

4197.

EPILEPTIC—PROBATE COURT MAY COMMIT DANGEROUS EPILEPTIC
TO OHIO HOSPITAL FOR EPILEPTICS WITHOUT CONSENT OF
PARENTS.

SYLLABUS:

Admission of epileptics to Ohio Hospital for Epileptics discussed.

COLUMBUS, OHIO, March 28, 1932.

HON. ORVILLE WEAR, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion which reads:

“The Probate Court of this County has requested that I write you with reference to the proper procedure under Section 2044, 2045 and 2046 of the General Code of Ohio, with reference to the commitment of a patient to the Ohio Hospital for Epileptics.

We have in this community a boy fifteen years of age, who is an epileptic and he was in the Ohio Hospital for Epileptics some few years back. He lives with his mother now, who succeeded in obtaining his release at that time. She has been divorced from her husband since this child was a baby and is receiving a stipulated sum of alimony every week from her former husband.

In the opinion of the Probate Judge and the officers of this community, this boy is dangerous in being allowed to go about the community unhampered, as he is getting to the age where he is becoming sexually developed and in the opinion of the Court this condition may lead to unsatisfactory complications.

The mother refuses to file application for admission to the hospital, of her son, the reason being, we think, that should such be done she would lose the alimony now being sent to her by her former husband. She allows the boy to roam the streets all hours of the day and night, and in his condition he makes a nuisance of himself at all times.

The Court is desirous of knowing how he may proceed to commit this boy to the Ohio Hospital for Epileptics, without consent of the mother, who has legal custody of him at the present time, and whether in the Court's discretion this boy could be classed, upon the proper evidence, as being a danger to the community under Section 2044 of the General Code.

In the opinion of the Court the boy could not be classed as insane.”

Section 2037, General Code, relative to commitments of patients to the Ohio Hospital for Epileptics, reads as follows:

“Insane persons who are also epileptic, and whose disease has developed during their residence in this state, and epileptics who have been residents of the state for one year next preceding application for

admission, shall be admissible as inmates of this institution. The number of inmates shall be apportioned among the counties of the state according to population."

Section 2044, General Code, referred to in your communication, reads:

"In the commitment and conveyance to the hospital the care and custody while there, and the discharge therefrom, of epileptic insane or epileptics whose being at large is dangerous to the community, like proceedings shall be had, and like powers exercised by officers charged with like duties in the premises as is provided by law for the commitment and care of the insane."

Section 2045, General Code, refers to the application for admission to the hospital of an epileptic person, "other than insane or dangerous."

Section 2046, General Code, refers to the hearing of an application filed under section 2045.

Section 2044, General Code, above quoted, provides that in the case of the commitment of a dangerous epileptic "like proceedings shall be had, and like powers exercised by officers charged with like duties in the premises as is provided by law for the commitment and care of the insane." The statutory provision as to the care and commitment of insane persons would therefore apply if the epileptic in question is dangerous. See Opinions of the Attorney General for 1919, page 1372.

Proceedings necessary for the commitment and care of the insane are found in sections 1950, et seq., General Code.

Section 1953, General Code, reads in part as follows:

"For the admission of a patient to a state hospital for the insane the following proceedings shall be had. A resident citizen of the county in which an insane person has a legal residence, or in which he may be temporarily residing or detained, must file with the probate judge of said county an affidavit substantially as follows: * * * ."

It follows therefrom that if the probate court finds upon proper evidence that the epileptic in question is dangerous, a resident citizen of the county in which such epileptic has a legal residence or is temporarily residing, may file the affidavit set forth in section 1953, General Code, and upon compliance with the statutory requirements, such court may commit such epileptic to the Ohio Hospital for Epileptics. I do not however pass upon the question of whether or not the epileptic in question is or is not dangerous. The determination of that matter is, of course, within the discretion of the probate court.

It should be noted that if immediate commitment is necessary then section 1955-1, General Code, relative to the immediate commitment of insane persons would apply.

Respectfully,
GILBERT BETTMAN,
Attorney General.