

CRIMINAL SEXUAL PSYCHOPATHS: Costs of proceedings alleging criminal sexual psychopathy to be paid according to rules found in Secs. 458.080 and 458.090, RSMo 1949.



September 15, 1953

Honorable Stanley Wallach
Prosecuting Attorney
St. Louis County
Clayton, Missouri

Dear Mr. Wallach:

The following opinion is rendered in reply to your request reading as follows:

"Please advise your opinion with respect to the following.

"We some time ago had occasion to use the recent enacted 'Sex Psychopathic Act' in sending a subject to Fulton, as was the Courts order.

"The question involved pertains to payment of the fees of the physicians whom the Court appointed and made examinations of the defendant and filed with the Court their respective reports and also testified at the formal hearing before the Court. These physicians (2) presented their bills and same were filed with the cause and taxed as costs.

"However, the State Auditor refuses, or I should say declines to pay the same on the theory that 'final disposition' of the case has not been effected.

"True it is the statutes on this subject are rather broad as to the ultimate disposition of the defendant; and perhaps, consists of a continuation of the original charge. However, this may go on indefinitely, but needless to say the local physicians duties are completed and they should be paid.

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"Should we have occasion to have another such case we are going to have difficulty in securing physicians to make these examinations without compensation, at least when payment can not be assured.

"Would like to hear from you on this subject, advising the State Auditor likewise."

Missouri's present law relating to criminal sexual psychopaths is found at Sections 202.700 to 202.770, RSMo 1949. The nature of the proceeding to declare a person a criminal sexual psychopath is described in the following language from State ex rel. Sweezer v. Green, 232 S.W. (2d) 897, 360 Mo. 1249, 1.c. 1253:

"Is the inquiry and proceeding provided by the Act civil or criminal in character? As to that we can reach but one conclusion. Ordinarily a criminal proceeding is some step taken before a court against some person or persons charged with a violation of the criminal law. The purpose of a criminal proceeding is to punish. But this Act is but a civil inquiry to determine a status. * * * In character the Act is not unlike statutes which provide for a civil inquiry into the sanity of a person. * * * Proceedings under the Act have none of the elements of a criminal proceeding. It is our conclusion that the Act is not criminal in character."

Section 202.770, RSMo 1949, provides:

"All laws now in force relating to the admission of insane persons to state hospitals, shall apply to criminal sexual psychopaths."

Missouri's general statutes relating to insanity inquiries and subsequent admission of insane persons to state hospitals is found at Chapter 458, RSMo 1949. The subject of costs in such proceedings is treated in Sections 458.080 and 458.090, RSMo 1949, which provide as follows:

"458.080. Costs paid by county, when. -- When any person shall be found to be insane according to the preceding provisions, the costs of the proceedings shall be paid out of his estate, or, if that be insufficient, by the county.

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"458.090. Costs paid by person causing inquiry, when.--If the person alleged to be insane shall be discharged, the cost shall be paid by the person at whose instance the proceeding is had, unless said person be an officer, acting officially according to the provisions of this chapter, in which case the costs shall be paid by the county."

CONCLUSION

It is the opinion of this office that reasonable compensation to be allowed examining physicians appointed under Section 202.720, RSMo 1949, to make an examination of an alleged criminal sexual psychopath, are to be taxed as costs in the proceeding and are to be paid according to the rules found in Sections 458.080 and 458.090, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Julian L. O'Malley.

Yours very truly,

JOHN M. DALTON
Attorney General

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