STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

June 9, 2021

Opinion No. 21-09

Law Enforcement Certification that a Weapon Is Inoperable or Unsafe

Question

Does law enforcement need to provide supporting evidence when certifying to a court that a weapon is inoperable or unsafe and, therefore, eligible for destruction under Tenn. Code Ann. § 39-17-1317(i)?

Opinion

No.

ANALYSIS

Tennessee law enforcement agencies have a duty to confiscate weapons that have been "possessed, used, or sold in violation of the law." Tenn. Code Ann. § 39-17-1317(a)(1). They may also take possession of abandoned weapons and weapons that have been voluntarily surrendered to them. Tenn. Code Ann. § 39-17-1317(b). If these weapons are safe and operable, law enforcement agencies may sell them in public sales or use them for legitimate law enforcement purposes. Tenn. Code Ann. § 39-17-1317(b)(1)–(2). However, if a specified law enforcement official[1] "certifies to the court that a [confiscated] weapon is inoperable or unsafe," the court must then order that the weapon be destroyed, recycled, or transferred to a museum or historical society. Tenn. Code Ann. § 39-17-1317(i).

The inoperable-or-unsafe statute does not define the word "certify" or specify whether these officials must provide evidence to support their statements that a weapon is inoperable or unsafe. *Id.* But the ordinary meaning of the word "certify" and the legislative history of the statute indicate that these officials do not need to provide supporting evidence.

Words used in a statute "must be given their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose." *Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012). A dictionary is the "usual and accepted source" for the "natural and ordinary meaning" of statutory language when the General Assembly has not defined a statutory term. *State v. Clark*, 355 S.W.3d 590, 593 (Tenn. Crim. App. 2011).

[1] Officials who may certify that a weapon is inoperable or unsafe are: (1) a chief of police, (2) a sheriff, (3) the director of a judicial district drug task force, (4) the Commissioner of the Tennessee Department of Safety and Homeland Security, and (5) the Director of the Tennessee Bureau of Investigation. Tenn. Code Ann. § 39-17-1317(i).

"Certify" generally means to "attest or confirm in a formal statement," *New Oxford American Dictionary* 284 (3d ed. 2010), or to "authenticate or verify in writing" or to "attest as being true or meeting certain criteria." *Certify Black's Law Dictionary* (11th ed. 2019); *see also Burress v. Sanders*, 31 S.W.3d 259, 264 n.5 (Tenn. Ct. App. 2000) (relying on the definition of "certify" in *Black's Law Dictionary*); Tenn. Op. Att'y Gen. No. 90-04 (Jan. 10, 1990) (same). In light of this definition, all that is required for a law enforcement official to certify a weapon is inoperable or unsafe is the officer's attestation, verification, or confirmation of that fact in a formal statement made to the court. The formal statement is probably best made in a signed writing, such as an affidavit, although oral testimony before the court also appears to be an option. No additional evidence is required.

The legislative history of the inoperable-or-unsafe statute also indicates the General Assembly did not intend for law enforcement officials to provide supporting evidence to certify a weapon is inoperable or unsafe. When discussing the scope of the statute, Senators Jackson and Gresham agreed that law enforcement would not need to maintain an audit trail demonstrating that the weapon was inoperable or unsafe. *Debate on S.B. 2334*, 106th Gen. Assem. (Tn. June 8, 2009) (statements of Sen. Jackson and Sen. Gresham). The General Assembly deemed it sufficient that law enforcement officials petition the court to dispose of the weapon and inform the court that a weapon was inoperable or unsafe. *Id.*

The way law enforcement officials may certify a weapon is inoperable or unsafe is quite broad. The statute does not impose any particular requirements for the content of the certification. Tenn. Code Ann. § 39-17-1317(i). When a statute does not impose particular requirements on a certification, courts generally do not require that the certifications contain specific terminology. *See Lake v. Motor Vehicles Div.*, 892 P.2d 1025, 1027 (Or. App. 1995) (finding that, when a state police technician had a statutory duty to "certify the accuracy" of breath alcohol testing equipment, the technician merely had to "sign the form attesting to its accuracy" and the signature gave "the form the authority and formality required to certify the accuracy of the test conducted on the . . . equipment"); *State v. Furley*, 890 S.W.2d 538, 539 (Tex. App. 1994); *Brown v. U.S. Nat. Bank of Omaha*, 371 N.W.2d 692, 700–01 (Neb. 1985); *see also* Tenn. Op. Att'y Gen. No. 90-04 (Jan. 10, 1990) (noting that "prudence would dictate" a party replicate the language in a statute when making a certification—but it is not required). So, law enforcement officials may certify that a weapon is inoperable or unsafe in any number ways, including by stating that, based upon their professional opinions, the weapon is inoperable or unsafe. And, although Tenn. Code Ann. § 39-17-1317(i) does not require that evidence be produced in support of the certification, it does not prevent a law enforcement officer from presenting such evidence.

Thus, when certifying under Tenn. Code Ann. § 39-17-1317(i) that a weapon is inoperable or unsafe, law enforcement officials do not need to provide evidence showing a weapon is eligible for destruction. They only need to attest or verify in a formal statement to the court that the weapon is inoperable or unsafe.

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