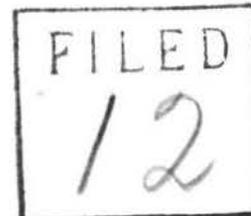


PENAL INSTITUTIONS: Idiots and insance inmates in the State Industrial School for girls may be returned to the sentencing court's jurisdiction and delivered to the sheriff for sanity proceedings.

October 18, 1937.

10-25



Honorable George D. Bryant
Chairman, Pardon and Parole Board
Jefferson City, Missouri

Dear Sir:

We have your request for an opinion dated August 24, 1937, which reads as follows:

"Mrs. Kitty Shepherd Griesser, Superintendent of the Industrial Home for Girls Chillicothe, writes us concerning Alberta Shunk and Doris D. Shunk as follows:

'This is a matter I have tried to adjust myself but to no avail. Alberta Shunk and Doris Dean Shunk were committed to this home from Holt County. After observing Alberta for a day or so, we learned she is an idiot. We cannot let her out of her room because she gets lost in the halls. Some girl has to look after her all the time.

'I called Judge Bridegman, who sentenced her to this Institution and informed him that this girl was an idiot and did not belong here, and that I wished he would have his worker call for her and sentence her to the Institution where she belongs - in my opinion this is Marshall. He was rather noncommittal and to date has done nothing about it.'

"Now the question is, does the Penal Board have authority to transfer these girls back to the county from which they were sent, or what disposition can the Board make of these cases?"

"P. S. In regard to the cases of the above named girls, permit me to call your attention to Sections 8367 and 8368 of the Revised Statutes, 1929."

Section 8364 R. S. Mo. 1929, provides:

"All commitments to the industrial home for girls of girls, over the age of twelve and under the age of eighteen shall be made by the juvenile division of the circuit court. Every girl over the age of twelve years and under the age of twenty-one years, who shall be convicted of any offense not punishable with imprisonment for life, or whose associations are immoral or criminal, or bad and vicious, or who is incorrigible to such an extent that she can not be controlled by her parents or guardian in whose custody she may be, may be sentenced to said industrial home until she shall reach the age of twenty-one years, if the court or magistrate before whom such conviction shall be had deems the girl so convicted a fit subject to be committed to said home, and the age of the girl so committed to be indorsed on the commitment in case any such child is under twelve years of age the same to be placed under the control of the state board of charities and corrections, as provided by article 1, chapter 90, R. S. 1929."

Section 8367 R. S. Mo. 1929, provides:

"No court or magistrate shall sentence any neglected or dependent girl to said institution, or any girl who is insane or idiotic, or afflicted with an incurable disease or enceinte, or who is so incorrigible that, in the opinion of the officer sentencing her, there is not a fair possibility of her reformation."

Section 451, R. S. Mo. 1929, provides:

"Whenever any judge of the county court, justice of the peace, sheriff, coroner or constable shall discover any persons, resident of his county, to be of unsound mind, as in section 448 mentioned, it shall be his duty to make application to the probate court for the exercise of its jurisdiction; and thereupon the like proceedings shall be had as in the case of information by unofficial persons."

Section 8659 R. S. Mo. 1929, provides:

"If any person, after being convicted of any crime or misdemeanor, and before the execution, in whole or in part of the sentence of the court, become insane, it shall be the duty of the governor of the state to inquire into the facts; and he may pardon such lunatic, or commute or suspend, for the time being, the execution in such manner and for such period as he may think proper, and may, by his warrant to the sheriff of the proper county or warden of the state penitentiary, order such lunatic to be conveyed to a state hospital and there kept until restored to reason. If the sentence of such

lunatic is suspended by the governor, the sentence of the court shall be executed upon him after such period of suspension has expired, unless otherwise directed by the governor."

The above legislative acts were construed in the case of *ex parte Griggs, v. Superintendent for Feeble-Minded*, 214 Mo. Aps. 304, l. c. 306, 348 S. W. 609, the Court said:

"It will be observed that petitioner was sentenced to the Industrial Home for Girls until she becomes twenty-one years of age, not for any crime or misdemeanor, but on the ground that she was incorrigible and immoral and, unless taken from her surroundings and associates, would become a permanently unchaste and immoral woman. Under the sentence her term in the Industrial Home will expire December 20, 1924. On the mere statement or declaration of the Physician of the Industrial Home that she is of feeble mind, she has been transferred to the Colony for the Feeble-minded and Epileptic there to be kept 'until restored to reason.' No inquiry was had or adjudication was rendered finding her to be of feeble mind. Nor was any opportunity afforded her to be represented at any hearing. The result of all which is that instead of being confined in the Industrial Home where her sentence will soon expire, she is now confined in the other institution as a person of feeble mind to remain there, not until she becomes of age, but 'until restored to reason.' We think her confinement in the institution at Marshall is without authority of law.

