

STATE OF TENNESSEE

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Opinion No. 10-124

Juvenile Court Official's Providing Copies of Civil Petitions Alleging Child Abuse to District Attorneys General

QUESTIONS

1. May a juvenile court official, upon receipt of a civil petition alleging child abuse or neglect based on the child's testing positive for illegal drugs at birth, provide a copy of the petition to the district attorney general for that county for evaluation for criminal prosecution?

2. If the answer to question one is yes, does this satisfy the obligation of the juvenile court, in Tenn. Code Ann. § 39-15-401(d)(1), to bring before the court, either by summons or warrant, any person suspected of abusing or neglecting a child?

OPINIONS

1. Yes. We have previously opined that the birth of a child with illegal drugs in his system triggers mandatory child-abuse reporting requirements. The mandatory reporting of child abuse serves the express public policy aim of safeguarding and enhancing the welfare of children. It is appropriate but not mandatory for juvenile court officials to provide district attorneys general with information, including civil petitions alleging child abuse or neglect based on a child's being born with drugs in his system, that would allow the district attorney general to evaluate the case for criminal prosecution.

2. No. The juvenile court only satisfies its obligation under the language of Tenn. Code Ann. § 39-15-401(d)(1) by either issuing a warrant or a summons for the person suspected of child abuse to appear before the court.

ANALYSIS

Tennessee law requires that “[a]ny person who has knowledge of . . . any child who is suffering from or has sustained any wound, injury, disability, or physical or mental condition shall report such harm immediately if the harm is of such a nature as to reasonably indicate that it has been caused by brutality, abuse or neglect or that, on the basis of available information, reasonably appears to have been caused by brutality, abuse or neglect.” Tenn. Code Ann. § 37-1-403 (2010). We think that “any person,” as used in Tenn. Code Ann. § 37-1-403, includes officials of juvenile court. When statutory language is clear and unambiguous, courts will apply the plain language in its normal and accepted use. *Boarman v. Jaynes*, 109 S.W.3d 286, 291

(Tenn. 2003) (citing *State v. Nelson*, 23 S.W.3d 270, 271 (Tenn. 2000)). The normal and accepted use of the phrase “any person” would encompass juvenile court officials. Thus, any juvenile court official with the requisite knowledge specified in § 37-1-403 must report it to the appropriate authorities.

We have opined previously that a child showing the presence of illegal drugs in his body at birth is suffering from injury due to abuse, and such abuse triggers the mandatory reporting requirement of Tenn. Code Ann. § 37-1-403. *See* Op. Tenn. Att’y Gen. 02-136 (Dec. 23, 2002); *see also* Op. Tenn. Att’y Gen. 08-114 (May 21, 2008) (opining that when a child is born addicted to an illegal drug as a result of the mother’s ingestion of the drug, the mother may be criminally prosecuted for assault). While persons with knowledge of abuse are required to report to one of the officials or entities listed in Tenn. Code Ann. § 37-1-403(a)(2), they are not required to report to district attorneys general. We think, however, it would be appropriate for them to do so voluntarily.

Tennessee public policy, as set forth in Tenn. Code Ann. § 37-1-402, favors this conclusion. Tenn. Code Ann. § 37-1-402 states that the purpose of the mandatory child abuse reporting requirement is to “protect children whose physical or mental health and welfare are adversely affected by brutality, abuse or neglect.” The express intention of this statute is for “the protective services of the state [to] be brought to bear on the situation to prevent further abuses, to safeguard and enhance the welfare of children, and to preserve family life.” Tenn. Code Ann. § 37-1-402(a) (2010). This code section is to be “administered and interpreted to provide the greatest possible protection as promptly as possible for children.” *Id.*

It is appropriate to read Tenn. Code Ann. § 37-1-402 as providing for the deterrent and punitive effects of state prosecutorial resources to be brought to bear speedily upon any case of alleged child abuse. To the extent that a juvenile court official’s turning over a civil petition alleging abuse facilitates this aim, the law not only permits but encourages this practice.

In your letter, you discussed Tenn. Code Ann. § 37-1-153 and its provisions regarding persons who may inspect files and records of a juvenile court proceeding. This statute does not present any barriers to the sharing of civil petitions alleging abuse. This statute allows juvenile court records to be shared with the “judge, officers and professional staff of the court,” as well as with “any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court,” with the permission of the court. Tenn. Code Ann. § 37-1-153(a)(1), (5) (2010). District attorneys general are both officers of the court as well as persons having a legitimate interest in the proceeding or the work of the court. While the Tennessee legislature has not defined “legitimate interest” in the context of this statute, we think the State’s interest in the prevention and punishment of child abuse rises to the level of a “compelling need” giving rise to a legitimate interest. *See* Op. Tenn. Att’y Gen. 00-128 (Aug. 10, 2000) (opining that “compelling need” may give rise to a legitimate interest). Other states list district attorneys general among select persons permitted to view juvenile court records. *See, e.g.,* Cal. Welf. & Inst. Code § 827 (2010).

You have also inquired whether the juvenile court official’s sharing of a civil petition alleging child abuse with a district attorney general discharges the duty imposed upon courts in

Tenn. Code Ann. § 39-15-401(d)(1), which provides that “[a]ny court having reasonable cause to believe that a person is guilty of violating this section shall have the person brought before the court, either by summons or warrant.” We think that the sharing of a civil petition alleging abuse, taken by itself, would not discharge this duty. Where a statute contains the word “shall,” it is generally construed as being mandatory, not discretionary. See *JJ & TK Corp. v. Bd. of Comm’rs*, 149 S.W.3d 628, 631 (Tenn. Ct. App. 2004) (citing *Gabel v. Lerman*, 812 S.W.2d 580, 582 (Tenn. Ct. App. 1990)). Tenn. Code Ann. § 39-15-401(d)(1), by its plain and unambiguous language, requires courts to issue a summons or warrant to bring before them persons suspected of child abuse. The fact that Tenn. Code Ann. § 39-15-401(d)(1) provides for alternative process—either summons or warrant—suggests that the legislature considered alternative means by which a court may discharge its duty under this section, and expressly limited them. We think, however, that this section does not prevent the court from also sharing with the district attorney general a civil petition alleging child abuse, so long as a summons or a warrant issues at some point to fulfill the duty in Tenn. Code Ann. § 39-15-401(d)(1).

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