Opinion No. 2012-065

July 12, 2012

The Honorable David "Bubba" Powers
State Representative
552 Hempstead 104 North
Hope, Arkansas 718081-6019

Dear Representative Powers:

I am writing in response to your request for my opinion on the following two questions:

1. Is a juvenile detention officer treated the same as a correctional officer under Arkansas law, especially in cases of assault on a juvenile detention officer?

2. In light of Arkansas Attorney General Opinion No. 2001-360, is a juvenile detention center subject to the same treatment and laws as a correctional institute under Arkansas law?

Your request apparently arises out of a concern regarding whether a juvenile resident of a detention facility might be prosecuted for felony battery in the second degree pursuant to A.C.A. § 5-13-202 (Supp. 2011) if he or she assaults a juvenile detention officer.

RESPONSE

In response to your first question, although a juvenile detention officer may be considered an "employee of a correctional facility" as that term is used in the second degree battery statute, A.C.A. § 5-13-202, this conclusion is not entirely clear, rendering it impossible for me confidently to opine that the statute would apply to a resident of a juvenile detention facility who "knowingly, without legal justification, causes physical injury to or incapacitates" such an officer. In my

opinion, the possibility exists that a court, being obliged to resolve any statutory ambiguity in favor of a criminal defendant, would grant a juvenile inmate defendant's motion to dismiss such a charge as inapplicable in a given case. The focus of your second question – whether "a juvenile detention center [is] subject to the same treatment and laws as a correctional institute" – is too broad to allow of ready response. As reflected in the referenced Attorney General opinion, I can nevertheless note that, as a matter of constitutional law, measures available to discipline juvenile inmates may differ considerably from those available to discipline adult inmates. This conclusion, however, does not bear on what statutes defining criminal liability might apply in any given instance. As regards second degree battery, the applicability to juvenile inmates of the second degree battery statute is discussed in my response to your first question. Legislative clarification regarding the scope of this statute is warranted.

Question 1: Is a juvenile detention officer treated the same as a correctional officer under Arkansas law, especially in cases of assault on a juvenile detention officer?

As noted above, based upon my inquiries, it appears that the concern underlying this question is whether an inmate of a juvenile detention center who knowingly injures or incapacitates a "juvenile detention officer" may be held criminally liable for battery in the second degree under A.C.A. § 5-13-202. At issue is whether a "juvenile detention officer" qualifies as an "employee of a correctional facility" – one of the individuals whose victimization by a juvenile detainee might give rise to liability under this statute. In my opinion, the answer to this question, although not entirely clear, is probably "yes." Legislative clarification is warranted.

The statute provides in pertinent part:

> (a) A person commits battery in the second degree if:
>
> (1) With the purpose of causing physical injury to another person, the person causes serious physical injury to any person;
>
> (2) With the purpose of causing physical injury to another person, the person causes physical injury to any person by means of a deadly weapon other than a firearm;

> (3) The person recklessly causes serious physical injury to another person by means of a deadly weapon; or
>
> (4) The person knowingly, without legal justification, causes physical injury to or incapacitates a person he or she knows to be:
>
> (A)(i) A law enforcement officer, firefighter, code enforcement officer, or employee of a correctional facility while the law enforcement officer, firefighter, code enforcement officer, or ***employee of a correctional facility*** is ***acting in the line of duty***.
>
> (ii) As used in this subdivision (a)(4)(A):
>
> * * *
>
> *(b)* "Employee of a correctional facility" includes a person working under a professional services contract with the Department of Correction, the Department of Community Correction, or the Division of Youth Services of the Department of Human Services; and
>
> * * *
>
> (b) Battery in the second degree is a Class D felony.

(Emphases added.)

My inquiries suggest that there is no debate about the applicability, under appropriate circumstances, of subsections (a)(1) through (a)(3) of this statute. Your question, which was reportedly prompted by concerns raised by a prosecutor and the administrators of a juvenile detention facility, is rather whether subsection (a)(4)(A) in particular would support a charge of second degree battery when an inmate in a juvenile detention facility knowingly incapacitates or physically injures a juvenile detention officer.

In addressing this question, I am struck initially by the fact that the legislature has unequivocally declared that subsection (a)(4)(A)(1) will apply only if the victim is one of the following: "A law enforcement officer, firefighter, code enforcement officer, or employee of a correctional facility . . . acting in the line of duty." Your

question, as I understand it, is only whether a "juvenile detention officer" qualifies as an "employee of a correctional facility" under this statute.

The term "juvenile detention officer" is not defined in the Arkansas Code. At one point in the Criminal Code, however, a "juvenile detention facility" is defined as follows:

> "Juvenile detention facility" means any facility for the temporary care of juveniles alleged to be delinquent, or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility's staff, so that a juvenile may not leave the facility unsupervised or without permission[.][1]

The Code in various other sections sets forth materially indistinguishable definitions of this term.[2] Presumably, a "juvenile detention officer" is an individual charged with providing the custodial "temporary care" referenced in this definition. In itself, this definition does not address whether a "juvenile detention facility" might further be classified as a "correctional facility," in which case a juvenile detention officer would qualify as "an employee of a correctional facility" under the second degree battery statute.

With respect to this issue, the Criminal Code elsewhere contains the following definitions:

> (2)(A) "Correctional facility" means any place used for the confinement of persons charged with or convicted of an offense or otherwise confined under a court order.
>
> (B) "Correctional facility" does not include youth services programs and applies to the Arkansas State Hospital only as to persons detained there charged with or convicted of an offense[.][3]

---

[1] A.C.A. § 5-54-101(9) (Repl. 2005).

[2] *See* A.C.A. §§ 6-20-104(a) (Repl. 2007), 9-27-303(33) (Supp. 2011) and 12-41-803(2) (Repl. 2009).