"Section 12302, Revised Statutes 1919, under which the Governor's warrant was issued, cannot, in our view, be made applicable to a case of this kind. It provides that: 'If any person, after being convicted of any crime or misdemeanor' shall become insane before the execution of the sentence imposed, the Governor may inquire into the facts and pardon such lunatic, or commute or suspend, for the time being, the execution of the sentence for such period as he may think proper, and may, by his warrant to the sheriff of the proper county or warden of the penitentiary, 'order such lunatic to be conveyed to a state hospital and there kept until restored to reason.' The section is in Article 7, Chapter 111, relating to State Hospitals for the insane and has no reference to the Colony for the Feeble-minded and Epileptic provided for in Article 13 of said Chapter. The institution at Marshall is not a State Hospital and the only way in which persons are admitted thereto is contained or provided for in section 12391, Revised Statutes 1919. It follows, therefore, that the restraint and control over petitioner by the respondent, as Superintendent of the Colony for Feeble-minded, is without authority of law, and she should be discharged therefrom.

Admission to the Missouri State School for Feeble-minded can only be obtained pursuant to the laws of 1931, p. 218, Section 8696, which reads:

"There shall be received and gratuitously supported in the Missouri state schools, feeble-minded and

epileptics residing in the state who, if of age, are unable, or if under age, whose parents or guardians are unable to provide for their support therein, and who shall be designated as state patients. Such additional number of feeble-minded and epileptics, whether of age or under age, as can be conveniently accomodated, shall be received into the school by the managers on such terms as shall be just; and shall be designated as private patients. Feeble-minded and epileptics shall be received into the school only upon the written request of the persons desiring to send them, stating the age, place of nativity, if known, christian and surname, and the town, city or county in which such persons respectively reside, and the ability of the respective parents or guardians or others to provide for their support in whole or in part, and if in part only, stating what part; and stating also the degree of relationship or other circumstances of connection between the patients and the persons requesting their admission; which statement, in all cases of state patients, must be verified by the affidavit of the petitioners and of two disinterested persons, and accompanied by the opinion of two qualified physicians, all residents of the same county with the patient, and acquainted with the facts and circumstances stated, and who must be certified to be credible by the county court of that county, or, in the case of the city of St. Louis, by the hospital commissioner or the assistant hospital commissioner of said city; and such county court, or, in the case of the city of St. Louis, the comptroller of said city, must also certify, in each case, that such patient is an eligible and proper

candidate for admission to the colony. State patients, whether of age or under age, may also be received into the colony upon the official application of any judge of a court of record: Provided, that the county in which such state patients as are now inmates of said school, resided when they were admitted, and the county wherein such state patients hereinafter admitted may reside at the time of such admission, shall be liable for and shall pay into the treasury of said school the sum of five dollars per month for each of such state patients."

Section 8368 R. S. Mo. 1929, provides:

"The officer in charge of the institution, by and with the written consent of the president of said board, shall be authorized and empowered to return whence she came and any girl who shall be found to be incorrigible or an improper subject for admission; and thereupon the court or magistrate by whom the said girl was committed, or his successor in office, shall have power to pass such sentence as would have been legal in the first instance if said girl had not been sent to said industrial home."

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

"The commissioners of the department of penal institutions shall have control of the institutions, determine 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."

In the Laws 1937, p. 400, we find that the Board of Probation and Parole is now vested with the authority directed to the Commissioners of the department of Penal Institutions.

CONCLUSION.

The legislative purpose of the State Industrial Home for girls is to confine, away from hardened criminals, young girls found to be incorrigible and immoral, and at the same time guilty of an offense not punishable with imprisonment for life, or found guilty of a misdemeanor, and to reform said girls. The institution was not intended as an insane asylum.

Our State hospitals for the insane are for the purpose of confining insane persons, while the colony for the feeble-minded is established to confine the feeble-minded and epileptics.

Persons committed to Missouri penal institutions may be transferred to state hospitals for the insane pursuant to Section 8659, supra, but where the demented person be a fit subject for the colony for the feeble-minded at Marshall the provisions for transfer from penal institutions, set out in Section 8759, supra, have no application. Such is the holding in the Griggs case, supra. Admission to the colony for the feeble-minded is only legal after an inquiry and adjudication, finding the person to be feeble-minded and after affording the person afflicted an opportunity to be represented at a judicial sanity hearing.

The Legislature realized that inmates at the State Industrial Home for girls, through some oversight or misinformation, or in the quick natural dissipating process of nature, may be discovered committed to the Industrial Home for girls, and at the same time be insane or feeble-minded. When this insane condition be discovered the Legislature properly provided for removing the afflicted person in an orderly and human manner, either by transfer to state hospitals for insane, under the provisions of Section 451, supra, and when discovered an idiot and

October 18, 1937.

eligible only to the colony for the feeble-minded, then for the return of the afflicted person to the jurisdiction of the Court which committed the afflicted person, as set out in Sections 8368 and 8470, supra.

It was intended by the Legislature that insane or idiotic persons should never knowingly be received at the penal institution, and when this mental condition be discovered, steps should be immediately taken to see that the afflicted person be taken from the penal institution to a proper place of confinement, according to the particular mental ailment, and pursuant to the rules of the Board of Probation and Parole, and the written consent of the president of the Board.

We are of the opinion that, where the inmate be insane or idiotic it is always legal and proper, upon written consent of the Board and its president, to immediately return and deliver the afflicted inmate to the custody of the sheriff of the county in which the afflicted inmates was originally committed to be dealt with according to law.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

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