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Opinion No. 05-012

Pretrial Diversion in Juvenile Appeals to Circuit or Criminal Court

QUESTION

When a juvenile who has been adjudicated delinquent in juvenile court appeals to the circuit or criminal court, may the district attorney handling the circuit or criminal court appeal permit the juvenile to enter into pretrial diversion without any intervention or consultation from the juvenile court?

OPINION

No. Pretrial diversion is not available to juveniles who are appealing a finding of delinquency.

ANALYSIS

Appeals from a finding of delinquency in juvenile court are to the criminal or circuit court having criminal jurisdiction, which shall try the case *de novo*. Tenn. Code Ann. § 37-1-159(a). Once a juvenile delinquency finding is appealed, however, it appears that pretrial diversion is not an available option.

Pretrial diversion in juvenile proceedings is provided for in Rule 23, Rules of Juvenile Procedure. However, the language of Rule 23 only permits pretrial diversion if the juvenile “does not wish to contest the allegations of the petition. . . .” If a juvenile has been adjudicated delinquent and seeks to appeal, he is contesting the allegations of the petition; thus, it would be contrary to the intent of the statute to permit a juvenile to enter pretrial diversion under Rule 23 on appeal.

The only other pretrial diversion provision is Tenn. Code Ann. § 40-15-105, which is inapplicable because the statute is contained within the adult criminal procedure code, and therefore applies only to adult criminal adjudications. Juvenile adjudications are not criminal prosecutions. *Juvenile Court of Shelby County v. State ex rel. Humphry*, 139 Tenn. 549, 201 S.W. 771 (Tenn. 1918). Juvenile proceedings are more in the nature of civil proceedings, though some due process protections are applicable. *See State v. Johnson*, 574 S.W.2d 739 (Tenn.1978). Absent a transfer hearing and indictment, juveniles cannot be prosecuted as adults. *See* Tenn. Code Ann. § 37-1-134.

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