BOYS' SCHOOL, INDIANA: Whether boys between ages of 16 and 17 may be sentenced to on certain charges, commitment.

December 27, 1939.

Dr. E. M. Dill,
Superintendent, Indiana Boys' School,
Plainfield, Indiana.

Dear Dr. Dill:

This will acknowledge your letter of December 4 in which you submit the following questions:

"1. Can a sixteen-year-old boy be sentenced to the Indiana Boys' School upon a charge of second degree burglary and petit larceny?

"2. Can he be committed to 'serve until released by trustees of the Indiana Boys' School'?

"3 Upon what charges can a boy between the ages of sixteen and seventeen be committed to the Indiana Boys' School, provided he has not received a suspended sentence prior to his sixteenth birthday?"

In reply to Question No. 1, I call your attention to Sec. 13-914 Burns Indiana Statutes Annotated 1933, which provides as follows:

"If any boy over the age of ten (10) years, and under the age of seventeen (17) years be arraigned for trial in any court having criminal jurisdiction, on a charge of any violation of any criminal law of this State, or if a complaint in writing, setting out the acts of such boy has been filed, which complaint shall be sworn to and due proof shall be made in open court in the presence of such boy that he is a proper subject for the guardianship of such institution in consequence of the incorrigible or vicious conduct, the court or jury trying the same may commit said boy to this institution instead of the jail of the county or State's prison; and the judge may, with the consent of the accused, arrest at any stage of the cause any further proceedings on the part of the prosecution, and commit the accused to the guardianship of said institution; Provided, That no commitment shall be for a shorter period than until the boy shall attain the age of twenty-one (21) years."
Nothing contained in this Act shall be construed to repeal, alter or amend any of the laws of this State conferring authority on any juvenile court over juvenile offenders, but juvenile courts shall have and possess the jurisdiction now conferred by law and as they would have had if this Act had not been passed.”

Under this section, several cases have reached the Supreme Court of the State and though all of these cases were appealed before 1933 when the statute was amended to increase the age limit to seventeen years, they still have a certain applicability to some of the procedure set out in the statute. In the case of Malone v. State, 169 Ind. 72, the court held the following verdict proper:

“We, the jury in the above cause, find the defendant, Harry Malone, guilty of grand larceny as charged in the affidavit, and that he be committed to the Indiana Reform School for Boys until he reaches the age of twenty-one years.”

It is readily seen, therefore, that a sixteen-year-old boy, (that is, one over sixteen years) may be convicted on a charge of second degree burglary or petit larceny and committed to the Indiana Boys' School. My answer to this first question, however, is not to be construed as overruling in any way a former opinion of this office rendered on May 23, 1938, which answered at some length this question: “Upon what charges may a boy under the age of sixteen years be legally committed to the Indiana Boys' School?” In that opinion the Juvenile Act, being section 9-2803 et seq, was construed in detail and the conclusion reached that for all children under the age of sixteen years, the exclusive procedure for dealing with violations of the law by such children, was by proceeding under the Juvenile Act and in juvenile courts, thus treating such children as delinquents. It is still the opinion of this office that section 13-914, above referred to, was superseded to a certain degree by the passage of the Juvenile Act, but that this section has not been impliedly repealed in toto; consequently, when the legislature in 1933 amended Sec. 13-914 to extend the age limit to seventeen years, that amendment and the procedure outlined in the section, are operative to provide ordinary court procedure as in all criminal cases for boys between the ages of sixteen and seventeen years, so that my opinion on this
first question must be read in the restricted sense that it applies only to boys between sixteen and seventeen years of age.

Your second question asks if a commitment reading “serve until released by trustees of the Indiana Boys’ School,” is proper. Our answer is in the negative for the reason that the statute (Sec. 13-914) provides, “That no commitment shall be for a shorter period than until the boy shall attain the age of twenty-one years.” Obviously, a commitment putting his release at the discretion of the trustees, is improper since they might release him before he reached the age of twenty-one years.

Your third question asks upon what charges a boy between the ages of sixteen and seventeen can be committed to your institution. Sec. 13-914, above referred to, answers this question explicitly by saying in substance that any boy between the ages of ten and seventeen years, arraigned in any court of criminal jurisdiction on a charge of any violation of any criminal law of the State, can, by the judge of said court, be committed to your institution. However, as mentioned above, the statute has been qualified and superseded to a certain degree by the passage of the Juvenile Act, with the result that the language at the present time applies only to boys between the ages of sixteen and seventeen years, and not to boys under sixteen years. You will see by an examination of this opinion and the former opinion rendered on May 23, 1938, that there is no conflict whatsoever.

Though none of your questions cover this precise point, I think it well to point out that the verdict and judgment of the court, as well as the commitment, must recite the boy’s age, and, further, the judgment and the commitment must recite that the sentence is for a period of time not shorter than the date on which the defendant will have arrived at the age of twenty-one years.