

Opinion No. 5.

Montana Highway Patrol—Minors—
Traffic Laws, Violation of.

H E L D: Under Sections 10729,
11753-11754, 10730 R. C. M. 1935, Per-
sons over seven years of age are cap-

able of committing a crime and are liable to arrest and punishment therefor.

December 11, 1936.

Montana Highway Patrol Board
Helena, Montana

Gentlemen:

In your letter of December 1 you ask for the opinion of this office upon the following questions:

1. "May a Montana Highway Patrolman arrest a minor for violating a Montana traffic law?"

Persons over the age of seven years are capable of committing a crime (Section 10729, R. C. M. 1935), and are liable to arrest (Sections 11753-11754 R. C. M. 1935) and punishment therefor under the laws of this state. (Section 10730, R. C. M. 1935). Your question is therefore answered in the affirmative.

2. "May this minor be taken before a justice of the peace and fined or given a jail sentence?"

Chapter 106 of the Code of Criminal Procedure, R. C. M. 1935, provides for the procedure to be taken against delinquent children and juvenile delinquent persons. Section 12280 of said chapter provides "that nothing herein shall be construed to confer jurisdiction upon any justice of the peace or police court to try any case against any child under 18 years of age." The same section provides that charges brought against such children under the age of 18 years shall be tried by the district court, and accordingly this question must be answered in the negative.

3. "In some cases probation officers have come in and taken custody of the minor after he has been arrested by a patrolman, informing the patrolman that he had no jurisdiction over a minor."

Sections 12275 and 12276 R. C. M. 1935 define delinquent children as those under the age of 18 years who violate "any law of this state." Section 12280 requires that whenever any such child is taken into custody he must be brought either directly before the district court, or if the district court is not then in session, before a justice of

the peace "who shall at once notify the chief probation officer of the county, who shall make investigation of such case * * * then the justice of the peace or police magistrate shall act as a committing and examining magistrate only * * *."

Section 12288, R. C. M. 1935, requires the probation officer to inquire into and make full examination and investigation of the facts and circumstances surrounding the commission of the alleged offense, the parentage and surroundings of the child, its exact age, habits and school record, and everything that will throw light on its life and character, and to report the findings of his investigation to the judge of the district court. The law also authorizes the probation officer to take the child in custody and control, and accordingly he acts, according to law when he proceeds as outlined in your third question.

4. "In cases of a jail sentence being given, may a minor be placed in the same cell or jail as other prisoners?"

The punishment, and place of confinement, if any, is left, according to Section 12288 R. C. M. 1935, in the discretion of the District Judge except that "when a child contemplated by this act shall be sentenced to confinement in any institution to which adult convicts are sentenced, it shall be unlawful to confine such child in any room, yard or enclosure with such adult convicts, or to allow them in any manner to come in contact with them or in any way commingle with such adult convicts, or to bring such child into any yard or room in which adult convicts may be present." Accordingly your fourth question must also be answered in the negative.

Section 12299 of the Delinquent Child Act declares that "this Act shall be liberally construed to the end that its provisions may be carried out, to-wit: that the care, custody, education and discipline of the child shall approximate, as nearly as may be, that which should be given by its parents, and that, as far as practicable, any delinquent child shall be treated not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance."

To the same effect is the view of the Supreme Court of Montana, as ex-

pressed in *State ex rel Palagi v. Freeman*, 81 Mont. 132, 262 Pac. 168, wherein Mr. Justice Matthews pointed out that juvenile delinquency proceedings were in no sense criminal proceedings, and that the purpose of the statute is to save children from prosecution and conviction on charges of crimes committed against the state, and to relieve them from the stigma attaching to conviction; to guard and protect them from themselves and evil minded persons with whom they are in contact, including improper home influences. Under the Act, the court said "such children are not to be treated as criminals. They are not even to be brought into a court room for a hearing. The manner of proceeding is by petition which must set forth * * * that it is for the best interest of the child and the state that the child be taken from its parents * * * and that such parents are unfit or improper custodians of the child, or are unwilling or unable to care for, protect, train, educate, control and discipline the child."