CHAPTER 19

Juvenile Justice Code

ARTICLE 1

General Provisions

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑10 | 20‑7‑6600 |
| 63‑19‑20 | 20‑7‑6605 |
| 63‑19‑30 | 20‑7‑6610 |

**SECTION 63‑19‑10.** Short title.

This chapter may be cited as the “Juvenile Justice Code”.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 132.

Westlaw Topic No. 211.

C.J.S. Infants Sections 12 to 13, 23, 26 to 28.

**SECTION 63‑19‑20.** Definitions.

When used in this chapter and unless otherwise defined or the specific context indicates otherwise:

Text of (1) effective until July 1, 2019. See Editor’s Note for contingency.

(1) “Child” or “juvenile” means a person less than seventeen years of age. “Child” or “juvenile” does not mean a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16‑1‑20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person sixteen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16‑1‑20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.

Text of (1) effective July 1, 2019. See Editor’s Note for contingency.

(1) “Child” or “juvenile” means a person less than eighteen years of age. “Child” or “juvenile” does not mean a person seventeen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16‑1‑20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person seventeen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16‑1‑20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.

(2) “Court” means the family court.

(3) “Criminal justice purpose” means:

(a) the performance of any activity directly involving the detection, apprehension, capture from escape or elopement, detention, pretrial release, post‑trial release, prosecution, adjudication, supervision, or rehabilitation of accused or adjudicated persons or criminal offenders; or

(b) the collection, storage, and dissemination of child offense history records.

(4) “Department” means the Department of Juvenile Justice.

(5) “Guardian” means a person who legally has the care and management of a child.

(6) “Judge” means the judge of the family court.

(7) “Parent” means biological parent, adoptive parents, step‑parent, or person with legal custody.

(8) “Parole board” means the Board of Juvenile Parole under the Department of Juvenile Justice.

(9) “Status offense” means an offense which would not be a misdemeanor or felony if committed by an adult including, but not limited to, incorrigibility or beyond the control of parents, truancy, running away, playing or loitering in a billiard room, playing a pinball machine, or gaining admission to a theater by false identification.

HISTORY: 2008 Act No. 361, Section 2; 2016 Act No. 268 (S.916), Section 2, eff July 1, 2019.

Editor’s Note

2016 Act No. 268, Section 12, provides as follows:

“SECTION 12. Section 10 of this act takes effect upon approval by the Governor. Sections 1 through 9 and Section 11 of this act take effect on July 1, 2019, contingent upon the Department of Juvenile Justice having received any funds that may be necessary for implementation. If the report submitted to the General Assembly on September 1, 2017, reflects any additional funds needed by the Department of Juvenile Justice to ensure implementation will be possible on July 1, 2019, the department shall include these funds in its budget requests to the General Assembly as part of Fiscal Years 2017‑2018 and 2018‑2019. Beginning on September 1, 2017, all state and local agencies and courts involved with the implementation of the provisions of this act may begin undertaking and executing any and all applicable responsibilities so that the provisions of this act may be fully implemented on July 1, 2019.”

Effect of Amendment

2016 Act No. 268, Section 2, in (1), substituted “a person less than eighteen years of age” for “a person less than seventeen years of age”, substituted “does not mean a person seventeen years of age or older” for “does not mean a person sixteen years of age or older”, and substituted “a person seventeen years of age who is charged” for “a person sixteen years of age who is charged”.

CROSS REFERENCES

Penalties for classes of felonies, see Section 16‑1‑20.

Library References

Infants 132.

Westlaw Topic No. 211.

C.J.S. Infants Sections 12 to 13, 23, 26 to 28.

Attorney General’s Opinions

Amending this section’s definition of “juvenile” to individuals under the age of eighteen would conflict with Article XII, Section 3 of the Constitution, and an amendment of Article XII, Section 3 of the Constitution would be necessary in order to house seventeen year old inmates with individuals who would be considered a juvenile. S.C. Op.Atty.Gen. (April 6, 2015) 2015 WL 1636656.

A parent or guardian is generally required to support his or her minor child, meaning any child under the age of eighteen. S.C. Op.Atty.Gen. (Oct. 14, 2010) 2010 WL 4391642.

**SECTION 63‑19‑30.** Other state agencies; preexisting obligations.

(A) It is the duty of other state agencies providing financial assistance and other children’s services related to the purposes of this chapter to cooperate with the department in carrying out its responsibilities to children and their families.

(B) Nothing in this chapter may be construed to relieve a state or local unit of government of any preexisting legal obligation to provide payments, services, or facilities.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9.

ARTICLE 3

Department of Juvenile Justice

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑310 | 20‑7‑6805 |
| 63‑19‑320(A) | 20‑7‑6810 |
| 63‑19‑320(B) | 20‑7‑6815 |
| 63‑19‑320(C) | 20‑7‑6820 |
| 63‑19‑330(A) | 20‑7‑6835 |
| 63‑19‑330(B) | 20‑7‑6825 |
| 63‑19‑340 | 20‑7‑6830 |
| 63‑19‑350 | 20‑7‑6840 |
| 63‑19‑360 | 20‑7‑6845 |
| 63‑19‑370 | 20‑7‑6850 |
| 63‑19‑380 | 20‑7‑6855 |
| 63‑19‑390 | 20‑7‑6860 |
| 63‑19‑400 | 20‑7‑6865 |
| 63‑19‑410 | 20‑7‑6870 |
| 63‑19‑420 | 20‑7‑6875 |
| 63‑19‑430 | 20‑7‑6880 |
| 63‑19‑440 | 20‑7‑6885 |
| 63‑19‑450 | 20‑7‑6890 |
| 63‑19‑460 | 20‑7‑6895 |
| 63‑19‑470 | 20‑7‑6905 |
| 63‑19‑480 | 20‑7‑6910 |
| 63‑19‑490 | 20‑7‑6900 |

**SECTION 63‑19‑310.** Department created.

There is created the South Carolina Department of Juvenile Justice.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 273.

Westlaw Topic No. 211.

C.J.S. Infants Section 371.

**SECTION 63‑19‑320.** Director; removal of director; bond.

(A) The Governor shall appoint a director of the department with the advice and consent of the Senate who shall possess qualifications necessary to manage the affairs of the department. If a vacancy occurs in the office when the Senate is not in session, the Governor may appoint a director to fill the vacancy until the Senate acts upon the appointment.

(B) The director is subject to removal by the Governor as provided for in Section 1‑3‑240.

(C) The director must 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 the director’s office and the accurate accounting for all monies and property coming into the director’s hands. The bond must be executed by a surety company authorized to do business under the laws of this State, and the premium on the bond must be paid by the State out of the department’s appropriations.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Removal of officers by Governor, see Section 1‑3‑240.

Library References

Infants 273.

Westlaw Topic No. 211.

C.J.S. Infants Section 371.

**SECTION 63‑19‑330.** Policy‑setting responsibilities of director; executive responsibilities of director.

(A) The director is the chief executive officer of the department. The director may appoint and employ officers and employees necessary to perform the duties and responsibilities of the department and shall ensure that the department’s organizational structure differentiates between separate divisions, the community‑based services and institutional services of the department.

(B) The director is vested with the exclusive responsibility for policy of the department to carry out the responsibilities, duties, and privileges provided for in this chapter.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 273.

Westlaw Topic No. 211.

C.J.S. Infants Section 371.

**SECTION 63‑19‑340.** Annual report.

An annual report of the department must be prepared by the director which shall include an account of all funds received and expended, persons served by the department including a report of the state and condition of the correctional institutions, and community programs operated by the department.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 273.

States 121.

Westlaw Topic Nos. 211, 360.

C.J.S. Infants Section 371.

C.J.S. States Sections 322 to 323, 372.

**SECTION 63‑19‑350.** Community services.

The department shall provide community services as the director shall assign to it which shall include, but are not limited to:

(1) family court intake screening and referral counseling;

(2) serving, advising, and counseling children placed on probation by the family court;

(3) serving, advising, and counseling children in institutions as may be necessary for the placement of the children in a proper environment after release and for the placement of children in suitable jobs where necessary and proper;

(4) supervising and guiding children released or conditionally released from institutions;

(5) counseling children released or conditionally released from its commitment facilities;

(6) coordinating the activities of supporting community agencies which aid in the social adjustment of children released from its commitment facilities;

(7) providing or arranging for necessary services leading to the rehabilitation of delinquents either within the department or through cooperative arrangements with other appropriate agencies;

(8) providing counseling and supervision for a child under twelve years of age who has been adjudicated delinquent or convicted of a crime or who has entered a plea of guilty or nolo contendere, when other suitable personnel is not available and upon request of the court;

(9) providing detention screening services when a child is taken into custody for violation of a law or ordinance as provided for in this chapter;

(10) providing prevention services including short‑ and long‑range planning, establishing statewide priorities and standards, developing public awareness programs, and providing technical assistance to local government in the development of prevention programs;

(11) developing secure and nonsecure alternatives to jail;

(12) providing a variety of community‑based programs to augment regular probation services including, but not limited to, volunteer services, restitution, community‑work programs, family counseling, and contract probation with specific sanctions for various types of behavior;

(13) providing a variety of community‑based programs to serve as alternatives to institutions including, but not limited to, halfway houses, work release, intensive supervision services, restitution, forestry and wilderness camps, marine science programs, and other residential and nonresidential programs;

(14) providing programs to divert juveniles, where proper and appropriate, from the juvenile justice system;

(15) juveniles must be assigned to intensive probation or aftercare services by the Department of Juvenile Justice. Juveniles assigned to these intensive supervision services must be those juveniles who require enhanced supervision, monitoring and contacts, or a higher level of treatment services. Intensive supervision must be provided by the department in all regions of the State. In conjunction with establishing these intensive supervision services, the department shall develop an array of graduated sanctions and impose these sanctions on offenders being provided intensive supervision services for technical rule violations and minor infractions, whenever feasible to do so, in lieu of re‑incarceration of the juvenile in a secure correctional facility. The array of graduated sanctions developed by the department may include, as a condition of probation or parole, placement of a juvenile in a staff or environmentally secure residential program. Case workers selected to monitor, supervise, and serve juveniles assigned to intensive supervision services shall have caseloads of no more than twenty juveniles.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 273, 275.

