CHAPTER 1

Department of Corrections

**SECTION 24‑1‑10.** Construction of references to “State Penitentiary,” “Penitentiary,” and “Director of the Department of Corrections”.

 Wherever in the Code of Laws of South Carolina, 1976, reference is made to the State Penitentiary or Penitentiary, it shall mean the Department of Corrections or an institution of the Department of Corrections; and wherever reference is made to the Director of the Department of Corrections, it shall mean Commissioner of the Department of Corrections.

HISTORY: 1975 (59) 74.

CROSS REFERENCES

Department of Corrections, reorganized, see Section 1‑30‑30.

**SECTION 24‑1‑20.** Declaration of policy.

 It shall be the policy of this State in the operation and management of the Department of Corrections to manage and conduct the Department in such a manner as will be consistent with the operation of a modern prison system, and with the view of making the system self‑sustaining, and that those convicted of violating the law and sentenced to a term in the State Penitentiary shall have humane treatment, and be given opportunity, encouragement and training in the matter of reformation.

HISTORY: 1962 Code Section 55‑291; 1960 (51) 1917.

CROSS REFERENCES

Constitutional provisions regarding institutions for confinement of persons convicted of crimes, and regarding control of convicts, see SC Const, Art 12, Sections 2 and 9.

NOTES OF DECISIONS

In general 1

1. In general

Statutes dealing with convicts and duties of director of Department of Corrections did not impose duty on city to pay for medical care of pretrial detainees. Myrtle Beach Hosp., Inc. v. City of Myrtle Beach (S.C.App. 1998) 333 S.C. 590, 510 S.E.2d 439, rehearing denied, affirmed as modified 341 S.C. 1, 532 S.E.2d 868. Prisons 419

**SECTION 24‑1‑30.** Department of Corrections created; functions.

 There is hereby created as an administrative agency of the State government the Department of Corrections. The functions of the Department shall be to implement and carry out the policy of the State with respect to its prison system, as set forth in Section 24‑1‑20, and the performance of such other duties and matters as may be delegated to it pursuant to law.

HISTORY: 1962 Code Section 55‑292; 1960 (51) 1917.

CROSS REFERENCES

Had of Department of Corrections being ex officio voting member of Governor’s Committee on Criminal Justice, Crime and Delinquency, see Section 23‑4‑110.

Library References

States 45.

Westlaw Topic No. 360.

C.J.S. States Sections 145 to 146, 157 to 161, 249.

**SECTION 24‑1‑40.** Department to be governed by appointed director; filling of vacancies; director subject to removal.

 The department shall be governed by a director appointed by the Governor with the advice and consent of the Senate. Any vacancy occurring for any cause shall be filled by the Governor in the manner provided for by law for the unexpired term. The director shall be subject to removal from office as provided in Section 1‑3‑240.

HISTORY: 1962 Code Section 55‑293; 1960 (51) 1917; 1993 Act No. 181, Section 373.

CROSS REFERENCES

Power of Governor to fill vacancy in State Board of Corrections, see Section 1‑3‑220.

Library References

States 46.

Westlaw Topic No. 360.

C.J.S. States Sections 88, 158 to 161, 163 to 165, 195.

**SECTION 24‑1‑90.** Director authorized to make rules and regulations.

 The director shall have authority to make and promulgate rules and regulations necessary for the proper performance of the department’s functions.

HISTORY: 1962 Code Section 55‑298; 1960 (51) 1917; 1993 Act No. 181, Section 374.

CROSS REFERENCES

Department of Corrections regulations, see S.C. Code of Regulations R. 33‑1 et seq.

Attorney General’s Opinions

The Director of the Department of Corrections has the authority to establish reasonable rules and regulations, including the authority to revise existing drug protocols, for the management of lethal injection procedures and protocols. S.C. Op.Atty.Gen. (April 21, 2011) 2011 WL 1740735.

**SECTION 24‑1‑100.** Qualifications of director of prison system.

 The director shall possess qualifications and training which suit him to manage the affairs of a modern penal institution.

HISTORY: 1962 Code Section 55‑299; 1960 (51) 1917; 1993 Act No. 181, Section 375.

CROSS REFERENCES

Public officers and employees generally, see Title 8.

Library References

States 47 to 52.

Westlaw Topic No. 360.

C.J.S. States Sections 88, 147 to 155, 166, 169 to 170, 175, 178 to 182, 184 to 195, 229.

**SECTION 24‑1‑110.** Employment and discharge of other personnel.

 (A) The duty of the director shall extend to the employment and discharge of such persons as may be necessary for the efficient conduct of the prison system.

 (B) In order to positively impact the retention of qualified correctional officers, and notwithstanding any provision of law to the contrary, the Director of the Department of Corrections is authorized to expend nonappropriated funds for the purpose of providing certain services to correctional officers at no cost or at a reduced cost. These services may include, but are not limited to, haircuts, cleaning of agency uniforms, and other services that relate directly to job requirements for correctional officers. These services may be provided by inmates incarcerated within the department. The price for the services, if any, shall be determined by the Director of the Department of Corrections. Any funds generated by these activities may be retained by the department and applied to costs associated with the operation of correctional officer retention incentives.

