ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

October 25, 1994

FILE NO. 94-020

CRIMINAL LAW AND PROCEDURE:
Holding 17 Year Old in County Jail on
Finding of Contempt for Probation Violation

Honorable Thomas O. Finks
State's Attorney, Shelby County
Shelby County Courthouse
Shelbyville, Illinois 62565

Dear Mr. Finks:

I have your letter wherein you inquire whether a 17 year old may be confined in the county jail, rather than in a juvenile detention facility, to serve a sentence for contempt resulting from the minor's violation of a juvenile probation order. For the reasons hereinafter stated, it is my opinion that a 17 year old who is sentenced for contempt may be confined in the county jail.

You have stated that in this case, a minor, then age 15, was found to be delinquent and was placed on probation pursuant to the provisions of the Juvenile Court Act of 1987 (705 ILCS 405/1-1 et seq. (West 1992)). Subsequently, after the minor's 17th birthday, he was held in contempt of court for his

failure to comply with the order of probation. Since there is no juvenile detention facility in the county, you have asked whether it would be permissible to house the 17 year old in the county jail, which is an adult facility.

It has been the policy of this State for well over one hundred years that youthful offenders are not to be confined with adult offenders. Thus, section 11 of the County Jails Act (730 ILCS 125/11 (West 1992)) provides:

> "Debtors and witnesses shall not be confined in the same room with other prisoners; male and female prisoners shall not be kept in the same room; minors shall be kept separate from those previously convicted of a felony or other infamous crime; and persons charged with an offense shall not be confined in the same cell as those convicted of a crime. The confinement of those persons convicted of a misdemeanor or felony shall be in accordance with a classification system developed and implemented by the local jail authority." (Emphasis added.)

This policy is also reflected in the provisions of the Juvenile Court Act of 1987. Section 5-7 of the Act (705 ILCS 405/5-7 (West 1992)) strictly limits holding minors in temporary custody in county jails. With an exception not here relevant, minors who are subject to article 5 may ordinarily be held for no longer than six hours in a county jail. That section also provides that:

> " * * *
>
> * * * Minors under 17 years of age shall be kept separate from confined adults and may

> not at any time be kept in the same cell, room or yard with adults confined pursuant to criminal law.
>
> * * *
>
> (Emphasis added.)

Once a minor reaches the age of 17, however, he or she is ordinarily subject to prosecution under the provisions of the Criminal Code of 1961 (720 ILCS 5/1-1 et seq. (West 1992)), not to adjudication under the Juvenile Court Act (see 705 ILCS 405/5-3 (West 1992)), and may be sentenced to serve time in a county jail.

I note, initially, that there is no provision of the Juvenile Court Act which permits a delinquent minor to be punished by the imposition of a period of confinement in a penal institution, except for minors who are committed to the custody of the Juvenile Division of the Illinois Department of Corrections. In the circumstances you have described, however, the 17 year old in question was sentenced for contempt of court, not for a matter which is justiciable under the provisions of the Juvenile Court Act. Although the offense for which he was placed on probation occurred prior to his 17th birthday, the contempt occurred after that date. In these circumstances, I do not believe that his confinement is a matter governed by the Juvenile Court Act.

A court has inherent power to enforce its orders by contempt proceedings, and the General Assembly cannot restrict

the use of that power. (In re Baker (1978), 71 Ill. 2d 480, 484.) In In re Baker, the 14 year old respondent was held in contempt for failing to obey a placement order. It was held that the provision of statutory alternatives to the contempt power found in the Juvenile Court Act did not limit the power of the court to use contempt proceedings to enforce orders entered pursuant to the Act. Further, based upon the language now found in section 5-3 defining "delinquent minor", a minor cannot be adjudicated delinquent solely because he has disobeyed a court order.

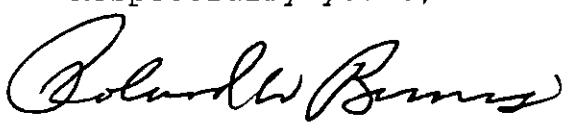
The court was even more specific in In re G.B. (1981), 88 Ill. 2d 36. Therein, the court held that contempt proceedings initiated for violation of an order entered in proceedings under the Juvenile Court Act are not governed by that statute, and the propriety of punishment imposed upon a juvenile found guilty of contempt for violation of such an order depends upon the court's power to impose punishment for contempt. (In re G.B. (1981), 88 Ill. 2d 36, 41.) In that case, 16 year old G.B. was sentenced to 60 days detention in a juvenile facility followed by probation after being held in contempt for disobeying an order requiring him to attend school. Neither disposition was, at that time, provided for in the Juvenile Court Act with respect to a minor, like G.B., who had not been adjudicated delinquent, but was under

court supervision. Nonetheless, the punishment was upheld as an appropriate exercise of the court's contempt power.

Based upon the above authorities, it is my opinion that a finding of and sentence for contempt resulting from disobedience of a probation order by a 17 year old is not limited by the Juvenile Court Act. The detention of the 17 year old contemnor is subject to the discretion and order of the court. There is nothing in the Juvenile Court Act that prohibits the detention of the contemnor in the county jail if the court deems such detention appropriate.

I must stress, however, that this opinion is based strictly on the facts you have related. If, for example, a petition to revoke probation based upon a violation of the terms thereof had been filed, instead of an action for contempt, the provisions of the Juvenile Court Act would apply, and, under the terms of section 5-25 of the Act (705 ILCS 405/5-25 (West 1992)), a term of confinement in the county jail would not be permissible. In re Tucker (1977), 45 Ill. App. 3d 728.

Respectfully yours,



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