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Opinion No. 08-120

Minimum sentence and minimum fine for conviction for prostitution or patronizing prostitution within one and one-half (1 ½) miles of a school.

QUESTION

Does a conviction at trial for prostitution or patronizing prostitution within one and one-half (1 ½) miles of a school, or a guilty plea to the same, mandate a minimum sentence of seven (7) days of incarceration and a fine of at least one thousand dollars ($1,000)?

OPINION

Yes. The language of Tenn. Code Ann. § 39-13-513(b)(3) and Tenn. Code Ann. § 39-13-514(b)(3) clearly requires that the imposed sentence shall be no less than seven days, and the imposed fine shall be no less than $1,000.

ANALYSIS

Tennessee Code Annotated § 39-13-513(b)(3) provides:

> A person convicted of prostitution within one and one-half (1 ½) miles of a school shall, in addition to any other authorized punishment, be sentenced to at least seven (7) days of incarceration and be fined at least one thousand dollars ($1,000).

Similarly, Tenn. Code Ann. § 39-13-514(b)(3) provides:

> A person convicted of patronizing prostitution within one and one-half (1 ½) miles of a school shall, in addition to any other authorized punishment, be sentenced to at least seven (7) days of incarceration and be fined at least one thousand dollars ($1,000).

The language of both statutes clearly provides mandatory minimums for incarceration and fines. Both specifically state that, in addition to any other authorized punishment, a person convicted of the respective offense "shall" be sentenced to "at least" seven (7) days of incarceration and be fined at least one thousand dollars ($1,000). The word "shall" communicates the intent that the minimum sentences are mandatory, while the phrase "at least" allows for longer sentences or larger fines but sets a minimum sentence and minimum fine.

The Tennessee Court of Criminal Appeals directly addressed the effect of the language of Tenn. Code Ann. § 39-13-514(b)(3) in *State of Tennessee v. Robert Banks*, No. W2003-02353-CCA-R3-CD, 2004 Tenn. Crim. App. LEXIS 970 (Tenn. Crim. App. Nov. 1, 2004). In *Banks*, the defendant appealed his Shelby County conviction for patronizing prostitution within one and one-half (1 ½) miles of a school. He was fined $100, and sentenced to 11 months, 29 days, with 45 days to be served consecutively in the county workhouse and the remainder on supervised probation. The appellate court affirmed the defendant's conviction but modified the defendant's fine from $100 to $1,000, because "the statute provides that a person convicted of patronizing prostitution within a mile and a half of a school 'shall. . . be fined at least one thousand dollars ($ 1,000),' Tenn. Code. Ann. § 39-13-514(b)(3) (emphasis added) . . ." *Banks*, 2004 Tenn. Crim. App. LEXIS 970, *16.

The language of the statutes does not distinguish between convictions secured after a guilty plea and those entered upon the verdict of a jury or judge after a trial for this purpose. Therefore, when any judgment of conviction is entered under these sections, the mandatory minimum sentence and mandatory minimum fine apply.

Based on the foregoing, it is the opinion of this Office that convictions under Tenn. Code Ann. § 39-13-513(b)(3) and Tenn. Code Ann. § 39-13-514(b)(3) require a minimum sentence of seven days incarceration and a minimum fine of $1,000.

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