HISTORY: 1962 Code Section 55‑300; 1960 (51) 1917; 1993 Act No. 181, Section 376; 2008 Act No. 353, Section 2, Pt 14.E, eff July 1, 2009.

Effect of Amendment

The 2008 amendment designated subsection (A) and added subsection (B) relating to employee retention.

CROSS REFERENCES

Exception for employees of law enforcement agencies for prosecution for offense of third degree sexual exploitation of a minor, see Section 16‑15‑410.

Library References

Prisons 7.

States 52.

Westlaw Topic Nos. 310, 360.

C.J.S. Prisons and Rights of Prisoners Section 14.

C.J.S. States Sections 154, 175, 178 to 182, 184 to 195.

Attorney General’s Opinions

Simultaneously serving as both correctional officer at state prison and as state constable probably violates dual office holding provisions of Constitution of South Carolina. 1984 Op. Atty Gen, No. 84‑74, p. 188.

NOTES OF DECISIONS

In general 1

1. In general

Prisoner’s civil rights complaint which alleged that he was a victim of cruel and unusual punishment because female corrections employees worked in his ward, and consequently his sexual drive was stimulated and frustrated, was frivolous and raised no federal constitutional issue. Mann v. Leeke (D.C.S.C. 1974) 73 F.R.D. 264.

**SECTION 24‑1‑120.** Bonds of director and other personnel.

 The director shall execute a good and sufficient bond payable to the State in the sum of fifty thousand dollars, conditioned for the faithful performance of the duties of his office and the accurate accounting for all moneys and property coming into his hands; and he may require of other officers, employees and agents of the prison system a good and sufficient bond in such sum as it may determine upon, payable to the State upon like conditions. Such bonds shall be executed by a surety company authorized to do business under the laws of this State, and the premium on any such bond shall be paid by the State out of the support and maintenance fund of the prison system.

HISTORY: 1962 Code Section 55‑301; 1960 (51) 1917; 1993 Act No. 181, Section 377.

Library References

Prisons 7.

States 48.

Westlaw Topic Nos. 310, 360.

C.J.S. Prisons and Rights of Prisoners Section 14.

C.J.S. States Sections 88, 147 to 150, 152.

**SECTION 24‑1‑130.** Management and control of prison system.

 The director shall be vested with the exclusive management and control of the prison system, and all properties belonging thereto, subject to the limitations of Sections 24‑1‑20 to 24‑1‑230 and 24‑1‑260 and shall be responsible for the management of the affairs of the prison system and for the proper care, treatment, feeding, clothing, and management of the prisoners confined therein. The director shall manage and control the prison system.

HISTORY: 1962 Code Section 55‑302; 1960 (51) 1917; 1993 Act No. 181, Section 378.

CROSS REFERENCES

Providing separate places of confinement for tuberculous prisoners and disinfecting such quarters, see Sections 44‑31‑310, 44‑31‑340.

Provision that the Budget and Control Board, under certain conditions, is authorized to enter into lease purchase agreements which would provide the state with an economically feasible method of replacing the Central Correctional Institution, see Section 1‑11‑400.

Library References

Prisons 4.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 7 to 9, 50 to 60, 63, 67 to 71, 74 to 80, 91 to 123, 133, 139.

NOTES OF DECISIONS

In general 1

Pretrial detainees 2

Religious accommodation 3

1. In general

Statutory responsibility of the Department of Corrections for the “proper care ... and management of the prisoners” includes the duty to transport a prisoner to court, whether criminal or civil, when directed to do so by court order. Kocaya v. Kocaya (S.C.App. 2001) 347 S.C. 26, 552 S.E.2d 765. Prisons 225

Federal regulations authorizing federal prison officials to reject incoming publications found to be detrimental to prison security are valid under First Amendment if reasonably related to legitimate penalogical interest, and prison officials were not obligated to adopt alternative rule less restrictive than “all‑or‑nothing” rule under which prison officials are to reject in their entirety any incoming publications that contain material that is excludable under regulations. Thornburgh v. Abbott, U.S.Dist.Col.1989, 109 S.Ct. 1874, 490 U.S. 401, 104 L.Ed.2d 459.