Westlaw Topic No. 211.

C.J.S. Infants Sections 307, 371, 373.

**SECTION 63‑19‑360.** Institutional services.

The department shall provide institutional services which include, but are not limited to:

(1) providing correctional institutional services for juveniles committed under this chapter;

(2) managing, operating, and supervising Birchwood, Willow Lane, John G. Richards, and other facilities as the director may establish;

(3) establishing and maintaining residential and nonresidential reception and evaluation centers at which all children committed to its custody by a circuit or family court must be received, examined, and evaluated before assignment to one of its institutions or before other disposition or recommendation is made concerning the child. The commitment of a child to a reception and evaluation center or youth correctional institution of the department may be made only after the child has been adjudicated delinquent. The evaluation conducted by the reception and evaluation centers includes, but is not limited to:

(a) a complete social, physical, psychological, and mental examination;

(b) an investigation and consideration of family and community environment and other facts in the background of the person concerned that might relate to the person’s delinquency;

(c) a determination of the correctional or custodial care that would be most appropriate. The department shall create facilities and employ personnel as will enable the centers to conduct the necessary physical, mental, and psychological examinations required by this section;

(4) providing juvenile detention services for juveniles charged with having committed a criminal offense who are found, after a detention screening or detention hearing, to require detention or placement outside the home pending an adjudication of delinquency or dispositional hearing. Detention services provided by the department for the benefit of the counties and municipalities of this State must include secure juvenile detention centers. The size and capacity of the juvenile detention facilities needed must be determined by the department after its consideration and review of minimum standards for local detention facilities in South Carolina for the design, construction, and operation of juvenile detention centers. These recognized state standards must be met or exceeded by the department in determining the size and capacity of the juvenile detention centers and in planning for the construction and operation of the facilities. The department shall determine and announce the anticipated maximum operational capacity of each facility and shall contact each county and municipal governmental body in this State for the purpose of determining which counties or municipalities anticipate utilizing these facilities upon each facility becoming operational. The department shall inform each county and municipal governmental body of the existing state and federal laws regarding the confinement of juveniles charged with committing criminal offenses, of each county’s and municipality’s ability to develop its own facility or to contract with other counties or municipalities for the development of a regional facility, and of the availability of the department’s facilities. This notice must be provided to each county and municipality for the purpose of determining which county governmental bodies desire to enter into an intergovernmental agreement with the department for the detention of juveniles from their particular community who are charged with committing a criminal offense for which pretrial detention is both authorized and appropriate. No later than September 1, 1993, the department shall report to the Budget and Control Board on the strategy of each county to comply with requirements of counties under this chapter. The department must include with its report a plan for the construction and the operation of those facilities which are projected to be necessary for the preadjudicatory detention of juveniles in this State. No later than September first of each subsequent year, the department shall report to the board on the status of all preadjudicatory juvenile detention facilities known to be operational or planned, regardless of ownership or management. Beginning with the report to the board which is due no later than September 1, 1996, the department must include an annual status report on the numbers of juveniles in pretrial detention who are awaiting disposition in general sessions court, whether they have been waived by the family court or whether they qualify due to the offense with which they are charged. The board then will coordinate with all responsible and affected agencies and entities to ensure that adequate funding is identified to prevent the detention or incarceration of juveniles who are awaiting disposition by, or who are under the jurisdiction of, the family court in adult jails anywhere within the State of South Carolina and to prevent the detention of juveniles who are awaiting disposition by general sessions court in facilities which do not provide actual sight and sound separation from adults who are in detention or custody. Upon completion of each facility and upon the determination by the Jail and Prison Inspection Division of the Department of Corrections that each facility is staffed in accordance with relevant standards and can be operated in accordance with these standards, the division shall determine and announce the rated capacity of each facility. A facility operated by the Department of Juvenile Justice for the preadjudicatory detention of juveniles must be maintained and continued in operation for that purpose until approved for conversion or closure by the Department of Administration. However, a county or municipality which decides to maintain its own approved facilities or which has entered into a regional intergovernmental agreement, which has provided secure facilities for preadjudicatory juveniles, and which meets the standards set forth above, may continue to operate these facilities. County and regionally operated facilities are subject to inspection by the Jail and Prison Inspection Division of the Department of Corrections for compliance with the standards set forth above and those created pursuant to Section 24‑9‑20. The division has the same enforcement authority over county, municipal, and regionally operated secure juvenile detention facilities as that which is provided in Section 24‑9‑30. In Department of Juvenile Justice operated facilities, the department shall determine an amount of per diem for each child detained in a center, which must be paid by the governing body of the law enforcement agency having original jurisdiction where the offense occurred. The per diem paid by the governing body of the law enforcement agency having original jurisdiction where the offense occurred must be based on the average operating cost among all preadjudicatory state facilities. The Department of Juvenile Justice must assume one‑third of the per diem cost and the governing body of the law enforcement agency having original jurisdiction where the offense occurred must assume two‑thirds of the cost. Per diem funds received by the department must be placed in a separate account by the department for operation of all preadjudicatory state facilities. Transportation of the juvenile to and from a facility is the responsibility of the law enforcement agency having jurisdiction where the offense was committed. Transportation of juveniles between department facilities, if necessary, is the responsibility of the department;

(5) each secure facility which detains preadjudicatory youth longer than forty‑eight hours, excluding weekends and state holidays, regardless of ownership or management, must have sufficient personnel to provide uninterrupted supervision and to provide administrative, program, and support requirements. Each of these facilities must have a minimum of two juvenile custodial officers on duty each shift, fully dressed, awake, and alert to operate the facility. At least one person shall directly supervise the juveniles at all times. At least one female juvenile custodial officer must be present and available to the female detention population at all times. Staff on duty must be sufficient to provide for a juvenile‑staff ratio adequate for custody, control, and supervision, and to provide full coverage of all designated security posts, excluding administrative, program, and other support staff. Staff shall prepare further a facility schedule of preplanned, structured, and productive activities. Schedules must be developed which include designated times for sleeping, dining, education, counseling, recreation, visitation, and personal time. Daily schedules should minimize idleness and promote constructive use of the juvenile’s day. The Department of Juvenile Justice shall provide educational programs and services to all preadjudicatory juveniles in its custody. County, municipal, and regionally operated facilities shall provide these services to all preadjudicatory juveniles under the jurisdiction of the family court and all pretrial juveniles awaiting general sessions court who are detained locally for more than forty‑eight hours, excluding weekends and state holidays, by contracting with the Department of Juvenile Justice or by arranging the services through the local school district in which the facility is located. It shall be the responsibility of the school district where a local detention center which has been approved to detain juveniles is located to provide adequate teaching staff and to ensure compliance with the educational requirements of this State. Students housed in approved local detention centers are to be included in the average daily membership count of students for that district and reimbursement by the Department of Education shall be made accordingly. Services which are arranged locally must be approved by the Department of Juvenile Justice as meeting all criteria developed under the authority of Section 63‑19‑380. Special needs students who are detained locally shall have all services required by federal and state laws and regulations;

(6) a county, municipality, or regional subdivision may provide temporary holdover facilities for juveniles only if the facilities comply with this section and with all standards created under the provisions of Section 24‑9‑20, which must be monitored and enforced by the Jail and Prison Inspection Division of the South Carolina Department of Corrections pursuant to its authority under Sections 24‑9‑20 and 24‑9‑30. The standards shall provide for the regulation of temporary holdover facilities with regard to adequate square footage, juvenile accommodations, access to bathroom facilities, lighting, ventilation, distinctions between secure and nonsecure temporary holdover facilities, staffing qualifications, and additional requirements as may be specified. These facilities may hold juveniles during the period between initial custody and the initial detention hearing before a family court judge for a period up to forty‑eight hours, excluding weekends and state holidays. Preadjudicatory juveniles who are subsequently transferred to a juvenile detention center may be housed in a temporary holdover facility when returned to the community for a court appearance. However, the temporary housing shall not exceed forty‑eight hours.

HISTORY: 2008 Act No. 361, Section 2.

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.

CROSS REFERENCES

Enforcement of minimum standards, see Section 24‑9‑30.

Inspection of facilities housing local or state prisoners or pretrial detainees, see Section 24‑9‑20.

Library References

Infants 273, 275.

Westlaw Topic No. 211.

C.J.S. Infants Sections 307, 371, 373.

**SECTION 63‑19‑370.** Interdepartmental agreements; retention of grant revenues.

The department may enter into agreements with the governing bodies of other state departments or institutions for the purpose of effecting a more efficient and economical management of any institution or program under its supervision. The department is authorized to make contracts and expend public funds as required to carry out the functions prescribed for it in this chapter within the limits of appropriated funds.

