



2010-052

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

March 25, 2010

500 DEXTER AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Charles Price
Presiding Circuit Judge
Fifteenth Judicial Circuit
Post Office Box 1667
Montgomery, Alabama 36102-1667

**THIS OPINION OVERRULED BY
OPINION ISSUED TO J. BRIAN HUFF,
JEFFERSON COUNTY PRESIDING
CIRCUIT JUDGE, DATED 7-21-2010,
A.G. NO. 2010-082**

Juveniles -- Detention Facility -- Jails --
Montgomery County

For purposes of section 12-15-208(d) of the Code of Alabama, persons alleged to be delinquent are to be considered "adult inmates" once they have reached their 18th birthday, thereby requiring them to be housed in an adult jail or lockup separate from accused or adjudicated delinquent children under the age of 18 years at the Montgomery County Youth Facility.

Once these persons turn age 18 years and it is brought to the attention of a juvenile court judge, the juvenile court judge should issue an order to have those persons 18 years of age or older placed in adult jails. In the order of commitment to adult jail, the order shall direct law enforcement officials to transport the juveniles from the juvenile detention facility to the adult jail pursuant to this authority in section 12-15-208(k) of the Code.

Dear Judge Price:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

For purposes of section 12-15-208(d) of the Code, are persons alleged to be delinquent lawfully

considered "adult inmates" once they have reached their 18th birthday, thereby requiring them to be housed in an adult jail or lockup separate from accused or adjudicated delinquent children under the age of 18 years at the Montgomery County Youth Facility?

For example, this arises when persons under the age of 18 commit a delinquent act and are not apprehended until they have exceeded their 18th birthday. Another example is when persons under the age of 18 have a birthday and turn 18 while in juvenile detention.

FACTS AND ANALYSIS

Your revised request for an opinion specifically stated that Montgomery County owns and operates a juvenile detention facility known as the Montgomery County Youth Facility ("Youth Facility"). Under Alabama law, specifically section 12-15-114(a) of the Code, the Family Court, as a juvenile court, has exclusive, original jurisdiction over cases filed against persons who allegedly committed delinquent acts as a "child," which is defined as follows in section 12-15-102(3):

An individual under the age of 18 years, or under 21 years of age and before the juvenile court for a delinquency matter arising before that individual's 18th birthday. Where a delinquency petition alleges that an individual, prior to the individual's 18th birthday, has committed an offense for which there is no statute of limitation pursuant to Section 15-3-5, the term child also shall include the individual subject to the petition, regardless of the age of the individual at the time of filing.

ALA. CODE § 12-15-102(3) (Supp. 2009).

For purposes of this request, the concern is with persons who may be detained at the Youth Facility for alleged delinquent acts committed prior to their 18th birthday, but who have attained the age of 18 years.

In 1974, the Juvenile Justice and Delinquency Prevention Act ("JJJPA") of 1974, codified in 42 U.S.C.A. § 5601, *et seq.*, was enacted with a broad consensus that children should not have contact with adults in jails and other institutional settings and that status offenders should not be placed in secure detention. Under the JJJPA and its subsequent reauthorizations, to receive federal funding for delinquency prevention programs and initiatives to improve state

and local juvenile justice systems, states are required to maintain certain core protections for children, which include: (1) the deinstitutionalization of status offenders, (2) adult jail and lockup removal, (3) "sight and sound" separation, and (4) disproportionate minority confinement.

The adult jail and lockup removal protection generally provides that children must not be detained in adult jails and lockups with certain exceptions not applicable in this opinion. This provision is designed to protect children from psychological abuse, physical assault, and isolation. Children housed in adult jails and lockups have been found to be eight times more likely to commit suicide, five times more likely to be sexually assaulted, two times more likely to be assaulted by staff, and 50 percent more likely to be attacked with a weapon than children in juvenile facilities. This protection is found in section 12-15-208(c), which provides as follows:

No person under the age of 18 years shall be detained or confined in any jail or lockup for adults except for the following exceptions:

(1) A child may be detained in a jail or lockup for adults for up to six hours while processing the case of the child.

(2) A child transferred for criminal prosecution pursuant to Section 12-15-203 may be detained in a jail or lockup for adults.

(3) A person charged pursuant to Section 12-15-204 may be detained in a jail or lockup for adults.

ALA. CODE § 12-15-208(c) (Supp. 2009).

