

## **Opinion No. 89-14**

March 10, 1989

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Elizabeth Major, Assistant Attorney General

**TO:** Curtis G. Hayes, Assistant District Attorney

### **QUESTIONS**

Does a court other than Children's Court have the authority to issue a bench warrant for the arrest of a child who has failed to appear 1) as a defendant on a Motor Vehicle Code violation which is not under the jurisdiction of the Children's Court, or 2) as a witness subpoenaed by a court other than Children's Court?

### **CONCLUSIONS**

Yes.

### **ANALYSIS**

1. Section 32-1-48 of the Children's Code, Sections 32-1-1 to 32-1-55 NMSA 1978 (Repl. Pamp. 1986), states in relevant part:

A. The municipal, magistrate or metropolitan court shall have original exclusive jurisdiction over all Motor Vehicle Code or municipal traffic code violations when the person alleged to have committed the violation is a child, with the exception of those violations contained in Paragraph (1) of Subsection O of Section 32-1-3 NMSA 1978 and all traffic offenses alleged to have been committed by the child arising out of the same occurrence pursuant to Subsection B of this section.

B. If the children's court acquires jurisdiction over a child pursuant to any of those Motor Vehicle Code violations contained in Paragraph (1) of Subsection O of Section 32-1-3 NMSA 1978, it shall have jurisdiction over all traffic offenses alleged to have been committed by the child arising out of the same occurrence.

The violations listed in Section 32-1-3(O)(1) NMSA 1978 (Cum. Supp. 1988) are:

- (a) any driving while under the influence of intoxicating liquor or drugs;
- (b) any failure to stop in the event of an accident causing death, personal injury or damage to property;
- (c) any unlawful taking of a vehicle or motor vehicle;

- (d) any receiving or transferring of a stolen vehicle or motor vehicle;
- (e) any homicide by vehicle;
- (f) any injuring or tampering with a vehicle;
- (g) any altering or changing of an engine number or other vehicle identification numbers;
- (h) any altering or forging of a driver's license or permit or any making of fictitious license or permit; or
- (i) any offense punishable as a felony.

Under the express provisions of Section 32-1-48(A), municipal, magistrate and metropolitan courts have exclusive jurisdiction over violations of the Motor Vehicle Code alleged to have been committed by a child with the exception of the violations enumerated in Section 32-1-3(O)(1), and other traffic offenses alleged to have been committed during the same occurrence as one of the violations in Section 32-1-3(O)(1).

Moreover, the rules of criminal procedure for magistrate and metropolitan courts and the general rules of procedure for municipal courts provide that those courts may issue an arrest warrant when a defendant or any person fails to appear as ordered. SCRA 1986 6-205, 6-207 (Repl. Pamp. 1988), 7-205, 7-207 (Repl. Pamp. 1988), 8-206 (Repl. Pamp. 1988). The Children's Code does not limit this power when the defendant who fails to appear is a child. Thus, when a court has jurisdiction over violations of the Motor Vehicle Code by a child under Section 32-1-48(A), that court also has authority under the above-cited court rules to issue an arrest warrant when the child-defendant fails to appear as ordered.

2. There is no limitation in the Children's Code providing that only children's courts may issue subpoenas to children. District, magistrate, metropolitan, and municipal courts have authority to subpoena witnesses in cases over which they have jurisdiction. SCRA 1986, 1-045, 2-502, 3-502, 5-302, 5-613, 6-606 (Repl. Pamp. 1988), 7-606 (Repl. Pamp. 1988), 8-602 (Repl. Pamp. 1988). Therefore, if a witness fails to appear as ordered, the court with jurisdiction over the case may issue a bench warrant for that witness' arrest, whether or not that witness is a child.

## **ATTORNEY GENERAL**

HAL STRATTON Attorney General