2010-082

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable J. Brian Huff
Presiding Circuit Judge
Jefferson County Family Court
120 2nd Court North
Birmingham, Alabama 35204-4765

Honorable Philip Lisenby
Presiding Juvenile Judge
Tuscaloosa County Family Court
5th Floor, Courthouse
714 Greensboro Avenue
Tuscaloosa, Alabama 35401

Juveniles -- Detention Facility -- Jails

Section 12-15-208(d) of the Code of Alabama does not require a person who is alleged to be delinquent and is not yet adjudicated as such, who turns 18 while being detained in a youth facility, to be treated as an adult and transferred to an adult jail.

Dear Sirs:

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

QUESTION

You ask for reconsideration of the opinion issued to Honorable Charles Price, Presiding Circuit Judge, Fifteenth Judicial Circuit, dated March 25, 2010, A. G. No. 2010-052. The question presented in that opinion was: For purposes of section 12-15-208(d) of the Code of Alabama, 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 county youth facility?

FACTS AND ANALYSIS

In the *Price* opinion, this Office stated that 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 youth facility. You have asked this Office to reconsider this opinion in light of the definition of "child" as used in the Alabama Juvenile Justice Act and its application to this question.

The Alabama Juvenile Justice Act was adopted to "facilitate the care, protection, and discipline of children who come under the jurisdiction of the juvenile court, while acknowledging the responsibility of the juvenile court to preserve the public peace and security." ALA. CODE § 12-15-101 (Supp. 2009). The Alabama Juvenile Justice Act was amended and renumbered by Act 2008-277, which became effective January 1, 2009.

Pursuant to section 12-15-114(a) of the Code, a juvenile court has exclusive, original jurisdiction over cases filed against persons who allegedly committed delinquent acts as a "child." ALA. Code § 12-15- 114(a) (Supp. 2009). "Child" is defined in section 12-15-102(3) as follows:

> (3) CHILD. 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).

This request specifically concerns persons who may be detained at a youth facility for alleged delinquent acts committed prior to their 18th birthday, but who have attained the age of 18 years after being detained. The plain language

of section 12-15-102(3) states that a child includes an individual "under the age of 21 years and before the juvenile court for a delinquency matter arising before that individual's 18th birthday." *Id.* Thus, if an individual was detained in a youth facility for a delinquency matter arising before the individual's 18th birthday and the individual is under the age of 21 years, that individual is a child as defined by the Juvenile Justice Act and may be detained at a youth facility.

Section 12-15-208 of the Code provides certain protections for children and the facilities in which children may be detained. Subsection (c) of section 12-15-208 provides the limited circumstances for which the law allows juveniles under 18 to be put into an adult jail or lockup. Subsection (d) provides that juveniles who are put into an adult jail or lockup shall have "sight and sound" separation protections. Subsection (d) states as follows:

> (d) *Compliance with separation.* Accused or adjudicated delinquent children or status offenders shall not have contact with adult inmates, including trusties. 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.
>
> No child shall enter pursuant to public authority, for any amount of time, in secure custody in a secure section of a jail, lockup, or correctional facility for adults as a disposition of an offense or as a means of modifying his or her behavior (e.g., Shock Incarceration or Scared Straight).

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

Nothing in subsection (d) requires that a person who has been detained in a youth facility and who turns 18 while being detained must be treated as an adult and transferred to an adult jail. As stated above, a child may be detained in a youth facility, and a child is defined to include a person under 21 years of age and before the juvenile court for a delinquency matter arising before that individual's 18th birthday. Thus, section 12-15-208(d) does not require a person who is alleged to be delinquent and is not yet adjudicated as such, who turns 18

while being detained in a youth facility, to be treated as an adult and transferred to an adult jail. Such persons may remain in the youth detention facility where the "sight and sound" separation requirements are not applicable.

Based upon the foregoing, the opinion to Honorable Charles Price, Presiding Circuit Judge, Fifteenth Judicial Circuit, dated March 25, 2010, A. G. No. 2010-052 is overruled.

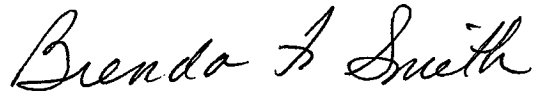
CONCLUSION

Section 12-15-208(d) of the Code of Alabama does not require a person who is alleged to be delinquent and is not yet adjudicated as such, who turns 18 while being detained in a youth facility, to be treated as an adult and transferred to an adult jail.

I hope this opinion answers your question. 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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