

OPINION
58-151

August 28, 1958 (OPINION)

JUDICIAL PROCEDURE, CRIMINAL

RE: Local Jurisdiction of Public Offenses

- Penitentiary Escapees, Jurisdiction

This is in answer to your oral request of August 16, 1958, for an opinion. It is understood that three inmates of the state hospital who recently escaped have not been captured. These inmates had been transferred from the state penitentiary to the state hospital for treatment. The question now arises as to whether the county of Burleigh or the county of Stutsman has jurisdiction over the escapees for purposes of extradition.

Section 29-0315 of the North Dakota Revised Code of 1943 states:

"ESCAPING FROM PENITENTIARY: JURISDICTION IN BURLEIGH COUNTY. The jurisdiction of a criminal action for escaping from or breaking the penitentiary, with intent to escape therefrom, or for attempting by force or violence or in any other manner to escape from said prison, is in the county where the same is located."

Although the custody of the escapees had been transferred to the state hospital they remained under sentence at the state penitentiary. Sections 12-4727, 12-4728 and 12-4729 of the 1957 Supplement to the North Dakota Revised Code of 1943 provide for the transfer of prisoners of the penitentiary to the state hospital for treatment. It is noted that although a prisoner is transferred to the state hospital he must be returned immediately upon his recovery if the term of sentence of such person has not expired. An escape by a prisoner thus transferred to the state hospital is not only an escape from the institution of the state hospital but also from the commitment to the penitentiary.

It is the opinion of this office that under section 29-0315 of the North Dakota Revised Code of 1943 it is the duty of the state's attorney of Burleigh County to extradite escapees of the penitentiary wherever they are in custody.

LESLIE R. BURGUM

Attorney General