

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
SECOND FLOOR CORDELL HULL BUILDING
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243-0488

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Opinion No. 05-121

Detention of Juveniles Transferred to Criminal Court to be Dealt with as Adults

QUESTIONS

1. When a juvenile is transferred from juvenile court to the sheriff to be held according to law and to be dealt with as an adult in criminal court pursuant to Tenn. Code Ann. §37-1-134, may the criminal court or district attorney general compel such a juvenile to be held in a juvenile detention facility pending such juvenile's trial in criminal court?

2. What court has the authority to order a juvenile who has been transferred to criminal court pursuant to Tenn. Code Ann. §37-1-134 to be held in an adult detention facility pending such juvenile's trial in criminal court?

OPINIONS

1. No. The criminal court, district attorney general, and assistant district attorneys general all lack authority to order a juvenile, transferred pursuant to Tenn. Code Ann. §37-1-134, to be held in a juvenile detention facility pending such juvenile's trial in criminal court.

2. The juvenile court has discretionary authority to order a juvenile who has been transferred pursuant to Tenn. Code Ann. §37-1-134 to be held in a juvenile detention facility pending such juvenile's trial in criminal court, although the criminal court with adult jurisdiction over the case may order otherwise.

ANALYSIS

First, neither the district attorney general nor one of his or her designated assistant district attorneys general may, under any circumstance, compel or order a juvenile to be held in a juvenile detention facility. A prosecutor may request that a juvenile be so held, but he or she lacks any authority to compel or order such action.

Second, it appears from the plain language of Tenn. Code. Ann. §37-1-134 (i) that the criminal court lacks authority to compel or order a juvenile transferred from juvenile to criminal court to be held in a juvenile detention facility pending trial, and this office has been unable to locate any support for a contrary proposition. Tenn. Code Ann. §37-1-134 (i) provides, in pertinent part, that:

“[w]hen a child transferred [from juvenile court to adult criminal court] is detained pending trial, such detention *shall* be in an adult detention facility separate and removed from adult detainees. Unless the court having adult criminal jurisdiction orders otherwise, the juvenile court may, in its discretion, order confinement in a juvenile detention facility pending trial.” (emphasis added)

Neither subsection (i) nor any other statute gives the criminal court authority to order a juvenile transferred from juvenile to criminal court to be held in a juvenile detention facility. While subsection (i) provides that the criminal court may “order otherwise,” such phrase means that the criminal court may object to the juvenile court’s ordering the transferred juvenile to a juvenile detention facility rather than an adult detention facility. 9 Tenn. Prac. Crim. Prac. & Procedure § 8.15 (2005). While the power to countermand such an order of the juvenile court clearly rests with the criminal court, we do not read the phrase “orders otherwise” to mean that the criminal court may order a transferred juvenile to be held in a juvenile detention facility rather than an adult detention facility.

The statute clearly provides, however, that the juvenile court may, in its discretion, order confinement of the transferred juvenile to a juvenile detention facility pending trial. This authority, though, is subject to the criminal court’s ordering otherwise, as discussed above.

For all these reasons, it is the opinion of this office that the criminal court, district attorney general, and assistant district attorneys general all lack authority to compel or order a juvenile transferred pursuant to Tenn. Code Ann. §37-1-134 to be held in a juvenile detention facility pending such juvenile’s trial in criminal court. Only the juvenile court may, in its discretion and subject to a contrary order of the criminal court, order a transferred juvenile to be held in a juvenile detention facility pending trial.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

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BRIAN C. JOHNSON
Assistant Attorney General

Requested by:

The Honorable David Davis
State Representative
212 War Memorial Building
Nashville, Tennessee 37243-0106