

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 09-149

Juvenile Court Jurisdiction

QUESTIONS

1. If a person over the age of 18 remains under the jurisdiction of the juvenile court as a “child” pursuant to Tenn. Code Ann. § 37-1-102(b)(4)(B), but fails to appear pursuant to a summons or other lawful process of the court, may the person be charged with failure to appear as an adult and be detained or incarcerated in the county jail as an adult pending a trial?
2. Does jurisdiction for the adult offense lie in the juvenile court or the county criminal court?
3. May an 18 year old under the jurisdiction of the juvenile court be charged with contempt of the juvenile court as an adult?

OPINIONS

1. Yes.
2. The county criminal court has jurisdiction on a failure to appear charge over an 18 year old even if the individual is still under the jurisdiction of the juvenile court under Tenn. Code Ann. § 37-1-102(b)(4)(B).
3. Yes.

ANALYSIS

1. An individual, who is over 18, but still subject to the juvenile court’s jurisdiction, may be charged as an adult with failure to appear. The question assumes that the juvenile court has jurisdiction over the individual even though the individual is over the age of 18. *See* Tenn. Code Ann. § 37-1-102(b)(4)(B). Failure to appear is a criminal offense under Tenn. Code Ann. § 39-16-609. “It is unlawful for any person to knowingly fail to appear as directed by a lawful authority if the person has been lawfully released from custody, with or

without bail, on condition of subsequent appearance at an official proceeding or penal institution at a specified time or place.” Tenn. Code Ann. § 39-16-609(a)(4). A violation of this section is not limited by the statute to any particular court; therefore, this statute is equally applicable when an individual fails to appear before any court, including a juvenile court. Since failure to appear is a separate offense, and the defendant is over the age of 18, the individual must be charged as an adult. Tenn. Code Ann. § 37-1-102(b)(4)(E) (stating that a person 18 years of age is legally an adult for all other purposes including, but not limited to, enforcement of the court's orders under subsection (b) through its contempt power under § 37-1-158). *See also* Tenn. Code Ann. §§ 37-1-103,-104 (setting out the juvenile courts exclusive original jurisdiction and concurrent jurisdiction). As a result, a person over the age of 18 who remains under the jurisdiction of the juvenile court pursuant to Tenn. Code Ann. § 37-1-102(b)(4)(B) but fails to appear can be charged with failure to appear as an adult and detained pursuant to subsections (d) and (e) of Tenn. Code Ann. § 39-16-609.

An individual charged with failure to appear in the juvenile court could be detained or incarcerated prior to trial. Failure to appear is considered either a Class A misdemeanor or a Class E felony. If the occasion for which the defendant’s appearance is required is a misdemeanor, or if the individual fails to appear for booking and processing pursuant to a criminal summons issued instead of an arrest warrant, failure to appear is a Class A misdemeanor. Tenn. Code Ann. § 39-16-609(d). If the occasion for which the defendant’s appearance is required is a Class A misdemeanor or a felony, failure to appear is a Class E felony. Tenn. Code Ann. § 39-16-609(e). Regardless of whether the defendant is charged with misdemeanor or felony failure to appear, he or she may be detained or incarcerated in the county jail pending trial if the magistrate orders detention or the defendant cannot make bail. Tenn. Code Ann. §§ 40-5-105; 40-11-102.

2. The county criminal court has jurisdiction over an individual who is charged with failure to appear under Tenn. Code Ann. § 39-16-609. Failure to appear is a separate crime from the offense with which the individual was charged as a juvenile, even if the failure to appear is based on an order from the juvenile court stemming from the prior offense. The juvenile court is a court of limited jurisdiction and could only exercise jurisdiction over a failure to appear charge if the failure to appear occurred prior to the individual’s eighteenth birthday. Tenn. Code Ann. §§ 37-1-102, -104. The question presented assumes that the failure to appear occurred *after the defendant’s eighteenth birthday*; thus the juvenile court lacks jurisdiction to detain the person on a charge of failure to appear. A juvenile court retains jurisdiction over someone who has reached the age of 18, only under limited circumstances: those circumstances do not include crimes committed after their eighteenth birthday, even if the person is still under the jurisdiction of the juvenile court for an offense(s) committed prior to turning 18. Tenn. Code Ann. § 37-1-102(b)(4)(B).

3. The juvenile court has the power to hold an individual in contempt provided he or she is properly before the court. Tenn. Code Ann. § 37-1-158 gives the juvenile court the power to hold someone in contempt for disobeying an order of the court as if the offense were committed against a circuit, chancery or appellate court. In *State v. Schmitz*, No. 01A01-9810-JV-00556, 1999 WL 807702 (Tenn. Ct. App. Oct. 12, 1999), the court held that a juvenile court

did not have jurisdiction to consider a contempt petition for failure to pay restitution based on that court's previous order because the petition was filed *after* the defendant turned 19. *Id.* As a result, the defendant was no longer under the jurisdiction of the juvenile court, and thus that court was unable to find the defendant in contempt. *Id.* The facts presented in this question are distinguishable. The potential defendants are under the age of 19 and continue to be under the jurisdiction of the juvenile court seeking to find them in contempt. Juvenile courts in Tennessee enjoy limited jurisdiction; therefore, in order to exercise jurisdiction, the party or parties must be properly before the court. So long as a juvenile court has jurisdiction over the issue and the individual, the court is free to exercise its contempt power.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MELISSA S. ROBERGE
Assistant Attorney General

Requested by:

Honorable Michael Dunavant
25th Judicial District
District Attorney General
121 North Main Street
Ripley, TN 38063