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ATTORNEY GENERAL OPINION NO. 90- 39

Gene M. Olander
District Attorney
Kansas Third Judicial District
Shawnee County Courthouse, Suite 212
Topeka, Kansas 66603

Re: Minors -- Kansas Juvenile Offenders Code --
Commitment to State Youth Center; Discharge from
Commitment; Duty of State Youth Center to Notify
Court

Synopsis: The Kansas juvenile offenders code provides for two methods by which a juvenile offender may be released from a state youth center. If a juvenile offender is conditionally released pursuant to K.S.A. 38-1673, prior notice of the date and proposed conditions of release must be provided to the committing court. If a juvenile offender is discharged from commitment pursuant to K.S.A. 38-1675, prior notice to the committing court is not required. Cited herein: K.S.A. 38-806 (repealed, L. 1982, ch. 182, § 150); 38-1604; 38-1673; 38-1675; 75-3336a; 76-2109 (repealed, L. 1982, ch. 182, § 150); 76-2209 (repealed, L. 1982, ch. 182, § 150); 76-2212 (repealed, L. 1982, ch. 182, § 150); 76-2414 (repealed, L. 1974, ch. 416, § 25).

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Dear Mr. Olander:

As Shawnee County District Attorney you request our opinion regarding whether K.S.A. 38-1675 authorizes the discharge of juvenile offenders from the state youth center prior to age 21 without appropriate conditions of release and without 15 days notice to the court as required in K.S.A. 38-1673 which addresses the procedure and supervision of a conditional release from the state youth center.

K.S.A. 38-1675 provides as follows:

"When a juvenile offender has reached the age of 21 years or has successfully completed the program at a state youth center together with any conditional release following the program, the superintendent in charge of the state youth center shall discharge the juvenile offender from any further obligation under the commitment. The discharge shall operate as a full and complete release from any obligations imposed on the juvenile offender arising from the offense for which the juvenile offender was committed."

K.S.A. 38-1673 provides as follows:

"(a) When a juvenile offender has satisfactorily completed the program at the state youth center to which the juvenile offender was committed or placed, the person in charge of the state youth center shall have the authority to release the juvenile offender under appropriate conditions and for a specified period of time.

"(b) At least 15 days prior to releasing a juvenile offender as provided in subsection (a), the person in charge of the state youth center shall notify the committing court of the date and conditions upon which it is proposed the juvenile offender is to be released.

"(c) Upon receipt of the notice required by subsection (b), the court shall review the proposed conditions of release and may recommend modifications or additions to the conditions.

"(d) If, during the conditional release, the juvenile offender is not returning to the county from which committed, the person in charge of the state youth center shall also give notice to the court of the county in which the juvenile offender is to be residing."

The issue, then, is whether the notice provisions mandated by K.S.A. 38-1673 whereby a juvenile may be conditionally released from the state youth center are also mandated when a juvenile offender is discharged from commitment under the provisions of K.S.A. 38-1675. In order to discern whether the notice requirement of K.S.A. 38-1673 is also a requirement of K.S.A. 38-1675, a review of the legislative history of both statutes is instructional.

Looking to the June 1981 Kansas Judicial Council Bulletin, which contains a draft of the Kansas Juvenile Offender Code, the Comment to Section 1674 (which was enacted as K.S.A. 38-1673) reads as follows:

"This is a new section and is intended to resolve the disparity between the provision in the juvenile code contained in K.S.A. 1980 Supp. 38-806(c), which states that once the juvenile is adjudicated the court retains jurisdiction until age 21, or final discharge by the court, and K.S.A. 75-3336a, K.S.A. 1980 Supp. 76-2414, and K.S.A. 76-2212 which say the superintendent of a youth center has authority to discharge a juvenile upon completion of the youth center program and such discharge is final."

The last three statutes cited in the above judicial council comment appear to be incorrect citations. K.S.A. 75-3336a authorizes the secretary of social and rehabilitative services to establish and maintain residential care facilities for children, under the supervision and administration of the commissioner of youth services and authorizes the secretary to

adopt necessary rules and regulations relating to the operation and management of residential care facilities. K.S.A. 1980 Supp. 76-2414 requires that any boy released from the Youth Center at Topeka or the Youth Center at Atchison be released on probation. K.S.A. 76-2212 authorized the superintendents of the youth centers at Topeka and at Atchison to "have full power to place any boy at the youth center of such superintendent at such employment and cause him to be instructed in such branches of useful knowledge as may be suitable to his years and capacity." Presumably, the authors of this judicial comment were referring to K.S.A. 76-2109 (1977) and K.S.A. 76-2209 (1977) which do say the superintendent of a youth center has authority to discharge a boy or girl upon completion of the youth center program and such discharge is final.

