

SC CIRCULAR NO. 9, May 17, 1988

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ADMINISTRATIVE SUPERVISION OF COURTS

TO : THE REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A DISTRICT COURTS AND SHARI'A CIRCUIT COURTS

SUBJECT: Opinion No. 40, Series of 1988 of the Department of Justice on the proper interpretation of Section 30 of R.A. 6425, as amended.

Upon request of Executive Director Manuel M. Supnet of the Dangerous Drugs Board, we are furnishing you herewith for your information the Opinion No. 40, series of 1988, of the Secretary of Justice on the Department's interpretation of Sec. 30 of the Dangerous Drugs Act.

This Opinion while persuasive and may provide constructive guidelines is neither controlling nor mandatory for the courts unless adopted by the Supreme Court in appropriate cases.

May 17, 1988.

(Sgd.) MAXIMO A. MACAREN

Court Administrator

March 9, 1988

Sec. Alfredo R.A. Bengzon, M.D.
Chairman, Dangerous Drugs Board
5th Floor Domestic Insurance Bldg.
port Area, Manila

S i r:

This has reference to your letter referring to this Department for opinion the conflict of views on the correct interpretation of Section 30 of the Dangerous Drugs Act (R.A. No. 6425, as amended), which reads:

"SEC. 30. Voluntary Submission of a Drug Dependent to Confinement, Treatment and Rehabilitation by the Dependent Himself or Through His Parent, Guardian or Relative.- If a drug dependent voluntarily submits himself for confinement, treatment and rehabilitation in a center and complies with such conditions therefor as

the Board may by rules and regulations prescribe, he shall not be criminally liable for any violation of Section 8, Article II and Section 16, Article III of this Act.

The above exemption shall be extended to a minor exemption shall be extended to a minor who may be committed for treatment and rehabilitation in a center upon sworn petition of his parent, guardian or relative within the fourth civil degree of consanguinity or affinity, or of the Minister of Health or the Minister of Social Services and Development, in that order. Such petition may be filed with the regional trial court of the province or city where the minor resides and shall set forth therein his name and address and the facts relating to his dependency. The court shall set the petition for hearing and give the drug dependent concerned an opportunity to be heard. If, after such hearing, the facts so warrant in its judgment, the court shall order the drug dependent to be examined by two physicians accredited by the Board. If both physicians conclude, after examination that the minor is not a drug dependent, the court shall enter an order discharging him. If either physician finds him to be a dependent, the court shall conduct a hearing and consider all relevant evidence which may be offered. If the court makes a finding of drug dependency, it shall issue an order for his commitment to a center designated by the court for treatment and rehabilitation under the supervision of the Board. Upon certification of the center that he may be temporarily discharged from the center, the court shall order his release therefrom on condition that he shall report to the Board for after-case and follow-up treatment for a period not exceeding eighteen months under such terms and conditions as may be imposed by the Board. If at any time during the after-case and follow-up period the Board certifies to his complete rehabilitation, the court shall enter an order of final discharge. Should the Board find at any time during the after-case and follow-up period that he required further treatment and rehabilitation in the center, it shall make a report to this effect to the court which shall thereupon order his recommitment to the center.

Should the drug dependent, having voluntarily submitted himself for confinement, treatment and rehabilitation in, or having been committed to a center upon petition of the proper party, escape therefrom, he may resubmit himself for confinement within one week from the date of his escape, or his parent, guardian or relative may, within the same period, surrender him for recommitment. If, however, the drug dependent does not resubmit himself for confinement or he is not surrendered for recommitment, as the case may be, the Board may apply with the court for the issuance of a recommitment order. Upon proof of previous commitment or of his voluntary submission to confinement, treatment and rehabilitation, the court shall issue an order for recommitment. If subsequent to such recommitment, he should escape again, he shall no longer be exempt from criminal liability for use or possession of any dangerous drugs.

The judicial and medical records pertaining to any drug dependent's confinement or commitment under this Section shall be confidential and shall not be used against him for any purpose except to determine how many times he shall have voluntarily submitted himself to confinement, treatment and rehabilitation or been committed to a center."

