

balance of time due on his sentence to be computed as of the date that he was declared delinquent on parole."

Since the sanction imposed in the cited section upon one convicted of crime while on parole serves to require him to remain in confinement for an additional period of time, the law must be strictly construed, as is the case in penal statutes, and the interpretation most favorable to the accused will apply. See Sutherland's Statutory Construction, 3rd Edition, Vol. 3, Sec. 5604.

Additionally, the subject matter received the attention of our courts in *State vs. Block*, 119 N. J. L. 282 (Supreme Court, 1938), where it said:

"Conviction as a disorderly person is not a conviction of crime."

Of similar effect is *State vs. Lavato*, 7 N. J. 137 (1951).

Accordingly, in view of the above decisions, you are advised that an individual on parole adjudged a disorderly person as now provided in N. J. S. Title 2A, Subtitle 12, is not deemed to have been convicted of crime within the meaning of Section 24 of the Parole Law, *supra*, and is not subject to the sanctions contained therein.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: EUGENE T. URBANIAK,  
*Deputy Attorney General.*

ETU:HH

FEBRUARY 20, 1953.

THE HONORABLE SANFORD BATES, *Commissioner,*  
*Department of Institutions and Agencies,*  
State Office Building,  
Trenton, New Jersey.

FORMAL OPINION—1953. No. 3.

DEAR COMMISSIONER BATES:

You desire to be advised of the legal authority of the State Board of Child Welfare to consent to the performance of surgery upon certain infant children in situations wherein the said board is not acting as legal guardian but is administering some form of welfare services to said children as provided in Chapter 138, P. L. 1951.

It is our opinion and we advise you that in the absence of legal guardianship in the said board, pursuant to an order of a court of competent jurisdiction, we perceive no statutory warrant of authority to give consent to perform surgery on minor children for whom the board merely provides "welfare services" under Chapter 138, P. L. 1951.

"Under the law, the least manual touching of the body of another against his will, constitutes an assault and battery." See *Central R. R. Co. of N. J. vs. Simandl*, 124 N. J. Eq. 207 (Chanc. Ct., 1938).

Wrongful abuse of authority is an assault and battery even when involving the medical services of a physician. See Whartons Criminal Law, Vol. I, p. 1105, Sec. 810.

A proper exercise of authority or duty conferred upon one by law is always justification and a defense to an action for assault and battery, as in the case of a parent who moderately chastises a child (See Wharton, *supra*, Vol I, p. 1117, Sec. 830); but who does not exceed the bounds of propriety and reasonableness in the infliction of punishment.

Thus, if we were to answer your query in the affirmative we must find in the statute under consideration some authority conferred upon the board to consent to the performance of surgery upon children not legal wards of the board. We find none, but rather observe a legislative intent to reserve certain rights and duties unto the parents of these children. Of interest is Section 5 of the law:

"Nothing in this act shall authorize the State Board of Child Welfare to accept the care or custody of any child, nor to provide welfare services for any child, except with the voluntary approval and consent of the parent, parents, legal custodian, guardian or other person with whom the child may be living."

Even though the necessary consent be secured from the parents or guardian as required by law, only those "welfare services" defined in the statute may be provided. See Sec. 2(g):

"The term 'welfare services' means consultation, counselling, and referral to or utilization of available resources, for the purpose of determining and correcting or adjusting matters and circumstances which are endangering the welfare of a child, and for the purpose of promoting his proper development and adjustment in the family and the community."

The most liberal construction of the words utilized in accordance with the commonly accepted meaning thereof will not accommodate the proposition that the board may consent to the performance of surgery on a child receiving the benefits of the act. It seems most significant to us that no mention is made anywhere in the above definition of "welfare services" of "medical or surgical services." It may be urged by some that the term "welfare" is sufficiently broad in its meaning to encompass surgical services. If any such decision exists in this jurisdiction it has escaped our attention.

It is within the clear power of the Legislature to enact statutes for the protection of the health of the infant wards of the State. 31 C. J. p. 994. In New Jersey, we have done this with respect to children committed to the guardianship of this same board. See Sec. 22, Chapter 138, P. L. 1951. Not so as to those children receiving aid under Article I of the same statute. Nor does the declaration of public policy in Section 1 of the act include the authority here sought. If such responsibility is to be vested in the board then the medium is by legislation designed for that purpose.

The board may wish to consider including a general consent for such surgery in the form of consent and approval secured from the parents or guardian as required in Section 5, *supra*.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: EUGENE T. URBANIAK,  
*Deputy Attorney General.*