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Robert W. Corbin

July 3, 1979

## LAW LIBRARY ARIZONA ATTORNEY GENERAL

The Honorable John T. Mawhinney  
State Senator  
Arizona State Capitol  
Phoenix, AZ 85007

Re: I79-182 (R79-146)

In your letter of May 11, 1979, you have asked us the following questions concerning the juvenile justice system:

1. Would it be contrary to the Arizona Constitution and statutory law to allow juveniles, in a voluntary status, to attend a youth indoctrination program lasting approximately three hours at the Arizona State Prison?
2. Is a juvenile who has been remanded by the court as an adult and convicted as an adult required to be kept incarcerated under the "sight and sound" restrictions of previous Attorney General's opinions regarding incarceration of juveniles?

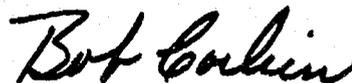
Under the terms of Arizona Constitution, Article 22, § 16, it is unlawful to confine any minor under the age of 18 in the same section of a jail or prison where adult prisoners are confined. Ariz. Rev. Stat. Ann. § 8-226 provides that each county shall maintain a juvenile detention center separate and apart from the jail or "lockup" in which adults are confined. The mandate of these provisions is clear: juveniles accused or convicted of crimes who are confined or detained must be placed in areas separate and apart from those in which adults are confined. See Anonymous Juvenile in Pima County v. Collins, 21 Ariz. App. 140, 143, 517 P.2d 98, 101 (1973).

The program you propose in your first question is not contrary to the Arizona Constitution or statutory law. Since juvenile participation would be on a voluntary basis, the juveniles would not be "confined" or "detained" in the manner prohibited by the Constitution and statute.

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Your second question is answered by Application of Vigileos v. State, 84 Ariz. 404, 330 P.2d 116 (1958). In that case, a juvenile who had been tried as an adult and convicted of first degree burglary filed a petition for writ of habeas corpus alleging, among other things, that he was being unlawfully confined in the Arizona State Prison. The juvenile contended that he was being confined in the same section of the prison in which adult prisoners were confined, contrary to the provisions of Arizona Constitution, Article 22, § 16. The Supreme Court agreed that such confinement was unlawful, (although it held that the manner in which the juvenile was confined within the state prison is not a matter to be determined by a writ of habeas corpus). Thus it is the opinion of this office that a juvenile who has been remanded by the court as an adult and convicted as an adult must be incarcerated in an area separate and apart from adult inmates.<sup>1</sup>

Sincerely,



BOB CORBIN  
Attorney General

BC/mm

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1. See also Atty.Gen.Op. 79-40.