

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

February 23, 2010

Opinion No. 10-20

Juvenile Court's Authority to Release Delinquent Child from DCS Custody

QUESTIONS

Does a juvenile court judge have the authority to release from custody a delinquent child committed to the Department of Children's Services and placed in a youth development center?

OPINIONS

Yes, pursuant to Tenn. Code Ann. § 37-1-139(b) a juvenile court judge has the authority to change, modify or vacate an order of commitment of a delinquent child to the Department of Children's Services upon a finding of changed circumstances and that the change, modification or vacation is in the best interest of the child.

ANALYSIS

As of July 1, 2007, a juvenile court judge has the authority to change, modify or vacate an order of commitment of a delinquent child to the Department of Children's Services upon a finding of changed circumstances and that the change, modification or vacation is in the best interest of the child. Prior to July 1, 2007, Tenn. Code Ann. § 37-1-139(b)(2005) read in pertinent part as follows:

An order of the [juvenile] court may also be changed, modified or vacated on the ground that changed circumstances so require in the best interest of the child, *except an order committing a delinquent child to the state department of children's services, or an institution for delinquent children*, an order terminating parental rights or an order of dismissal.

(emphasis added). That Code section was amended, effective July 1, 2007, to eliminate the restriction on the court's initiation of the release of delinquent children, and now provides in pertinent part:

Except for an order terminating parental rights or an order of dismissal, an order of the court may also be changed, modified or vacated upon a finding of changed

circumstances and that the change, modification or vacation is in the best interest of the child.

Chap. 199 of the Public Acts of 2007. The statute provides that “[a]ny party to the proceeding, the probation officer or other person having supervision or legal custody of or an interest in the child may petition the court for the relief provided in this section.” Tenn. Code Ann. § 37-1-139(d)(2009 Supp.). It also sets out the procedures to be followed after such a petition is filed. Tenn. Code Ann. § 37-1-139(e)(2009 Supp.)¹

Tenn. Op. Atty. Gen. No. 91-53 (May 29, 1991), opined, based in part on the prior version of Tenn. Code Ann. § 37-1-139(b), that a juvenile court judge could not initiate the release of a juvenile committed to the then Department of Youth Development. Inasmuch as one of the statutes on which the opinion was based was changed subsequent to the issuance of the opinion, Tenn. Op. Atty. Gen. No. 91-53 (May 29, 1991) no longer correctly states the law.

ROBERT E. COOPER, JR.
Attorney General and Reporter

CHARLES L. LEWIS
Deputy Attorney General

KIMBERLY J. DEAN
Deputy Attorney General

¹ No change has been made as yet to the Rules of Juvenile Procedure to conform them to the new statutory procedures. See TENN. R. JUV. P. 34(c).

Requested by:

The Honorable Paul R. Wohlford
Juvenile Court Judge
Bristol Tennessee Juvenile Court
104 Eighth Street
Bristol, Tennessee 37620