2. Pretrial detainees

Statutes dealing with convicts and duties of director of Department of Corrections did not impose duty on city to pay for medical care of pretrial detainees. Myrtle Beach Hosp., Inc. v. City of Myrtle Beach (S.C.App. 1998) 333 S.C. 590, 510 S.E.2d 439, rehearing denied, affirmed as modified 341 S.C. 1, 532 S.E.2d 868. Prisons 419

Implied‑in‑law contract doctrine did not impose obligation on city to pay for medical care rendered to pretrial detainees, in light of federally‑funded hospital’s legal obligation to stabilize detainees and lack of state legislation requiring city to pay bills. Myrtle Beach Hosp., Inc. v. City of Myrtle Beach (S.C.App. 1998) 333 S.C. 590, 510 S.E.2d 439, rehearing denied, affirmed as modified 341 S.C. 1, 532 S.E.2d 868. Implied And Constructive Contracts 72; Prisons 419

3. Religious accommodation

Grooming policy for Arkansas Department of Correction, which did not allow a Muslim prisoner to grow a half‑inch beard, was underinclusive with respect to Department’s asserted interest in avoiding security risks from concealment of contraband, suggesting that the policy was not least restrictive means of furthering that interest, as required by RLUIPA for substantial burden on a prisoner’s exercise of religion; Department allowed prisoners with dermatological conditions to grow quarter‑inch beards and permitted prisoners to grow more than a half‑inch of hair on their heads, contraband could be hidden in clothing or shoes but prisoners were not required to be barefoot or naked, and the vast majority of States and the federal government permitted inmates to grow half‑inch beards for any reason or for religious reasons. Holt v. Hobbs, 2015, 135 S.Ct. 853, 190 L.Ed.2d 747. Prisons 153

Even if the grooming policy for Arkansas Department of Correction, which did not allow a Muslim prisoner to grow a half‑inch beard, furthered Department’s compelling interest in preventing prisoners from disguising their identities in order to enter restricted areas within the prison, escape, and evade apprehension after escaping, the policy was not the least restrictive means of furthering that interest, as would be required under RLUIPA for substantial burden on a prisoner’s religious exercise; inmates could be photographed without beards when first admitted to prison and periodically thereafter if needed. Holt v. Hobbs, 2015, 135 S.Ct. 853, 190 L.Ed.2d 747. Prisons 153

Even if the grooming policy for Arkansas Department of Correction, which did not allow a Muslim prisoner to grow a half‑inch beard, furthered Department’s compelling interest in preventing prisoners from hiding contraband, the policy was not the least restrictive means of furthering that interest, as would be required under RLUIPA for substantial burden on a prisoner’s religious exercise; Department already searched prisoners’ hair and clothing and it presumably examined the quarter‑inch beards of prisoners with dermatological conditions, and if there was a risk of physical injury to a guard from a razor or needle concealed in a half‑inch beard, the Department could adopt the less restrictive alternative of having the prisoner run a comb through his beard. Holt v. Hobbs, 2015, 135 S.Ct. 853, 190 L.Ed.2d 747. Prisons 153

Grooming policy for Arkansas Department of Correction, which did not allow a Muslim prisoner to grow a half‑inch beard, did not further Department’s compelling interest in preventing prisoners from hiding contraband, as would be required under RLUIPA for substantial burden on a prisoner’s religious exercise; an item of contraband would have to be very small to be concealed by a half‑inch beard, a prisoner would have to find a way to prevent the item from falling out, and since the Department did not demand that inmates have shaved heads or short crew cuts, it was hard to see why an inmate would seek to hide contraband in a half‑inch beard rather than in the longer hair on his head. Holt v. Hobbs, 2015, 135 S.Ct. 853, 190 L.Ed.2d 747. Prisons 153

Grooming policy for Arkansas Department of Correction, which did not allow a Muslim prisoner to grow a half‑inch beard, substantially burdened prisoner’s exercise of religion, as element for prisoner’s claim for religious accommodation under RLUIPA, where prisoner was put to the choice of shaving his beard and thereby engaging in conduct that seriously violated his religious beliefs or facing serious disciplinary action, even if prisoner was provided with a prayer rug and a list of distributors of Islamic material, he was allowed to correspond with a religious advisor, he was allowed to maintain the required diet and observe religious holidays, his religion would “credit” him for attempting to follow his religious beliefs, and not all Muslims believed that men must grow beards. Holt v. Hobbs, 2015, 135 S.Ct. 853, 190 L.Ed.2d 747. Prisons 153

**SECTION 24‑1‑140.** Director empowered to make rules and regulations; separation and classification of prisoners.

 The director shall have power to prescribe reasonable rules and regulations governing the humane treatment, training, and discipline of prisoners, and to make provision for the separation and classification of prisoners according to sex, color, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured.

HISTORY: 1962 Code Section 55‑303; 1960 (51) 1917; 1993 Act No. 181, Section 379.

CROSS REFERENCES

Department of Corrections regulations, see S.C. Code of Regulations R. 33‑1 et seq.

Library References

Prisons 4.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 7 to 9, 50 to 60, 63, 67 to 71, 74 to 80, 91 to 123, 133, 139.

Attorney General’s Opinions

The Department of Corrections has the statutory authority to classify inmates for its internal purposes as it deems appropriate pursuant to Section 24‑1‑140 (1985). 1987 Op. Atty Gen, No. 87‑24, p 74.