All revenues generated from United States Department of Agriculture grants, the Education Finance Act, the Detention Center, and Medicaid federal funding may be retained, carried forward, and expended by the Department of Juvenile Justice, in accordance with applicable regulations, for the costs associated with related programs.

HISTORY: 2008 Act No. 361, Section 2; 2008 Act No. 353, Section 2, Pt 28A.

Library References

Infants 273.

Westlaw Topic No. 211.

C.J.S. Infants Section 371.

**SECTION 63‑19‑380.** Special school district designation.

(A) The Department of Juvenile Justice is designated as a special school district which shall operate a continuous progress education program on a twelve‑month basis. There is created within the department the Education Division which shall provide academic and vocational training at the Reception and Evaluation Center, Birchwood High School, Willow Lane Junior High School, and all other institutions operating under the department. Academic and vocational training provided pursuant to this section shall meet all educational standards prescribed by law and by the Department of Education for public schools of the State including, but not limited to, compliance with and operation under the provisions of the Education Finance Act, the Defined Minimum Program, teacher and superintendent certification laws and regulations, and other laws or regulations governing the education of children. The department may prescribe additional requirements as it may from time to time deem necessary.

(B) The State Superintendent of Education shall administer the standards related to the school programs. Reports from the Department of Education evaluating the educational program at all juvenile corrections institutions and indicating whether or not the program meets the standards as prescribed, must be made directly to the director. Department of Education supervisory personnel as considered appropriate must be utilized for evaluating the programs and for reporting to the director.

(C) Schools operated by the department shall receive funds from the Department of Education under the same provisions as other public schools in the State. Funds previously received by the Department of Juvenile Justice from the South Carolina Department of Education for programs now being consolidated under the Education Finance Act shall be disbursed to the Department of Juvenile Justice by the Department of Education from the appropriation provided in the annual general appropriations act and entitled “Education Finance Act”. The amount to be disbursed to the Department of Juvenile Justice must be sufficient to produce funds equal to the product of the number of students served by the Department of Juvenile Justice weighted according to the criteria established by the South Carolina Department of Education under the provisions of the Education Finance Act and the state portion of the appropriated value statewide of the base student cost, adjusted for operation of the department’s twelve‑month continuous progress education program using a base of two hundred thirty‑five instructional days instead of one hundred ninety instructional days. The amount includes, but is not limited to, all funding for teacher salary supplements, instructional purposes, or any other funds disbursed to the Department of Juvenile Justice school district’s twelve‑month continuous progress educational program. The Department of Juvenile Justice shall comply with the provisions of subsection (4) of Section 59‑20‑50 and subsections (1), (2), (3)(a), (4)(b), (c), (d), (e), and (f) of Section 59‑20‑60. The South Carolina Department of Education annually shall determine that these provisions are being met and include its findings in the report mandated in subsection (5)(e) of Section 59‑20‑60. If the accreditation standards set forth in the Defined Minimum Program for the Department of Juvenile Justice as approved by the State Board of Education are not met, funds by this section shall be reduced the following fiscal year according to the provisions set forth in the Education Finance Act.

(D) The director shall operate as the trustee for schools under the department’s jurisdiction for all administrative purposes, including the receipt and expenditure of funds appropriated or granted to the schools for any purpose. The director shall employ a full‑time superintendent of schools for the special school district. The superintendent shall hold a valid superintendent’s certificate from the Department of Education and shall serve as the head of the Education Division.

(E) In lieu of classification by the Division of State Personnel, the employment status of the superintendent of schools for the department and all instructional personnel operating under the Education Division of the department must be governed by the laws of the State regarding employment of instructional personnel and regulations of the Department of Education.

HISTORY: 2008 Act No. 361, Section 2; 2008 Act No. 353, Section 2, Pt 28C.1.

Library References

Infants 273, 275.

Westlaw Topic No. 211.

C.J.S. Infants Sections 307, 371, 373.

**SECTION 63‑19‑390.** Peace officers and constables.

Juvenile correctional employees of the department, while performing their officially assigned duties relating to the custody, control, transportation, or recapture of a juvenile offender within the jurisdiction of the department, and other employees of the department authorized by the director to perform similar functions as part of their official duties, have the status of peace officers anywhere in this State in a matter relating to the custody, control, transportation, or recapture of the juvenile. Employees of the department’s Division of Public Safety, on proper training and certification from the Criminal Justice Academy and after having taken the oath of office prescribed by law and the Constitution of this State, must continue to be commissioned as state constables pursuant to Section 23‑1‑60.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Appointment, compensation, removal and terms of special deputies, constables, security guards, and detectives, see Section 23‑1‑60.

Library References

Infants 273.

Westlaw Topic No. 211.

C.J.S. Infants Section 371.

**SECTION 63‑19‑400.** Gifts.

The department may accept gifts, donations, or contributions and may receive devises and bequests. These acquisitions must be used for the purposes specified by the donors.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 273.

Westlaw Topic No. 211.

C.J.S. Infants Section 371.

**SECTION 63‑19‑410.** Fees.

(A) The department may charge and collect fees for evaluation and treatment services provided for a person referred or temporarily committed to its facilities either at the evaluation center in Columbia or any center or other facility of the department. Fees may be charged to a parent or guardian or to the public or private agency responsible for the temporary commitment or referral. In cases where insurance coverage is available, fees of treatment or evaluation may be charged to the insurer. No fees may be charged to a person who is finally committed to a custodial facility of the department, and no person may be denied treatment or evaluation services because of inability to pay for the services.

(B) The director shall approve and periodically review, a schedule of maximum charges for the services of the department, including residential care. The department shall adopt procedures to determine ability to pay and may authorize its designees to reduce or waive charges based upon their findings. No charge for services rendered by the department may exceed the actual cost of the services at the facility rendering the services.

(C) The department shall establish a hearing and review procedure so that parents or legal guardians of a person under the department’s jurisdiction may appeal charges made for services or may present to the departmental officials information or evidence which, in their opinion, needs to be considered in establishing charges.

(D) The department may utilize all legal procedures to collect lawful claims. All funds collected pursuant to this section must be deposited with the State Treasurer for use of the department in defraying the cost of services for which the fees may be collected.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 273.

Westlaw Topic No. 211.

C.J.S. Infants Section 371.

**SECTION 63‑19‑420.** Natural resource sales.

The director is authorized to sell mature trees, other timber, and farm products and commodities from lands owned by the department. Before the sale of timber, the director shall consult with the State Forester to determine the economic feasibility of and obtain approval for the sales. Funds derived from the sales must be credited to the account of the department to be used for capital improvements subject to the approval of the State Fiscal Accountability Authority or Department of Administration, as appropriate.

HISTORY: 2008 Act No. 361, Section 2.

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.

Library References

Infants 273.

Westlaw Topic No. 211.

C.J.S. Infants Section 371.

**SECTION 63‑19‑430.** Bumper sticker sales.

The department may print or purchase for resale bumper stickers and other informational material prepared to publicize and educate the public concerning activities of the department. All these materials must have “South Carolina” inscribed on the material. After the costs of the materials have been recovered, all proceeds from the sale of the materials must be deposited in the student welfare fund of the department and used for the purposes prescribed for that fund.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 273.

Westlaw Topic No. 211.

C.J.S. Infants Section 371.

**SECTION 63‑19‑440.** Goldsmith Center.

The department’s reception and evaluation center located in Columbia is designated “The William J. Goldsmith Reception and Evaluation Center”.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 271.

Westlaw Topic No. 211.

C.J.S. Infants Sections 370, 378.

**SECTION 63‑19‑450.** Youth Industries Program.

(A) The director of the Department of Juvenile Justice may establish a Youth Industries Program, consistent with all applicable state and federal child labor laws, employing juveniles committed to the department. This program may include:

(1) providing services to private industries including, but not limited to:

(a) packing, assembling, handling, reconditioning or restoring products, goods, wares, or merchandise;

(b) contracting with private industry for the manufacturing and processing of goods, wares, or merchandise;

(c) contracting with other profit or nonprofit businesses or commercial enterprises to provide the services enumerated in subitems (a) and (b) within the department’s Sheltered Workshop Program;

(2) manufacturing or processing industry or service which utilizes juveniles in the manufacture or production of goods, wares, merchandise, articles, or products or in providing services which may be needed for the construction, operation, maintenance, or use of any office, department, institution, or agency supported in whole or in part by this State or a political subdivision of this State; or

(3) otherwise engaging juveniles in paid work opportunities within the department, consistent with the general welfare of the department’s mission of rehabilitation and treatment.

(B) To implement the Youth Industries Program the director may enter into contracts in the manner provided by law to implement its Youth Industries Program. A contract may include rental or lease agreements for state land or buildings or portions of state buildings on the grounds of an institution or a facility of the Department of Juvenile Justice and if the contract contains such rental or lease agreements, it must provide the business entity with reasonable access to and egress from these grounds, buildings, and facilities.

(C) In conducting the Youth Industries Program, the department may purchase equipment, raw materials, and supplies in the manner provided by law and may engage necessary supervisory personnel.

(D) The prices of articles or products manufactured or produced or services rendered under the Youth Industries Program must be uniform and nondiscriminating and must be as near to the usual market price for these articles, products, or services as is practicable.

(E) All monies collected by the department from the sale or disposition of articles and products manufactured or produced or from services rendered by juveniles in the Youth Industries Program must be deposited into a special account designated “Youth Industries Account”. The monies collected and deposited into this account must be used solely for the purchasing of manufacturing supplies, equipment, machinery, and buildings for the Youth Industries Program to pay the wages of the juveniles employed in the program and the salaries of the necessary personnel in the program, and to defray the necessary expenses of the program. The director must deduct from wages paid to a juvenile:

(1) state, federal, and local taxes;

(2) allocations for support of children pursuant to law, court order, or agreement by the committed juvenile; and

(3) contributions to any fund established by law to compensate the victims of crime of not more than twenty percent and not less than five percent of gross wages.

