

Opinion No. [30-37]

February 12, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Hon. William E. Hannan, Legislative Librarian, New York State Library, University of New York, Albany, N. Y.

JUVENILE DELINQUENTS

OPINION

I have before me yours of the 5th inst. in which you request certain information and an opinion on the subject of juvenile delinquents. I shall endeavor to comply with your request to the best of my ability.

You first ask "At what age is the child in your state amenable to the criminal law?" We have no statute in this state governing that question specifically but the common law is recognized here in criminal matters and it is probable that the English common law rule would govern that rule as stated in 8 R. C. L., page 65, which is as follows:

"By the English Common Law, following the rule of the Roman Law, a child under the age of 7 years was conclusively presumed to be incapable of committing a crime the common law raised a presumption of incapacity in favor of an infant between the age of 7 and the age of 14 years. The presumption being very strong at 7 and decreasing with the progress of his years."

Your second question is "What does your state do with a child who commits homicide? (a) What court is he brought before for hearing or trial? (b) What penalty is imposed in the case of such child?"

Your third question is, "Is a child treated in the same manner as an adult in homicide cases?"

Your fourth question "Is there any tendency in your state to take such cases out of the criminal or other courts and refer it direct to the children's or juvenile courts; the consideration being the age of the child and his welfare."

Perhaps it will be well to group your second, third and fourth questions and endeavor to answer them as one.

Section 35-4101 of the Compilation of 1929 defines juvenile delinquents. Such definition beginning as follows:

"A juvenile delinquent is declared to be any one under the age of eighteen years who violates any laws of the state or any ordinance of any city, town or village within this state"

The definition proceeds then to cover a multitude of irregularities of conduct such as might be expected of boys or girls who are lacking in those traits of character which lead to good conduct. I do not quote in full inasmuch as the first statement in the definition is sufficient to show the age limit and that the violation of any law of this state, which, of course, would include the criminal law against homicide, is sufficient for the purposes of your question.

Section 35-4102 of the 1929 Compilation reads in part as follows:

"Juvenile courts established. There is hereby established in each county of this state a court to be known as the 'juvenile court of ___ county, New Mexico.' Said court shall have exclusive original jurisdiction over juvenile delinquents and over those who contribute to such delinquency, and over all matters arising under this act. The district judges of the state shall be the judges of the juvenile courts in the counties of their respective districts;"

This act further provides for a juvenile docket and record; for the charging of offense, that is the offense of being a juvenile delinquent by affidavit; for the declaring of juvenile delinquents to be wards of the courts. It provides also for referees and private hearings; for the transfer of cases against persons under the age of sixteen years from the district court docket to the juvenile court docket.

The juvenile court has power to parole at any time before or after sentence any juvenile delinquent under the care of the probation officer or any other suitable person or institution. In all cases in which the juvenile delinquent is charged with an offense in which the right of trial by jury is guaranteed, or such juvenile delinquent has disregarded his parole or become incorrigible, the court shall hear the charges against such juvenile delinquent as the committing magistrate, and if the delinquent be bound over he shall be proceeded against in the same manner as provided by law.

Section 61-101 of the Compilation of 1929 creates a Girl's Welfare Board composed of five resident women of this state to be appointed by the Governor with the consent of the Senate.

Section 61-102 is as follows:

"The said board shall have power to receive, educate, maintain, discipline, control and parole girls under the age of eighteen years committed to it by the district judges of the state; Provided, that the approval of the court committing the girl shall be first had to the terms of all paroles."

"61-103. **Courts may commit girls to board.** The district courts may, in their discretion commit to the said board as wards of the court, for terms not exceeding the minority of such girls, girls under the age of eighteen years who have been convicted of felonies less than murder, or of misdemeanors, etc."

"130-601. **New Mexico Reform School may be designated New Mexico Industrial School.** The New Mexico Reform School at Springer may also be designated and known as the New Mexico Industrial School and shall be used for the detention, reformation and instruction of boys under eighteen years of age who may be convicted of any offense less than murder or manslaughter, or who may be adjudged to be juvenile delinquents.

When any boy under eighteen years of age is convicted of any such offense or is adjudged to be a juvenile delinquent, the court may, if in its opinion the accused is a proper subject therefor, order him committed to said school until he shall attain the age of twenty-one years or until he shall be sooner paroled, released or removed by order of the court."

The court may also transfer from the reforming school to the State Penitentiary in cases in which he deems it to be to the interest of other inmates of the reform school.

Our juvenile delinquent statute is a very unsatisfactory and ambiguous enactment. Opinions of members of the bar and bench are divergent on many questions, which have not yet been solved by our Supreme Court. It is thought that the juvenile court is without criminal jurisdiction and that a juvenile offender should be prosecuted by indictment or information in the district court the same as adults. Any sentence imposed would be the sentence prescribed by statute as you will note from above quotations the place of detention or imprisonment is left to the discretion of the court in cases where the defendant is under the age of eighteen years and the offense less than murder or manslaughter.

Your attention is also directed to the proviso that the judges of the district courts are also the judges of the juvenile courts. I think it quite probable that if the question were properly raised our Supreme Court would hold this part of the statute, if not all the statute, to be unconstitutional.