There are no constitutional provisions or statutes which would absolutely preclude private corporation from participating in management of State Correctional facility through contract with Board of Corrections. 1985 Op. Atty Gen, No. 85‑81, p 217.

NOTES OF DECISIONS

In general 1

Religious accommodation 2

1. In general

State statutes that create and define powers of the South Carolina Department of Corrections do not themselves create the liberty interest necessary to support prisoners’ claim that defendants’ implementation of state inmate classification system was an unconstitutional deprivation of procedural due process. Slezak v. Evatt (C.A.4 (S.C.) 1994) 21 F.3d 590, certiorari denied 115 S.Ct. 235, 513 U.S. 889, 130 L.Ed.2d 158.

2. Religious accommodation

Grooming policy for Arkansas Department of Correction, which did not allow a Muslim prisoner to grow a half‑inch beard, was underinclusive with respect to Department’s asserted interest in avoiding security risks from concealment of contraband, suggesting that the policy was not least restrictive means of furthering that interest, as required by RLUIPA for substantial burden on a prisoner’s exercise of religion; Department allowed prisoners with dermatological conditions to grow quarter‑inch beards and permitted prisoners to grow more than a half‑inch of hair on their heads, contraband could be hidden in clothing or shoes but prisoners were not required to be barefoot or naked, and the vast majority of States and the federal government permitted inmates to grow half‑inch beards for any reason or for religious reasons. Holt v. Hobbs, 2015, 135 S.Ct. 853, 190 L.Ed.2d 747. Prisons 153

Even if the grooming policy for Arkansas Department of Correction, which did not allow a Muslim prisoner to grow a half‑inch beard, furthered Department’s compelling interest in preventing prisoners from disguising their identities in order to enter restricted areas within the prison, escape, and evade apprehension after escaping, the policy was not the least restrictive means of furthering that interest, as would be required under RLUIPA for substantial burden on a prisoner’s religious exercise; inmates could be photographed without beards when first admitted to prison and periodically thereafter if needed. Holt v. Hobbs, 2015, 135 S.Ct. 853, 190 L.Ed.2d 747. Prisons 153

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Grooming policy for Arkansas Department of Correction, which did not allow a Muslim prisoner to grow a half‑inch beard, substantially burdened prisoner’s exercise of religion, as element for prisoner’s claim for religious accommodation under RLUIPA, where prisoner was put to the choice of shaving his beard and thereby engaging in conduct that seriously violated his religious beliefs or facing serious disciplinary action, even if prisoner was provided with a prayer rug and a list of distributors of Islamic material, he was allowed to correspond with a religious advisor, he was allowed to maintain the required diet and observe religious holidays, his religion would “credit” him for attempting to follow his religious beliefs, and not all Muslims believed that men must grow beards. Holt v. Hobbs, 2015, 135 S.Ct. 853, 190 L.Ed.2d 747. Prisons 153

**SECTION 24‑1‑145.** Transfer or exchange of foreign convicted offenders.

 Notwithstanding any other provisions of law, when any treaty between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the Governor, on behalf of this State, shall be authorized, subject to the terms of such treaty, to permit the Director of the Department of Corrections to transfer or exchange offenders and take any other action necessary to participate in such treaty.

HISTORY: 1981 Act No. 42, Section 1; 1993 Act No. 181, Section 380.

CROSS REFERENCES

Effect of Interstate Corrections Compact on extradition, see Section 24‑11‑20.

Extradition of persons charged with crime in another state, see Sections 17‑9‑10 et seq.

Library References

Prisons 13.5.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 130 to 143.

**SECTION 24‑1‑150.** Annual inventory and report of prison system property; statement of fiscal affairs of system.

 Annually the director shall cause a full and complete inventory of all property of every description belonging to the prison system to be made, and there shall be set opposite each item the book and actual market value of same. Such inventory shall further include a statement of the fiscal affairs of the system for the preceding fiscal year; and a sufficient number of copies of such inventory and report shall be printed to give general publicity thereto.

HISTORY: 1962 Code Section 55‑304; 1960 (51) 1917; 1966 (54) 2184; 1993 Act No. 181, Section 381.

Library References

Prisons 4.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 7 to 9, 50 to 60, 63, 67 to 71, 74 to 80, 91 to 123, 133, 139.

**SECTION 24‑1‑160.** Periodic reports from departments, officers and employees.

 The director shall have power to require all necessary reports from any department, officer, or employee of the prison system at stated intervals.

HISTORY: 1962 Code Section 55‑305; 1960 (51) 1917; 1993 Act No. 181, Section 382.

Library References

Prisons 4.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 7 to 9, 50 to 60, 63, 67 to 71, 74 to 80, 91 to 123, 133, 139.

**SECTION 24‑1‑170.** Financial records.

 The director shall keep, or cause to be kept, correct and accurate accounts of each and every financial transaction of the prison system, including all receipts and disbursements of every character. He shall receive and receipt for all money paid to him from every source whatsoever, and shall sign all warrants authorizing any disbursement of any sum or sums on account of the prison system. He shall keep full and correct accounts with any industry, department and farm of the prison system, and with all persons having financial transactions with the prison system.

