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Opinion No. 05-008

Process to Issue for Juvenile Delinquents' Escape

QUESTIONS

1. When custody of a juvenile who is adjudicated delinquent is given to the Department of Children's Services and the Department subsequently places the juvenile in a group home or other non-institutional placement, what process should issue if the juvenile absconds from that placement?
2. Would the answer to the first question be different if the individual were 18 years of age?

OPINIONS

1. A petition with a summons should issue. In the event a summons is not effective, the court may issue an order of attachment.
2. If a person absconds after turning 18, but while serving a commitment for a juvenile offense, the individual is no longer a child and any offense would be handled as an adult offense.

ANALYSIS

1. Tennessee statutes make it an offense for a juvenile delinquent to escape from a penal institution. Specifically, Tenn. Code Ann. § 39-16-605 provides that it is unlawful for a person to escape from a penal institution, as defined in Tenn. Code Ann. § 39-16-601. Tenn. Code Ann. § 39-16-601 defines penal institution as "any institution or facility used to house or detain a person . . . adjudicated delinquent by a juvenile court." Tenn. Code Ann. § 39-16-601 (4)(B). Another statute, Tenn. Code Ann. § 37-1-116 (a), allows the Department of Children's Services to detain a delinquent minor in one of several different settings, including a foster home, a facility operated by a licensed care agency or a secure detention facility. Thus, the first issue is which of these placements meets the definition of a "penal institution" under Tenn. Code Ann. § 39-16-601 (4)(B).

Another statute, Tenn. Code Ann. § 37-1-116 (j), also addresses this issue and provides clarification of the definition of “any institution or facility used to house or detain a person . . . adjudicated delinquent.” It provides:

(j)(1) Any juvenile who:

(A) Is alleged or adjudicated to be delinquent;

(B) Is confined to a secure detention or correctional facility designated, operated or approved by the court; and

(C) Absconds or attempts to abscond from such facility;

may be charged with the offense of escape or attempted escape and a petition alleging such offense may be filed with the juvenile court of the county in which the alleged offense occurred. If the allegations of the petition are sustained, then the court may make any order of disposition authorized by § 37-1-131.

Tenn. Code Ann. § 36-1-116 (j)(1). This statute clearly limits the offense of escape to those juvenile delinquents who are housed in secure facilities. While Tenn. Code Ann. § 39-16-601, which could be read to include all juvenile delinquents, was amended subsequent to the passage of Tenn. Code Ann. § 36-1-116 (j)(1), it is our opinion that the later statute does not operate to repeal the earlier and that they must be read together to limit the offense of escape to those juveniles who are housed in secure facilities.

A statute can be repealed by subsequent legislative enactment either expressly or by implication. Tenn. Code Ann. § 39-16-601 does not expressly repeal Tenn. Code Ann. § 37-1-116 (j)(1). Repeal by implication is highly disfavored and will occur only when there is an irreconcilable conflict between two statutes. *State v. Martin*, 146 S.W.3d 64, 73 (Tenn. Crim. App. 2004). There is no irreconcilable conflict between the two statutes; Tenn. Code Ann. § 37-1-116 (j)(1) explicitly provides that a juvenile who absconds from a secure facility commits the offense of escape. Thus, it operates to limit the definition of a penal institution under Tenn. Code Ann. § 39-16-601 (4)(B) to “secure detention or correctional facilit[ies].”

This analysis is further supported by previous commentary from the Tennessee Supreme Court and the express purpose of Title 37, which governs juveniles. The Tennessee Supreme Court analyzed the legislative intent behind the criminal escape statute in *State v. Walls*. In *Walls*, an individual escaped from the back of a police car while being transported to jail. *Walls*, 62 S.W.3d 119, 120 (Tenn. 2001). In determining that the back of a police car did not qualify as a “facility” under the definition of a penal institution, the Supreme Court studied the 1996 revision of the escape

statute. The court stated:

This revised definition of a “penal institution” emerged from the legislature’s 1996 comprehensive provisions governing juveniles and the adjudication of delinquent children. *See* 1996 Tenn. Pub. Acts ch. 1089. These statutes provide, in part, that “detention” of a juvenile “means confinement in a secure or closed type of facility which is under the direction or supervision of the court or a facility which is designated by the court or other authority as a place of confinement for juveniles.” Tenn. Code Ann. § 37-1-102(b)(13) (2001).

