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Opinion No. 10-61

Separation of Powers: Pretrial Diversion Legislation (HB 3283)

QUESTION

Both the current version of the pretrial diversion statute and the proposed legislation (HB 3283) require a defendant requesting diversion to provide a statement detailing his version of the facts underlying the offense. If a defendant violates his diversion agreement and the pretrial memorandum of understanding is terminated, current law specifies that the defendant's statement is inadmissible in the State's case-in-chief at the subsequent trial but can be used for impeachment if the defendant testifies contrary to his prior statement. The proposed legislation deletes all references to the potential use of the defendant's statement in the event of a termination of the memorandum of understanding. Does this legislation violate the separation of powers doctrine established in Article II, § 2, of the Tennessee Constitution?

OPINION

No.

ANALYSIS

Article II, § 1, of the Tennessee Constitution declares that “[t]he powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.” Article II, § 2, provides that “[n]o person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.” While the General Assembly has “broad power. . . to establish rules of evidence in furtherance of its ability to enact substantive law,” its power in this regard is not unlimited. *State v. Mallard*, 40 S.W.3d 473, 481 (Tenn. 2001). “Just as the General Assembly has no constitutional power to enact rules that infringe the protection of the Declaration of Rights, the legislature can have no constitutional authority to enact rules, either of evidence or otherwise, that strike at the very heart of a court’s exercise of judicial power[.]” *Id.* at 483 (citations omitted). “Among the inherent judicial powers are the powers to hear facts, to decide the issues of fact made by the pleadings, and to decide the questions of law involved.” *Id.* at 483. Thus, “any determination of what evidence is *relevant*, either logically or legally, to a fact at issue in litigation is a power that is entrusted solely to the care and exercise of the judiciary.” *Id.* at 483.

The proposed legislation does not purport to direct the admissibility of particular evidence or to determine the relevance of any particular evidence. Rather, the legislation merely removes the current legislative declaration of the statement's admissibility in a criminal proceeding. If HB 3283 is enacted, the admission at trial of the defendant's statement-of-the-offense facts would be governed by general rules of evidence and other constitutional and case-law rules addressing the use of a defendant's statement at his criminal trial. Therefore, HB 3283 does not run afoul of the separation of powers provision of Article II, § 2.

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