HISTORY: 1962 Code Section 55‑306; 1960 (51) 1917; 1993 Act No. 181, Section 383.

CROSS REFERENCES

Public finance generally, see Title 11.

Library References

Prisons 4.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 7 to 9, 50 to 60, 63, 67 to 71, 74 to 80, 91 to 123, 133, 139.

**SECTION 24‑1‑210.** Department to prosecute violations relating to treatment of convicts.

 The department shall prosecute all violations of the law in reference to the treatment of convicts.

HISTORY: 1962 Code Section 55‑310; 1952 Code Section 55‑310; 1942 Code Section 1967; 1932 Code Section 1982; Cr. C. ‘22 Section 966; Cr. C. ‘12 Section 983; Cr. C. ‘02 Section 695; R. S. 576; 1885 (19) 74; 1939 (41) 107; 1960 (51) 1917; 1993 Act No. 181, Section 385.

Library References

Prisons 10.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 14, 124 to 125, 128 to 129.

**SECTION 24‑1‑220.** Suits to be brought in name of director.

 All actions or suits at law accruing to the department shall be brought in the name of the director, who shall also appear for and defend actions or suits at law in which it is to the interest of the department to appear as a party defendant. No suit or action at law shall be brought for or defended on behalf of the department except by authority of the director.

HISTORY: 1962 Code Section 55‑311; 1952 Code Section 55‑311; 1942 Code Section 1971; 1932 Code Section 1971; Cr. C. ‘22 Section 955; Cr. C. ‘12 Section 959; Cr. C. ‘02 Section 673; G. S. 2722; R. S. 558; 1882 (18) 255; 1960 (51) 1917; 1993 Act No. 181, Section 386.

Library References

States 203.

Westlaw Topic No. 360.

C.J.S. States Sections 569 to 573.

**SECTION 24‑1‑230.** Director may purchase or condemn lands for constructing building or sewer or water line.

 The Department of Corrections may purchase or condemn lands for the construction of any building or sewerage or water line essential to the operation of the prison system.

HISTORY: 1962 Code Section 55‑312; 1962 (52) 1905; 1987 Act No. 173 Section 17; 1993 Act No. 181, Section 387.

CROSS REFERENCES

Procedures for the condemnation of property, see the Eminent Domain Procedure Act, Sections 28‑2‑10 et seq.

Library References

Prisons 4.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 7 to 9, 50 to 60, 63, 67 to 71, 74 to 80, 91 to 123, 133, 139.

Attorney General’s Opinions

If property is considered essential by the Board for any of the purposes set forth in this section, the Board of Corrections may purchase the land without legislative enactment or authorization by the Budget and Control Board. 1965‑66 Op. Atty Gen, No 1972, p 20.

**SECTION 24‑1‑250.** Sale of timber and horticultural products; utilization of funds.

 (A) The Department of Corrections is hereby authorized to sell mature trees and other timber suitable for commercial purposes from lands owned by the department. Prior to such sales, the director shall consult with the State Forester to determine the economic and environmental feasibility of and obtain approval for such sales. Funds derived from timber sales shall be utilized by the Department of Corrections to maintain and expand the agricultural program subject to the approval of the Department of Administration or at the discretion of the director, for projects or services benefiting the general welfare of the inmate population.

 (B) The Department of Corrections is hereby authorized to sell horticultural products suitable for commercial purposes that are grown or produced through the department’s horticulture program. Notwithstanding any other provision of law, the proceeds from the sale of horticultural products by the Department of Corrections shall be retained by the agency to fund services benefiting the general welfare of all inmates.

HISTORY: 1962 Code Section 55‑340; 1969 (56) 100; 1981 Act No. 148, Section 8; 1982 Act No. 293, Section 1; 1993 Act No. 181, Section 388; 2008 Act No. 353, Section 2, Pt 14.C, eff July 1, 2009.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 2008 amendment designated subsection (A) and added subsection (B) relating to horticultural products; and, in subsection (A), deleted the second sentence which limited sales to fifty thousand dollars in any one year, in the second sentence added “and environmental”, and added the clause at the end of the third sentence following “Budget and Control Board”.

CROSS REFERENCES

Application of proceeds from sales of raw agricultural products as provided in this section, see Section 24‑3‑410.

Library References

Prisons 4.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 7 to 9, 50 to 60, 63, 67 to 71, 74 to 80, 91 to 123, 133, 139.

**SECTION 24‑1‑252.** Retention and use of proceeds from sale of surplus products produced by farm program.

 Notwithstanding another provision of law, the Department of Corrections shall retain proceeds from the sale of surplus products produced by its farm program. These funds may be used to:

 (1) offset the operating costs of the farm program;

 (2) expand and modernize the farm program; and

 (3) support a project or service to benefit the general welfare of the prison population.

