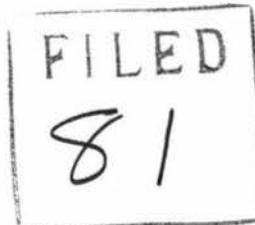


JUVENILES: Industrial Home for Girls at Chillicothe cannot legally detain and restrain a child committed to their care beyond the child's twenty-first birthday.

December 6, 1949



Mr. W. E. Sears, Director
Board of Training Schools
Jefferson City, Missouri

Dear Mr. Sears:

Your letter of recent date requesting an opinion of this department reads as follows:

"It would be appreciated by this office if we could secure an Opinion as to whether or not Ruth Mary Gregory, a girl now at the Training School for Girls, Chillicothe, Missouri, could be retained at the school or remain under supervision of the Missouri Training School Board after reaching the age of 21, which will be January 27, 1950.

"The above named girl was sentenced for ten years when she was 17 years of age and to be of assistance, we are hereby attaching a copy of the sentence and judgment of the Court at the time she was committed to the training school."

The request involves the restraint of a particular person, however the principle involved might be applicable to another at any time.

At the time Ruth Mary Gregory was sentenced for the crime of armed robbery to the State Penitentiary for a term of ten years, she was seventeen years of age, said sentence being ordered by the trial court to be served in the Industrial Home for Girls at Chillicothe. This sentence was imposed by a court of general criminal jurisdiction according to the laws applicable to First Degree Robbery, and she was committed to the Industrial Home for Girls as provided for in Section 9011, R. S. Mo. 1939, which law was in effect at the time of the sentence, but since repealed.

The repealing of this law does not affect the sentence

imposed upon the person in question and the enactment of the new law (Section 8994, Vol. II, Laws of 1947, page 321) found at page 62 of the pocket parts of the Revised Statutes of Missouri, 1939, does not take precedence to the extent that the Home would have any greater power over such child than that law provided, nor can it affect the sentence so imposed under the prior law.

Section 661, R. S. Mo. 1939, reads as follows:

"No offense committed, and no fine, penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, shall be affected by such repeal; but the trial and punishment of all such offenses, and the recovery of such fines, penalties and forfeiture, shall be had, in all respects, as if the provisions had remained in force.

(Underscoring ours)

The court, in sentencing this party to the State Penitentiary, then ordering the same to be served in the Industrial Home for Girls by operation of law commuted the same to a term no longer than the Home would legally be entitled to restrain her, which in this instance would be until her twenty-first birthday, at which time she would be entitled to be discharged.

Section 9011, R. S. Mo. 1939 (now repealed) provided as follows:

"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 or 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 social security commission."

(Underscoring ours)

It will be noticed that this section provides that a girl could be sentenced to the Industrial Home for Girls until she reached the age of twenty-one years; no provision was made for further restraint by that institution after the child reached her twenty-first birthday.

It follows therefore that the authorities in charge of the State Industrial Home for Girls could not legally detain or restrain any child committed beyond their twenty-first birthday, and in this case where the trial court imposed a ten year prison sentence upon a seventeen year old child, the same to be served in the Industrial Home for Girls, did by operation of law commute that sentence to a period of time which would not extend beyond the child's twenty-first birthday.

CONCLUSION

Therefore, it is the opinion of this department that the Circuit Court in sentencing Ruth Mary Gregory for a term of ten years to the Missouri State Penitentiary to be served in the Industrial Home for Girls at Chillicothe

Mr. W. E. Sears, Director

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by operation of law commuted said sentence to a term no longer than that which the law would permit the institution to detain and restrain such minor which would be until she reached her twenty-first birthday, and it follows that such child is entitled to be discharged on attaining that age.

Respectfully submitted,

GORDON P. WEIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General