

Opinion No. 43-4351

August 3, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Dr. J. J. Johnson, Sr., Superintendent, New Mexico State Hospital, Las Vegas, New Mexico

In your letter dated July 30, 1943, you state that you have a boy committed to the State Hospital who has a charge of manslaughter pending against him. He has been taking certain treatments, and it may be desirable to return him to the care and custody of his parents until the treatments are completed. You are wondering what procedure to follow, and what your liability will be in case the boy should violate his parole while he is in your charge.

Section 37-220, sub-section 4 of the New Mexico 1941 Compilation provides that when a person who was charged with a crime has recovered, he shall be delivered to the Sheriff of the proper county, or to such person as the Court having jurisdiction of the offense shall direct, to be dealt with according to law.

If this boy has recovered sufficiently that he can be better treated at the home of his parents than at the State Hospital, I believe that the matter should be taken up with the District Judge who committed him to the institution, and a parole or a conditional release given only upon the order of the District Judge. In this way, you will not have to bear the responsibility of depending upon the boy or his parents to comply with his parole in order that he will be available for trial at the end of his period of treatment.

By C. C. McCULLOH

First Asst. Atty. Gen.