HISTORY: 2008 Act No. 353, Section 2, Pt 14A, eff July 1, 2009.

**SECTION 24‑1‑260.** Use of fees collected in clinical pastoral training program.

 The Department of Corrections is hereby authorized to retain all fees collected in connection with the clinical pastoral training program conducted by the department for use in the continued operation of that program.

HISTORY: 1962 Code Section 55‑313; 1971 (57) 190; 1993 Act No. 181, Section 389.

Library References

Prisons 4.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 7 to 9, 50 to 60, 63, 67 to 71, 74 to 80, 91 to 123, 133, 139.

**SECTION 24‑1‑270.** Trespass or loitering on or refusal to leave State correctional properties prohibited.

 (A) As used in this section, the term ‘state correctional properties’ includes all property under the control of the Director of the South Carolina Department of Corrections, or his agents, for the confinement of inmates or other uses pursuant to the director’s responsibilities.

 (B) It is unlawful for a person to:

 (1) trespass or loiter on state correctional properties after notice to leave is given by the director or his authorized agents or, after lawful entry, refuse to leave the premises after notice is given; or

 (2) incite, solicit, urge, encourage, exhort, instigate, or procure a person to violate the provisions of item (1) of this subsection.

 (C) A person violating the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

 (D) The provisions of this section must not be construed to bar prosecution of other offenses committed on state correctional property.

HISTORY: 1962 Code Section 55‑12.1; 1972 (57) 2515; 1993 Act No. 181, Section 390; 1993 Act No. 184, Section 60.

CROSS REFERENCES

Validity, construction, and application of loitering statutes and application of loitering statutes and ordinances. 72 ALR 5th 1.

Library References

Trespass 76.

Westlaw Topic No. 386.

C.J.S. Trespass Sections 172, 174 to 175, 191.

**SECTION 24‑1‑280.** Employees of Department of Corrections, Department of Juvenile Justice, or Department of Mental Health as peace officers.

 An employee of the South Carolina Department of Corrections, the South Carolina Department of Juvenile Justice, or the Department of Mental Health whose assigned work location is one of the correctional facilities of the Department of Corrections or the Department of Juvenile Justice, while performing his officially assigned duty relating to the custody, control, transportation, or recapture of an inmate within the jurisdiction of his department, or an inmate of any jail, penitentiary, prison, public work, chain gang, or overnight lockup of the State or any political subdivision of it not within the jurisdiction of his department, has the status of a peace officer anywhere in the State in any matter relating to the custody, control, transportation, or recapture of the inmate.

HISTORY: 1962 Code Section 55‑359; 1963 (53) 505; 1974 (58) 2175; 1999 Act No. 72, Section 2003 Act No. 12, Section 3.

Library References

Prisons 9.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 14 to 20.

Attorney General’s Opinions

Simultaneously serving as both correctional officer at state prison and as state constable probably violates dual office holding provisions of Constitution of South Carolina. 1984 Op. Atty Gen, No. 84‑74, p. 188.

**SECTION 24‑1‑285.** Organ and tissue donation program.

 (A) An organ and tissue donor program is established within the Department of Corrections. The purpose of the program is to educate prisoners about the need for organ and tissue donors, the procedures required to become a registered organ donor, and, in the case of bone marrow donors, the procedures for determining the person’s tissue type and the medical procedures a donor must undergo to donate bone marrow. The Medical University of South Carolina and the University of South Carolina, School of Medicine, in conjunction with the Department of Corrections, must make available to prisoners educational pamphlets and brochures concerning bone marrow donation and the bone marrow donation programs operating in this State.

 (B) Organ or tissue donations, other than bone marrow donations, may be made by a prisoner, or other person, who meets the requirements contained in Section 44‑43‑315 and in the manner provided by Section 44‑43‑320. However, if the department determines that a prisoner’s participation in the program would constitute a threat to security, then the department may prohibit the prisoner from participating.

 (C) The department is not responsible for any costs associated with tests or other procedures required to make an organ or tissue donation, including costs associated with follow‑up doctor appointments or complications arising from donation.

 (D) Within its prisoner housing units, the department must display signage informing prisoners of the donor program and, upon request, must provide prisoners with a form, sufficient under the provisions of the Uniform Anatomical Gift Act, for the gift of all or part of the donor’s body conditioned upon the donor’s death and a document containing a summary description and explanation of the act. If the prisoner would like to make an organ or tissue donation, the department must provide the prisoner with appropriate assistance and the presence of the legally required number of witnesses. A prisoner’s election to donate all or any part of his body pursuant to this section must be noted in his prison records.

 (E) The department, in conjunction with appropriate medical authorities, must develop and maintain policies and procedures to:

 (1) facilitate participation by interested prisoners in the bone marrow donor programs established in Article 2, Chapter 43, Title 44; and

 (2) ensure that organ and tissue donations made by prisoners, other than bone marrow donations, comply with Articles 5, 7, and 11, Chapter 43 of Title 44.