[3] A.C.A. § 5-54-101.

Subsection (13)(A) of this statute defines the term "youth services program" as follows:

> "Youth services program" means a residential program operated by the Division of Youth Services ["DYS"] of the Department of Health and Human Services or its contractor for the purpose of detaining, housing, and treating persons committed to the division.

Conspicuously absent in subsection (2)(B) of this statute is any reference to a "juvenile detention facility" as being excluded from the category "correctional facility." However, "youth services programs," which provide for the ultimate detention of juvenile delinquents who may have been in the "temporary care" of a juvenile detention facility as defined in A.C.A. § 5-54-101(9), *supra*, ***are*** expressly excluded from the category of "correctional facility" pursuant to subsection (2)(B), *supra.* It would appear illogical in the extreme for the legislature to exclude from the category of "correctional facility" a DYS facility designed to house juveniles already adjudicated delinquent while including within the category a youth detention facility designed temporarily to house juveniles who are merely "alleged to be delinquent." The designation of youth facilities as distinct from "correctional facilities" would appear to be congruent with the principle, discussed at length in the above referenced opinion, that juvenile detention of any sort, whether it be in a juvenile detention facility or a DYS facility, is uniquely focused on rehabilitation as opposed to punishment.[4] Stated differently, it appears counterintuitive to conclude that the legislature intended to exclude a DYS facility from the category of "correctional facility" while including a "juvenile detention facility" within that designation. Specifically with respect to the second degree battery statute, to thus distinguish between DYS facilities and juvenile detention facilities would be to expose a juvenile who has not yet been adjudicated delinquent – a category that includes certain temporary inmates of juvenile detention facilities – to greater criminal sanctions than an adjudicated delinquent residing in a DYS facility.

The confusion just discussed is only compounded by the fact that the chapter of the Code dealing with assault and battery does not define either "juvenile detention facility" or "correctional facility." An analysis of the second degree battery statute suggests, however, that both a DYS facility and a juvenile detention

---

[4] I will not here repeat my predecessor's elaborate analysis of this issue, with which I fully concur.

facility should be considered varieties of "correctional facility" for purposes of applying the statute. Specifically, A.C.A. § 5-13-202(a)(4)(A)(ii)*(b)*[5] designates as an "employee of a correctional facility" any employee of a "professional services contract[or]" who performs services for, *inter alia*, the Division of Youth Services ("DYS"). Extrapolating from this designation, it appears logical to assume that if the employee of a DYS contractor qualifies as an "employee of a correctional facility" under the statute, a direct employee of a DYS facility performing the same function would likewise qualify. This conclusion would appear to follow notwithstanding the fact that a DYS facility does not qualify as a "correctional facility" under the unrelated A.C.A. § 5-54-101(2)(B) referenced above. Moreover, although the inference is hardly unavoidable, it further appears that if a DYS employee would qualify as an "employee of a correctional facility," an employee of a juvenile detention facility (i.e., a "juvenile detention officer") would as well. As a protocol for statutory interpretation, however, such logical leapfrogging is far from desirable – particularly when the result might be to expose to enhanced criminal liability juveniles who are treated with special regard in other contexts.

To summarize the foregoing, the Code in at least one instance suggests a legislative intention to classify juvenile facilities differently from adult "correctional facilities." This distinction appears consistent with a more general legislative intention to treat juvenile offenders differently than adult offenders, stressing rehabilitation over punishment. *See* the above referenced Opinion No. 2001-360. The second degree battery statute, however, strongly implies that this distinction will not extend to determining whether an offender faces criminal exposure for second degree battery.

The question becomes, then, whether a statute that might be read as only applying by implication to a juvenile detainee will support a prosecutor's charging decision. With respect to this question, I can do no more than defer to the prosecutor's discretion, assuming he will make his decision with an awareness that criminal statutes must be strictly construed, with all doubts resolved in favor of the defendant.[6] In offering this caveat, I do not intend to minimize the obvious fact that battering an officer of a juvenile facility is equally injurious to its victim as battering an employee of a "correctional facility" as defined in A.C.A. § 5-54-101(2). I fully appreciate the impulse of prosecutors and administrators to

---

[5] This subsection was added to the Code pursuant to Acts 2003, No. 66.

[6] *See Heikkila v. State*, 352 Ark. 87, 98 S.W.3d 805 (2003).

safeguard juvenile detention officers in the conduct of their duties. The fact remains, however, that the courts will resolve any statutory ambiguities in favor of a criminal defendant. Given this principle, I can only stress again that legislative clarification regarding the scope of this statute is strongly warranted.

Question 2: In light of Arkansas Attorney General Opinion No. 2001-360, is a juvenile detention center subject to the same treatment and laws as a correctional institute under Arkansas law?

As suggested in my response to your first question, my predecessor's opinion, which you reference in this question, discusses in considerable detail the unique treatment afforded juvenile offenders under Arkansas law. With respect to your reference to "treatment," my predecessor's opinion in particular distinguishes the aims of juvenile detention, noting primarily the rehabilitative, as distinct from punitive, ends such detention is intended to serve. This largely constitutional issue of "treatment," however, including the range of disciplinary actions to which a juvenile offender might be subject, is distinct from the question of what charges a juvenile engaging in a particular variety of misconduct might face under Arkansas law. Given the background of your request, the latter question is purely one of statutory interpretation. In response to your question, then, a juvenile detention center is subject to whatever laws might reasonably be interpreted as applicable to it, including laws that might characterize its employees as those of a "correctional facility" for purposes of applying the second degree battery statute. The application of those laws in this instance is confusing for the reasons set forth in my response to your previous question. Legislative clarification is warranted.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM/JHD:cyh