

DIVISION OF MENTAL  
HEALTH:

Persons committed to state mental hospitals pursuant to provisions of Section 552.040, RSMo 1969, relating to the commitment and release procedures of persons acquitted on grounds of mental disease or defect, may be placed on convalescent status by the heads of such facilities pursuant to the provisions of Section 202.830, RSMo 1969, and the heads of such facilities are not required to apply for a "conditional" release by the court where the committed person was tried. The courts have no power to restrict or abrogate the authority of the heads of facilities to place such a person on convalescent status under the provisions of Section 202.830 although such heads of facilities cannot grant a final release under that section but must obtain an order of the court under Section 552.040 to release the committed person unconditionally.

OPINION NO. 327

August 6, 1970

George A. Ulett, M. D., Director  
Division of Mental Health  
722 Jefferson Street  
P. O. Box 687  
Jefferson City, Missouri 65101



Dear Dr. Ulett:

This opinion is in answer to your question in which you ask whether the head of a facility of the Division of Mental Health has the authority to place a patient committed pursuant to the provisions of Section 552.040, RSMo 1969, on convalescent status under the provisions of Section 202.830, RSMo 1969.

We note that the Seventy-fifth General Assembly in 1969, by House Bill No. 29, repealed Section 552.040, RSMo Supp. 1967 and certain other relevant sections and enacted in lieu thereof certain new sections including what is now designated as Section 552.040, RSMo 1969, relative to the commitment and release procedures of defendants who are acquitted on the grounds of mental disease or defect excluding responsibility.

For the sake of clarity we quote here the provisions of Subsection 3 of Section 552.040, RSMo 1969, showing the new matter by underscore and the omitted matter in brackets:

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"3. The provisions of sections 202.810, 202.820, 202.823, 202.830, 202.840, 202.843, 202.847, 202.850, 202.857, 202.870 and 202.875, RSMo, apply to persons committed under subsection 1, but no such person shall be released [conditionally or] unconditionally without an order of court as hereafter provided."

The provisions of Subsection 4 of Section 552.040, RSMo 1969 now provide:

"4. The committed person or the superintendent of a hospital where the person is committed may file an application in the court where the person was tried, seeking an order releasing him conditionally or unconditionally. Copies of the application shall be served personally or by certified mail upon the superintendent of the hospital unless he files the application, the committed person unless he files the application, the director of the division of mental diseases, and the prosecuting or circuit attorney of the county where the committed person was tried and acquitted. The committed person shall be released by order of the court unless either the superintendent of the hospital or the prosecuting or circuit attorney shall, within ten days after the service upon the last one of the two persons, file a written objection thereto. If a written objection is filed within such time the court shall hold a hearing upon notice to the confined person, the superintendent of the hospital, the director of the division of mental diseases, and the prosecuting or circuit attorney of the county where the person was tried. Prior to the hearing any of the parties shall be entitled to an examination of the committed person, upon written application, by a physician of his or its own choosing and at his or its expense. By agreement of all parties to the proceeding any psychiatric report of the mental condition of the committed person which may accompany the application for release or which is filed in objection thereto may

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be received in evidence without testimony in person of the examining physician. Upon the hearing the court shall either deny the application or order an unconditional release or a conditional release under section 202.830, RSMo, where applicable. Any order denying the application shall be without prejudice to the filing of another application after one hundred eighty days from the denial of the prior application."

Section 202.830, RSMo 1969 provides:

"1. The head of a facility may release an improved patient on convalescent status when he believes that such release is in the best interests of the patient. Release on convalescent status shall include provisions for continuing responsibility to and by the facility, including a plan of treatment on an outpatient or nonhospital patient basis. Prior to the end of the year on convalescent status, and not less frequently than annually thereafter, the head of the hospital shall reexamine the facts relating to the hospitalization of the patient on convalescent status and, if he determined that in view of the condition of the patient hospitalization is no longer necessary, he shall discharge the patient.

"2. Prior to such discharge, the head of the facility from which the patient was given convalescent status may readmit the patient at any time. If there is reason to believe that it is to the best interests of the patient to be rehospitalized, the division or the head of the facility may issue an order for the immediate rehospitalization of the patient. Such an order, if not voluntarily complied with, upon the endorsement by a judge of a court of record of the county in which the patient is resident or present, shall authorize any health or police officer to take the patient into custody and transport him to the facility or, if the order is issued by the division, to

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a facility designated by it."

Additionally, we wish to point out that the Division of Mental Health is referred to as the Division of Mental Diseases in Chapter 552 although the 1969 changes in Chapter 202 RSMo, (House Bill No. 43 of the Seventy-fifth General Assembly,) indicate a change in name of the division to the "division of mental health". Section 202.010, RSMo 1969.

In view of the fact that that the legislature omitted the above bracketed matter, that is, "conditionally or" and inserted the reference to Section 202.830 it is our view that the legislature intended that the head of such a facility may release an improved patient on convalescent status pursuant to the provisions of Section 202.830 and that such a "release" constitutes essentially a "conditional" release by the head of the facility but obviously is not by any means a final release or discharge from the facility.

It is also our view that Subsection 4 of Section 552.040, RSMo 1969, authorizes the superintendent of the hospital where the person is committed or the committed person to file an application in the court where the person was tried seeking an order to release him conditionally or unconditionally. It is our interpretation that the superintendent is not required to file an application with the court to seek a conditional release for such a person but, under the changes in Subsection 3, as we stated, may release the patient on convalescent status under the provisions of Section 202.830, RSMo 1969. Obviously such provisions as are contained in Section 202.830, RSMo 1969, which authorize a final discharge of the patient do not apply to patients committed under Section 552.040 for the clear reason that only the courts may order an unconditional release.

It has also been called to our attention that the various mental hospitals have received court orders both antedating the effective date of House Bill No. 29 which made the indicated changes in Section 552.040, and also orders subsequent to that date which orders purport to require the head of the facility to obtain an order of the court before the committed person is released under any circumstances. As we stated, however, the legislature has clearly given the heads of such facilities the authority under Section 202.830 to place such persons on convalescent status and the courts are now without power to restrict or abrogate this legislative grant of authority.

#### CONCLUSION

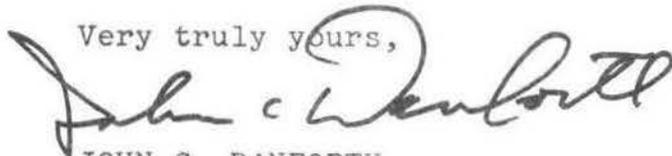
It is therefore the conclusion of this office that persons

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committed to state mental hospitals pursuant to the provisions of Section 552.040, RSMo 1969, relating to the commitment and release procedures of persons acquitted on grounds of mental disease or defect, may be placed on convalescent status by the heads of such facilities pursuant to the provisions of Section 202.830, RSMo 1969, and the heads of such facilities are not required to apply for a "conditional" release by the court where the committed person was tried. The courts have no power to restrict or abrogate the authority of the heads of facilities to place such a person on convalescent status under the provisions of Section 202.830, although such heads of facilities cannot grant a final release under that section but must obtain an order of the court under Section 552.040 to release the committed person unconditionally.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General