 (F) All organ or tissue donations, including bone marrow donations, made pursuant to this section must be made on a voluntary basis.

HISTORY: 2007 Act No. 41, Section 1, eff June 4, 2007.

Code Commissioner’s Note

At the direction of the Code Commissioner, the references in the first sentence of subsection (B) were changed from “44‑43‑330” and “44‑43‑350” to “44‑43‑315” and “44‑43‑320”, respectively, to reflect amendments by 2009 Act No. 4.

**SECTION 24‑1‑290.** Employment of inmates through prison industries program; development of marketing plan; certification by Department of Commerce as to unfair competitive wage disadvantage; publication of notice.

 (A) The Department of Corrections, in conjunction with the Department of Commerce, shall develop and maintain a marketing plan to attract private sector service businesses for the employment of inmates through the prison industries program.

 (B) Prior to entering into new contracts and renewals of existing contracts with private sector service entities that want to hire inmates through the prison industries program, the Department of Corrections must provide public notice of its intention to establish or continue a prison‑based industry at a particular facility and receive certification by the Department of Commerce that an unfair competitive wage disadvantage to the local economy is not created by each new contract for prison labor.

 (1) The public notice required in this subsection must be forwarded to a newspaper of general circulation in the county where the prison‑based industry is or will be located, with a request that it be published at least once a week for two consecutive weeks. The notice must include a description of the work to be performed, the intent to contract for inmate labor, and provide that objections to the proposed hiring of prison labor may be filed with the Department of Commerce within thirty days of the last date that the notice appears.

 (a) The Department of Commerce must maintain a copy of any objections filed for a period of three years from the date that the objections were received.

 (b) Advertising costs associated with the publication of notice must be borne by the entity seeking to contract for prison labor.

 (2) The certification required by this subsection must be based upon objections to the establishment of a prison‑industry program provided for in item (1).

 (C) No contract may be negotiated or executed prior to forty days after the last date that the notice required by subsection (A) appears. New contracts and renewals of existing contracts between private sector entities and the Department of Corrections must be negotiated in accordance with procedures established jointly by the Department of Commerce and the Department of Corrections. The procedures must be drafted to ensure fairness and consistency in establishing contracts with private sector entities seeking to establish or continue prison‑based operations whenever the wage to be paid is less than the federally established minimum wage.

 (D) The marketing plan and the procedures for negotiating new contracts and contract renewals must be submitted to and approved by the Department of Administration prior to implementation. The Department of Corrections shall annually submit an audit report of the program to the Senate Corrections and Penology Committee and the House Medical, Military, Public and Municipal Affairs Committee. The provisions of the section may not be construed to apply to traditional prison industries as authorized in Section 24‑3‑320.

HISTORY: 2007 Act No. 68, Section 1, eff August 1, 2007.

Code Commissioner’s Note

This section was redesignated from Section 21‑1‑285 at the direction of the Code Commissioner.

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Editor’s Note

2007 Act No. 68, Section 3, provides as follows:

“The provisions of this act supercede and are controlling over any provision to the contrary in paragraph 37.36, Part IB of the 2007‑2008 General Appropriations Bill.”

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 24‑1‑295.** Employment of inmates for work involving exportation of products; deductions from wages.

 The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, service work is defined as any work that includes repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that is not original equipment manufacturing. The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector. However, the Director of the Department of Corrections shall deduct the following from the gross earnings of the inmates engaged in prison industry service work in addition to any other required deductions:

 (1) If restitution to a particular victim or victims has been ordered by a court of appropriate jurisdiction, then twenty percent must be used to fulfill the restitution obligation.

 (2) If restitution to a particular victim or victims has not been ordered by a court of appropriate jurisdiction, or if the court‑ordered restitution to a particular victim or victims has been satisfied, then twenty percent must be applied to the South Carolina Victim Compensation Fund.

 (3) Thirty‑five percent must be used to pay the prisoner’s child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty‑five percent must be used by the Department of Corrections to defray the cost of the prisoner’s room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to item (4). This is in addition to the ten percent used for the same purpose in item (4).

 (4) Ten percent must be made available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate’s choice.

 (5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

 (6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to item (4).

HISTORY: 2007 Act No. 68, Section 2, eff August 1, 2007.

Code Commissioner’s Note

This section was redesignated from Section 24‑1‑290 at the direction of the Code Commissioner.

Pursuant to 2017 Act No. 96, Section 14, the reference to “Victim’s Compensation Fund” in (2) was changed to “Victim Compensation Fund”.

Editor’s Note

2007 Act No. 68, Section 3, provides as follows:

“The provisions of this act supercede and are controlling over any provision to the contrary in paragraph 37.36, Part IB of the 2007‑2008 General Appropriations Bill.”