* * *

When viewed in this context, the legislature’s intent in revising the definition of “penal institution” by adding both “facility” and a person “adjudicated delinquent by a juvenile court” becomes apparent. The legislature recognized that the juvenile statutory provisions clearly differentiate facilities for the detention of juveniles from facilities for the detention of adults. As a result, it revised the definition of “penal institution” to clarify that the offense of escape may apply to juveniles adjudicated delinquent who escape from juvenile facilities.

Walls, 62 S.W.3d at 122. Clearly, the definition of “detention,” relied on by the supreme court, applies only to secure facilities. *See* Tenn. Code Ann. § 37-1-102 (b)(13). In addition, one of the express purposes of Title 37 is to “remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior.” *See* Tenn. Code Ann. § 37-1-101 (a)(2). Thus, we think the legislature intended the criminal escape statute to apply only to secure facilities. However, the juvenile court can order the return of the child, just as it could order the return of a dependent and neglected child who ran away from his or her foster home. The process, whether through a runaway or an escape petition, would be the same.

A case in juvenile court is initiated either by transfer from another court or by the filing of a petition with the juvenile court and the issuance of a summons. Tenn. Code Ann. § 37-1-108. Tenn. Code Ann. § 37-1-121 contemplates that upon the filing of a petition, the juvenile court will issue a summons to the proper and necessary parties, including a child over the age of 14 who is alleged to be delinquent, directing their appearance at a hearing. Tenn. Code Ann. § 37-1-121(a) and (c). Tenn. Code Ann. § 37-1-121 also authorizes the court to endorse on the summons an order directing law enforcement to take the child into immediate custody if the child might abscond or be removed from the jurisdiction or not appear before the court for any other reason. Tenn. Code Ann. § 37-1-121(d). In addition, Tenn. Code Ann. § 37-1-122 authorizes the juvenile court to issue an order of attachment in cases where the service of a summons would be ineffective. *See also* Tenn. R. Juv. P. 11. Thus, it appears that any of these methods would be appropriate processes through

which to bring the minor back before the court. *See also* Tenn. R. Juv. P. 8(b), 9, 10, and 11.

2. If the individual escapes after turning 18 but while serving a commitment for a juvenile offense, the individual is no longer a child and, thus, any offense would be handled as an adult offense. Tenn. Code Ann. § 37-1-102 defines a “child” as:

(A) A person under eighteen (18) years of age; or

(B) A person under nineteen (19) years of age for the limited purpose of:

(i) Remaining under the continuing jurisdiction of the juvenile court to enforce a non-custodial order of disposition entered prior to the person’s eighteenth birthday; or

(ii) Remaining under the jurisdiction of the juvenile court for the purpose of being committed, or completing commitment including completion of home placement supervision, to the department of children’s services with such commitment based on an adjudication of delinquency for an offense that occurred prior to the person’s eighteenth birthday; or

(iii) Remaining under the jurisdiction of the juvenile court for resolution of delinquent offense or offenses committed prior to a person’s eighteenth birthday but considered by the juvenile court after a person’s eighteenth birthday with the court having the option of retaining jurisdiction for adjudication and disposition or transferring the person to criminal court under § 37-1-134.

Tenn. Code Ann. § 37-1-102(b)(4)(A) and (B). Given this statutory language, it appears that the juvenile court retains jurisdiction of an individual until his or her nineteenth birthday only for the completion of a commitment entered prior to the person’s eighteenth birthday or in order to adjudicate offenses occurring prior to the person’s eighteenth birthday. Tenn. Code Ann. § 37-1-102 (B)(ii) and (iii). Because the definition of a child does not include an individual who commits an additional offense after turning eighteen but while serving out a juvenile commitment, it appears that the juvenile court would not retain jurisdiction over this offense. If the individual absconded from a non-secure facility, that would not be an escape, but the individual would be in contempt of the juvenile court’s previous order and the court could use appropriate contempt remedies. If, however, the individual absconded from a secure facility, under Tenn. Code Ann. §§ 37-1-116 and 39-16-605 that is a crime which could be prosecuted in the adult criminal system.

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