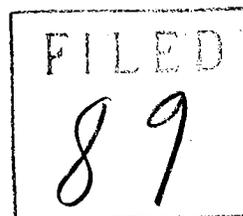


CRIMINAL LAW: Excessively punishing a child, by beating and starving, by persons exercising care and control of the child makes such persons subject to prosecution under Sections 4419 and 4410, R.S. Mo. 1939.



November 17, 1945

11/20

Honorable D. D. Thomas, Jr.  
Prosecuting Attorney  
Carroll County  
Carrollton, Missouri

Dear Sir:

Receipt is acknowledged of your letter dated October 4, 1945, in which you requested an official opinion of this office and which reads as follows:

"Assuming there is substantial evidence to the effect that a man and his wife have deliberately starved a boy under seventeen years of age, for the last two and a half years, and have beaten him with a rubber hose, light cord and other implements: I want to know under just what section of the statutes a complaint can be filed.

"Perhaps I should add, these people were not the legal guardians of the child, but that the stepmother left him with the couple to raise.

"It may be that this appears to be a some-what foolish request on my part but I must confess that I am rather confused, after reading the statutes, as to whether or not a complaint can be filed under Section 4419 for the reason that the evidence does not clearly disclose any beating having occurred within the last year. The evidence does indicate that these people have deliberately starved the child and I have no doubt but that a conviction can be obtained,

based on starvation, but there is some question about the sufficiency of proof as to assaults.

"If you have any suggestion to make, with reference to a form of complaint and information, I would be glad to have them."

The main problem in your request is to determine the correct section of the statutes under which the parties indicated in your letter can be charged.

The facts set forth in your letter are that a man and his wife deliberately starved a boy left with them to raise for the last two and one-half years and beat him with a rubber hose, light cord and other implements. However, the evidence does not clearly disclose any beatings having occurred within the last year.

Section 4419, R.S. Mo. 1939, provides as follows:

"If any mother or father of any infant child under the age of sixteen years, whether such child was born in lawful wedlock or not, or any person who has adopted any such infant, or any other person having the care and control of any such infant, shall unlawfully and purposely assault, beat, wound or injure such infant, whereby its life shall be endangered or its person or health shall have been or shall be likely to be injured, the person so offending shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding three years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars or by both such fine and imprisonment."

It is our opinion that the persons who assumed the responsibility of raising the child had care and control of the child. Two Missouri cases presenting similar facts to the instant case, where persons were prosecuted for beating a minor child under

their care and control, are State v. Henggeler, 312 Mo. 15, 278 S.W. 743, and State v. Evans, 270 S.W. 684. However, in these cases there was only evidence of beatings, and no evidence of starvation.

It does not appear that the beatings administered in the instant case were for the sole purpose of disciplining the boy. In State v. Kocnse, 123 Mo. App. 655, 101 S.W. 139, it was held that severe and excessive punishment of a child by a parent indicated an absence of good faith and was not administered as a disciplinary measure for the child's benefit. In this case the father who made his adopted son run in front of him as he followed on horseback and beat him with a whip was found guilty of unlawful assault.

In the instant case the beating of the boy with a rubber hose, light cord and other implements, we believe, is so excessive as to constitute an unlawful and purposely administered assault or beating and would uphold prosecution for such crime under Section 4419, supra.

In prosecuting the persons entrusted with raising the boy for unlawfully and purposely assaulting or beating him, only the evidence of assaults or beatings when the boy was under sixteen years of age could be used, because Section 4419, supra, only applies when a minor child under the age of sixteen years is assaulted or beaten.

In considering whether starvation alone could uphold prosecution under Section 4419, supra, we must determine whether deliberately starving the boy did unlawfully and purposely injure him, whereby his life was endangered or his health was injured, or was likely to be injured. The word "injure" is defined in Volume 32, C. J., page 512, as follows:

"\* \* \* \* It has been variously defined as meaning to cause loss or detriment to; to damage; to damage and lessen the value of; to do harm to; to harm; to hurt; to hurt or wound the person; \* \* \*"

From this definition it is believed that to deliberately starve a person is to injure him by causing him damage or harm to his person. To starve a person can injure or is likely to injure his state of health.

For there to be an injury it is not necessary that there be visible wounds or markings on the body. In defining "injury"

the following quotation is taken from State v. Henggeler, supra, at l.c. 746:

"\* \* \* \* 'A wound is an injury to the person by which the skin is broken.' 40 Cyc. 2865. An injury is a broader term. \* \* \*"

In Volume 32, C. J., page 515, the word "injury" is defined as follows:

"The word 'injury' has numerous and comprehensive popular meanings. Thus it may mean an act resulting in damage; an act which damages, harms, or hurts; any wrong, damage, or mischief done or suffered; any wrong or damage done to another, either in his person, rights, reputation or property; \* \* \* \*"

In view of the above definitions we believe that when a person is deliberately starved he suffers such damage to his person and bodily harm that his life is endangered or his health is injured, or is likely to be injured.

To deliberately starve a minor child, as in the instant case, is to unlawfully and purposely injure him in a manner that would warrant prosecution under Section 4419, supra. However, only the evidence of starvation when the boy was under the age of sixteen years could be used.

Prosecution in the instant case under Section 4419, supra, is not barred by the statute of limitations, as set forth in Section 3782, R. S. Mo. 1939, though the evidence does not clearly disclose any beating having occurred in the last year. Section 3782 provides as follows:

"No person shall be tried, prosecuted or punished for any felony, other than as specified in the next preceding section, unless an indictment be found or information be filed for such offense within three years after the commission of such offense, except indictment or informations for bribery or for corruption in office may be prosecuted

if found or filed within five years after the commission of the offense."