These deductions may not exceed eighty percent of gross wages.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 275.

Westlaw Topic No. 211.

C.J.S. Infants Sections 307, 373.

**SECTION 63‑19‑460.** Voluntary participation in program.

(A) A juvenile may participate in the Youth Industries Program established pursuant to Section 63‑19‑450 only on a voluntary basis and only after the juvenile has been informed of the conditions of the employment.

(B) A juvenile participating in the Youth Industries Program:

(1) providing services to private industry must be compensated commensurate with the prevailing wage for work of a similar nature in the private sector;

(2) is not considered an employee of the State and is not eligible for unemployment compensation upon termination from the program; however, a juvenile is entitled to all other work benefits, including worker’s compensation or its equivalent.

(C) The wages of a juvenile authorized to work in the Youth Industries Program, if paid other than by the department, must be paid directly to the Department of Juvenile Justice and credited to the juvenile’s account. If the wages are paid by an entity other than the department, these wages must be paid directly to the department, and the department shall credit the wages to the juvenile’s account. The director must deduct from wages paid to a juvenile:

(1) state, federal, and local taxes;

(2) allocations for support of children pursuant to law, court order, or agreement by the committed juvenile; and

(3) contributions to any fund established by law to compensate the victims of crime of not more than twenty percent and not less than five percent of gross wages.

These deductions may not exceed eighty percent of gross wages.

(D) Juvenile participation in the Youth Industries Program must not result in the displacement of employed workers in the State and must not impair existing contracts.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 274, 275.

Westlaw Topic No. 211.

C.J.S. Infants Sections 307, 372 to 373.

**SECTION 63‑19‑470.** Sale of goods prohibited.

It is unlawful to sell or offer for sale on the open market of this State goods, wares, or merchandise manufactured or produced wholly or in part by juvenile offenders in this or another state. However, this subsection does not apply to:

(1) articles produced by juveniles on parole or probation or in community supervision;

(2) products sold by the Department of Juvenile Justice made by juveniles in its arts and crafts programs;

(3) articles or products sold to nonprofit corporations incorporated under Article 1, Chapter 31, Title 33 or to organizations operating in this State which have been granted an exemption under Section 501(c) of the Internal Revenue Code of 1986;

(4) articles or products made in the Youth Industries Program pursuant to Section 63‑19‑450, through contracts with private sector businesses which provide work and vocational training opportunities for juvenile offenders with physical or mental disabilities or who are persons with intellectual disability if the compensation is paid by the private sector business to the juvenile offender on a piece rate basis;

(5) products sold intrastate or interstate produced by juveniles employed in the Youth Industries Program;

(6) services provided by juveniles in the Youth Industries Program including, but not limited to, restoration and reconditioning activities, the packaging and handling of goods, wares, or merchandise, or the dismantling and reassembling of products.

HISTORY: 2008 Act No. 361, Section 2.

Code Commissioner’s Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted “intellectual disability” for “mentally retarded” and “person with intellectual disability” or “persons with intellectual disability” for “mentally retarded”.

Library References

Infants 271.

Westlaw Topic No. 211.

C.J.S. Infants Sections 370, 378.

**SECTION 63‑19‑480.** Compensation of victims of crime fund.

There is created a fund within the Department of Juvenile Justice for the compensation of victims of crime. All contributions deducted from a juvenile’s wages pursuant to Section 63‑19‑450(E)(3) or 63‑19‑460(C)(3) must be deposited into this fund. Of the amount contributed to the fund by each juvenile, ninety‑five percent must be paid by the department on behalf of the juvenile as restitution to the victim or victims of the juvenile’s adjudicated crime as ordered by the family court or the releasing entity, and five percent must be submitted to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund. If the amount of restitution ordered has been paid in full or if there is no victim of the juvenile’s adjudicated crime, the juvenile’s contributions must be submitted to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund.

HISTORY: 2008 Act No. 361, Section 2; 2017 Act No. 96 (S.289), Section 11, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 11, substituted “Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund” for “South Carolina Victims’ Compensation Fund” twice.

Library References

Infants 223.1.

States 127.

Westlaw Topic Nos. 211, 360.

C.J.S. Infants Sections 43, 71 to 95, 310.

C.J.S. States Sections 386 to 387.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 113, Parole and Aftercare.

**SECTION 63‑19‑490.** Authority to promulgate regulations.

The Department of Juvenile Justice in consultation with this state’s regulatory agencies may promulgate regulations which are necessary to implement Sections 63‑19‑450 and 63‑19‑460.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 273.

Westlaw Topic No. 211.

C.J.S. Infants Section 371.

ARTICLE 5

Board of Juvenile Parole

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑610 | 20‑7‑7005 |
| 63‑19‑620 | 20‑7‑7010 |
| 63‑19‑630 | 20‑7‑7020 |
| 63‑19‑640 | 20‑7‑7015 |

**SECTION 63‑19‑610.** Board.

(A)(1) There is created the Board of Juvenile Parole. The parole board is composed of seven members appointed by the Governor with the advice and consent of the Senate. In making these appointments, the Governor shall select members who are representative of the racial, gender, and geographical diversity of the State. If a vacancy occurs on the parole board when the Senate is not in session, the Governor may appoint a member to fill the vacancy and the appointee is a de facto member until the Senate acts upon the appointment.

(2) The Department of Juvenile Justice shall continue to provide to the Board of Juvenile Parole the budgetary, fiscal, personnel, and training information resources and other support considered necessary by the parole board to perform its mandated functions.

(B) Members of the parole board shall serve four‑year terms and until their successors are appointed and qualify and these terms expire on June thirtieth of the appropriate year.

(C) No member may be reappointed to the parole board until two years after the expiration of a full four‑year term.

HISTORY: 2008 Act No. 361, Section 2; 2012 Act No. 279, Section 31, eff June 26, 2012.

Editor’s Note

2012 Act No. 279, Section 33, provides as follows:

“Due to the congressional redistricting, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires. Further, the inability to hold an election or to make an appointment due to judicial review of the congressional districts does not constitute a vacancy.”

Effect of Amendment

The 2012 amendment rewrote subsection (A).

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

**SECTION 63‑19‑620.** Removal of member.

A member of the parole board is subject to removal by the Governor as provided for in Section 1‑3‑240(C).

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

**SECTION 63‑19‑630.** Officers; rules and procedures.

The parole board shall elect from among its members a chairman who shall serve a one‑year term and who may not succeed himself as chairman. The parole board may elect a vice‑chairman and secretary and shall fix the time and place of meetings. Rules and procedures for parole board meetings, as considered advisable, must be adopted by the parole board. Six members of the parole board constitute a quorum for the transaction of business.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

**SECTION 63‑19‑640.** Compensation.

The members of the parole board must be reimbursed for actual expenses incurred in attending parole board meetings and shall receive as compensation the same per diem as provided by law for members of state boards, committees, and commissions.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

**SECTION 63‑19‑650.** Compensation.

Members of the Board of Juvenile Parole shall receive compensation in an amount provided by the General Assembly in the annual general appropriations act.

HISTORY: 2012 Act No. 246, Section 1, eff June 18, 2012.

ARTICLE 7

Custody and Detention

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑810 | 20‑7‑7205 |
| 63‑19‑820 | 20‑7‑7210 |
| 63‑19‑830 | 20‑7‑7215 |
| 63‑19‑840 | 20‑7‑7220 |
| 63‑19‑850 | 20‑7‑7225 |

**SECTION 63‑19‑810.** Taking a child into custody.

(A) When a child found violating a criminal law or ordinance is taken into custody, the taking into custody is not an arrest. The jurisdiction of the court attaches from the time of the taking into custody. When a child is taken into custody, the officer taking the child into custody shall notify the parent, guardian, or custodian of the child as soon as possible. Unless otherwise ordered by the court, the person taking the child into custody may release the child to a parent, a responsible adult, a responsible agent of a court‑approved foster home, group home, nonsecure facility, or program upon the written promise, signed by the person, to bring the child to the court at a stated time or at a time the court may direct. The written promise, accompanied by a written report by the officer, must be submitted to the South Carolina Department of Juvenile Justice as soon as possible, but not later than twenty‑four hours after the child is taken into custody. If the person fails to produce the child as agreed, or upon notice from the court, a summons or a warrant may be issued for the apprehension of the person or of the child.

(B) When a child is not released pursuant to subsection (A), the officer taking the child into custody shall immediately notify the authorized representative of the Department of Juvenile Justice, who shall respond within one hour by telephone or to the location where the child is being detained. Upon responding, the authorized representative of the department shall review the facts in the officer’s report or petition and any other relevant facts and advise the officer if, in his opinion, there is a need for detention of the child. The officer’s written report must be furnished to the authorized representatives of the department and must state:

(1) the facts of the offense;

(2) the reason why the child was not released to the parent. Unless the child is to be detained, the child must be released by the officer to the custody of his parents or other responsible adult upon their written promise to bring the child to the court at a stated time or at a time the court may direct. However, if the offense for which the child was taken into custody is a violent crime as defined in Section 16‑1‑60, the child may be released only by the officer who took the child into custody. If the officer does not consent to the release of the child, the parents or other responsible adult may apply to any judge of the family court within the circuit for an ex parte order of release of the child. The officer’s written report must be furnished to the family court judge. The family court judge may establish conditions for such release.

