

INTERMEDIATE REFORMATORY: Eligibility of convicts, eliminations of ineligible convicts.

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January 15, 1934.



**Honorable G. W. McLain, Superintendent
Intermediate Reformatory
Jefferson City, Missouri**

Dear Sir:

Your request for an opinion dated December 20, 1933 is as follows:

"I should like to have your opinion in the following instances:

1. According to the Statutes pertaining to the Intermediate Reformatory, only first offenders between the ages of 17 and 25 years shall be accepted at our institution. In case I should receive a prisoner who is under the age of 17 or over 25 years at the time he was sentenced, what disposition should I make of the prisoner? Shall the Superintendent have the power to return him to the Sheriff, his Deputy, or his office in the county from which he was sentenced?
2. Also, it is my belief that in case an inmate who is convicted on the second offense and sentenced direct to Alcoa Farms is received that the Superintendent of the Intermediate Reformatory shall have the power to transfer him to the Penitentiary."

Section 8466 R. S. Mo. 1929, provides as follows:

"An intermediate reformatory for young men, who for the first time have been convicted of felony as hereinafter designated, is hereby established."

Section 8474 R. S. Mo. 1929, provides as follows:

"If any male person seventeen years of age and less than twenty-five years of age be convicted of a felony for the first time, and he be not guilty of treason or murder in the

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first or second degree, or any offense for which capital punishment is provided, the court trying such person may sentence him to the custody of the officials of the intermediate reformatory to be confined at said reformatory for the term prescribed by the statutes of this state and fixed by the court or jury as a punishment for such offense. It shall be the duty of the officials in charge of said reformatory to receive all such convicted persons."

Section 8475 R. S. Mo. 1929, provides in part as follows:

"* * * b. The department of penal institutions shall have the power, with the consent of the governor, to transfer to the penitentiary any prisoner who subsequent to his committal to the intermediate reformatory, shall be shown to their satisfaction to have been, at the time of his conviction, twenty-five years of age or over, or to have been previously convicted of a felony; and may also transfer any apparently incorrigible prisoner, whose presence in the reformatory appears to be seriously detrimental to the well-being of the inmates of the institution. And the superintendent may, by written requisition, request the return to the intermediate reformatory of any person who may have been so transferred subject to the approval of the commissioners. Each person so transferred to the penitentiary shall be held therein, and subject to all rules and discipline thereof until he becomes eligible for release, according to the rules adopted for the penitentiary, unless recalled to the reformatory, as herein provided, by the department of penal institutions. And it shall be the duty of the warden of the penitentiary to receive such prisoners as may be transferred to him, and properly care for them till such time as their return may be asked for or until the time of their official release from said penitentiary. It is further provided, that if in any case it shall be found by the department of penal institutions

and the governor of this state, that a prisoner confined in the Missouri penitentiary or the Missouri reformatory at Boonville, has been improperly sentenced to either of these institutions, and that such prisoner should have been sentenced to the intermediate reformatory, such prisoner may, with the consent of the governor, be transferred to the intermediate reformatory, to be and become an inmate therein, subject to the rules and discipline of such reformatory; and it shall be the duty of the general superintendent of said reformatory to receive such prisoner into said reformatory as may be so transferred, and properly care for such prisoner therein until such time as such prisoner may be lawfully paroled or discharged therefrom. In like manner, transfers may be made from the Missouri reformatory at Boonville to the intermediate reformatory of any offender who, subsequent to his commitment, shall be shown to their satisfaction to have been, at the time of his conviction seventeen years or more of age, but less than twenty-five and for the first time convicted of a felony. In case of any transfers herein set forth the convict is not to remain under the custody of the department of penal institutions for a longer time than that fixed in the original sentence."

