

**Opinion No. 68-69**

July 1, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Board of Probation and Parole P.O. Box 2006 Santa Fe, New Mexico

**QUESTION**

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Is a minor who has been convicted of a violation of Section 54-7-13, N.M.S.A., 1953 Compilation (unlawful possession of narcotic drugs) eligible for parole before the minimum sentence is served?

CONCLUSION

Yes.

**OPINION**

{\*112} **ANALYSIS**

The sentencing provisions of the Narcotic Drug Act (Section 54-7-1, et seq., N.M.S.A., 1953 Compilation, as amended) are found in Section 54-7-15, supra.

The pertinent part of this section reads as follows:

{\*113} If an adult be convicted of any offense defined in the foregoing sections by selling or otherwise disposing of narcotic drugs or marijuana to a minor, such adult shall, without reference to the number of offenses, be fined not more than ten thousand dollars (\$ 10,000) and imprisoned for not less than twenty [20] years nor more than life. For the purpose of this subsection, an adult is defined as a person of either sex twenty-one [21] years of age or over, and a minor is defined as a person of either sex under the age of twenty-one [21] years.

Upon conviction of any offense **by an adult** under the Uniform Narcotic Drug Act, the imposition or execution of a sentence shall not be suspended or probation or parole shall not be granted until the minimum imprisonment provided for the offense shall have been served. Provided that if it shall appear to the court that the defendant is addicted to the use of narcotics, the court may order sentence to be served at a correcting institution or hospital other than the state penitentiary; and providing further that if the correcting institution or hospital certifies that the defendant is cured of the use of narcotics, the defendant may be placed on probation for the remainder of the sentence. (Emphasis added)

It is noted that the above quoted subsection refers in the first paragraph to sale, etc., of a narcotic to a minor and for the purpose of the subsection defined the words "adult" and "minor". The language is carried over into the second paragraph of the subsection which again refers to "adult" in prohibiting the granting of a suspended sentence, probation or parol until the minimum sentence is served.

An "adult" is defined in Black's Law Dictionary (3rd Ed.) as "one who has attained the legal age of majority, generally 21 years, though in some states women are legally adults at 18".

New Mexico has no general statutory definition of "adult" or "minor". Various statutes exist setting forth rights and duties of persons under 21 years of age under particular fact situations. Marriage laws are an example as is Section 57-4-4, N.M.S.A., 1953 Compilation which permits a married woman under the ages of 21 years to join with her husband in conveyances, leases and mortgages. This latter provision sets forth an exception to the common law rule that a minor could not execute such documents with legal force and effect. It thus appears, absent exception, that the age at which one attains majority in this state is considered to be the same as at common law and is 21 years. Nothing to the contrary appearing, Section 21-3-3, N.M.S.A., 1953 Compilation, declaring that common law is the rule of practice and decision will govern. Even if we consider that the definition contained in the first paragraph of Section 54-7-15, supra, is restricted to that paragraph, the use of the word "adult" contained in the second paragraph would require the same conclusion as if it applied to the whole subsection, and a normal reading of the statute would require such an application. The definition clause refers to the "subsection" and makes it applicable by its terms to the entire subsection and not to just the first paragraph thereof.

Whether we apply the definition of "adult" contained in subsection (D) of Section 54-27-15, supra or apply the common law definition the result reached is the same. In either case the prohibition against suspension, probation or parole is only applicable to the "adult" who has been convicted of a violation of the Narcotic's Act.

{\*114} The restriction against the granting of a suspension, probation or parole not being applicable where a minor under the age of 21 years is convicted of a violation of the Narcotics Drug Act, the same laws pertaining to suspension of sentences or granting of probation and parole that are applied to a minor committing any criminal offense for which a similar sentence has been imposed are applicable.

By: James V. Noble

Assistant Attorney General