonable cause to believe a juvenile meets the requirements of Neb. Rev. Stat. § 29-2266, it would follow that reasonable cause would also exist that said juvenile is "wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian, . . . deports himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or is habitually truant from home or school...." Neb. Rev. Stat. § 43-247(3)(b). More importantly, it would be only in the rarest of occasions that the temporary custody requirements of Neb. Rev. Stat. § 43-248 would not be met if the probation officer has reasonable cause to believe the provisions of § 29-2266(2) have been satisfied.

It is clear that when a juvenile violates a condition of probation, only the juvenile court may permanently modify the original disposition. See Neb. Rev. Stat. § 43-286(4). However, it would defeat the purpose of the juvenile code, i.e., to care for and protect the children within our borders, were a probation officer powerless to place into temporary custody a child who is at risk as described in Neb. Rev. Stat. § 29-2266(2).

If a probation officer chooses to take a juvenile probationer into custody, the same preadjudication protocols as set out in Neb. Rev. Stat. § 43-248 to 43-259 should be observed. The issues of temporary placement or detention should be brought before the juvenile court promptly and within all statutory time limits. Such a process would serve the best interests of the child while respecting the rights of both the juvenile and his/her parents or guardian.

Sincerely,

DON STENBERG
Attorney General



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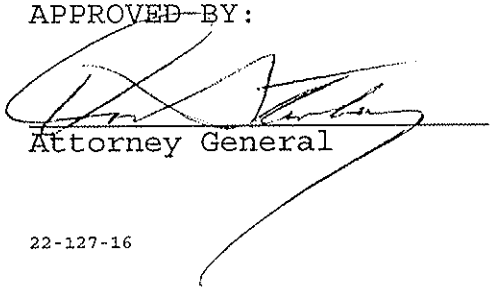

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