Notes of Decisions

In general 1

Constitutional issues 2

Deductions 3

Review 4

1. In general

Inmates’ grievances to amount of pay received under Prevailing Wage Statute and contract for work performed as part of prison industry program were grievances to South Carolina Department of Corrections (SCDC) “policies/procedures” rather than to incidents, and, thus, were excepted from grievance system policy’s 15‑day filing deadline for incident grievances; policy expressly excepted “policies/procedures” grievances from deadline, grievances challenging SCDC’s day‑to‑day operations fell within SCDC’s proposed definition of “policies/procedures,” inmates’ pay under statute was expression of legislative policy, and contractual pay was not incident, in that it effected numerous inmates and was not temporally limited. Ackerman v. South Carolina Dept. of Corrections (S.C.App. 2016) 415 S.C. 412, 782 S.E.2d 757, rehearing denied, certiorari denied. Prisons 283

2. Constitutional issues

Statute authorizing certain deductions from inmate’s pay under service work contract was neither remedial nor procedural and operated prospectively only, and, thus, retroactive application of statute to inmate’s wages violated his due process rights, since inmate had right to wages, prior to effective date of statute authorizing certain deductions from his pay, pursuant to budget provisos and statutes requiring inmates to earn prevailing wage, inmate’s right to certain wage became vested as soon as he earned that wage, and increase in deductions retroactively to gross wages earned prior to effective date divested inmate’s vested right to higher net wage under statute governing paid employment of inmates. Gatewood v. South Carolina Dept. of Corrections (S.C.App. 2016) 416 S.C. 304, 785 S.E.2d 600, rehearing denied, certiorari denied. Constitutional Law 4822; Prisons 181

3. Deductions

The South Carolina Department of Corrections (SCDC) was not entitled to deduct security costs and overhead from inmate’s gross wages earned under service work contract entered into by SCDC as part of Prison Industries program during one‑month gap between end‑date of budget proviso for fiscal year and effective date of statute authorizing certain deductions from inmate’s pay under service work contract, including “any other required deductions,” even though contract included language that “SCDC shall be responsible to pay inmate workers, cover security costs and [Prison Industries] overhead,” since more general statutory provision, which was effective during one‑month gap and governed paid employment of inmates, did not authorize such deductions. Gatewood v. South Carolina Dept. of Corrections (S.C.App. 2016) 416 S.C. 304, 785 S.E.2d 600, rehearing denied, certiorari denied. Prisons 181

Security costs and overhead connected with Prison Industries program of the South Carolina Department of Corrections (SCDC) constituted “other required deductions” for purposes of statute authorizing deductions from inmate’s pay “in addition to any other required deductions” under service work contract as part of program, since such expenses were built into negotiated wage, contract’s payment provision stated that any increase in inmate’s wage would “only reflect SCDC’s increased costs of prison overhead,” and statutory provisions implied that SCDC had flexibility to determine amount it would charge industry sponsor to compensate SCDC for inmate labor and any other costs SCDC might incur to make such work available for eligible inmates. Gatewood v. South Carolina Dept. of Corrections (S.C.App. 2016) 416 S.C. 304, 785 S.E.2d 600, rehearing denied, certiorari denied. Prisons 181

4. Review

Inmate asserting wage grievance challenge preserved for appeal his question of whether retroactive application of statute authorizing certain deductions from inmate’s pay under service work contract as part of Prison Industries program by Administrative Law Court (ALC) violated his due process rights, even if inmate did not raise issue before ALC, since ALC’s application of statute to inmate’s wage deductions prior to statute’s effective date implied it operated retroactively, inmate’s challenge to which statute applied to his wage deductions fairly encompassed retroactivity question, and question of whether applying statute retroactively violated due process was fairly subsumed within question of whether it in fact operated retroactively. Gatewood v. South Carolina Dept. of Corrections (S.C.App. 2016) 416 S.C. 304, 785 S.E.2d 600, rehearing denied, certiorari denied. Prisons 298

Inmate failed to preserve for appeal to Administrative Law Court (ALC) his argument that he was entitled to overtime pay, even though South Carolina Department of Corrections (SCDC) addressed issue of overtime in its grievance determination; inmate did not request overtime pay on any grievance form filed with SCDC. Gatewood v. South Carolina Dept. of Corrections (S.C.App. 2016) 416 S.C. 304, 785 S.E.2d 600, rehearing denied, certiorari denied. Prisons 293

Issue, which was raised by inmate to Administrative Law Court (ALC) in his wage‑related grievance proceeding challenging pay received from Prison Industries program, of whether South Carolina Department of Corrections (SCDC) should be ordered to process wage grievances for other inmates participating in same program who did not file their own grievances was manifestly without merit, and, thus, ALC was not required to address it, even though ALC did not expressly state in its order that such issue was manifestly without merit, since there was no requirement in ALC rules that opinion was required to specifically state that issue was manifestly without merit in order to avoid addressing it. Gatewood v. South Carolina Dept. of Corrections (S.C.App. 2016) 416 S.C. 304, 785 S.E.2d 600, rehearing denied, certiorari denied. Prisons 293