(C) When a child is charged by a law enforcement officer for an offense which would be a misdemeanor or felony if committed by an adult, not including a traffic or wildlife violation over which courts other than the family court have concurrent jurisdiction as provided in Section 63‑3‑520, the law enforcement officer also shall notify the principal of the school in which the child is enrolled, if any, of the nature of the offense. This information may be used by the principal for monitoring and supervisory purposes but otherwise must be kept confidential by the principal in the same manner required by Section 63‑19‑2220(E).

(D) Juveniles may be held in nonsecure custody within the law enforcement center for only the time necessary for purposes of identification, investigation, detention, intake screening, awaiting release to parents or other responsible adult, or awaiting transfer to a juvenile detention facility or to the court for a detention hearing.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 68.4, 192.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41 to 42, 46 to 48, 296 to 300.

NOTES OF DECISIONS

In general 1

1. In general

Department of Juvenile Justice (DJJ), having assumed custody of a known dangerous individual, had an independent duty to control and supervise juvenile delinquent to prevent him from harming others as long as it retained custody of him by court order. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Courts 55

When a party is in a position to monitor, supervise, and control a person’s conduct, a special relationship between the defendant and the dangerous person may trigger a common law duty to warn potential victims of the danger posed by the individual; however, this special duty is limited to situations where the person under the defendant’s control has made a specific threat directed at a specific individual. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Negligence 221

**SECTION 63‑19‑820.** Out‑of‑home placement.

(A) When the officer who took the child into custody determines that placement of a juvenile outside the home is necessary, the authorized representative of the Department of Juvenile Justice shall make a diligent effort to place the child in an approved home, program, or facility, other than a secure juvenile detention facility, when these alternatives are appropriate and available.

(B) A child is eligible for detention in a secure juvenile detention facility only if the child:

(1) is charged with a violent crime as defined in Section 16‑1‑60;

(2) is charged with a crime which, if committed by an adult, would be a felony or a misdemeanor other than a violent crime, and the child:

(a) is already detained or on probation or conditional release or is awaiting adjudication in connection with another delinquency proceeding;

(b) has a demonstrable recent record of wilful failures to appear at court proceedings;

(c) has a demonstrable recent record of violent conduct resulting in physical injury to others; or

(d) has a demonstrable recent record of adjudications for other felonies or misdemeanors; and

(i) there is reason to believe the child is a flight risk or poses a threat of serious harm to others; or

(ii) the instant offense involved the use of a firearm;

(3) is a fugitive from another jurisdiction;

(4) requests protection in writing under circumstances that present an immediate threat of serious physical injury;

(5) had in his possession a deadly weapon;

(6) has a demonstrable recent record of wilful failure to comply with prior placement orders including, but not limited to, a house arrest order;

(7) has no suitable alternative placement and it is determined that detention is in the child’s best interest or is necessary to protect the child or public, or both; or

(8) is charged with an assault and battery or an assault and battery of a high and aggravated nature on school grounds or at a school‑sponsored event against any person affiliated with the school in an official capacity.

A child who meets the criteria provided in this subsection is eligible for detention. Detention is not mandatory for a child meeting the criteria if that child can be supervised adequately at home or in a less secure setting or program. If the officer does not consent to the release of the child, the parents or other responsible adult may apply to the family court within the circuit for an ex parte order of release of the child. The officer’s written report must be furnished to the family court judge who may establish conditions for the release.

(C) No child may be placed in secure confinement or ordered detained by the court in secure confinement in an adult jail or other place of detention for adults for more than six hours. However, the prohibition against the secure confinement of juveniles in adult jails does not apply to juveniles who have been waived to the court of general sessions for the purpose of standing trial as an adult. Juveniles placed in secure confinement in an adult jail during this six‑hour period must be confined in an area of the jail which is separated by sight and sound from adults similarly confined.

(D) Temporary holdover facilities may hold juveniles during the period between initial custody and the initial detention hearing before a family court judge for a period up to forty‑eight hours, excluding weekends and state holidays.

(E) A child who is taken into custody because of a violation of law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained in an adult detention facility. A child who is taken into custody because of a violation of the law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained more than twenty‑four hours in a juvenile detention facility, unless an order previously has been issued by the court, of which the child has notice and which notifies the child that further violation of the court’s order may result in the secure detention of that child in a juvenile detention facility. If a juvenile is ordered detained for violating a valid court order, the juvenile may be held in secure confinement in a juvenile detention facility for not more than seventy‑two hours, excluding weekends and holidays. However, nothing in this section precludes a law enforcement officer from taking a status offender into custody.

(F) Children ten years of age and younger must not be incarcerated in a jail or detention facility for any reason. Children eleven or twelve years of age who are taken into custody for a violation of law which would be a criminal offense under the laws of this State if committed by an adult or who violates conditions of probation for such an offense must be incarcerated in a jail or detention facility only by order of the family court.

(G) For purposes of this section, “adult jail” or other place of detention for adults includes a state, county, or municipal police station, law enforcement lockup, or holding cell. “Secure confinement” means an area having bars or other restraints designed to hold one person or a group of persons at a law enforcement location for any period of time and for any reason. Secure confinement in an adult jail or other place of detention does not include a room or a multipurpose area within the law enforcement center which is not secured by locks or other security devices. Rooms or areas of this type include lobbies, offices, and interrogation rooms. Juveniles held in these areas are considered to be in nonsecure custody as long as the room or area is not designed for or intended for use as a residential area, the juvenile is not handcuffed to a stationary object while in the room or area, and the juvenile is under continuous visual supervision by facility staff while in this room or area which is located within the law enforcement center. Secure confinement also does not include a room or area used by law enforcement for processing “booking” purposes, irrespective of whether it is determined to be secure or nonsecure, as long as the juvenile’s confinement in the area is limited to the time necessary to fingerprint, photograph, or otherwise “book” the juvenile in accordance with state law.

HISTORY: 2008 Act No. 361, Section 2.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Library References

Infants 192.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41 to 42, 46 to 48.

Attorney General’s Opinions

A court would likely find that references to “assault and battery of a high and aggravated nature” in section 63‑19‑820 and section 63‑19‑1210 should be changed to “assault and battery with intent to kill”. S.C. Op.Atty.Gen. (Oct. 1, 2010) 2010 WL 4391633.

**SECTION 63‑19‑830.** Detention hearings; screenings.

(A) If the officer who took the child into custody has not released the child to the custody the child’s parents or other responsible adult, the court shall hold a detention hearing within forty‑eight hours from the time the child was taken into custody, excluding Saturdays, Sundays, and holidays. At this hearing, the authorized representative of the department shall submit to the court a report stating the facts surrounding the case and a recommendation as to the child’s continued detention pending the adjudicatory and dispositional hearings. The court shall appoint counsel for the child if none is retained. No child may proceed without counsel in this hearing, unless the child waives the right to counsel and then only after consulting at least once with an attorney. At the conclusion of this hearing, the court shall determine whether probable cause exists to justify the detention of the child and the appropriateness of, and need for, the child’s continued detention. If continued detention of a juvenile is considered appropriate by the court and if a juvenile detention facility exists in that county which meets state and federal requirements for the secure detention of juveniles or if that facility exists in another county with which the committing county has a contract for the secure detention of its juveniles and if commitment of a juvenile by the court to that facility does not cause the facility to exceed its design and operational capacity, the family court shall order the detention of the juvenile in that facility. A juvenile must not be detained in secure confinement in excess of ninety days except in exceptional circumstances as determined by the court. A detained juvenile is entitled to further and periodic review:

(1) within ten days following the juvenile’s initial detention hearing;

(2) within thirty days following the ten‑day hearing; and

(3) at any other time for good cause shown upon motion of the child, the State, or the department.

If the child does not qualify for detention or otherwise require continued detention under the terms of Section 63‑19‑820(A) or (B), the child must be released to a parent, guardian, or other responsible person.

(B) A juvenile ordered detained in a facility must be screened within twenty‑four hours by a social worker or if considered appropriate by a psychologist in order to determine whether the juvenile is emotionally disturbed, mentally ill, or otherwise in need of services. The services must be provided immediately.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 192, 203.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 40 to 42, 44 to 48, 58 to 59, 62 to 63, 66, 69 to 70.

**SECTION 63‑19‑840.** Detention homes; temporary care and custody.

Provisions must be made for a detention home or homes for the temporary detention of children to be conducted by the court or, subject to the approval and supervision of the court, by an appropriate public agency; or the court may arrange for the use of private homes for detention, subject to the supervision of the court or other agency, or may arrange with an institution or agency to receive for temporary care and custody children within the jurisdiction of the court.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 192, 203.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 40 to 42, 44 to 48, 58 to 59, 62 to 63, 66, 69 to 70.

**SECTION 63‑19‑850.** Transportation to detention facility.

No child may be transported to a juvenile detention facility in a police vehicle which also contains adults under arrest. When a child is to be transported to or from a juvenile detention facility following a detention screening review conducted by the Department of Juvenile Justice or after a detention order has been issued by the court, the local law enforcement agency which originally took the child into custody shall transport this child to or from the juvenile detention facility. Transportation of juveniles between department facilities, if necessary, is the responsibility of the department.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 192, 203.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 40 to 42, 44 to 48, 58 to 59, 62 to 63, 66, 69 to 70.

