

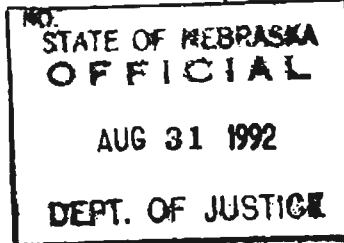


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92109



DATE: August 28, 1992

SUBJECT: Transportation of Juveniles who have been taken into custody to Juvenile Detention Facilities.

REQUESTED BY: Mark Behm
Cedar County Attorney

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

QUESTION: Whether a county sheriff must accept responsibility for transporting juveniles to a juvenile detention facility from a State Patrol officer who has taken the juvenile into custody.

CONCLUSION: Yes

There is no statute or case law which directly addresses this issue. However when the statutes addressing juvenile detention are read in conjunction with the statutes outlining the sheriff's general powers and duties, we are led to the conclusion that the county sheriff is responsible for the detention of juveniles and should therefore be primarily responsible for their transportation while in detention. This decision does not mean that a state trooper cannot transport a juvenile directly to the nearest detention facility rather than the county sheriff's office.

Neb.Rev.Stat. §23-1703 provides in part that:

. . . . the sheriff shall have charge and custody of the jail, and the prisoners of the same, and is required to receive those lawfully committed to keep them himself or

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Mark Behm
August 28, 1992
Page -2-

herself, or by his or her deputy jailer, until discharged by law.

While this statute does not specifically include juveniles in its coverage, it cannot be read to exclude them. Juveniles who must be held in a secure facility clearly fall within the sheriff's duty as a jailer. Although they may not be held in contact with adults (See Neb.Rev.Stat. §43-251) they remain subject to the custodial powers of the sheriff.

The juvenile code supports this position. Section 43-2,110 empowers the County Board to appropriate funds to establish and maintain detention homes in connection with the juvenile courts of the state. The temporary custody provisions of the code also contemplate the provision of detention as a county function. Section 43-254 notes that if a juvenile is placed temporarily in a state institution (where the only local facility is a jail) the county would bear the expense of the placement. Finally, §43-251 offers instructions as to who may be held in jail. The sheriff (as jailer) is clearly being addressed by this statute.

Based on the foregoing statutory authority, we believe that the county sheriff maintains primary responsibility for the housing of juveniles who require detention. Therefore, a state trooper who apprehends a juvenile offender (who cannot be otherwise released) should deliver the juvenile to the sheriff who bears responsibility for detention. The sheriff of the county where the offense took place cannot refuse to take custody of the juvenile offender. While this may create inconvenience for the sheriff who must transport the offender over long distances in order to deposit the juvenile in a detention facility, this transportation nonetheless remains the duty of the jailer. The state trooper may provide transportation if they choose to do so and if they are acting in accord with the directions of the sheriff. However, the trooper is not required to provide transport any further than the county sheriff's office.

Sincerely,

DON STENBERG
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Deputy Attorney General

Approved By:


Don Stenberg, Attorney General
22-72-11