The "sight and sound" separation protection disallows contact between children and adult offenders (i.e., if juveniles are put in an adult jail or lockup under the limited circumstances for which the law allows, they must be separated from adult inmates). This protection is found in section 12-15-208(d), which provides, in pertinent part, as follows:

Accused or adjudicated delinquent children or status offenders shall not have contact with adult inmates, including trustees. Contact is defined to include any physical or sustained sight and sound contact. Sight contact is defined as clear visual contact between adult inmates and accused or adjudicated delinquent children or status offenders within close proximity to each

other. Sound contact is defined as direct verbal communication between adult inmates and accused or adjudicated delinquent children or status offenders.

ALA. CODE § 12-15-208(d) (Supp. 2009).

Because persons 18 years of age or older in Alabama are considered "adults" for purposes of committing criminal offenses and being tried in adult court, and because the term "adult inmates" is not defined in the Alabama Juvenile Justice Act, the age of 18 years should be the "cut off" age for classifying individuals as "children" (under age 18 years) and "adult inmates" (18 years of age or older) for detention purposes to fulfill the policy behind the federal law. The "sight and sound separation" requirements do not apply when these persons are placed with adults in jail.

The fact that a person 18 years and older can be held in adult jail pre- or post-adjudication does *not* authorize a juvenile court to *sentence* this person to adult jail because this is not an authorized disposition in section 12-15-215(a). There is an exception to this rule in the Juvenile Justice Act: a juvenile court judge may place a person 18 years of age or older who previously has been adjudicated delinquent in adult jail to enforce an order requiring payment of court-ordered monies pursuant to section 12-15-117(d). These provisions allow a juvenile court judge to decide whether a person 18 years of age should be placed in adult jail, but does not give a juvenile court judge discretion whether to place an 18-year-old in jail versus juvenile detention.

CONCLUSION

For purposes of section 12-15-208(d), persons alleged to be delinquent are to be considered "adult inmates" once they have reached their 18th birthday, thereby requiring them to be housed in an adult jail or lockup separate from accused or adjudicated delinquent children under the age of 18 years at the Youth Facility.

QUESTION 2

Should these persons referred to above be transported to the county jail, or should they stay at the Youth Facility while awaiting a hearing in the Family Court?

FACTS AND ANALYSIS

As stated above, because persons 18 years of age or older in Alabama are considered "adults" for purposes of committing criminal offenses and being tried in adult court, and because the term "adult inmates" is not defined in the Alabama Juvenile Justice Act, the age of 18 years should be the "cut off" age for classifying individuals as "children" (under age 18 years) and "adult inmates" (18 years of age or older) for detention purposes to fulfill the policy behind the federal law.

If a person has been placed in the Youth Facility for an alleged delinquent act and turns 18 years of age while in the facility, this fact shall be brought to the attention of a juvenile court judge. The juvenile court judge should issue an order to have those persons 18 years of age or older placed in an adult jail. In the order of commitment to adult jail, the order shall direct law enforcement officials to transport the juveniles from the juvenile detention facility to the adult jail pursuant to this authority in section 12-15-208(k).

If a person turns age 18 at times other than "regular business hours" (such as weekends or legal holidays), certainly the order from the juvenile court and the transporting of the person from the juvenile detention facility to an adult jail or lockup can be accomplished within a reasonable period of time.

CONCLUSION

Once these persons turn age 18 years and it is brought to the attention of a juvenile court judge, the juvenile court judge should issue an order to have those persons 18 years of age or older placed in adult jails. In the order of commitment to adult jail, the order shall direct law enforcement officials to transport the juveniles from the juvenile detention facility to the adult jail pursuant to this authority in section 12-15-208(k).

QUESTION 3

Assuming these persons are to be held at the Youth Facility, should these persons be in an area where they can have no physical, as well as sight or sound, contact with persons under the age of 18 years who are detained at the Youth Facility?

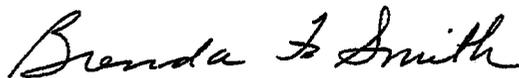
FACTS, ANALYSIS, AND CONCLUSION

As stated above, because persons 18 years of age or older in Alabama are considered "adults" for purposes of committing criminal offenses and being tried in adult court and because the term "adult inmates" is not defined in the Alabama Juvenile Justice Act, the age of 18 years should be the "cut off" age for classifying individuals as "children" (under age 18 years) and "adult inmates" (18 years of age or older) for detention purposes to fulfill the policy behind the federal law. Based on the above, the answer to Question 3 is moot.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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