

JUVENILE COURT:
JUVENILE CODE:
DIV. OF MENTAL DISEASES:

Juvenile court may retain jurisdiction of child until age of twenty-one. Juvenile committed to state mental hospital may be released by head of hospital. If released while under jurisdiction of juvenile court, child is to be returned to committing court for further disposition.

July 8, 1959



Dr. Addison M. Duval
Director
Division of Mental Diseases
State Office Building
Jefferson City, Missouri

Dear Dr. Duval:

This is in response to your request for opinion dated June 3, 1959, which reads, in part, as follows:

"Over the past several months we have had from time to time questions raised relative to the proper interpretation of provisions of the new Juvenile Code. I would appreciate your kind assistance at this time in helping us understand some of the legal implications.

"Under the new Juvenile Code of Missouri what is the legal responsibility, respectively of the committing court and the hospital? Specifically, when a juvenile court commits a youngster to us is it then the intent of the law that we clear with the committing court prior to making any disposition of the case, such as convalescent or trial leaves, week-end passes or other short periods of leave, and ultimate discharge. Also, specifically, if a juvenile court commits a youngster to us under the age of seventeen and subsequently, while a patient in one of our hospitals, the patient becomes over seventeen years of age, does the court still have jurisdiction until the age of twenty-one?"

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With respect to the jurisdiction of the juvenile court, Section 211.041, RSMo, Cum. Supp. 1957, provides:

"When jurisdiction over the person of a child has been acquired by the juvenile court under the provisions of this chapter in proceedings coming within the applicable provisions of section 211.031, the jurisdiction of the child may be retained for the purpose of this chapter until he has attained the age of twenty-one years, except in cases where he is committed to and received by the state board of training schools."

(Emphasis ours.)

Prior to the enactment of Senate Bill No. 15 of the 69th General Assembly, the present Juvenile Code, and at the time of the decision of the Supreme Court of Missouri in State ex rel. Menth v. Porterfield, Mo. Sup., 264 SW 386, the law conferring jurisdiction on juvenile courts provided that "When jurisdiction has been acquired under the provisions hereof over the person of a child, such jurisdiction shall continue, for the purpose of Sections 211.010 to 211.300, until the child shall have attained its majority. * * *" (§211.010, RSMo 1949.) In spite of this seemingly mandatory provision, the court, in the Porterfield case, held that the court could divest itself of jurisdiction by an order affirmatively limiting the period of the child's wardship to a specified period which expired before the child reached his majority.

The only difference in this respect between the law now and the law as it was prior to the enactment of Senate Bill No. 15 is that, in view of the permissive language of Section 211.041, supra, the court's order disposing of the child must affirmatively show an intention to retain jurisdiction of a child either by express language or necessary inference if, in fact, the court does intend for its jurisdiction to continue. If the court's intention with respect to jurisdiction over the child does not clearly appear in its order of commitment, we suggest that you correspond with the committing court and seek clarification thereof.

Section 211.201, RSMo, Cum. Supp. 1957, provides expressly that if a child under the jurisdiction of the juvenile court is found to be feeble-minded, epileptic, mentally defective or

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otherwise mentally disordered, the court may commit such child to the Missouri State School, the St. Louis Training School, or other state hospital or institution under such conditions as the court may prescribe. The language, "other state hospital," is broad enough to encompass a hospital within the Division of Mental Diseases.

If a child is committed by the juvenile court to a hospital within the Division of Mental Diseases and in its order of commitment the court has specified certain conditions, those conditions are binding on the hospital because the rest of Section 211.201 says that the order of commitment shall be binding upon the hospital or institution to which the child is committed.

Section 211.231, RSMo, Cum. Supp. 1957, provides that all commitments made by the juvenile court shall be for an indeterminate period which shall not continue beyond the child's twenty-first birthday; that the court shall give to the institution or agency a summary of its information concerning the child; and that the institution or agency shall give to the court such information as the court may require from time to time so long as the child is under the jurisdiction of the juvenile court. Here again, the duration of the court's jurisdiction over a child committed to a hospital within the Division of Mental Diseases will be shown in the court's order of commitment.

It should be mentioned parenthetically that Section 211.251, RSMo, Cum. Supp. 1957, vests the juvenile court with the authority to modify its decree at any time. It is axiomatic that a court must have jurisdiction over a person or thing before it can either enter or modify a judgment or order with respect thereto. 15 C.J., Courts, Section 14, page 826. Consequently, this section must be read in the light of Section 211.041, supra, so as to authorize the court to modify its order with respect to a child at any time during which it has retained jurisdiction over that child.

If the court commits a child to an institution within the Division of Mental Diseases and does not retain jurisdiction over the child, obviously someone must have the authority to discharge the child or release him on convalescent status when conditions warrant such action. Sections 202.827 and 202.830, RSMo, Cum. Supp. 1957, would seem to vest this authority in the head of the hospital.

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Even though the juvenile court does retain jurisdiction over a child committed to a hospital within the Division of Mental Diseases, we do not glean from these statutes when read together an intention on the part of the Legislature to authorize the court to direct the child's activity while in the hospital or to decide when he is eligible for release from the hospital. The court may attach conditions to the order of commitment under Section 211.201, supra, and may, from time to time, require information concerning the child under Section 211.231, supra, so long as the child is under its jurisdiction, but as far as release on convalescent status and ultimate discharge from the institution is concerned, that would seem to be a matter to be determined by the head of the hospital.

If a child is discharged from a hospital within the Division of Mental Diseases within the period during which the juvenile court has retained jurisdiction of the child, it should be upon proper communication with the committing court and the return of the child to the court for such further disposition of the child as the court may deem advisable.

CONCLUSION

It is the opinion of this office that in the order of the juvenile court committing a child to a hospital within the Division of Mental Diseases the court may retain jurisdiction of the child until the age of twenty-one, but it is not necessary that it do so. Whether the court retains jurisdiction or not, the head of the hospital may release the child on convalescent status and ultimately discharge such child from the hospital. If a child is discharged from a state mental hospital within the period during which the juvenile court has retained jurisdiction, the court should be notified and the child returned to the court for such further disposition of the child as the court may deem advisable.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

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