ARTICLE 9

Intake and Initiation of Proceedings

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑1010 | 20‑7‑7405 |
| 63‑19‑1020 | 20‑7‑7410 |
| 63‑19‑1030 | 20‑7‑7415 |
| 63‑19‑1040 | 20‑7‑7420 |

**SECTION 63‑19‑1010.** Intake and probation.

(A) The Department of Juvenile Justice shall provide intake and probation services for juveniles brought before the family courts of this State and for persons committed or referred to the department in cooperation with all local officials or agencies concerned. The role and function of intake is to independently assess the circumstances and needs of children referred for possible prosecution in the family court. Recommendations by the department as to intake must be reviewed by the office of the solicitor in the circuit concerned, and the final determination as to whether or not the juvenile is to be prosecuted in the family court must be made by the solicitor or by the solicitor’s authorized assistant. Statements of the juvenile contained in the department’s files must not be furnished to the solicitor’s office as part of the intake review procedure, and the solicitor’s office must not be privy to these statements in connection with its intake review.

(B) Where circumstances do not warrant prosecution in the discretion of the solicitor, the intake counselor shall offer referral assistance for services as appropriate for the child and family. In the event that a juvenile is adjudicated to be delinquent or found by the family court to be in violation of the terms of probation, the intake counselor shall offer appropriate dispositional recommendations to the family court for its consideration and determination of the disposition of the case.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 191, 192, 208, 225.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 40 to 48, 51 to 59, 61 to 62, 66 to 67, 69 to 95.

**SECTION 63‑19‑1020.** Instituting proceedings.

The parent or custodian of a child, an official of a child welfare board, a public official charged by law with the care of the poor, the recognized agents of an agency, association, society, or institution, a person having knowledge or information of a nature which convinces the person that a child is delinquent or that a child, by reason of his own acts in accordance with this chapter, is subject to the jurisdiction of the court, any person who has suffered injury through the delinquency of a child, or an officer having an arrested child in charge, may institute a proceeding respecting the child.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 200.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41, 46 to 48.

**SECTION 63‑19‑1030.** Prehearing inquiry.

(A) Whenever a person informs the court that a child is within the purview of this chapter, the court shall make preliminary inquiry to determine whether the interest of the public or of the child requires that further action be taken. Thereupon, the court may make an informal adjustment as is practicable without a petition or may authorize a petition to be filed by any person.

Text of (B) effective until July 1, 2019. See Editor’s Note for contingency.

(B) The petition and all subsequent court documents must be entitled:

“In the Family Court of \_\_\_\_ County.

In the Interest of \_\_\_, a child under seventeen years of age.”

The petition must be verified and may be upon information and belief. It shall set forth plainly:

(1) the facts which bring the child within the purview of this chapter;

(2) the name, age, and residence of the child;

(3) the names and residences of the child’s parents;

(4) the name and residence of a legal guardian, if there is one, of the person or persons having custody of or control of the child, or of the nearest known relative if no parent or guardian can be found. If any of these facts are not known by the petitioner, the petition shall state that.

Text of (B) effective July 1, 2019. See Editor’s Note for contingency.

(B) The petition and all subsequent court documents must be entitled:

“In the Family Court of \_\_\_\_\_\_\_ County.

In the Interest of \_\_\_\_\_\_\_, a child under eighteen years of age.”

The petition must be verified and may be upon information and belief. It shall set forth plainly:

(1) the facts which bring the child within the purview of this chapter;

(2) the name, age, and residence of the child;

(3) the names and residences of the child’s parents;

(4) the name and residence of a legal guardian, if there is one, of the person or persons having custody of or control of the child, or of the nearest known relative if no parent or guardian can be found. If any of these facts are not known by the petitioner, the petition shall state that.

(C) Before the hearing of a case of a child, the judge shall cause an investigation of all the facts pertaining to the issue to be made. The investigation shall consist of an examination of the parentage and surroundings of the child, the child’s age, habits and history, and also shall include inquiry into the home conditions, habits and character of the child’s parents or guardian, if that is necessary in the discretion of the court. In these cases the court, if advisable, shall cause the child to be examined as to the child’s mentality by a competent and experienced psychologist or psychiatrist who shall make a report of the findings. Before the hearing in the case of a child, if the child attends school, a report on the child must be obtained from the school which the child attends. The school officials shall furnish the report upon the request of the court or its probation counselor. The court, when it is considered necessary, shall cause a complete physical examination to be made of the child by a competent physician.

(D) In a case where the delinquency proceedings may result in commitment to an institution in which the child’s freedom is curtailed, the child or the child’s parents or guardian must be given written notice with particularity of the specific charge or factual allegations to be considered at the hearing. The notice must be given as soon as practicable and sufficiently in advance to permit preparation. The child or the child’s parent or guardian also must be advised in the notice of their right to be represented by counsel and that, if they are unable to employ counsel, counsel will be appointed to represent them. In the hearing, the parent and child also must be expressly informed of their right to counsel and must be specifically required to consider whether they do or do not waive the right of counsel.

HISTORY: 2008 Act No. 361, Section 2; 2016 Act No. 268 (S.916), Section 3, eff July 1, 2019.

Editor’s Note

2016 Act No. 268, Section 12, provides as follows:

“SECTION 12. Section 10 of this act takes effect upon approval by the Governor. Sections 1 through 9 and Section 11 of this act take effect on July 1, 2019, contingent upon the Department of Juvenile Justice having received any funds that may be necessary for implementation. If the report submitted to the General Assembly on September 1, 2017, reflects any additional funds needed by the Department of Juvenile Justice to ensure implementation will be possible on July 1, 2019, the department shall include these funds in its budget requests to the General Assembly as part of Fiscal Years 2017‑2018 and 2018‑2019. Beginning on September 1, 2017, all state and local agencies and courts involved with the implementation of the provisions of this act may begin undertaking and executing any and all applicable responsibilities so that the provisions of this act may be fully implemented on July 1, 2019.”

Effect of Amendment

2016 Act No. 268, Section 3, in the second undesignated paragraph under (B), substituted “under eighteen years of age” for “under seventeen years of age”.

Library References

Infants 208.

Westlaw Topic No. 211.

C.J.S. Infants Sections 40, 43 to 45, 51 to 59, 61 to 62, 66 to 67, 69 to 95.

**SECTION 63‑19‑1040.** Indigent defense.

Notwithstanding Title 17, Chapter 3, Defense of Indigents, in determining indigence for the purpose of appointing legal counsel for a child in a delinquency proceeding, the court shall determine the financial ability of the child’s parents to retain counsel for the child. If the court determines that the parents are able to retain counsel for the child but the parents refuse to retain counsel and the court appoints counsel, the court may order the parents to reimburse the Indigent Defense Fund or pay the court‑appointed attorney in an amount to be determined by the court.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 205.

Westlaw Topic No. 211.

C.J.S. Infants Sections 40, 44 to 45, 58 to 59, 62, 66, 69 to 70, 334.

ARTICLE 11

Transfer of Jurisdiction

Showing the section in former Chapter 7, Title 20 from which the section in this article was derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑1210 | 20‑7‑7605 |

**SECTION 63‑19‑1210.** Transfer of jurisdiction.

Section effective until July 1, 2019. See, also, section 63‑19‑1210 effective July 1, 2019. See Editor’s Note for contingency.

In accordance with the jurisdiction granted to the family court pursuant to Sections 63‑3‑510, 63‑3‑520, and 63‑3‑530, jurisdiction over a case involving a child must be transferred or retained as follows:

(1) If, during the pendency of a criminal or quasi‑criminal charge against a child in a circuit court of this State, it is ascertained that the child was under the age of seventeen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the Constitution gives to the circuit court exclusive jurisdiction or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall order the child to be taken immediately to the place of detention designated by the court or to that court itself, or shall release the child to the custody of some suitable person to be brought before the court at a time designated. The court then shall proceed as provided in this chapter. The provisions of this section are applicable to all existing offenses and to offenses created in the future unless the General Assembly specifically directs otherwise.

(2) Whenever a child is brought before a magistrate or city recorder and, in the opinion of the magistrate or city recorder, the child should be brought to the family court of competent jurisdiction under the provisions of this section, the magistrate or city recorder shall transfer the case to the family court and direct that the child involved be taken there.

(3) When an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.

(4) If a child sixteen years of age or older is charged with an offense which, if committed by an adult, would be a misdemeanor, a Class E or F felony as defined in Section 16‑1‑20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.

(5) If a child fourteen or fifteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16‑1‑20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this chapter. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.

(7) Once the family court relinquishes its jurisdiction over the child and the child is bound over to be treated as an adult, Section 63‑19‑2020 dealing with the confidentiality of identity and fingerprints does not apply.

(8) When jurisdiction is relinquished by the family court in favor of another court, the court shall have full authority and power to grant bail, hold a preliminary hearing and any other powers as now provided by law for magistrates in such cases.

(9) If a child fourteen years of age or older is charged with a violation of Section 16‑23‑430(1), Section 16‑23‑20, assault and battery of a high and aggravated nature, or Section 44‑53‑445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(10) If a child fourteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court acting as committing magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑19‑1210.** Transfer of jurisdiction.

Section effective July 1, 2019. See, also, section 63‑19‑1210 effective until July 1, 2019. See Editor’s Note for contingency.

