

PENAL INSTITUTIONS:
MISSOURI TRAINING SCHOOL FOR BOYS:
AGE LIMIT:

Only male persons under seventeen years of age at the time of committance of act for which they are sentenced may be received at the Missouri Training School for Boys.

January 27, 1938

Mr. J. E. Matthews,
Director of Department of Penal Institutions,
Jefferson City, Missouri.



Dear Sir:

This is to acknowledge receipt of your request dated January 24, 1938 for an official opinion from this department which is as follows:

"Attached is a copy of a letter from the Superintendent of the Missouri Training School for Boys, at Boonville, relative to the boys sentenced to this Institution, who are over seventeen (17) years of age.

It seems that the Judges in the Circuit Courts are not paying any attention to the age limit of this Institution and these boys should be sentenced to the Intermediate Reformatory at Algoa.

We would appreciate an early opinion in this matter in order that these boys can be transferred to the Institution to which they belong.

In the past, it has been the practice of the Missouri Training School for Boys, when one has escaped, to carry boys on our rolls for one month and if not apprehended within that time, their name is dropped.

We would also like to have an opinion as to whether these names should be dropped or carried on for an indefinite time."

I

Upon an examination of the laws pertaining to the Missouri Training School for Boys, I find that the Legislature in 1933 enacted the following section which is found at page

331, Section 8350:

"Any person under the age of seventeen years, convicted of a crime, the punishment of which, under the statutes of this state, when committed by persons over the age of seventeen years, is imprisonment in the penitentiary for a term of not less than ten years, may be punished in the same manner and to the same extent as provided by the statutes for the punishment of persons over the age of seventeen, or, if a boy, he may be imprisoned in the penitentiary or committed to the Missouri Training School for Boys; and any boy under the age of seventeen years convicted of any other felony, either upon plea of guilty or upon trial, may be committed to the Missouri Training School for Boys. Any boy under the age of seventeen years convicted of a misdemeanor in any court of record, either upon the plea of guilty or upon trial, may, in the discretion of the court, be committed to the Missouri Training School for Boys. No boy under seventeen years of age convicted of a felony shall hereafter be committed to the county jail as a punishment for such offense. Any court having a criminal jurisdiction, in which any male person, between seventeen and twenty-five years of age, shall, upon a plea of guilty, or by the verdict of a jury, be convicted of a felony, and his punishment assessed at imprisonment in the penitentiary, may, in its discretion, at the same term at which such plea of guilty is entered or conviction occurs, and before such person is transferred to the penitentiary, commute the punishment to confinement, in the Missouri intermediate reformatory for such term as the court may deem proper, but not for a longer time than that fixed in the sentence to the penitentiary; but such court shall first ascertain and determine that said conviction or plea of guilty is the first conviction or plea of guilty of such person for a felony,

and that the previous conduct, habits and associations of the person so convicted or pleading guilty warrant such commutation."

By this section the legislature has provided that any male person under seventeen (17) years of age who is convicted of a felony punishable by imprisonment for a term in excess of ten years (10) in the penitentiary may be punished as any person over the age of seventeen (17) years, or, if a boy, he may be imprisoned in the penitentiary or Missouri Training School for Boys and the section also provides that any boy under the age of seventeen (17) years who is convicted of any other felony may be committed to the Missouri Training School for boys. This section also provides that any boy convicted of a misdemeanor may, in the discretion of the court, be sentenced to the Missouri Training School for Boys.

The section also provides that any court having criminal jurisdiction in which a male person between the ages of seventeen (17) and twenty one (21), is either convicted or pleads guilty and if a punishment is assessed at imprisonment in the penitentiary, may in its discretion and at the same term of such conviction or plea of guilty commute the punishment to imprisonment in the intermediate reformatory.

Prior to the act of 1933 the Laws of Missouri, 1929 at Section 8350 permitted courts to sentence male persons between the ages of seventeen (17) and twenty one (21) years to the Missouri Training School for boys, but by the act of 1933, Section 8350, supra, this provision was taken out of the act which applied to the ages of boys at the Missouri Training School so that as the law now stands it seems that only male persons under seventeen (17) years of age can be sentenced to the Missouri Training School for Boys.

Section 3188, page 1352, Volume 16 Corpus Juris, is as follows:

"***** the legislature of a state has, within constitutional bounds, the power to designate the punishment to be inflicted for crimes; and therefore as long as it violates no constitutional enactment it may make whatever provision it sees fit as to the place in which imprisonment for an offense shall be served.*****"

We find no provision of the Laws of Missouri which prohibits the legislature from designating the place of imprisonment for the violation of crime.

In the case of State v. Walker, 309 Mo. 103, l.c. 111, the court said:

"The purpose of the act of the legislature establishing the reformatory was to segregate youthful offenders and free them from associating with habitual criminals *****."

Section 8475 R.S. Mo. 1929 provides as follows:

"Transfers may be made under the following conditions:

a. As soon as the construction of the intermediate reformatory is to be undertaken, or as soon as its agricultural or industrial activities require laborers, the commissioners of the department of penal institutions shall have power, with the consent of the governor to transfer to the tract of land upon which the intermediate reformatory is to be located any or all inmates of the Missouri reformatory at Boonville and of the Missouri penitentiary, who at the time of their last conviction were between the ages of seventeen (17) and twenty-five (25) years and who are serving their first sentence for conviction of a felony.*****

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. *****.

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 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.*****"

This section seems to provide properly for the transferring to the other penal institutions boys who have been improperly committed to the Missouri Training School for Boys.

CONCLUSION

From the foregoing statutes, it is the opinion of this department that the court is without jurisdiction to sentence to, and the commissioners of the department of penal institutions and the officials of the Missouri Training School for Boys are unauthorized to accept for confinement in said training school, any person of the age of seventeen (17) years or over at the time of the conviction of the offense for which they are sentenced, and in case such persons are sent to the said school, then by the provisions of Section 8475, supra, they may be transferred to the intermediate reformatory or penitentiary.

II

On your question as to how long the names of a person who escapes from the Missouri Training School for Boys should be carried on the rolls, we are assuming that you refer to the rolls upon which you make your requisition for the expenses of said school and for charges against counties for support of certain boys under the following section:

Section 8358 R.S. Mo. 1929 is as follows:

"There shall be paid to the state prison board the sum of fifteen dollars per month for the support, maintenance, clothing and all other expenses of each person committed to said reformatory, from the time of his reception into said institution until his discharge therefrom: Provided, that no payment shall be made for the time that any such person may be absent from the reformatory on probation, by permission of the board. All payments shall be made quarterly in advance; Provided, that all payments for the support of persons chargeable to a county shall be paid by such county in cash, and for that purpose the county court is authorized to discount its warrants, but the Missouri reformatory shall not receive any county warrants for the maintenance and support of any person committed to such institution."

From this section the state or county pays so much per month to the institution for the support of each person confined in the institution.

If the person escapes, there is not expense for his support, and no claim for his support should be presented.

CONCLUSION

It is, therefore, the opinion of this department that you should immediately drop the name of any person who escapes

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from the Missouri Training School for Boys, off the roll which the institution uses in making its requisition for the support, maintenance, clothing and expenses of persons confined therein, and that the names of such escape should be replaced on the roll when he is apprehended. This opinion does not relieve such escape from being apprehended at any time and returned to the reformatory to serve out the term of his sentence.

Respectfully submitted,

TYRE.W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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