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STATE OF MAINE

Inter-Departmental Memorandum Date November 26, 1963

John J. Shea, Director

Dept. State Probation and Parole

From Courtland D. Perry, Assistant Atty. Gen'l.

Dept. Mental Health and Corrections

Subject Parole or Discharge of Incurable Transferees from Training Centers--Out-Of-State Supervision of Juvenile Offenders.

FACTS:

Children committed to the Boys Training Center or to the Stevens Training Center may be transferred to the Reformatory for Men or to the Reformatory for Women respectively, due to incorrigibility, such procedure being in accordance with the following statute: R.S. 1954, c. 152-A, §32 (Amend. P.L. 1963, c. 108, §3.)

"Any child committed to the center whose presence therein may be seriously detrimental to the well-being of the center, or who willfully and persistently refuses to obey the rules and regulations of said center may be deemed incorrigible, and upon recommendation of the superintendent may be transferred to a reformatory with the approval of the Commissioner of Mental Health and Corrections, but no child shall be transferred under the age of 15. To so transfer, the superintendent shall certify that the child is incorrigible upon the mittimus in the case with the recommendation that transfer to the appropriate reformatory be effected. Upon approval by the Commissioner of Mental Health and Corrections, the transfer may be effected any time thereafter. It shall be the duty of the officers of the reformatory to receive any person so transferred and the remainder of the original commitment shall be executed at the reformatory, except that in the event a child so transferred has, in the opinion of the superintendent of the reformatory and of the superintendent of the center, benefited from the program at the reformatory, to such an extent that return to the center would be in the best interest of the child and of the community, such child may be returned to the center. The reason for such return shall be certified by the recommending superintendents on the mittimus and certification of the return shall be made by the recommending superintendents to the Commissioner of Mental Health and Corrections, giving their reasons therefor."

From time to time, it becomes desirable and to the best interests of the individual, and the public, to have conditionally released to the supervision of agencies of other states, juvenile offenders committed to the reformatories or to the training centers.

QUESTION:

1. Is it within the jurisdiction of the Probation and Parole Board to parole juvenile offenders from either reformatory transferred thereto as incorrigible?

ANSWER:

No.

QUESTION:

2. Does authority to discharge and conditionally release incorrigible transferees from training centers lie solely with the superintendents thereof?

ANSWER:

Yes.

QUESTION:

3. Is the "Uniform Interstate Compact on Juveniles" the only Act under which a juvenile offender may be placed under the supervision of an agency of another state, upon conditional release, from a reformatory or from a training center?

ANSWER:

Yes.

OPINION:

1. Provisions setting forth the persons eligible for parole hearing at the Reformatory for Men are found in R.S. 1954, c. 27-A, §13, as amended, and include "inmates" convicted of misdemeanors, felonies, and being between the ages of 16 years and 17 years adjudicated juvenile offenders.

Provisions setting forth conditions requisite to eligibility for hearing by the Probation and Parole Board at the Reformatory for Women are found in R.S. 1954, c. 27-A, §13-A, as amended, in which section only "inmates" are referred to, and no sub-classes are created within that class. As defined in R.S. 1954, c. 27-A, §1, subsection III, "inmate" means a person in execution of a sentence to a reformatory."

It is clear, that a juvenile offender transferred as incorrigible from the Boys Training Center to the Reformatory for Men, being under commitment to said Center does not fall within any sub-class created within the class "inmate" in the cited statute. Furthermore, it is clear, that such transferee does not fall within the class "inmate", subject to the jurisdiction of the Probation and Parole Board, since transferees are not in execution of a sentence to the reformatory. The same reasoning is applicable to incorrigible transferees from the Stevens Training Center to the Reformatory for Women, i.e., such transferees are not in execution of a sentence to the reformatory.

OPINION:

2. R.S. 1954, c. 152-A, §32, supra, provides in part with respect to a child transferred from a training center to a reformatory as incorrigible: ". . . the remainder of the original commitment shall be executed at the reformatory"

The scope of the term "Original Commitment" is determined by an examination of portions of §§29 and 33 of c. 152-A, as they relate to the authority of the superintendent of a training center to discharge a committed child. ". . . .All

commitments of such children shall be for the term of their minority, unless sooner discharged by the superintendent", such superintendent is vested with authority to discharge every child committed to the center; no exception is made and such authority does not cease by reason of the transfer of the child to a reformatory as incorrigible. If a determination is made that a transferred incorrigible child is rehabilitated, as a result of the program at the Reformatory, the Superintendent of the training center to which the child was committed, may cause the child to be discharged directly from the reformatory, upon consent of the Department of Mental Health and Corrections. (it is considered that the Legislature implicitly contemplated that such discharge would be based upon a joint consideration by the superintendent of the reformatory, and of the training center, of the progress of the transferee). If a transferred incorrigible child remains at a reformatory until the expiration of minority, the superintendent of the training center to which the child was committed shall issue the certificate of discharge.

One exception is provided in c. 152-A, §32, supra, which permits the removal of a transferred incorrigible child from a reformatory short of absolute discharge, i.e., a transferred incorrigible child may be returned to a training center upon joint recommendation of the superintendent of the center and reformatory involved, as provided in the statute. This procedure affords the only means by which a transferred incorrigible child may be granted conditional release, such release to be effected as follows: Once the joint recommendation for return has been made, the transferee becomes subject to return to the center and, thus, subject to the provisions of R.S. 1954, c. 152-A, §31, which covers committed children in residence at the center, and which includes provisions relating to entrustment. The transferee may be returned pursuant to the recommendations, or if the superintendent of the center determines at that time that the transferee should be placed on entrustment, such conditional release may take place without a physical return of the child to the center.

OPINION:

3. A person convicted of an offense may be paroled to the supervision of an agency in another state under R.S. 1954, c. 27-A, §20 the "Uniform Act for Out-Of-State Parolee Supervision."

A person between the ages of 16 years and 17 years adjudicated to have committed a juvenile offense and by reason thereof committed to either Reformatory for Men or the Reformatory for Women, may not be placed in another state under the above Uniform Act, since R.S. 1954, c. 152-A, §2, specifically, provides that the adjudication of the commission of a juvenile offense shall not be deemed to be a conviction of crime. Such offenders, however, may be placed under the supervision of an agency in another state upon parole, pursuant to Article 7 of the "Uniform Interstate Compact on Juveniles", (R.S. 1954, c. 27-A, §22), since such offenders fall within the definition of "delinquent juvenile" set forth in Article 3 thereof.

A juvenile offender committed to a training center, including incorrigible transferees recommended for return, or actually returned to a center, may be placed as provided in the Juvenile Compact under the supervision of an agency in another state. The conditional release giving rise to such placement, would be in the form of an entrustment effected under the provisions of §31, supra. "Entrustment" as provided for in §31 falls within the definition of "parole" set forth in Article 3 of the Compact. "Parole" is defined therein as any kind of conditional release.

Courtland D. Perry

Courtland D. Perry
Assistant Attorney General