

OFFICE OF THE ATTORNEY GENERAL



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Honorable David Hooks
Director
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Community Affairs
401 Adams Avenue
Montgomery, AL 36130

Sexually Transmitted Diseases
- Conviction - Juveniles -
Tests and Testing

1. The Attorney General's
Office does not issue opinions
on matters which are being
litigated in the courts.

2. The term "conviction"
under Alabama law includes
guilty pleas.

3. The term "convicted"
under Alabama law does not
include juveniles adjudicated
delinquent under state law
for committing sexual acts.

Dear Mr. Hooks:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION 1

Does the definition of "conviction"
under Alabama law include guilty pleas and
pleas of nolo contendere?

FACTS AND ANALYSIS

Alabama has no statutory plea of nolo contendere. However, the question of whether a plea of nolo contendere is a conviction is presently being litigated in the courts. As it is the longstanding policy of the Attorney General's Office to refrain from issuing an opinion on matters which are being litigated, we respectfully decline to respond to that issue. We will, however, address the issue of guilty pleas.

The Code of Alabama 1975 does not provide a definition of the term "conviction." Federal law, however, does provide a definition of "conviction" as follows:

"'Conviction' and 'convicted' mean the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere, but do not include a final judgment which has been expunged by pardon, reversed, set aside or otherwise rendered nugatory." 28 U.S.C.A. § 2901(f).

Under United States Supreme Court and Alabama case law pertaining to guilty pleas, a plea of guilty is considered to be more than a confession which admits that the accused did various acts. The guilty plea itself is a conviction, and nothing remains but to give judgment and to determine punishment. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Russell v. State, 428 So.2d 131 (Ala. 1982); and Heaton v. State, 435 So.2d 780 (Ala.Crim.App. 1983).

CONCLUSION

The term "conviction" under Alabama law includes guilty pleas.

QUESTION 2

Your question is:

Does "convicted" under Alabama law include "juveniles adjudicated under state law for committing sexual acts?"

FACTS AND ANALYSIS

Under Alabama statutory law, juvenile proceedings are governed in Code of Alabama 1975, §§ 12-15-1 through -156. Several of these sections apply to your question.

Code of Alabama 1975, § 12-15-1(8) defines a "delinquent act" as follows:

"(8) DELINQUENT ACT. An act committed by a child that is designated a violation, misdemeanor or felony offense under the law of this state or of another state if the act occurred in another state or under federal law or a violation of a municipal ordinance; provided, however, that traffic offenses, other than those charged pursuant to section 32-5A-191, committed by one 16 years of age or older, shall not fall within the jurisdiction of the juvenile court. Provided, further, such term shall not include any criminal act, offense or violation committed by a child who has previously been transferred for criminal prosecution pursuant to section 12-15-34 and convicted or adjudicated a youthful offender on the criminal charge."

Code of Alabama 1975, § 12-15-1(9) defines a "delinquent child" as follows:

"(9) DELINQUENT CHILD. A child who has committed a delinquent act and is in need of care or rehabilitation."

Your question appears to be directed only at a juvenile who has been adjudicated to be a delinquent child by the juvenile court, which is governed by § 12-15-30(a), because he or she committed a delinquent act.

Code of Alabama 1975, § 12-15-30(a) states as follows:

"(a) The juvenile court shall exercise exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, dependent or in need of supervision."

However, Code of Alabama 1975, §§ 12-15-34(a) and (h) state as follows:

"(a) The prosecutor may, before a hearing on the petition on its merits and following consultation with probation services, file a motion requesting the court to transfer the child for criminal prosecution, if the child was 14 or more years of age at the time of the conduct charged and is alleged to have committed an act which would constitute a crime if committed by an adult. . . .

"(h) A conviction or adjudication as a youthful offender following the transfer of a child for criminal prosecution as provided in this section shall terminate the juvenile court's jurisdiction over that child with respect to any future criminal acts, offenses or violations of any nature and with respect to any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction. Any such pending or future criminal acts committed by the child shall be prosecuted as other criminal charges are prosecuted; provided, however, that the juvenile court shall exercise jurisdiction over the child for the purpose of obtaining verification of a previous conviction or adjudication as a youthful offender after being transferred for prosecution as an adult, and for the purpose of authorizing release pending trial on bond or as otherwise provided by law. Termination of the juvenile court's jurisdiction over the child with respect to future criminal charges and pending allegations of delinquency, as provided herein, shall not affect the juvenile court's jurisdiction over the child with respect to any other matter provided in this chapter, specifically including any prior allegations of delinquency which, at the time of the criminal conviction, has been disposed of by the juvenile court either through informal adjustment, consent decree or adjudication. The juvenile

court is specifically authorized, to the extent practicable, to continue exercising its jurisdiction over the child with respect to such previously disposed delinquency cases after the termination of its jurisdiction with respect to other criminal charges."

