

Opinion No. 89.**Children — Delinquents — State Vocational School for Girls — Continuing Jurisdiction of Committing Court.**

HELD: The court committing a juvenile delinquent to the State Vocational School for Girls retains jurisdiction over her and may order her release at any time, when good cause appears therefor.

April 15, 1937.

Mrs. Harriet Adams
Superintendent
State Vocational School for Girls
Helena, Montana

Dear Mrs. Adams:

You have submitted to this office the question of whether or not a girl once committed to the State Vocational School for Girls can be discharged, released or placed upon parole by order of the court that committed or sentenced her to said institution.

Section 12539, R. C. M. 1935, provides: that each girl committed to said institution shall remain there until she arrives at the age of 21 years, unless paroled or legally discharged, subject to the right of the executive board

to discharge her under certain conditions at the age of 18 years.

Section 12540 has reference to the commutation of her sentence.

Section 12078 provides that in all prosecutions for crimes, the court may suspend the execution of a sentence and place the defendant on probation in the manner hereinafter provided. This section specifically provides that **nothing** in this act shall in any manner effect the laws providing the method of dealing with juvenile delinquents. It has been held by our Supreme Court, under Section 12078, that where the court suspends the sentence, the power to do so must have been exercised at the time the sentence was pronounced, the theory being that if the sentence is suspended at the time of the rendering of the judgment, the suspension of the sentence is a part of the judgment itself, but after the defendant has been sentenced to the institution, the court loses all powers to suspend the sentence.

State ex rel. Foot v. The District Court, 72 Mont. 374;

State ex rel. Bottomley v. District Court, 73 Mont. 541.

Section 12288 has reference to delinquent children, and provides most of the procedure and jurisdiction of the court in reference to such delinquents. It is our view that under Section 12288 it is intended that the court shall have continuing jurisdiction over said child, and the child or juvenile occupies the status of ward to the court, and the sections dealing with the suspension of judgments in criminal cases, and particularly Section 12078, expressly excepts from the provisions therein juvenile delinquents. We find this language in Section 12288:

"Where the parents or guardians are unfit for the custody of said child or unable to control said child, the court may deem the child to be the **ward of the court**, as far as his person is concerned; and in all cases where any child has been declared to be the ward of the court, the authority of the court over its person shall continue until the court shall otherwise decree, and the court may adopt all rules and regulations that may be needed to carry out the provisions of this act."

This section further provides:

"It being the intention of this act that no child shall be taken away or kept out of his home or away from his parents or guardians any longer than is reasonably necessary to preserve the welfare of the child and the interest of all this state," "And provided the court could from time to time cite into court the person, institution, association or society to whose care any delinquent child has been awarded and require him or it to make a full, true and perfect report as to his or its doings in behalf of said child; and it shall be the duty of such person, institution or association within ten days after such citation to make such report * * * and upon the hearing of such report * * * the court may if it sees fit take such child from said person or institution, association or society and place it with another, or restore such child to the custody of its parents or former guardian or institution."

In other words, the intention of the law is that the court shall never lose jurisdiction of the child; that the judgment entered by the court was a continuing order, with a duty imposed upon the court, more or less, of the nature of a guardian and ward, and as the language of Section 12288 specifically says, it is the intention of the law that no child should be taken away or kept out of its home any longer than is reasonably necessary to preserve the welfare of the child and interest of the state. When it is properly called to the attention of the court that it would be for the welfare of the child and the state that the said child should be released from said institution, then it is the intention of the law that the committing judge, in a judicial manner, may determine this situation, and if it is deemed proper, order the child released.

The statute in itself specifically provides that the jurisdiction of the court over the child shall continue until the court shall otherwise decree, and to hold that the court be divested of jurisdiction of the child upon making its order would be to attempt to nullify the statute.

Section 12539 specifically provides that the girl shall remain at the institution unless paroled or legally discharged. That the said section con-

templates that the court has jurisdiction of said girl and has the right to make such orders as may be deemed necessary, after her commitment, is apparent.

Therefore, it is my opinion that a girl committed to the State Vocational School for Girls can be discharged, or released, by order of the committing court.