In accordance with the jurisdiction granted to the family court pursuant to Sections 63‑3‑510, 63‑3‑520, and 63‑3‑530, jurisdiction over a case involving a child must be transferred or retained as follows:

(1) If, during the pendency of a criminal or quasi‑criminal charge against a child in a circuit court of this State, it is ascertained that the child was under the age of eighteen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the Constitution gives to the circuit court exclusive jurisdiction or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall order the child to be taken immediately to the place of detention designated by the court or to that court itself, or shall release the child to the custody of some suitable person to be brought before the court at a time designated. The court then shall proceed as provided in this chapter. The provisions of this section are applicable to all existing offenses and to offenses created in the future unless the General Assembly specifically directs otherwise.

(2) Whenever a child is brought before a magistrate or city recorder and, in the opinion of the magistrate or city recorder, the child should be brought to the family court of competent jurisdiction under the provisions of this section, the magistrate or city recorder shall transfer the case to the family court and direct that the child involved be taken there.

(3) When an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.

(4) If a child seventeen years of age or older is charged with an offense which, if committed by an adult, would be a misdemeanor, a Class E or F felony as defined in Section 16‑1‑20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.

(5) If a child fourteen, fifteen, or sixteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16‑1‑20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this chapter. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.

(7) Once the family court relinquishes its jurisdiction over the child and the child is bound over to be treated as an adult, Section 63‑19‑2020 dealing with the confidentiality of identity and fingerprints does not apply.

(8) When jurisdiction is relinquished by the family court in favor of another court, the court shall have full authority and power to grant bail, hold a preliminary hearing and any other powers as now provided by law for magistrates in such cases.

(9) If a child fourteen years of age or older is charged with a violation of Section 16‑23‑430, Section 16‑23‑20, or Section 44‑53‑445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(10) If a child fourteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense.

HISTORY: 2008 Act No. 361, Section 2; 2016 Act No. 268 (S.916), Section 4, eff July 1, 2019.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

2016 Act No. 268, Section 12, provides as follows:

“SECTION 12. Section 10 of this act takes effect upon approval by the Governor. Sections 1 through 9 and Section 11 of this act take effect on July 1, 2019, contingent upon the Department of Juvenile Justice having received any funds that may be necessary for implementation. If the report submitted to the General Assembly on September 1, 2017, reflects any additional funds needed by the Department of Juvenile Justice to ensure implementation will be possible on July 1, 2019, the department shall include these funds in its budget requests to the General Assembly as part of Fiscal Years 2017‑2018 and 2018‑2019. Beginning on September 1, 2017, all state and local agencies and courts involved with the implementation of the provisions of this act may begin undertaking and executing any and all applicable responsibilities so that the provisions of this act may be fully implemented on July 1, 2019.”

Effect of Amendment

2016 Act No. 268, Section 4, in (1), substituted “under the age of eighteen years” for “under the age of seventeen years”; in (4), substituted “If a child seventeen years of age or older” for “If a child sixteen years of age or older”; in (5), substituted “If a child fourteen, fifteen, or sixteen years of age” for “If a child fourteen or fifteen years of age”; in (9), substituted “Section 16‑23‑430, Section 16‑23‑20, or Section 44‑53‑445” for “Section 16‑23‑430(1), Section 16‑23‑20, assault and battery of a high and aggravated nature, or Section 44‑53‑445”; and in (10), substituted “the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over” for “the court acting as committing magistrate shall bind over”.

CROSS REFERENCES

Correction and treatment of youthful offenders, definitions, see Section 24‑19‑10.

Library References

Infants 68.5 to 68.7(5).

Westlaw Topic No. 211.

C.J.S. Infants Sections 26 to 36, 298, 301.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 102, Transfer of Jurisdiction.

S.C. Jur. Probation, Parole, and Pardon Section 26, Youthful Offender Act Release.

Attorney General’s Opinions

A court would likely find that references to “assault and battery of a high and aggravated nature” in section 63‑19‑820 and section 63‑19‑1210 should be changed to “assault and battery with intent to kill”. S.C. Op.Atty.Gen. (Oct. 1, 2010) 2010 WL 4391633.

NOTES OF DECISIONS

In general 1

Burglary 4

Constitutional issues 1.2

Criminal sexual conduct 5

Murder 3

Order waiving jurisdiction 6

Transfer factors 2

1. In general

On appellate review, the transfer order permitting a juvenile’s prosecution in court of general sessions will be affirmed unless the family court has abused its discretion. State v. Lamb (S.C. 2007) 374 S.C. 346, 649 S.E.2d 486, rehearing denied. Infants 3096

Upon a motion to transfer jurisdiction of a child accused of criminal activity, the family court must determine if it is in the best interest of both the child and the community before granting the transfer request. State v. Pittman (S.C. 2007) 373 S.C. 527, 647 S.E.2d 144, rehearing denied, certiorari denied, certiorari denied 128 S.Ct. 1872, 552 U.S. 1314, 170 L.Ed.2d 751. Infants 2988

1.2. Constitutional issues

Eighth Amendment categorically prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide; although 37 States and District of Columbia permitted sentences of life without parole for a juvenile nonhomicide offender in some circumstances, and federal law allowed for possibility of life without parole for offenders as young as 13, national consensus existed against imposing such sentences, given that only 12 jurisdictions nationwide imposed life without parole sentences on juvenile nonhomicide offenders, and most of those imposed the sentence quite rarely, life without parole was the second most severe penalty permitted, juvenile nonhomicide offenders had limited culpability compared to adult offenders, and no legitimate penological goal, including retribution, deterrence, incapacitation, and rehabilitation, provided an adequate justification for such a sentence. Graham v. Florida, 2010, 130 S.Ct. 2011, 560 U.S. 48, 176 L.Ed.2d 825, as modified. Sentencing And Punishment 1607

2. Transfer factors

On a motion to transfer jurisdiction of a child accused of criminal activity, the family court must consider the following eight factors: (1) the seriousness of the alleged offense; (2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (3) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted; (4) the prosecutive merit of the complaint; (5) the desirability of trial and disposition of the entire offense in one court; (6) the sophistication and maturity of the juvenile; (7) the record and previous history of the juvenile; and (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile, if he is found to have committed the alleged offense, by the use of procedures, services and facilities currently available. State v. Pittman (S.C. 2007) 373 S.C. 527, 647 S.E.2d 144, rehearing denied, certiorari denied, certiorari denied 128 S.Ct. 1872, 170 L.Ed.2d 751; State v. Corey D. (S.C. 2000) 339 S.C. 107, 529 S.E.2d 20.

Family court must consider following factors when deciding whether to waive its jurisdiction over a juvenile: (1) seriousness of alleged offense; (2) whether alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (3) whether alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted; (4) prosecutive merit of the complaint; (5) desirability of trial and disposition of entire offense in one court; (6) sophistication and maturity of juvenile; (7) record and previous history of juvenile; and (8) prospects for adequate protection of public and likelihood of reasonable rehabilitation of the juvenile, if he is found to have committed the alleged offense, by the use of procedures, services and facilities currently available. State v. Jones (S.C.App. 2011) 392 S.C. 647, 709 S.E.2d 696, habeas corpus dismissed 2014 WL 958302, habeas corpus dismissed 2016 WL 5219509. Infants 2988

Family court properly considered Kent factors in deciding to waive jurisdiction over juvenile charged with murder and armed robbery; it found the crimes were classified as most serious offenses and that evidence indicated suspects approached victim, attempted to rob him, and shot him, it noted the crimes were premeditated and committed in an aggressive, violent, and willful manner, it found the community required protection from the perpetrators, it found the crimes were committed against people rather than property, and it observed that defendant had previously received probationary sentence after being adjudicated delinquent for armed robbery. State v. Jones (S.C.App. 2011) 392 S.C. 647, 709 S.E.2d 696, habeas corpus dismissed 2014 WL 958302, habeas corpus dismissed 2016 WL 5219509. Infants 2993

Family court adequately took into account that shooting was an accident when waiving jurisdiction over juvenile charged with murder and armed robbery, where family court noted in its order that while the death of the victim was not premeditated, it was reasonable to assume that harm could occur during the commission of the armed robbery. State v. Jones (S.C.App. 2011) 392 S.C. 647, 709 S.E.2d 696, habeas corpus dismissed 2014 WL 958302, habeas corpus dismissed 2016 WL 5219509. Infants 2988

3. Murder

Court of general sessions had subject matter jurisdiction to try defendant, a juvenile at time of offense, for murder after family court accepted defendant’s consent to transfer; defendant’s consent to transfer was intelligently and voluntarily given. State v. Lamb (S.C. 2007) 374 S.C. 346, 649 S.E.2d 486, rehearing denied. Infants 2997

Evidence was sufficient to establish the existence of the eight Kent v. United States factors, when family court waived its jurisdiction and allowed 12 year old defendant to be tried as an adult for the murder of his grandparents; defendant had used shotgun to kill his grandparents after grandfather paddled defendant and locked him in a room for choking another student on school bus and kicking chair of church musician, and there was evidence that defendant engaged in escape plans, made shanks and caused other disruptions while in the custody of the Department of Juvenile Justice (DJJ). State v. Pittman (S.C. 2007) 373 S.C. 527, 647 S.E.2d 144, rehearing denied, certiorari denied, certiorari denied 128 S.Ct. 1872, 552 U.S. 1314, 170 L.Ed.2d 751. Infants 2989(4)

Evidence supported family court’s waiver of jurisdiction over juvenile to circuit court, in prosecution for murder; offense of murder was serious and protection of community favored waiver, particularly since several members of juvenile’s family were afraid of him, crime had been committed in aggressive, violent and wilful manner, in that juvenile had shot victim, his father, nine times, the sheer violence of murder, and juvenile’s elaborate efforts to create an alibi and/or conceal evidence showed degree of intellect and sophistication even beyond age of juvenile. State v. Miller (S.C.App. 2005) 363 S.C. 635, 611 S.E.2d 309, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 373 S.C. 599, 647 S.E.2d 175. Infants 2988