K.S.A. 38-1673 did resolve the existing statutory disparity by placing conditional release authority with the person in charge of the state youth center. However, to facilitate a better coordinated effort between local courts and SRS in returning a juvenile to the home community, notice to the committing court of any conditional release was required. (June, 1981 Kansas Judicial Council Bulletin, Comment following Section 1674).

Under K.S.A. 38-1673 if a juvenile offender is to be released under appropriate conditions, the court must receive notice of the conditions and proposed release date. If a juvenile offender is so conditionally released, once he or she also fulfills the appropriate conditions and has been on release for a specified period of time, "the superintendent in charge of the state youth center shall discharge the juvenile offender from any further obligation under the commitment." K.S.A. 38-1675.

Under K.S.A. 38-1673 the person in charge of the state youth center has the authority to conditionally release the juvenile offender once that juvenile offender has satisfactorily completed the program at the state youth center. However, the fact that a juvenile offender has satisfactorily completed the program does not require the person in charge of the state youth center to exercise his or her authority to conditionally release the juvenile offender. There may well be reasons which, in the discretion of the person in charge of the state youth center, warrant retaining the juvenile offender for a longer period of time, or there may be reasons which, in the discretion of the person in charge of the state youth center, warrant discharging a

juvenile offender without any conditions of release. In the latter event, K.S.A. 38-1675 authorizes the superintendent in charge of the state youth center to discharge the juvenile offender from any further obligation under the commitment. The Kansas Judicial Council Bulletin Comment lends support to this position by stating, "this section . . . clarifies who has authority to discharge after the juvenile has been through the state youth center for a given offense or offenses."

K.S.A. 38-1675 provides a mechanism whereby a juvenile offender may be discharged from commitment, not released on specified conditions. Unlike a conditional release, a discharge "operates as a full and complete release from any obligations." K.S.A. 38-1575. The discharge from commitment statute derives from prior discharge statutes in the juvenile code, K.S.A. 76-2109 and K.S.A. 76-2209 (repealed, L. 1982, ch. 182, § 150), which also operated as a "full and complete release from all penalties and disabilities."

K.S.A. 38-1675 does not contain any notice requirement provision like that specified in K.S.A. 38-1673, nor does K.S.A. 38-1675 refer in any manner to the notice requirement of K.S.A. 38-1673. As there is no legislative history from which to infer a notice requirement to the court upon a discharge from commitment, and as the plain language of the statute makes no reference to a notice requirement, we must conclude that notice to the committing court is not required by K.S.A. 38-1675.

Further support for this position is found in the jurisdictional statute of the Kansas Juvenile Offender Code, K.S.A. 38-1604(c):

"When jurisdiction is acquired by the district court over an alleged juvenile offender it may continue until the juvenile (1) has attained the age of 21 years, (2) has been discharged by the court or (3) has been discharged under the provisions of K.S.A. 38-1675."

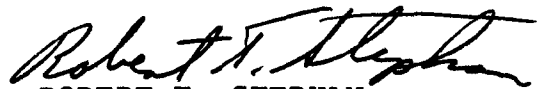
This statutory jurisdictional language is a modification from that proposed and found within the June 1981 Judicial Council Bulletin which provided that the district court retained jurisdiction over a juvenile offender until the juvenile (1) attained the age of 21 or (2) had been discharged. That proposed jurisdictional section was a restatement of the then current law as found in K.S.A. 38-806 which gave authority for

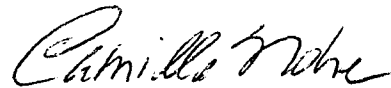
final discharge to the court. The jurisdictional statute as enacted by the Kansas legislature clearly changed the existing law by providing that the district court's jurisdiction could be terminated by the discharge from commitment section under the provisions of K.S.A. 38-1675.

The reason for the notice requirement in K.S.A. 38-1573 is to allow the court the opportunity to review the proposed conditions of release and to make recommendations for modifications or additions. K.S.A. 38-1575 contemplates a full and complete release, and therefore without any conditions for the court to review. If the legislature determines that notice to the court, prior to a juvenile offender being discharged from commitment under K.S.A. 38-1675, would be consistent with public policy, it is within the province of the legislature to enact such a requirement.

In conclusion, the Kansas juvenile offers code provides for two methods by which a juvenile offender may be released from a state youth center. If a juvenile offender is conditionally released pursuant to K.S.A. 38-1673, prior notice of the date and proposed conditions of release must be provided to the committing court. If a juvenile offender is discharged from commitment pursuant to K.S.A. 38-1675, prior notice to the committing court is not required.

Very truly yours,


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