

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 05-108

Age-Based Punishment for DUI

QUESTIONS

1. Whether a harsher penalty for underage defendants convicted of driving under the influence (“DUI”), as set forth in the Conference Committee Report adopted by the General Assembly for Senate Bill 79, is constitutional.
2. Whether precedent exists for age-based punishment.

OPINIONS

1. Yes. The age-based system of punishment for DUI offenders set forth in the Conference Committee Report on Senate Bill 79 does not violate any provision of the United States Constitution or the Tennessee Constitution. In particular, it does not violate the rights to equal protection and due process of law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution or Articles I, § 8, and XI, § 8, of the Tennessee Constitution.
2. Yes. There is precedent for age-based punishment in Tennessee.

ANALYSIS

1. The Conference Committee Report on Senate Bill 79 recommends amending Tennessee Code Annotated section 55-10-403 by adding a subsection (s), which would provide, in pertinent part, as follows:

(1) In addition to the punishment provided in subsection (a), a person convicted of violating the provisions of § 55-10-401 for the first time, shall be punished as follows:

(A) If the person is less than twenty-one (21) years of age at the time of the offense, the court shall sentence such person to confinement in the county jail or workhouse for not less than forty-eight (48) hours nor more than eleven (11) months and twenty-nine (29) days

and to remove litter during daylight hours from state route highways or state-aid highways as provided in subdivisions (2)--(9) for a period of twenty-four (24) hours to be served in three (3) shifts of eight (8) consecutive hours each.

(B) If the person is twenty-one (21) years of age or more at the time of the offense, the court shall sentence the person to confinement in the county jail or workhouse for not less than twenty-four (24) hours nor more than eleven (11) months and twenty-nine (29) days and to remove litter during daylight hours from state route highways or state-aid highways as provided in subdivisions (2)--(9) for a period of twenty-four (24) hours to be served in three (3) shifts of eight (8) consecutive hours each.

The above amendment, although providing for a more severe penalty for DUI offenders who are under the age of twenty-one, satisfies constitutional equal protection requirements. A classification based upon age satisfies equal protection requirements so long as it is rationally related to any legitimate government interest; strict judicial scrutiny is inapplicable. *See Gregory v. Ashcroft*, 501 U.S. 452, 470, 111 S.Ct. 2395, 2406, 115 L.Ed.2d 410 (1991). The Conference Committee Report on Senate Bill 79 aims to discourage drivers from underage drinking, which is a crime in and of itself. *See* Tenn. Code Ann. § 57-3-412(a)(3)(A). It serves the legitimate penal interests of the State of Tennessee by authorizing more severe punishment for people under twenty-one years old who drink and drive. It is rationally based upon the premise that people under twenty-one years old should not be drinking alcohol at all, much less driving under the influence. Since it is rationally related to legitimate state interests, equal protection requirements are satisfied.

Additionally, the Conference Committee Report on Senate Bill 79 satisfies constitutional due process requirements since it is unambiguous and rationally related to legitimate state interests, and the defendant is otherwise afforded the procedural rights associated with a trial and a sentencing hearing for driving under the influence.

For these reasons, it is the opinion of this Office that the Conference Committee Report on Senate Bill 79 is constitutional under both the Constitution of the United States and the Constitution of Tennessee.

2. There is precedent for age-based punishment. For example, first degree murder is punishable by death. *See* Tenn. Code Ann. § 39-13-202(c)(1). However, juveniles are not eligible for the death penalty. *See id.* § 37-1-134(a)(1). Tennessee's legislative ban against imposing the death penalty on juveniles preceded *Roper v. Simmons*, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), in which the Supreme Court held that execution of individuals who were under 18 years of age at the time of their capital crimes is prohibited by Eighth and Fourteenth Amendments to the United States Constitution.

Furthermore, our criminal code contains several legislative distinctions in other areas that are similarly based on age. For example, certain conduct is only punishable where the actor is below a prescribed age. As noted above, it is unlawful for anyone under twenty-one years old to consume alcohol. *See id.* § 57-3-412(a)(3)(A). It is likewise illegal for any person under eighteen years old

to possess a tobacco product. *See id.* § 39-17-1505(a). Furthermore, although not directly related to punishment, Tennessee Code Annotated section 55-10-415(a)(1)(A) provides for a lower blood alcohol concentration for drivers between the ages of sixteen and twenty-one. Our legislature has also imposed differing criminal penalties based on the age of the victim. Two of the aggravating factors that would support a sentence of death or life without the possibility of parole for a person convicted of first degree murder relate to the youth or advanced age of the victim. *See id.* § 39-13-204(i)(1), (14). Similarly, rape is a Class B felony, punishable by eight to thirty years in prison, but rape of a child less than thirteen years old is a Class A felony, punishable by fifteen to sixty years in prison. *See id.* §§ 39-13-503(b); -522(b); 40-35-11(b)(1), (2).

Accordingly, it is the opinion of this Office that the Conference Committee Report on Senate Bill 79, which provides for a harsher punishment for defendants under twenty-one years old who are convicted of DUI, is constitutional, and there is precedent for such an age-based system of punishment.

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