STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

February 3, 2014

Opinion No. 14-15

Juveniles on Sex Offender Registry

QUESTIONS

1. Would a juvenile who committed a violent juvenile sexual offense before age fourteen but was not adjudicated delinquent on that offense until after his fourteenth birthday be subject to the sexual offense registry requirements under Tenn. Code Ann. § 40-39-202(27) and (28)?

2. Does the inclusion of violent juvenile sexual offenders on the registry withstand constitutional scrutiny?

OPINIONS

1. Yes.

2. Yes.

ANALYSIS

1. Recognizing that repeat sexual offenders, violent sexual offenders, and sexual offenders who prey on children present an extreme threat to Tennessee's citizens, the General Assembly created a sexual offense registry to facilitate better tracking and monitoring of specified sexual offenders. Tenn. Code Ann. § 40-39-201(b)(1). In 2011, it added violent juvenile sexual offenders to the class of offenders subject to these tracking and monitoring requirements. 2011 Tenn. Pub. Acts, ch. 483, § 9. Tenn. Code Ann. § 40-39-202 now provides, in relevant part, as follows:

> (27)(A) "Violent juvenile sexual offender" means a person fourteen (14) years of age or more but less than eighteen (18) years of age who has been adjudicated delinquent in this state for any act that constitutes a violent juvenile sexual offense as defined in this section;
>
> (B) At the time of adjudication of a qualifying offense, such offender shall become a violent sexual offender and this part governing violent sexual offenders shall be applicable to such violent juvenile sexual offender, unless otherwise set out in this part;

> (28) "Violent juvenile sexual offense" means an adjudication of delinquency, for any act committed on or after July 1, 2011, that, if committed by an adult, constitutes the criminal offense of:
>
> (A) Aggravated rape, under § 39-13-502;
>
> (B) Rape, under § 39-13-503;
>
> (C) Rape of a child, under § 39-13-522, provided the victim is at least four (4) years younger than the offender;
>
> (D) Aggravated rape of a child, under § 39-13-531; or
>
> (E) Criminal attempt, under § 39-12-101, to commit any of the offense enumerated in this subdivision (28);

Tenn. Code Ann. § 40-39-202(27), (28).

Determining whether a particular juvenile—in this instance, one committing a qualifying act before age fourteen but adjudicated delinquent after turning fourteen—is bound by registry requirements is a matter of statutory construction. The paramount rule of statutory construction "is to ascertain and give effect to legislative intent without broadening the statute beyond its intended scope." *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009). Legislative intent is to be discerned from the precise wording of the statute, giving those words their natural and ordinary meaning within the context of the legislation as a whole and not utilizing any forced construction that would extend the statute's meaning. *Chapman v. Davita, Inc.*, 380 S.W.3d 710, 714 (Tenn. 2012); *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010).

By definition, a "violent juvenile sexual offender" is a person "fourteen (14) years of age or more but less than eighteen (18) years of age who has been adjudicated delinquent" for any act constituting a violent sexual offense. Tenn. Code Ann. § 40-39-202(27)(A). Such offender "shall become" a violent sexual offender "[a]t the time of adjudication of a qualifying offense." *Id.* § 40-39-202(27)(B). A plain reading of the statute indicates that classification of a juvenile offender as a "violent sexual offender" is triggered by the adjudication of delinquency for a qualifying offense rather than by commission of the act constituting such offense. Thus, a child adjudicated delinquent after the child's fourteenth birthday for a violent sexual offense committed when the child was less than fourteen years of age would be subject to the reporting and registry requirements of Tenn. Code. Ann. §§ 40-39-201 *et seq*.

2. Legislative acts in Tennessee are presumed to be constitutional. *Riggs v. Burson*, 941 S.W.2d 44, 51 (Tenn. 1997). Reviewing courts in evaluating statutes must indulge every presumption and resolve every doubt in favor of

constitutionality. *Id*. Subjecting violent juvenile sex offenders to statutory registration and monitoring provisions will likely withstand constitutional challenge.

Both the federal and state constitutions proscribe cruel and unusual punishments. U.S. Const. amend. VIII; Tenn. Const. art. I, § 16. The Tennessee Supreme Court, however, has concluded that the reporting and tracking requirements of Tennessee's registration act are not punitive in nature. *Ward v. State*, 315 S.W.3d 461, 469 (Tenn. 2010). Registry requirements have no effect on an offender's range of punishment and do not inflict additional punishment. *Id*. at 470. Instead, the General Assembly has made it clear that the registry is remedial and regulatory in nature. *Id*. at 469. While *Ward* preceded the extension of registry requirements to violent juvenile sexual offenders, its reasoning applies equally to the class of juvenile offenders who become subject to registry requirements upon being adjudicated delinquent for specified violent sexual offenses. Just as with adult offenders, the registry requirements add no additional punishment. Since the registry is not a punishment provision, its requirements cannot be held to constitute cruel and unusual punishment. *See Cutshall v. Sundquist*, 193 F.3d 466, 477 (6th Cir. 1999) (rejecting Eighth Amendment attack on prior version of Tennessee's sex offender registry).[1]

The Fourteenth Amendment to the United States Constitution and both art. I, § 8 and art. XI, § 8 of the Tennessee Constitution provide for equal protection under the law. Equal protection constitutional provisions guarantee that all persons similarly circumstanced shall be treated alike. *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993) (quoting *F.S. Royster Guano Company v. Virginia*, 253 U.S. 412, 415 (1920)). Only legislation that interferes with a fundamental right or operates to the peculiar disadvantage of a suspect class or quasi-suspect class requires strict or enhanced scrutiny. *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994).

