

DATE: 03-11-91

CITATION: VAOPGCPREC 33-91
Vet. Aff. Op. Gen. Couns. Prec. 33-91

TEXT:

SUBJECT: Juvenile Offenses Occurring on VA Property.

(This opinion, previously issued as Opinion of the General Counsel 23-75, dated September 11, 1975, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

To: District Counsel Cheyenne

QUESTION:

The question presented concerns the handling of juvenile offenders on VA property since the enactment of the Juvenile Justice and Delinquency Prevention Act of 1974, 18 U.S.C. §§ 5031-5042 (P.L. 93-413). In particular, we have been asked by the District Counsel in Wyoming to decide whether VA Hospital Police should refrain from issuing United States Court Violation Notices to juvenile offenders for violations of VA Regulation 218, or, in the alternative, whether juveniles should continue to be cited until the current practices are challenged.

COMMENTS:

The Juvenile Justice and Delinquency Prevention Act of 1974 was designed to promote greater participation by the states in handling criminal matters involving juveniles. Section 5032 of title 18, United States Code, as amended by the Act, provides as follows:

"... A juvenile alleged to have committed an act of juvenile delinquency shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to an appropriate district court of the United States that the juvenile court or other appropriate court of a State (1) does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, or (2) does not have available programs and services adequate for the needs of juveniles ... If the Attorney

General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State...."

Contact with the Department of Justice, Special Litigation Section, with regard to the matter of applicability of the Act to petty offenses on Federal Property, has established that it is indeed applicable. This means that if a citation is issued to a juvenile, for a violation of VA Regulation 218, the United States Attorney's Office must proceed in accordance with the provisions of the Act. The Department of Justice has informed this office that where the jurisdiction is exclusive in the Federal Government, the procedure to be followed allows the matter to be referred directly to the United States Magistrate without going through the certification process called for in the Act. The State, in those cases, would have no jurisdiction to assert, even if it so desired.

Where the jurisdiction is concurrent or proprietary in nature, a violation of VA Regulation 218 by a juvenile or, for that matter, any violation of Federal law by a juvenile, must be presented to the appropriate local prosecutor in order that he may accept or refuse prosecutorial responsibilities in the matter. If the local prosecutor does accept the case for prosecution, he would proceed against the juvenile in State court for violation of State law rather than any Federal law or Regulation. The Department of Justice has advised that the United States Attorneys may wish to have local VA authorities handle this initial contact with local prosecutors in petty offense cases. This, of course, is a matter for the District Counsel to explore with the appropriate United States Attorney. If the local prosecutor declines to proceed in State court on a VA petty offense, or if the local facilities have been determined to be inadequate for juveniles by the United States Attorney, then, under the provisions of the Act, the United States Attorney would be required to so certify in order to proceed in the Federal court system.

With regard to citations issued to juveniles for traffic offenses, it is mentioned that VA streets in Wyoming are not dedicated, and therefore there may be no violation of State law except for certain specified violations which are violations wherever committed in the State (Wyoming Statutes, of 1957, Title 31-79). The dedication, or lack thereof, as it relates to the question of whether an offense has occurred, should be presented to the local prosecutor's office by either the agency or the United States Attorney in each case for his opinion on the matter. The local prosecutor's opinion should resolve the issue.

When VA Hospital Police arrest a juvenile on VA property, it is equally important that the provisions of the Act be adhered to, especially those in Section 5033 which require the arresting officer to advise the juvenile of his legal rights, notify the Attorney General (United States Attorney), and notify the parents or guardian of the fact the juvenile is in custody. When a citation is issued to a juvenile, the officers should notify the United States Attorney.

The Department of Medicine and Surgery has advised this office that the VA Police are presently instructed to take a "hands off" policy with regard to juvenile violations of VAR 218. The only policy in writing within this agency is found in DM & S Supplement to MP-1, Part 1, Chapter 2, paragraph 13d(5). That paragraph does not reflect a "hands off" policy, nor is it current as regards amendments to the Act. A revision of VA policy in DM & S that changes be made in the area of handling juvenile violations so as to be in accord with the Act.

HELD:

In the State of Wyoming or any other State where jurisdiction over VA property is concurrent or proprietary in nature, the provisions of the Juvenile Justice and Delinquency Prevention Act require that cases involving violation of Federal law by juveniles (including violations of VA Regulation 218) be presented to the appropriate local prosecutor in order that he may accept or relinquish prosecutorial responsibilities. This will include both arrest and citation cases, and contact should be made with the appropriate United States Attorney to explore the question of whether he or the agency will contact the local prosecutor to discuss the matter.

VETERANS ADMINISTRATION GENERAL COUNSEL
Vet. Aff. Op. Gen. Couns. Prec. 33-91