By interpreting these sections to arrive at an answer to your question, we find that according to § 12-15-30(a), the juvenile court may maintain its jurisdiction over the entire adjudication proceedings of the juvenile before the court, or according to § 12-15-34(a), the prosecutor may ask the juvenile court to grant adult status to the juvenile so that he or she can be transferred for criminal prosecution as an adult. The juvenile court may then transfer the juvenile to adult status, based upon the juvenile's age and the severity of the crime.

It is the understanding of this office that Code of Alabama's stipulated sexual offenses (found at §§ 13A-6-60 through -70 and § 15-20-1) would constitute crimes if committed by an adult. It is entirely within the prosecutor's discretion to ask that the juvenile court transfer a juvenile, age 14 years or older, over to be tried as an adult for committing such crime(s). If the juvenile court subsequently does transfer the juvenile for criminal prosecution as an adult, and that juvenile is tried and convicted, then he or she is no longer under the sole jurisdiction of the juvenile court. Such a conviction is not an "adjudication" in juvenile court, but would constitute a conviction under state law for committing a sexual offense. In this sense, the juvenile would be considered to have been tried and convicted as an adult for committing a sexual offense.

However, if the juvenile court does not transfer the juvenile over to be tried as an adult, that court then maintains sole jurisdiction over that juvenile for trial on the offense of committing sexual acts. If the juvenile pleads guilty or is found guilty of the charge(s), then the court can adjudicate that juvenile under state law to be a delinquent child because that juvenile committed a delinquent act. Under both Alabama statutory and case law, "an adjudication of delinquency is not considered to be a 'conviction.'" Code of Alabama 1975, § 12-15-72(a) and Chambers v. State, 497 So.2d 607 (Ala.Crim.App. 1986).

Code of Alabama 1975, § 12-15-72(a) states as follows:

"(a) An order of disposition or other adjudication in proceedings under subsection (a) of section 12-15-30 shall not be considered to be a conviction or impose any civil disabilities ordinarily resulting from a conviction of a crime or operate to disqualify the child in any civil service application or appointment."

The Chambers court reiterated this statutory language. Chambers, supra, at 611.

It is, therefore, the opinion of this office that the term "convicted" under Alabama law would include in its definition a juvenile, 14 years of age or older, who has been transferred by the juvenile court to stand trial as an adult for committing an act which would constitute a crime if committed by an adult. Such act could include sexual offenses. However, the term "convicted" under Alabama law would not include in its definition a juvenile who has been adjudicated delinquent by the juvenile court, regardless of the act or acts committed by the juvenile. An adjudication of juvenile delinquency is not considered to be a conviction.

We note that Act No. 94-481 provides that any person who has attained the age of 16 years at the time of the act or conduct charged and who is charged with a Class A felony or a felony which has as an element thereof the use of a deadly weapon or the causing of a serious physical injury shall be tried as an adult. A person tried under the provisions of Act No. 94-481 is "charged, arrested and tried an an adult." Thus, under the terms of Act No. 94-481, a person who has reached the age of 16 years at the time of his offense is to be treated as an adult when charged with certain enumerated offenses. The term "conviction" would apply to such proceedings.

CONCLUSION

Under Alabama law, "convicted" does not include in its definition juveniles adjudicated delinquent under state law for committing sexual acts. Such cases would come under the jurisdiction of the juvenile court, and the juvenile would be deemed adjudicated as a delinquent child for committing a delinquent act. The term "convicted" would only apply to the juvenile if that juvenile was transferred by the juvenile court for criminal prosecution, was 14 or more years of age at the time of the conduct charged and was convicted of committing an act which would constitute a crime if it were

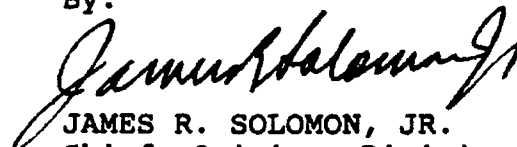
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committed by an adult, or was convicted of certain offenses enumerated in Act No. 94-481 which occurred after the accused attains the age of 16 years.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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