

Opinion No. 2010-071

August 17, 2010

Didi H. Sallings, Executive Director
Arkansas Public Defender Commission
101 East Capitol, Suite 201
Little Rock, Arkansas 72201

Dear Ms. Sallings:

This is my response to your question about applying A.C.A. § 16-93-609(b) (Repl. 2006) to a person convicted of a violent or sex felony committed after 2001 who has a prior conviction for an offense that was not listed in A.C.A. § 5-4-501(d) when the later crime was committed.

Your question is the subject of a pending petition under Ark. R. Crim. Proc. 37.1 in *State v. Smith*, No. CR-2008-982 (Circuit Court of Craighead County, Arkansas, W. Dist., Criminal Div., petition filed June 22, 2010). I have a statutory duty to render my opinion to legislators, prosecuting attorneys, and other state officials on certain matters of state law (*see* A.C.A. § 25-16-706 (Repl. 2002)), but my office follows a long-standing policy against issuing opinions on matters that are in litigation. *See, e.g.*, Op. Att’y Gen. 2009-089, 2008-183, and 2007-039 (and opinions cited therein). I must therefore respectfully decline to issue an opinion in this instance. Any opinion from my office would be executive comment on a question properly before a court.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General