You state that in the 229th meeting of the Dangerous Drugs Board (the "Board") on August 20, 1987, the Vice-Mayor Elmer Pormento of Quezon City expressed the view that an adult drug dependent who voluntarily submit himself for confinement in a center for treatment and rehabilitation can be admitted therein without the need of a court order and that if he wants a court order for his admission, he can sign the petition for confinement himself. Dr. Plaridel Vidal, who is the Administrative Officer of the Narcotics Command Rehabilitation Center, contends however that a rehabilitation center cannot admit an adult drug dependent without any court order because it will have no legal hold over him if he desires to leave the place and that R.A. No. 6425 is silent as to who is authorized to sign a petition for confinement of an adult drug dependent, unlike in the case of a minor drug dependent where the law specifically mentions the individuals authorized to sign in his behalf. Dr. Vidal propose that the Board adopt a policy interpreting Section 30 so as to cover adult drug dependents such that the persons authorized therein to sign petitions for confinement of minors can likewise do so for adults.

The queries to be resolved, we take it, are (a) whether or not a rehabilitation center may without need of a court

order, admit an adult drug dependent who voluntarily submits himself for confinement therein for treatment and rehabilitation purposes; and (b) whether or not Section 30, supra, may be interpreted as likewise covering adult drug dependents such that the persons specifically authorized therein to sign petitions for confinement on behalf of minor drug dependents may similarly do so for adult drug dependents.

We believe that the first issue should be answered in the affirmative. By clear implication, the abovequoted provisions of law empower the rehabilitation center to which an adult drug dependent has voluntarily submitted himself for confinement, to confine him for purposes of treatment and rehabilitation. While the Board may not perhaps prevent the departure of a drug dependent from the center, there is a legal constraint upon such departure since it could result in the loss of the immunity from criminal prosecution for use or possession of any dangerous drugs granted to said dependent under Section 30. Besides, the law authorizes the Board to apply with the courts for the issuance of a recommitment order for such departing drug dependent which the courts shall issue upon proof of his previous commitment or voluntary confinement. Such order will then serve as the legal basis for his subsequent compulsory confinement in the rehabilitation center.

As regards the second issue, it may be stated, as a general proposition, that Section 30, above-quoted, covers both adult and minor drug dependents. A drug dependent is, in contemplation of the law, a person who experiences a state of psychic or physical dependence, or both, on any dangerous drugs arising from the intake of such drugs on a periodic or continuous basis. Pursuant to the familiar rule that *ubi lex no distinguit nec nos distinguere debemos* (Colgate-Palmolive Phils., Inc., vs. Jimenez, 1 SCRA 267), one should not make a distinction, when the law uses the term "drug dependent", between an adult drug dependent and a minor one, unless the language clearly intends otherwise. Thus, a correct reading of Section 30 should be that the first paragraph contemplates adult drug dependents, the second paragraph covers minor drug dependents and the third and fourth paragraphs refer to both adult and minor drug dependents.

In fine, under Section 30, a drug dependent shall be exempt from criminal prosecution for use or possession of any dangerous drugs if he shall voluntarily submit himself to confinement, treatment and rehabilitation in a center by personally surrendering himself to the authorities in the center, if he is an adult drug dependent, or by order of the court upon petition of his parent, guardian, relative, or the Secretary of Health or the Secretary of social Services and Development, in that order, if he is a minor drug dependent.

Since the grant of immunity is essentially predicated on the voluntary act of the drug dependent whether by himself or through his parent or guardian, a court order of confinement is not necessary in the case of an adult drug dependent because such requirement would destroy the element of voluntariness required by law. The law assumes that an adult drug dependent, having reached the age of majority, has become *sui juris* and therefore capable of deciding for himself. In the case of a minor drug dependent who, under the law, does not have full capacity to act, the element of voluntariness is supplied by his parent or guardian who must file a petition on his behalf for approval by the court.

Please be guided accordingly.

(Sgd.) SEDFREY A. ORDONES

Secretary of Justice

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