

Opinion No. 73-14

February 2, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Fred E. White Assistant District Attorney Eleventh Judicial District
218 West Apache Farmington, New Mexico 87401

QUESTIONS

QUESTIONS

1. What procedure should be used to obtain extradition of a juvenile from another state who stands charged in this state with commission of an act which constitutes a crime if committed by an adult?
2. Who is responsible for the costs of such extradition?

CONCLUSION

1. See analysis.
2. See analysis.

OPINION

{*24} ANALYSIS

At the outset we point out that this opinion does not reach the question of whether a juvenile may be extradited from New Mexico to another state. This decision would depend on the applicable law of the demanding state and whether under this law the juvenile stands charged with commission of a **crime** in that state.

The Children's Code, Sections 13-14-1 through 13-14-45, N.M.S.A., 1953 Comp. (1972 Interim Supp.), does not speak specifically to the process of extradition of juveniles. In Sections 13-14-18 and 13-14-19, N.M.S.A., 1953 Comp. (1972 Interim Supp.), this code provides for issuance and service of summons in proceedings before the Children's Court. However, these sections do not provide a method for returning a child who has committed a criminal act and thereafter fled to another state.

Section 13-14-20C, N.M.S.A., 1953 Comp. (1972 Interim Supp.) states that a child may be taken into custody:

"C. pursuant to the laws of arrest for commission of a delinquent act;"

Therefore, a warrant which would be necessary for extradition may issue for the arrest of a juvenile for commission of a delinquent act. Section 13-14-3, N.M.S.A., 1953 Comp. (1972 Interim Supp.) defines a delinquent act in this manner:

"N. 'delinquent act' means an act committed by a child, **which would be designated as a crime under the law if committed by an adult**, except for offenses under the Motor Vehicle Code other than:

- (1) driving while under the influence of intoxicating liquor or drugs;
- (2) failure to stop in the event of an accident causing death, personal injuries or damage to property;
- (3) reckless driving;
- (4) driving without a valid operator's license or permit; or
- (5) any offense punishable as a felony." (Emphasis added.)

Also Section 13-14-27C, N.M.S.A., 1953 Comp. (1972 Interim Supp.) enjoins a **{*25} criminal** prosecution of a juvenile for commission of a delinquent act unless the case has first been transferred from the Children's Court to a district court. Finally Section 13-14-30, N.M.S.A., 1953 Comp. (1972 Interim Supp.) provides that a judgment in proceedings on a petition under the Children's Code shall not be deemed a conviction of a **crime**. Since the Children's Code refers to an act which **would be** a crime if committed by an adult, it is apparent that a child is not to be charged with a crime but rather with a delinquent act.

Since neither the Children's Code nor any other statute refers specifically to extradition of juveniles, we must look to the Uniform Criminal Extradition Act for the determination of whether juveniles fall within its ambit. Section 41-19-2, N.M.S.A., 1953 Comp., in accordance with the Uniform Criminal Extradition Act, states:

"Fugitives from other states -- Governor to cause arrest and delivery. -- Subject to the provisions of this act [41-19-1 to 41-19-30], the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with **treason, felony, or other crime**, who has fled from justice and is found in this state." (Emphasis added.)

See 9 ULA258, 264(1957). This section is based on the mandate of the United States Constitution, Article IV, Section 2, which states in part:

"A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the

state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

Any person who is charged with treason, felony, or other **crime** may be extradited. As stated above, a juvenile can only be charged in New Mexico with committing a delinquent act and, therefore, cannot be extradited. In other words, the Uniform Criminal Extradition Act would prohibit another state's returning a juvenile to New Mexico since the juvenile would be charged with commission of a delinquent act rather than commission of a crime as required by Section 2 of the Uniform Act.

However, there appears to be one instance in which a juvenile may be extradited. Under Section 13-14-11, N.M.S.A., 1953 Comp. (1972 Interim Supp.) every criminal matter must go to the Children's Court if the defendant was under 18 years of age at the time the alleged offense was committed. Only when the child is 16 years of age or more at the time of commission of the alleged delinquent act and the alleged act is a felony may the child be prosecuted in district court for committing a crime, and this transfer can be made only after a hearing in Children's Court, Section 13-14-27, N.M.S.A., 1953 Comp. (1972 Interim Supp.).

If the requirements of Section 13-14-27, *supra*, are met and if after a hearing on whether a transfer should be made, the matter has been transferred to district court for prosecution, the juvenile may be extradited under the normal extradition procedures. Note that under Section 13-14-27A(3), *supra*, at least three days before the hearing, written notice of time, place and purpose must be given to the child. **Kent v. United States**, 383 U.S. 541, 16 L. Ed. 2d 84, 86 S. Ct. 1045 (1966) holds that such a hearing is critically important in determining vitally important statutory rights of the juvenile and he must be given right to counsel and access to records. Therefore, holding such a hearing in the absence of the juvenile may be questionable with respect to safeguarding his constitutional rights, and as a practical matter, there may be no effective way for New Mexico to obtain extradition of a juvenile from another state. In any event, the costs of such an extradition would be governed by Section 41-19-26, N.M.S.A., 1953 Comp. which states:

"Costs and expenses. -- When the punishment of the crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the auditor; and in all other cases {*26} they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed."

We note here that the provisions of the Interstate Compact on Juveniles deal with the return of runaways and would aid in the return of juveniles alleged to have committed a delinquent act. This compact was passed by both houses of the New Mexico Legislature in 1972 but was vetoed. Since there is no special statute dealing with extradition of juveniles, and the Children's Code does not speak to this issue, the provisions of the Uniform Criminal Extradition Act apply. Therefore we are of the opinion

that juveniles cannot be extradited except in the one instance and by the procedure set out above.

By: Jane E. Pendleton

Assistant Attorney General