Section 4410, R. S. Mo. 1939, provides as follows:

"If any person shall be maimed wounded or disfigured, or receive great bodily harm, or his life be endangered, by the act, procurement or culpable negligence of another, in cases and under circumstances which would constitute murder or manslaughter if death has ensued, the person by whose act, procurement or negligence such injury or danger of life shall be occasioned shall, in cases not otherwise provided for, be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not less than six months, or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months, or by fine not less than one hundred dollars."

In State v. Porter, 81 S.W. (2d) 316, prosecution was instituted under Section 4016, R.S. Mo. 1929, which is identical to Section 4410, supra. In that case it was stated in the information that the defendant did unlawfully, willfully and feloniously strike, choke and strangle his victim, whereby the victim did receive great bodily harm and injury, endangering the victim's life. In ruling on the sufficiency of the information, the following was stated at l.c. 318:

"\* \* \* \* Under this section the gravamen of the felony is the maiming, wounding, disfiguring, inflicting great bodily harm, or endangering the life of another. See State v. Brown, 60 Mo. 141, loc. cit. 142; State v. Pine, 324 Mo. 194, 198 (3), 23 S.W. (2d) 7, 9 (4). As stated in State v. Agee, 68 Mo. 264, 265: 'We have frequently held that an indictment based on the section referred to need not state that the act was done willfully, intentionally, with malice,

with a deadly or dangerous weapon, or under circumstances which had death ensued, would have constituted murder or manslaughter.' \* \* \* \*"

In the case of State v. Nieuhaus, 117 S.W. 73, 217 Mo. 322, there was a prosecution for violation of Section 1849, R.S. Mo. 1899, which is the same as Section 4410, supra. The facts in that case are quite similar to the facts in the instant case. A girl of thirteen years of age was living with a man and his wife, not her parents, and was beaten with a whip and burned with a stove poker by the wife who was the defendant in that case. The following quotation is taken from l.c. 77, in construing Section 1849, R.S. Mo. 1899:

"\* \* \* \* This section has often been considered by this court, and it has been uniformly ruled that it is unnecessary for the indictment to state that the act was done willfully, intentionally, with malice, with a deadly or dangerous weapon, or under circumstances which, had death ensued, would have constituted murder or manslaughter. State v. Moore, 65 Mo. 606; Jennings v. State, 9 Mo. 862; State v. Bohannon, 21 Mo. 490; State v. Bailey, 21 Mo. 484."

We believe that beating a person with a rubber hose, or light cord, could inflict great bodily harm or endanger the life of a person, and would constitute murder or manslaughter, if death should ensue. Consequently an information could be filed under Section 4410, supra.

In making our research we have been unable to find any cases where prosecution was instituted under Section 4410, supra, or any similar statute where the means used in committing the crime were starvation. We do believe that to deliberately starve a person can cause great bodily harm by injuring his health and can endanger his life as to uphold prosecution under Section 4410, supra. Should death result from deliberately starving a person, it would probably be murder rather than manslaughter, because the fact that it was deliberate eliminates the possibility of culpable negligence causing death.

In Lewis v. The State of Georgia, 72 Ga. 164, a woman was convicted of murder as the result of severely beating,

starving and exposing to the elements an orphan child left with her when its mother died. From this case the following quotation is taken at l.c. 168:

" \* \* \* \* 'It has never been doubted that, if death is the direct consequence of the malicious omission to perform a duty, as of a mother to nourish her infant child, this is a case of murder. If the omission was not malicious, and arose from negligence only, it is a case of manslaughter.' \* \* \* \* Where a sick or weak person is exposed to cold, with an intent to destroy him, this may amount 'to wilful murder, under the rule that he who wilfully and deliberately does any act which apparently endangers another's life, and thereby occasions his death, shall, unless he clearly prove to the contrary, be adjudged to kill him of malice propense.' \* \* \* \*"

In *Pallis v. State*, 26 So. 339, 123 Ala. 12, the defendant was indicted for assault upon her child, with intent to murder. She left her child by the side of the road without clothing or wrappings. At l.c. 339 the following quotation is taken:

"'If the exposure or neglect of an infant or other dependent person, resulting in death, is an act of mere carelessness, wherein danger to life does not clearly appear, the homicide is only manslaughter; whereas, if the exposure or neglect is of a dangerous kind, it is murder. For example, if from an infant of tender years the person under obligation to provide for it willfully withholds needful food or any other needful thing, though not with intent to kill, and by reason thereof the child dies, he commits murder.' \* \* \* \*"

From *Territory v. Manton*, 14 Pac. 637, l.c. 638, the following is taken:

" \* \* \* \* 'If a man neglects to supply his legitimate child with

suitable food and clothing, or suitably provide for his apprentice whom he is under legal obligation to maintain, and the child or apprentice dies of the neglect, he is guilty of a felonious homicide.' \* \* \* \*"

In the instant case, where the responsibility of raising the boy, who was a minor, was assumed, there was also a legal duty to provide him with food. Other cases involving prosecution for murder or manslaughter, where the courts have ruled on death being caused by an omission to act where a duty existed, are State v. Barnes, 141 Tenn. 469, 212 S.W. 100; State v. Noakes, 70 Vt. 247, 40 Atl. 249; State v. Chenoweth, 163 Ind. 94, 71 N.E. 197.

Therefore, we believe that deliberately starving a boy, in the instant case, would inflict great bodily harm or would endanger his life, and prosecution could be instituted under Section 4410, supra.

Conclusion.

In view of the above research, it is the opinion of this office that a complaint and information, in the instant case, could be filed under Section 4419, R.S. Mo. 1939, or Section 4410, R.S. Mo. 1939, based on either the beatings given the boy or on deliberate starvation.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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