STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

Universal Military Training and Service Act) continues in effect; the exclusion in the 1957 law not having included leaves of absence.

JAMES GLYNN FROST
Deputy Attorney General

August 26, 1960

Peter Bowman, M. D.
Superintendent
Pineland Hospital and Training Center
Pownal, Maine

Dear Dr. Bowman:

We have your memo in which you ask if the word "may" as it appears in Chapter 152-A, Section 6, of the Revised Statutes of 1954 as enacted by Chapter 342, Public Laws of 1959, is permissive or mandatory, your basic question being whether you should accept for commitment a juvenile sent to you by a juvenile court when the papers accompanying the juvenile do not reveal that he has been examined by a qualified psychiatrist.

The said Section 6 of Chapter 152-A reads as follows:

> "Mentally retarded and mentally ill juveniles. If, in any proceeding before a juvenile court, the court has cause to believe that the juvenile is mentally retarded, or mentally ill, the court may require such juvenile to be examined by any qualified psychiatrist and the result of said examination shall be reported to the court for its guidance.
>
> "The expenses of any examination authorized by this section shall be paid by the county in which the juvenile court ordering such examination is sitting."

Another section that should be read in conjunction with Section 6 is Section 17, subsection IV, paragraph G of Chapter 152-A, which section deals with the power of a juvenile court to dispose of juvenile cases. Among several specifically enumerated kinds of disposition of juvenile cases, the juvenile court may:

> "Commit, in its discretion, to an appropriate treatment center provided that the court has received a report, as provided in section 6, that the juvenile is mentally retarded or mentally ill;"

Thus, while it is discretionary in the court to initially require examination of the juvenile by a qualified psychiatrist, it is our opinion that such court is powerless to commit the juvenile to the Pineland Hospital and Training Center *unless* the juvenile was so examined by a psychiatrist. The examination is jurisdictional and must be complied with before a juvenile court has jurisdiction to commit to a treatment center.

The commitment papers should indicate that such examination was made.

Your question, however, as revealed by conversation with Dr. Sidwell, actually concerns commitment papers which conform to the use under a law now repealed, which provided that a municipal court could commit

certain juveniles to Pineland upon the certificate of " . . . 2 physicians who are graduates of some legally organized medical college and have practiced 3 years in this state, that such juvenile is mentally defective and that his or her mental age is not greater than ¾ of subject's life age nor under 3 years. . ." Chapter 146, section 6, R. S. 1954, repealed by Public Laws of 1959, Chapter 342, section 17.

While the present law, of course, would be clearly satisfied if the commitment papers were to contain a statement to the effect that examination had been made by a qualified psychiatrist and which papers indicate who that psychiatrist was; still, on the other hand, if the papers indicate that the juvenile had been examined by duly qualified physicians, then we think the law has still been complied with.

We think it is within the competence of a court to determine whether or not a physician is qualified to act as a psychiatrist. A court having sought the services of a physician in order to fulfill the conditions of the law relating to commitment of juveniles to a treatment center and having indicated in its papers of commitment that the subject was examined by a physician, has, in our opinion, complied with that portion of the law requiring such examination. We think that the court has, in effect, found that such examining physician or physicians are qualified psychiatrists and its findings should be given recognition.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General

September 13, 1960

Dr. Francis H. Sleeper
Superintendent
Augusta State Hospital
Augusta, Maine

Dear Dr. Sleeper:

I have your request for an opinion regarding Section 118, Chapter 27, Revised Statutes of 1954 as it relates to the power of municipal court justices to order an adult sent to the State Hospital for observation as result of the notice of a plea of insanity in a criminal action. (The word "adult" is purposely stated since a juvenile court has the authority to be examined by a qualified psychiatrist and the findings reported to the court and to commit to a treatment center those mentally retarded or mentally ill. Sections 6 and 17, subsection G.)

In the case of an adult offender the municipal court has no authority to order a person committed for observation. Section 118 is clear and authorizes the superior court to do so on certain conditions, but gives a municipal court no such authority.

Very truly yours,

GEORGE A. WATHEN
Assistant Attorney General