Section 8479 R. S. Mo. 1929, provides as follows:

"Whenever an offender shall be delivered to said intermediate reformatory, the officer delivering such offender shall deliver to the superintendent a certified copy of the sentence received by such offender to be furnished by the clerk of the court, and shall take from the superintendent a certificate of the delivery of such convict. In addition to the certified copy of the sentence said officer delivering the prisoner shall furnish the superintendent information regarding the prisoner covering his age, crime for which committed and circumstances thereof, personal history of prisoner including such facts re-

garding his home environment and his habits of industry as shall be helpful to the superintendent also a statement covering his previous crimes, convictions and commitments. It shall be the duty of the prosecuting attorney in the respective counties and the circuit attorney in the city of St. Louis to prepare and furnish such statement to the officer delivering such offender to said intermediate reformatory."

Section 8470 R. S. Mo. 1929, provides as follows:

"The commissioners of the department of penal institutions shall have control of the institutions ~~determines the policy~~ of the same and make necessary rules not inconsistent with the law, for the discipline, instruction, and employment, and release or transfer, of the inmates; cause to be kept proper records including those of the inmates; and audit the accounts of the superintendent monthly."

Under Section 8466 R. S. Mo. 1929, above set out, we see that the original purpose for an intermediate reformatory, in this State, was to accommodate, away from hardened criminals, young men who were convicted as first offenders, of a felony.

The age prescribed for eligibility, as set out in Section 8474, R. S. Mo. 1929, is for youths who have attained their seventeenth birthday but not past their twenty-fifth birthday at the time of their conviction, as a first offender, and the superintendent must receive such convicted persons. In Section 8479 R. S. Mo., 1929, it provides for the procedure of delivery and receipt of the prisoner and charges the superintendent with finding out the prisoner's age before receiving the prisoner.

The Legislature realized that inmates might, through oversight or misinformation as to eligibility, be committed to the intermediate reformatory, while over twenty-five years of age, but is silent as to underage. Again, inmates who were eligible when committed may become incorrigible, and subject to transfer. In such cases, where the inmate is found to be over the age, or to be a second offender, or is found to be incorrigible, then such information should be brought to the attention of those in charge of the department of Penal Institutions as provided in Section 8475, R. S. Mo. 1929, and said Board with the consent of the Governor may

transfer said prisoner to the penitentiary, and the warden must receive.

Prisoners under seventeen years of age are not eligible to confinement in the intermediate reformatory and should under no circumstances be received by the Superintendent, except under the provisions of Section 8475 R. S. Mo. 1929. That is to say, that the department of penal institutions and the Governor under prescribed conditions may transfer prisoners from the penitentiary or from the reformatory which he must receive, but the Legislature although providing in all events for cases where the prisoner received on commitment of court, be over age. They did not provide, in any event, for a prisoner under the age being received on commitment of a court, or in any other manner than upon order of the penal board and Governor.

Since there is no duty upon the Superintendent at Alcoa to receive under age or over age convicts, upon commitments of the courts, the Superintendent can avoid in most cases, an illegal confinement, at the time of admission, by making inquiry from the prisoner or from any source, and the law so provides, and if the Superintendent's discretion which cannot be arbitrary, he believes the prisoner not eligible, then he should not receive the prisoner and grant the statutory certificate of delivery until further proof of eligibility be submitted him, in addition to the court's commitment. Under the provisions of Section 8470, R. S. Mo. 1929, the Superintendent can lay down an institutional rule, which would require proof of age to accompany all commitments of court, and such a rule would not be inconsistent with the law so long as it be enforced with discretion and not arbitrarily.

Under age prisoners who by chance are received at the intermediate reformatory on commitment of court, in our opinion, have no legal status at said institution, and although our Supreme Court has never passed on the point, it is our opinion that said prisoner would be released from the Superintendent at Alcoa, upon a writ of habeas corpus being issued and the cause heard on its merits.

I am in no position to prescribe what shall be done under such circumstances for that would be an invasion of the right of the Superintendent, under the law, to determine the policy of the institution. It is our opinion, that under such circumstances the Superintendent has the power to return such a prisoner to the

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custody of the sheriff of his deputy, in the county in which he was committed.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.