



**TYRONE C. FAHNER**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. 81-007

**CRIMINAL LAW AND PROCEDURE:  
Juvenile Court Act**

Honorable Gene L. Stockton  
State's Attorney  
Lee County  
P. O. Box 462  
Courthouse  
Dixon, Illinois 61021

Dear Mr. Stockton:

This is in response to your predecessor's letter in which he asked the following questions:

- (1) May a juvenile court judge continue a delinquent petition under the supervision of the court without an adjudication; and
- (2) May he order as a term of the continuance of supervision that a juvenile perform public service employment.

For the reasons hereinafter stated, it is my opinion that a juvenile court judge may continue a delinquency petition under the supervision of the court without an adjudication but may not order public service employment as a term of the continuance of supervision.

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The answer to your first question is found in section 4-7 of the Juvenile Court Act (Ill. Rev. Stat. 1979, ch. 37, par. 704-7), which explicitly gives a juvenile court judge the power to continue a delinquency petition under the supervision of the court without an adjudication:

"Continuance Under Supervision. (1) In the absence of objection made in open court by the minor, his parent, guardian, custodian or responsible relative, the court may before proceeding to findings and adjudication, or after hearing the evidence but before noting in the minutes of proceeding a finding of whether or not the minor is a person described in Section 2-1, continue the hearing from time to time, allowing the minor to remain in his own home subject to such conditions as to conduct and visitation and supervision by the probation officer or other designee of the court as the court may prescribe.

(2) If the minor, his parent, guardian, custodian or responsible relative objects in open court to any such continuance and insists upon proceeding to findings and adjudication, the court shall so proceed.

(3) Nothing in this Section limits the power of the court to order a continuance of the hearing for the production of additional evidence or for any other proper reason.

(4) Upon the consent of the minor, the court may include, in any order of continuance under this Section, an order that restitution be made by the minor, in the same manner and under the same conditions as provided in subsection (4) of Section 5-2, except that the 'dispositional hearing' referred to therein shall be the adjudicatory hearing for purposes of this Section."

Subsection 5-2(4) of the Juvenile Court Act (Ill. Rev. Stat. 1979, ch. 37, par. 705-2(4) gives the court the authority to require restitution pursuant to section 5-5-6 of the Unified

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Code of Corrections (Ill. Rev. Stat. 1979, ch. 38, par. 1005-5-6):

" \* \* \*

(4) In addition to any other order of disposition, the court may order any minor included under paragraph (a) or paragraph (b) of subsection (1) of this Section, or any minor included under paragraph (c) thereof as neglected with respect to his own injurious behavior, to make restitution, in monetary or non-monetary form, under the terms and conditions of Section 5-5-6 of the 'Unified Code of Corrections', except that the 'presentence hearing' referred to therein shall be the dispositional hearing for purposes of this Section. The parent, guardian or legal custodian of the minor may pay some or all of such restitution on the minor's behalf."

Section 5-5-6 of the Code provides in part for the amount of restitution not to exceed the actual out-of-pocket expenses or loss to the victim proximately caused by the conduct of the defendant. There is, however, no provision in section 4-7 empowering a juvenile court judge to order a juvenile to perform public service employment as a term of the continuance of supervision.

When a juvenile court judge places a minor on probation, he may, pursuant to subsection 5-3(2)(n) of the Juvenile Court Act (Ill. Rev. Stat. 1979, ch. 37, par. 705-3(2)(n)), order the minor to perform some reasonable public service work. This provision is in addition to subsection 5-3(2)(1) which permits a judge to order restitution as a condition of probation:

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" \* \* \*

(2) The court may as a condition of probation or of conditional discharge require that the minor:

\* \* \*

(1) make restitution under the terms of subsection (4) of Section 5-2;

\* \* \*

(n) perform some reasonable public service work such as but not limited to the picking up of litter in public parks or along public highways or the maintenance of public facilities, provided that no minor required to perform such public service work shall be assigned to work outside the municipality or township of his residence; or

\* \* \*

Subsection 5-6-3.1(c)(10) of the Unified Code of Corrections (Ill. Rev. Stat. 1979, ch. 38, par. 1005-6-3.1(c)(10)) contains similar provisions for minors, subject to the jurisdiction of the Department of Corrections.

Both section 4-7 and section 5-3 of the Juvenile Court Act, as well as section 5-5-6 of the Unified Code of Corrections, have restitution provisions. However, while section 5-3 of the Act and section 5-5-6 of the Code provide for the imposition of public service work, no such language is found in section 4-7 of the Act. Under the rule of construction expressio unius est exclusio alterius it may be assumed that the legislature intended to exclude public service work from section 4-7.

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It is a second rule of statutory construction that in the absence of statutory definitions indicating different legislative intent, courts will assume that statutory words have their ordinary and popularly understood meanings, and when a statute uses words which have well-known legal meanings, courts will assume that is the meaning intended by the legislature. (People v. Choate (1979), 71 Ill. App. 3d 267, 274.) Webster's Third New International Dictionary defines "restitution" as follows:

" \* \* \* the making good of or giving an equivalent for some injury (as a loss of or damage to property)"

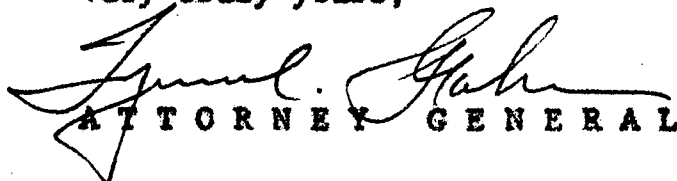
This is similar to the definition found in Black's Law Dictionary Fourth Edition:

"Act of restoring; restoration; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification."

It is plain that restitution would not include public service work.

On the basis of the above discussion, it is clear that while section 4-7 of the Juvenile Court Act gives a juvenile court judge the power to continue a delinquency petition under the supervision of the court without an adjudication, he may not order a juvenile to perform public service employment as a term of the continuance of supervision.

Very truly yours,

  
ATTORNEY GENERAL