

DUTIES OF
PROBATION OFFICER:

Mentally deficient child ordered committed to state hospital by Juvenile Court in St. Louis should be taken to the hospital by the Probation officer rather than by the sheriff.



January 28, 1948

Honorable James W. Griffin
Circuit Attorney
City of St. Louis
Municipal Courts Building
St. Louis, Missouri

2/3

Dear Sir:

This will acknowledge your recent letter in which you request an opinion of this department. Your letter is as follows:

"Today we received the enclosed letter from the Probation Officer of the Juvenile Court in this City. The contents requests for an opinion on the subject of whether it is the duty of an officer of the Juvenile Court, (a division of the Circuit Court of the City of St. Louis) to deliver a mentally deficient child to a State Hospital under a commitment from said court, or would this duty of delivery be performed by the Sheriff's Office?

"Please furnish this office an opinion on said subject."

An act approved on March 27, 1946, enacted by the 63rd General Assembly, Laws of Missouri 1945, page 632, repealed Section 9681, Article 9, Chapter 56, R.S. Mo. 1939, and enacted a new Section 9681 in lieu thereof, which said new section contains the following language:

"* * * Whenever there is to be a child brought before the juvenile court, it shall be the duty of the clerk of said court, if practicable, to notify the probation officer in advance of that fact. It shall be the duty of the probation officer to make such investigation of the child as may be required by the court, to be present in court in order to represent the

interests of the child when the case is heard, and to furnish to the court such information and assistance as the judge may require, and to take charge of any child before and after trial, as may be directed by the court. Probation officers are hereby vested with all the power and authority of sheriffs to make arrests and perform other duties incident to their office. The juvenile court shall have power to make rules specifying the duties of the probation officers in any and all cases.* * *

This section clearly imposes on the probation officer the duty to take charge of any child before and after trial as may be directed by the court. This being true, the question then occurs as to whether or not the duty thus imposed on said officer to take charge of any child " * * * after trial as may be directed by the court" extends to the taking of the child to the state hospital when the juvenile court has made an order directing that the child be placed in said institution; and, if so, whether or not he is the only officer upon which said duty devolves. In this connection, we suggest that the words of the statute imposing on the probation officer the duty "to take charge of the child * * * after trial, as may be directed by the court," being specific and containing no exception or qualification, must mean that it is the absolute duty of said officer under the statute to take charge of the child and do whatever the court directs shall be done, or, otherwise stated, whatever the court directs shall be done with the child shall be done by the probation officer and no one else.

Section 9348, R.S. Mo. 1939, provides for investigations into the present sanity of persons acquitted of criminal charges on the ground of insanity prevailing at the time of the commission of the offense charged. Section 9349, R.S. Mo. 1939, provides for the commitment of such persons found to be insane, if they be dangerous, to a state hospital, and provides further as follows:

" * * * an order shall be entered of record that he be sent to a state hospital, designating it, and further requiring the sheriff or other ministerial officer of the court, with such assistance as may be specified in the order, to convey such prisoner to the hospital, * * *" (Underscoring ours.)

This statute, in providing that the sheriff or other ministerial officer of the court shall convey the prisoner to the hospital, avoids conflict with the statute first above cited, which provides, as above set forth, that the probation officer shall take charge of any child before and after trial, as may be directed by the court, and confers on him the power and authority of sheriffs in the performance of duties incident to his office.

We assume that, in cases of commitment of a mentally deficient child to a state hospital, said commitment is made pursuant to the provisions of Sections 9348 and 9349, R.S. Mo. 1939, because we find no other statute under which such commitments are authorized. Construing together the provisions of Sections 9348 and 9349, R.S. Mo. 1939, on the one hand, and new Section 9681, Laws of Missouri 1945, page 632, on the other, we are of the opinion that, in case of such commitment by the juvenile court, the child should be conveyed to the state hospital by the probation officer.

CONCLUSION

Therefore, since Section 9349, R.S. Mo. 1939, does not limit the performance of the duty of conveying prisoners to the state hospital to sheriffs but specifically extends it to other ministerial officers of the court, and since new Section 9681, Laws of Missouri 1945, page 632, gives exclusive charge of any child before and after trial, as may be directed by the court, to the probation officer, we are of the opinion that, in case the juvenile court directs that a mentally deficient child be committed to a state hospital, it becomes the duty of the probation officer to convey said child to that institution.

Respectfully submitted,

SAMUEL M. WATSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SMW:LR