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The Honorable Jerry Thorne  
Idaho State Senator  
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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Dear Senator Thorne:

This letter is written in response to your request for an opinion regarding the jurisdiction of the magistrate division of the district court under the Youth Rehabilitation Act.

You first ask whether the court can order disposition other than by ordering custody to the department of health and welfare. A court becomes involved in a juvenile case when a pleading, known as a petition, seeks to have a child brought within the purview of the Youth Rehabilitation Act. Subsequent to the filing of a petition under the Youth Rehabilitation Act and where the juvenile admits to the allegations contained in the petition, the court may make an informal adjustment or a formal disposition of the petition.

Informal adjustment is outlined in Idaho Code § 16-1807A(2). The options available to the court include, but are not limited to:

- (a) Reprimand of the juvenile;
- (b) Informal supervision with the probation department;
- (c) Community service work;
- (d) Restitution to the victim;
- (e) Participation in a community-based diversion program.

The court also has the option of proceeding by way of formal disposition, in which case the court conducts a disposition

hearing and orders an investigative report as prescribed by Idaho Code § 16-1814:

16-1814. DISPOSITIONAL HEARING.--(1) Upon the entry of an order finding the child is within the purview of the act, the court shall then hold a disposition hearing in the manner prescribed by the Idaho juvenile rules to determine the treatment, rehabilitation or detention sentence that will best serve the needs of the child and the public interest.

Prior to the entry of an order disposing of the case, other than an order of discharge or dismissal, the court shall request and shall receive a report containing the results of an inquiry into the home environment, past history, rehabilitation or prevention of out of home placement services provided, social, physical and mental condition of the child. The court shall not consider or review the report prior to the entry of an order of adjudication. After receiving the investigative report, the court then has numerous options at its disposal under Idaho Code § 16-1814:

1. Place the child on formal probation for a period not to exceed one (1) year from the date of the order;
2. Commit the child to a period of detention, pursuant to this act, for a period of time not to exceed thirty (30) days for each unlawful or criminal act the child is found to have committed, or where the child has been adjudicated as an habitual status offender. No child who is found to come within the purview of the act for the commission of a status offense shall be sentenced to detention in a jail facility unless such an adjudication has been made that the child is an habitual status offender;

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3. Commit the child to detention and suspend the sentence on specific probationary conditions;
  4. Commit the child to the legal custody of the department of health and welfare for an indeterminate period of time not to exceed his or her nineteenth birthday, unless extended jurisdiction is necessary to complete the rehabilitation goals of the department, for appropriate disposition. When such commitment order is entered, the child shall be transported to the facility designated by the department by the sheriff of the county where the child resides or is committed, or by appointed agent. Any order of commitment to the department shall be subject to review at least once every six (6) months. When committing a child to the department the court shall at once forward to the department a certified copy of the order of commitment;
  5. Order the proceeding expanded or altered to include consideration of the cause pursuant to chapter 16, title 16, Idaho Code.
  6. Order the case and all documents and records connected therein transferred to the magistrate division of the district court for the county where the child and/or parents reside if different than the county where the child was charged and found to have committed the unlawful or criminal act, for the entry of a dispositional order;
  7. Order medical care or psychological examination and treatment for the child;
  8. Order such other terms, conditions, care or treatment as appears to the court will best serve the interests of the child and the community.
- (2) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order the child or his

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parents or both to pay restitution to any victim who suffers an economic loss as a result of the child's conduct in accordance with the standards and requirements of sections 19-5304 and 19-5305, Idaho Code. (Emphasis added.)

The court thus has several options in ordering disposition of an adjudicated youth, many of which do not involve custody by the department of health and welfare. However, youths who have had prior adjudications or who have committed multiple offenses may require residential treatment. This will normally necessitate commitment to the department of health and welfare, as there are few adequate community-based programs for juveniles in Idaho.

Your second question is whether the court can order the Idaho Department of Health and Welfare to provide a particular care and treatment program that the court determines to be in the best interests of the child. Idaho Code § 16-1801 explains the intent behind the Youth Rehabilitation Act: "the policy of the state of Idaho is hereby declared to be. . .to consider the needs and best interests of the child." Idaho Code § 16-1814 implements this policy by allowing the court to proceed to the disposition of the case by any of the prescribed methods listed in the statute.

One such prescribed method is to commit the child to the legal custody of the department of health and welfare. Once the child is committed to the custody of the department, it is the department that has the responsibility to designate the facility where a youth is to be placed. The judge may make recommendations to the department as to appropriate placement, treatment and care. However, these recommendations are not binding on the department. Rules promulgated by the department of health and welfare appear to be consistent with the above interpretation. Assigned social workers attempt to follow court recommendations when possible.

Once committed to the custody of the department of health and welfare:

[T]he department shall keep under continued study a child in its control and shall retain him under supervision and control so long as, in its judgment, such control is necessary for the protection of the public. . .The department shall discharge a person as soon as, in its opinion, there is

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reasonable probability that he can be given full liberty without danger to the public.

Idaho Code § 16-1826. Thus, discharge of a child from custody by the department of health and welfare requires notification in writing to the court as well as to the parent. No court approval is required for discharge. If a new offense is committed by the youth subsequent to a disposition under the Youth Rehabilitation Act, the judge may again act in accordance with § 16-1814.

In summary, once a judge determines that residential treatment is necessary, the only practical placement at this time is usually the department of health and welfare. Once custody of the child is given to the department, the judge may recommend, but not order, the department to follow placement, treatment or supervisory programs.

I hope you will find this information helpful.

Very truly yours,



PATRICK J. KOLE  
Chief, Legislative and  
Public Affairs Division

PJK/tg