Convicted sex offenders do not constitute a suspect class. *Cutshall*, 193 F.3d at 482. Thus, statutory registration requirements are scrutinized under the rational basis test, meaning that, so long as the statute bears a reasonable relation to a proper purpose and is neither arbitrary nor discriminatory, it should be upheld. *Riggs*, 941 S.W.2d at 51. In *Cutshall*, the Sixth Circuit addressed a challenge to the constitutionality of Tennessee's 1994 Sex Offender Registration and Monitoring Act. The court concluded that the State had established legitimate concerns about law enforcement and public safety with respect to sex offenses. *Id.* at 482-83.

[1] The Tennessee Supreme Court in *Ward* did not foreclose the possibility that imposition of further restrictions on sex offender registrants could render the effect of the act punitive. *Ward*, 315 S.W.3d at 472-73. *See, e.g., In re C.P.*, 967 N.E.2d 729, 732 (Ohio 2012) (holding that certain provisions of Ohio's juvenile sex offender requirements were punitive in nature and thus violated federal and state constitutional prohibitions of cruel and unusual punishment). But unless Tennessee's registry requirements reach that point, any Eighth Amendment challenge would likely fail.

Accordingly, it was not irrational to apply these registration and notification requirements to the class of sex offenders identified in the statute. *Id.* These same concerns apply to the class of juvenile offenders who commit specified violent sexual offenses and justify imposing registration and monitoring requirement upon this group of juvenile offenders. The Texas Court of Appeals rejected a similar challenge to its statutory provision that required specified juvenile offenders to abide by the sex offender registry requirements. *In the matter of M.A.H.*, 20 S.W.3d 860, 866 (Tex. Ct. App. 2000).

The substantive component of the Due Process Clause protects fundamental rights that are "so 'implicit in the concept of ordered liberty' that 'neither liberty nor justice would exist if they were sacrificed.'" *Doe v. Michigan Dept. of State Police*, 490 F.3d 491, 499 (6th Cir. 2007) (quoting *Palko v. Conn*, 302 U.S. 319, 325 (1937)). Unless a statute implicates a fundamental right, it will comport with substantive due process under both the federal and state constitutions if it bears a reasonable relation to a proper legislative purpose and is neither arbitrary nor discriminatory. *Riggs*, 941 S.W.2d at 51.

Tennessee's sex offender registry requirements are not punitive in nature, so the statute does not implicate an offender's liberty interest. *See Ward*, 315 S.W.3d at 469. Nor do juvenile registration requirements implicate any right to privacy in the confidentiality of juvenile court records. In *Davis v. Davis*, 842 S.W.2d 588, 599-600 (Tenn. 1992), the Tennessee Supreme Court recognized an individual right to privacy guaranteed under the liberty clauses of the Tennessee Declaration of Rights, namely, the right to personal autonomy or the "right to be left alone." However, the court has specifically rejected suggestions of the existence of a constitutional privacy right to the non-disclosure of personal information. Rather, the confidentiality of records is a statutory matter left to the legislature. *Doe v. Sundquist*, 2 S.W.3d 919, 926 (Tenn. 1999). Furthermore, the General Assembly specifically limited the disclosure of information concerning juvenile court proceedings by designating such information about juvenile sex offenders as confidential to all but law enforcement personnel, except for repeat juvenile sex offenders. Tenn. Code Ann. § 40-39-206(e).

Because the juvenile registry provisions implicate no fundamental rights, the statute will withstand judicial scrutiny if it bears a reasonable relation to a proper purpose under the rational basis test. Here, the statute itself includes its purpose, that is, to protect Tennessee citizens from repeat sexual offenders, violent sexual offenders, and offenders who prey upon children—all of whom present an extreme threat to public safety. Tenn. Code Ann. § 40-39-201(b)(1). By providing specific information on these offenders to the law enforcement community, the registry directly addresses the public safety need to have enhanced awareness of the presence of these offenders in the community. The South Carolina Supreme Court rejected a substantive due process challenge to its parallel juvenile sex offender registry statute, finding that the registration of offenders, including juveniles, who

have proved themselves capable of certain sex offenses, is rationally related to the legitimate objective of protecting the public from sex offenders. *In re Ronnie A.*, 585 S.E.2d 311, 312 (S.C. 2003). *See also J.P. v. DeSanti*, 653 F.2d 1080, 1089-90 (6th Cir. 1981) ("[T]he Constitution does not encompass a general right to nondisclosure of private information.") There appears no reason for the Tennessee courts to reach a different result.

Nor does this statute run afoul of procedural due process. As explained in the answer to question 1, juvenile offenders become subject to the registry requirements automatically upon the adjudication of delinquency for qualifying offenses without the need for additional fact finding. By statute, a juvenile charged by petition with the commission of a delinquent act is afforded both constitutional and statutory rights and procedures during delinquency proceedings. *State v. Rodgers*, 235 S.W.3d 92, 95 (Tenn. 2007). These rights include the right to due process, the right to counsel at delinquency proceedings, the right to introduce evidence and to cross-examine adverse witnesses, the right against self-incrimination, and the right to proof of the commission of the act charged beyond a reasonable doubt. *Id.*; Tenn. Code Ann. §§ 37-1-126, -127, -129. Accordingly, the juvenile offender's rights to procedural due process are fully protected during the delinquency proceedings themselves. *Cf. Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1, 7 (2003) (holding that an adult sex offender was not entitled to an additional hearing regarding registry status since status was automatic upon conviction and the criminal conviction process afforded procedural safeguards).

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