Juvenile's detention LD 1581

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Senator Samuel W. Collins, Jr.
Joint Standing Committee on the Judiciary
State House
Augusta, Maine 04333

Dear Senator Collins:

You have asked for our opinion concerning the possible effect of the Opinion of the Justices, 339 A.2d 510 (Me. 1975), on certain provisions of the Proposed Juvenile Code, L.D. 1581, authorizing law enforcement officers to detain juveniles under certain circumstances. After reviewing the case law and relevant materials, it is our opinion that the above-cited case does not cloud the constitutionality of the proposed law.

The relevant section of L.D. 1581, as presently drafted, provides that a law enforcement officer may take a juvenile into "interim care," defined as "temporary physical control of a child," when the officer has reasonable grounds to believe 1) that the juvenile is "abandoned, lost or seriously endangered in his surroundings and that immediate removal is necessary for his protection," or 2) that "the juvenile has run away from his parents, guardian or legal custodian." §3501. In no case may the child be held against his or her will for more than six hours. The officer is required to notify the parents and the juvenile "intake worker" and to take the child to any shelter care facility designated by the intake worker "without unnecessary delay." "Shelter" is defined as temporary care in "physically unrestricting facilities." §3003(26).

Opinion of the Justices, 339 A.2d 510 (Me. 1975), dealt with proposed legislation authorizing law enforcement officers to take into custody certain persons under the influence of alcohol for up to twelve hours in a police facility or forty-eight hours in a treatment facility. The Supreme Judicial Court

found the proposed legislation overbroad because it encompassed situations where neither the parens patriae nor the "police power" interests of the state justified the deprivation of liberty authorized. Firstly, since the class of intoxicated persons subject to protective custody was not limited to those who were found in public, it encompassed those who, because they were in private, did not require the intervention of the state under the parens patriae rationale. Secondly, two of the three categories of persons subject to custody encompassed those only slightly under the influence of alcohol who were therefore capable of caring for themselves without intervention of the state under the parens patriae doctrine. Thirdly, the proposed legislation was declared overbroad to the extent that it invoked the "police power" of the state to justify a deprivation of liberty without a sufficient showing that the person was actually a menace to the public safety. With reference to the police power, the court stated that the government "may validly assert and maintain custodial control of an adult person's body (however temporarily), as a method of protecting the public safety, only within the state's penological interests. ..." (emphasis added)

The present legislation pertains only to juveniles, defined as persons under the age of eighteen. §3003(15). Also, the proposed legislation invokes the parens patriae authority of the state to provide protective care to its citizens, rather than the police power authority to enforce the laws. It should be noted, however, that even under the police power, the court has found constitutional a detention of up to two hours upon probable cause to believe that a person has committed a civil violation and that the person has not accurately identified himself. Opinion of the Justices, 355 A.2d 341 (Me. 1976).

The test set out by the Maine Supreme Judicial Court to determine the constitutionality of detention is twofold. Governmental custodial restraint is valid "only in circumstances in which (1) an important governmental interest compels it, and (2) the restraint authorized is no greater than is strictly necessary to the fulfillment of such governmental interest." Opinion of the Justices, 339 A.2d 510, 517 (Me. 1975).

In considering the present legislation, a constitutional question arises only in the context of involuntary "interim care," as no deprivation of freedom is imposed when a person willingly seeks the care of a police officer.

The important governmental interest which justifies rendering interim care against a child's will is the parens patriae concern of the state for its younger citizens. The responsibility of the sovereign acting in the shoes of the parent to protect the welfare of a child is undisputed. See Opinion of the Justices, 339 A.2d 510, 518 (Me. 1975); S... S... v. State, 299 A.2d 560 (Me. 1973); Merchant v. Bussell, 139 Me. 118, 121 (1942); Weber v. Doust, 146 P. 623, 626, 84 Wash. 330 (1915); Ex parte Crouse, 4 Wharton 9 (Pa. 1839). It is by virtue of the parens patriae doctrine, as applied to juveniles, that the states have enacted laws specially regulating activities of minors such as employment and access to driver's licenses, marriage licenses and liquor. In particular, the parens patriae rationale permits temporary custody by a police officer of neglected, dependent or delinquent children, whether or not they have violated a criminal law. In re James L., Jr., 194 N.E.2d 797 (Ohio 1963). Weber v. Doust, 146 P. 623, 626, 84 Wash. 330 (1915).

Clearly the parens patriae function of the state justifies temporary governmental intervention when a juvenile reasonably appears to be abandoned, lost or seriously endangered and when it further appears that immediate intervention is necessary for the child's own protection. In the case of nonconsensual intervention, the circumstances above clearly provide the necessary exigent circumstances to avoid a Fourth Amendment violation.

In the case of a runaway, we think here too the parens patriae responsibility of the state constitutes the "important governmental interest" justifying intervention in the first place. Although the circumstances of being a runaway are not so much in the nature of a physical emergency as they are in the case previously discussed, the government does have a substantial interest in the child's welfare justifying the very limited intervention authorized here. First of all, the law enforcement officer must have "reasonable grounds to believe" that the juvenile has run away from his legal custodian. This qualification we interpret to mean "probable cause" in the classic sense, and this limitation prevents groundless or pretextual stops by police officers.

Although running away from home is not a crime under the proposed Juvenile Code, providing interim care to runaways can be regarded as an extension of the parents' right to custody of the child as provided in 19 M.R.S.A. §211. That such was the intention of the present provision is indicated by the fact that the parents are to be notified as soon as possible, that the taking

of a juvenile into interim care is not to be considered an arrest, and that placing the juvenile in jail, other than in the public sections, is strictly prohibited. Furthermore, §§3503 and 3504 provide that the juvenile shall be taken either directly home or, under certain circumstances, to a shelter close to the parents' residence.

Given that interim care as outlined in the proposed legislation is justified by the parens patriae interest of the state, is the restraint authorized any greater than is strictly necessary to the fulfillment of that interest? We think the legislation is narrowly drafted so as to avoid overbreadth in this regard. Unlike the legislation under consideration in Opinion of the Justices, 339 A.2d 510 (Me. 1975), the present bill prohibits putting the person in a jail or other secure facility, limits any involuntary interim care to a maximum of six hours, and authorizes interim care only for those in urgent need of services or those who, being non sui juris and having run away from home, are in need of the parental control and supervision envisioned by our laws. Under these circumstances, the temporary deprivation of liberty authorized by this legislation is no more than is necessary to effectuate the state's legitimate interest under the parens patriae rationale.

We hope these comments are helpful.

Sincerely,

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JEB/mp