

OPINION
58-77

October 9, 1958 (OPINION)

CRIMES AND PUNISHMENTS

RE: State Training School - Term of Commitment

This is in reply to your request for an opinion of this office in regard to the term of commitment of juveniles to the State Training School.

You call our attention to sections 12-4615 and 12-4613 of the North Dakota Revised Code of 1943 as follows:

"12-4615. Contents of order or commitment. Every order of commitment to the state training school shall specify the date, as near as may be ascertained by the juvenile court, at which the accused will attain majority. The date so ascertained and specified shall be conclusive for all purposes connected with the state training school. The judge shall cause to be transmitted to the superintendent with each person committed to the state training school, a statement of the nature of the complaint or charges together with such other particulars concerning the accused as he may be able to ascertain and as he deems necessary."

"12-4613. Who may be sent to state training school - Court procedure. Whenever a person under the age of twenty-one years is found guilty in any district court or county court with increased jurisdiction of a crime or public offense, other than murder, the court instead of entering judgment against such person, if in its judgment the accused is a proper subject therefor, may direct an order entered in the minutes of the court that such person be committed to the state training school until such person attains the age of twenty-one years. If the person so committed is of such age that he will not have been incarcerated for at least two years upon the date of his twenty-first birthday, the court's order may extend the commitment beyond such twenty-first birthday, but the entire commitment in such case shall not exceed a period of two years."

You inform us that one juvenile who has attained the age of fifteen years has been committed to the State Training School for the period of one year; you further inform us that you are also honoring commitments from certain courts until the juvenile obtains the age of eighteen years.

You request our opinion as to the legality of such commitments and as to whether or not the juvenile should be retained at the State Training School or returned to the jurisdiction of the court from which they were processed.

The basic question would, therefore, appear to be whether the last

part of section 14-4613 requires that any commitment must be for the full length of time therein specified (till the juvenile attains the age of twenty-one) or whether said last part of section 14-4613 authorizes a commitment in the discretion of the court, for a period not in excess of the length of time therein specified.

We agree with the point of view that a juvenile commitment should not necessarily be for a fixed period of time in the same manner as a criminal sentence. Thus in 31 AM Jur 322-323, Juvenile Courts Section 47, we find the statement that:

"47. Term or duration of commitment - Discharge. The juvenile statutes contemplate that a delinquent child is to be detained until reformed, as long as he remains under age. To commit a juvenile for a definite period would require the presumption that reformation could be attained within a definite time. Such a presumption would not be warranted, for it would not take into account the individual aptitude of some juveniles for reformation, and the inaptitude of others. Detention for a specific time would in many instances defeat the object of the statutes by preventing discharge upon reformation, and in other instances by effecting discharge before reformation. . . ."

Looking to the decision upon which this statement is based, *Ex Parte Moody Mae Reynolds Birchfield*, (Okla) 212 P.2d 145, 14 ALR 2d 331, we find that this reasoning is based upon a part of the court's decision explaining why a commitment for an indefinite period was not void for indefiniteness, thus entitling the petitioner to habeas corpus. It is in our opinion hardly authority for the proposition that a commitment (even under the Oklahoma statutes) for a definite term would be either void or voidable.

The Supreme Court of this state has frequently recognized and commented on the fact that our juvenile statutes providing for detention, etc. of juvenile delinquents are not specifically criminal in nature but are rather designed for the purpose of assisting in the reformation of juveniles. See, for example: *State ex rel Minot v. Gronna*, 79 N.D. 673, 59 N.W.2d 514; *State ex rel Stensby v. McClelland*, 58 N.D. 365, 226 N.W. 540; *State ex rel Johnson v. Broderick*, 75 N.D. 340, 27 N.W.2d 849. However, it would appear that the action to be taken by the state is determined almost in entirety through the juvenile court. Thus, we see statutory provision for commitment of delinquent juveniles to the state school in proper circumstances, (Section 25-0407 of the North Dakota Revised Code of 1943) rather than to the state training school. We note also the statutory provisions pertaining to the custody of children by the juvenile court. Thus section 27-1610 of the North Dakota Revised Code of 1943 provides:

"27-1610. Children wards of the state. All children within the provisions of this chapter, for the purposes of this chapter only, shall be considered 'wards of the state', and their persons shall be subject to the care, guardianship, and control of the court as provided in this chapter. At the discretion of the court, such care, guardianship and control may be continued until the ward shall have attained the age of

twenty-one years. The provisions of this chapter shall not change the age of minority for any purpose other than that of awarding the custody of the child."

From the above, it is our thought that the juvenile court statutes in the first instance give the authority to determine the method and length of time necessary for the proper care of the delinquent juvenile and that the state training school is merely one of the facilities available to the court for this purpose. While it is true that the commitment of a juvenile for a definite term, expiring prior to the time the child attains adult status can conceivably bear a connotation of criminal sentencing, we do not believe that same would necessarily establish that the court has attempted to sentence a criminal rather than to provide for the custody of a juvenile delinquent. From the provisions of section 27-1610, quoted supra, it is our thought that the discretion as to the length of time the court will provide for the custody of the child through any of the facilities available to the court, is in all instances to be exercised by the court. The statutes establishing the state training school and providing for the use of its facilities are not in our opinion designed to divest the juvenile court of its judicial function in the determination of the proper length of custody of the juvenile and are not designed to transfer such discretion to the officials of such institution. The provision, therefore, of section 12-4613 referring to commitment to the state training school until the juvenile reaches the age of twenty-one years is intended to limit the length of commitment in the instances therein covered to the time before the juvenile reaches adult status and is not intended to require that all commitments be for that full length of time.

In conclusion, it is our opinion that the orders of commitment to which you have reference are prima facie valid, even though providing for a term of commitment that will expire prior to the time the juvenile attains adult status.

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