

PROSECUTING ATTORNEY:
INTERMEDIATE REFORMATORY:

Must comply with section 217.170 requiring certain information be furnished superintendent of intermediate reformatory regarding prisoner delivered for confinement therein.

March 20, 1951.

Honorable James L. Paul,
Prosecuting Attorney
McDonald County,
Pineville, Missouri,



Dear Sir:

This will acknowledge receipt of your request for an opinion from this office on a question which you present as follows:

"For the past two years, it has been the policy of the judges in this circuit and of this office, that where there is a plea of guilty, or where it is known a plea of guilty is to be entered by a prisoner to a crime of which he stands charged, to require a pre-sentence investigation by the State Board of Parole and Probation, to ascertain whether or not the subject is eligible for parole, and if so to work out a parole plan.

"In some instances, such a parole plan cannot be accomplished and in other instances, even though a parole plan is accomplished and subject placed on parole, there have been times when it has been necessary to revoke the parole. In any of these instances where the subject is committed to either the Intermediate Reformatory at Algoa, or to the Missouri Penitentiary, this office, although well acquainted with Section 9121 of the Revised Statutes of the State of Missouri, has made a very brief commitment report and advised the institution that a pre-sentence investigation is on file, feeling that the pre-sentence investigation which goes into detail, is so much more valuable in properly classifying them, than a hurried statement by this office which has been made by minor contact with the subject. However, this office has recently received instructions from the Intermediate Reformatory, that unless the law is complied with, that inmates will not be accepted unless there is a Prosecuting Attorney's statement, accompanying the commitment papers.

"Advise this office that in instances where there is on file with the State Board of Parole and Probation

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a complete pre-sentence investigation in cases where parole plans cannot be worked out, and where there is in addition to the pre-sentence investigation, a parole violation on file with the Parole and Probation Department, if Section 9121 of the Revised Statutes of the State of Missouri, must be conformed with, to the extent of a complete statement where at the time of commitment, the institution is advised of the previous report."

The Section 9121, R. S. Mo. 1939, to which you refer in your letter was incorporated with Section 9057, R. S. Mo. 1939, by Senate Bill 1069 of the 65th General Assembly and may be found as Section 217.170, RSMo 1949, reading as follows:

"1. Whenever any convict shall be delivered to the division for confinement in either the penitentiary or the intermediate reformatory, the officer delivering such convict shall deliver to the warden or the superintendent a certified copy of the sentence received by such officer from the clerk of the court and shall take from the warden or superintendent a certificate of delivery of such convict.

"2. In addition to the certified copy of the sentence, the officer delivering the prisoner to the intermediate reformatory shall furnish the superintendent information regarding the prisoner covering his age, crime for which committed and circumstances thereof, personal history of prisoner including such facts regarding his home environment and his habits of industry as shall be helpful to the superintendent; also a statement covering his previous crimes, convictions and commitments.

"3. It shall be the duty of the prosecuting attorney in the respective counties and the circuit attorney in the city of St. Louis to prepare and furnish such statement to the officer delivering such offender to the intermediate reformatory."

In construing a statute one of the primary rules of construction is to determine the intention of the Legislature in enacting the statute as that intent is expressed in the act. This rule was reiterated by the Supreme Court of Missouri in the case of American Bridge Co. v. Smith, 179 S.W. (2d) 12, l.c. 15, as follows:

"The primary rule of construction of statutes is to ascertain the lawmakers' intent from the words used if possible; and to put upon the language of

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the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object,* * *."

The section to which we refer above directs that whenever any convict shall be delivered to the division of penal institutions for confinement in either the penitentiary or the intermediate reformatory, the officer delivering such convict shall deliver to the warden or superintendent a certified copy of the sentence received by such officer from the clerk of the court and shall take from the warden or superintendent a certificate of delivery of such convict. There appears to be no confusion as to the clearly stated mandate of the Legislature in directing the procedure outlined above.

In addition to the certified copy of the sentence, the officer delivering a prisoner to the intermediate reformatory is required, in the words of the statute, "he shall furnish the superintendent information regarding the prisoner covering his age, crime for which committed and circumstances thereof, personal history of prisoner, including such facts regarding his home environment and his habits of industry as shall be helpful to the superintendent; also a statement covering his previous crimes, convictions and commitments." This directive appears also to be clearly enough expressed to be easily understood. Herein is outlined the information which is required to be furnished the superintendent of the intermediate reformatory by the officer delivering the prisoner.

Paragraph 3 of said section directs that it shall be the duty of the prosecuting attorney in the respective counties and the circuit attorney in the city of St. Louis to prepare and furnish such statement to the officer delivering such offender to the intermediate reformatory. The section does not make it optional with the prosecuting attorney to furnish such statement by providing that he may do so but specifically directs that it shall be his duty to furnish such statement. The directive seems so clearly expressed as to leave no room for misunderstanding, and the directive must be complied with by the prosecuting attorney as a duty of his office.

From your letter it appears there may be some misunderstanding as to the administrative arrangement of the Board of Probation and Parole and the Intermediate Reformatory. These are separate administrative bodies and the information submitted to the Board of Probation and Parole is not relayed to the superintendent of the intermediate reformatory. The prosecuting attorney is not relieved of the duty imposed by section 217.170, R. S. Mo. 1919, by virtue of an investigation and reports having been filed with the Board of Probation and Parole.

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The purpose of this section is to provide information relative to the inmate to the superintendent of the institution which may be useful in classifying and beginning a rehabilitation program for the inmate. The information required by this section is helpful and used for such a purpose; without it the institution is handicapped and the inmate's classification and rehabilitation program delayed. The mandate of the Legislature is too clearly expressed to give rise to a misunderstanding that the section may be disregarded and not complied with by the prosecuting attorney.

CONCLUSION.

It shall be the duty of the prosecuting attorney in the respective counties and the circuit attorney in the city of St. Louis to prepare and furnish a statement to the officer delivering a prisoner to the intermediate reformatory containing the information as outlined by section 217.170, RSMo 1949.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General.

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