

SENATOR FLORENCE SHAPIRO
DISTRICT 8

COMMITTEES:
State Affairs, Chair
Criminal Justice
Administration



The Senate of
The State of Texas

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JAN 04 2000

OPINION COMMITTEE

January 3, 2000

RQ-0169-JC
FILE # ML-41205-00
I.D. # 41205

Office of the Attorney General
Attn: Liz Robinson
Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear Ms. Robinson,

Attached please find a letter from the Plano Police Department requesting my assistance in obtaining an opinion from your office. Would you please review this request for an opinion? Please feel free to contact my staff if you have any questions, or require further information. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Florence Shapiro".

Florence Shapiro

FS/sc

enclosure

cc: Mr. Bruce D. Glasscock, Chief of Police
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358



city of plano  police department

OFFICE OF POLICE CHIEF

Bruce D. Glasscock
Chief of Police

P.O. Box 860358
Plano, Texas 75086-0358
972-941-2401

December 3, 1999

Senator Florence Shapiro
2901 Dallas Parkway, Suite 330
Plano, Tx 75093

Dear Senator Shapiro:

Our department has discovered a possible problem with one of the recently enacted provisions to the Code of Criminal Procedure, specifically certain changes to Chapter 63, related to the Missing Persons' Clearinghouse. I am requesting that your office seek an opinion from the Attorney General as to the enforceability of the statute as discussed below.

Article 63.009(g) of the Code of Criminal Procedure is the source of the concern. This newly enacted portion reads as follows:

(g) On determining the location of a child under Subsection (a)(1) or (2), other than a child who is subject to the continuing jurisdiction of a district court, an officer shall take possession of the child and shall deliver or arrange for the delivery of the child to a person entitled to possession of the child. If the person entitled to possession of the child is not immediately available, the law enforcement officer shall deliver the child to the Department of Protective and Regulatory Services.

As you can see, the new statute mandates that police officers take *possession* of the missing child once the child is located. Article 63.001 defines a "child" as a person under 18 years of age. The statutes, read in conjunction, require that police take custody of persons over the age of 17, but not yet 18, even though a 17-year-old cannot legally be defined as a runaway per the Family Code. See section 51.02(2)(A), Family Code, Title 3 - Juvenile Justice Code.



"Professionalism - Integrity - Progress"



December 3, 1999
Senator Florence Shapiro
Page Two

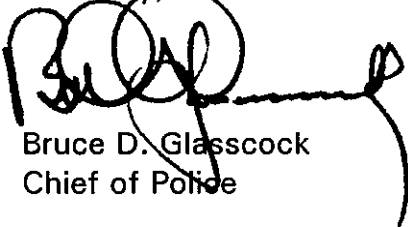
The questions are:

1. Are police officers authorized to take a person who is over the age of seventeen, but not yet eighteen, into custody simply because the person has been listed as "missing"?
2. What if the person does not want to be detained?
3. Would officers then be authorized to use force to take possession of the person?
4. If detained, how long may the detention last?

Finally, the office of the Attorney General, pursuant to Article 63.10, is authorized to take steps to enforce the provisions of Chapter 63. Would that office pursue an action against an agency that refused to detain a seventeen year old who had committed no crime and did not voluntarily remain in police custody?

The concerns of police agencies are clear – do we "arrest" a person (restrain the person's liberty) who has committed no crime, or do we ignore what appears to be a statutory mandate in order to avoid an allegation of an unconstitutional seizure. This appears to be a "no-win" situation for law enforcement. Should you have any questions or would like to discuss further, please contact my office at (972) 941-2401. Any help you could give us would be greatly appreciated.

Sincerely,



Bruce D. Glasscock
Chief of Police

BDG/cp

c: Warren Spencer, Police Legal Advisor