Family court should have transferred jurisdiction over two murder charges against 12‑year‑old juvenile to court of general sessions; victims were elderly women, murders were violent and premeditated, there was probable cause to believe that juvenile participated actively in all aspects thereof, and even though family court found indictment by grand jury likely and that it would be easier for state to proceed against all defendants in same court, family court nonetheless waived juvenile’s co‑defendants to general sessions court while retaining jurisdiction of juvenile’s case. State v. Corey D. (S.C. 2000) 339 S.C. 107, 529 S.E.2d 20. Infants 2989(4)

4. Burglary

Juvenile under age of fourteen could not be transferred to general sessions court on first degree burglary charges, even though murder charges against him, which arose from same criminal episodes, would be transferred. State v. Corey D. (S.C. 2000) 339 S.C. 107, 529 S.E.2d 20. Infants 2988

5. Criminal sexual conduct

Juvenile under age of fourteen could not be transferred to general sessions court on criminal sexual conduct (CSC) charges, even though murder charges against him, which arose from same criminal episodes, would be transferred. State v. Corey D. (S.C. 2000) 339 S.C. 107, 529 S.E.2d 20. Infants 2988

Sexual offense committed by petitioner when he was under 14 years of age could not be transferred to general sessions court; intervening statute providing that any person under age of 14 should be tried as juvenile for sexual offenses was unaffected by later repeal and simultaneous reenactment of provision limiting transfer of sexual offenses to those committed by juveniles fourteen years of age and over. Slocumb v. State (S.C. 1999) 337 S.C. 46, 522 S.E.2d 809. Infants 2971

6. Order waiving jurisdiction

It is the responsibility of the family court to include in its waiver of jurisdiction order a sufficient statement of the reasons for, and considerations leading to, that decision; conclusory statements, or a mere recitation of statutory requirements, without further explanation will not suffice. State v. Avery (S.C. 1998) 333 S.C. 284, 509 S.E.2d 476, rehearing denied. Infants 2993

A family court order waiving jurisdiction should be sufficient to demonstrate that the statutory requirement of full investigation has been met and that the question has received full and careful consideration by the family court. State v. Avery (S.C. 1998) 333 S.C. 284, 509 S.E.2d 476, rehearing denied. Infants 2993

The salient facts upon which a juvenile transfer order is based are to be set forth in the order. State v. Avery (S.C. 1998) 333 S.C. 284, 509 S.E.2d 476, rehearing denied. Infants 2993

Record supported family court’s transfer of jurisdiction over juvenile charged with murder, armed robbery, and possession of weapon during commission of violent crime; transfer order demonstrated full investigation had been conducted and reflected consideration of testimony from transfer hearing and of Department of Juvenile Justice’s (DJJ) Preadjudicatory Transfer Evaluation, and, in concluding that best interests of both public and juvenile required transfer, court found persuasive the premeditated and serious nature of crimes with which juvenile was charged, his lack of sophistication and maturity, and his unwillingness to participate in rehabilitative process. State v. Avery (S.C. 1998) 333 S.C. 284, 509 S.E.2d 476, rehearing denied. Infants 2989(4)

ARTICLE 13

Dispositional Powers of the Court

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑1410 | 20‑7‑7805 |
| 63‑19‑1420 | 20‑7‑7807 |
| 63‑19‑1430 | 20‑7‑7808 |
| 63‑19‑1440 | 20‑7‑7810 |
| 63‑19‑1450 | 20‑7‑7815 |
| 63‑19‑1460 | 20‑7‑7820 |
| 63‑19‑1470 | 20‑7‑7825 |

**SECTION 63‑19‑1410.** Adjudication.

Text of (A) effective until July 1, 2019. See Editor’s Note for contingency.

(A) When a child is found by decree of the court to be subject to this chapter, the court shall in its decree make a finding of the facts upon which the court exercises its jurisdiction over the child. Following the decree, the court by order may:

(1) cause a child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist, or psychologist and for that purpose place the child in a hospital or other suitable facility;

(2) order care and treatment as it considers best, except as otherwise provided in this section and may designate a state agency as the lead agency to provide a family assessment to the court. The assessment shall include, but is not limited to, the strengths and weaknesses of the family, problems interfering with the functioning of the family and with the best interests of the child, and recommendations for a comprehensive service plan to strengthen the family and assist in resolving these issues.

The lead agency shall provide the family assessment to the court in a timely manner, and the court shall conduct a hearing to review the proposed plan and adopt a plan as part of its order that will best meet the needs and best interest of the child. In arriving at a comprehensive plan, the court shall consider:

(a) additional testing or evaluation that may be needed;

(b) economic services including, but not limited to, employment services, job training, food stamps, and aid to families with dependent children;

(c) counseling services including, but not limited to, marital counseling, parenting skills, and alcohol and drug abuse counseling; and

(d) any other programs or services appropriate to the child’s and family’s needs.

The lead agency is responsible for monitoring compliance with the court‑ordered plan and shall report to the court as the court requires. In support of an order, the court may require the parents or other persons having custody of the child or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter to do or omit to do acts required or forbidden by law, when the judge considers the requirement necessary for the welfare of the child. In case of failure to comply with the requirement, the court may proceed against those persons for contempt of court;

(3) place the child on probation or under supervision in the child’s own home or in the custody of a suitable person elsewhere, upon conditions as the court may determine. A child placed on probation by the court remains under the authority of the court only until the expiration of the specified term of the child’s probation. This specified term of probation may expire before but not after the eighteenth birthday of the child. Probation means casework services during a continuance of the case. Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well‑being of the child and the child’s family. Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child’s personality and character, with the aid of the social resources of the community. As a condition of probation, the court may order the child to participate in a community mentor program as provided for in Section 63‑19‑1430. The court may impose monetary restitution or participation in supervised work or community service, or both, as a condition of probation. The Department of Juvenile Justice, in coordination with local community agencies, shall develop and encourage employment of a constructive nature designed to make reparation and to promote the rehabilitation of the child. When considering the appropriate amount of monetary restitution to be ordered, the court shall establish the monetary loss suffered by the victim and then weigh and consider this amount against the number of individuals involved in causing the monetary loss, the child’s particular role in causing this loss, and the child’s ability to pay the amount over a reasonable period of time. The Department of Juvenile Justice shall develop a system for the transferring of court‑ordered restitution from the child to the victim or owner of property injured, destroyed, or stolen. As a condition of probation the court may impose upon the child a fine not exceeding two hundred dollars when the offense is one in which a magistrate, municipal, or circuit court judge has the authority to impose a fine. A fine may be imposed when commitment is suspended but not in addition to commitment;

(4) order the child to participate in a community mentor program as provided in Section 63‑19‑1430;

(5) commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in family homes or under the guardianship of a suitable person. Commitment must be for an indeterminate period but in no event beyond the child’s twenty‑first birthday;

(6) require that a child under twelve years of age who is adjudicated delinquent for an offense listed in Section 23‑3‑430(C) be given appropriate psychiatric or psychological treatment to address the circumstances of the offense for which the child was adjudicated; and

(7) dismiss the petition or otherwise terminate its jurisdiction at any time on the motion of either party or on its own motion.

Text of (A) effective July 1, 2019. See Editor’s Note for contingency.

(A) When a child is found by decree of the court to be subject to this chapter, the court shall in its decree make a finding of the facts upon which the court exercises its jurisdiction over the child. Following the decree, the court by order may:

(1) cause a child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist, or psychologist and for that purpose place the child in a hospital or other suitable facility;

(2) order care and treatment as it considers best, except as otherwise provided in this section and may designate a state agency as the lead agency to provide a family assessment to the court. The assessment shall include, but is not limited to, the strengths and weaknesses of the family, problems interfering with the functioning of the family and with the best interests of the child, and recommendations for a comprehensive service plan to strengthen the family and assist in resolving these issues.

The lead agency shall provide the family assessment to the court in a timely manner, and the court shall conduct a hearing to review the proposed plan and adopt a plan as part of its order that will best meet the needs and best interest of the child. In arriving at a comprehensive plan, the court shall consider:

(a) additional testing or evaluation that may be needed;

(b) economic services including, but not limited to, employment services, job training, food stamps, and aid to families with dependent children;

(c) counseling services including, but not limited to, marital counseling, parenting skills, and alcohol and drug abuse counseling; and

(d) any other programs or services appropriate to the child’s and family’s needs.

The lead agency is responsible for monitoring compliance with the court‑ordered plan and shall report to the court as the court requires. In support of an order, the court may require the parents or other persons having custody of the child or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter to do or omit to do acts required or forbidden by law, when the judge considers the requirement necessary for the welfare of the child. In case of failure to comply with the requirement, the court may proceed against those persons for contempt of court;

(3) place the child on probation or under supervision in the child’s own home or in the custody of a suitable person elsewhere, upon conditions as the court may determine. A child placed on probation by the court remains under the authority of the court only until the expiration of the specified term of the child’s probation. This specified term of probation may expire before but not after the twentieth birthday of the child. Probation means casework services during a continuance of the case. Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well‑being of the child and the child’s family. Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child’s personality and character, with the aid of the social resources of the community. As a condition of probation, the court may order the child to participate in a community mentor program as provided for in Section 63‑19‑1430. The court may impose monetary restitution or participation in supervised work or community service, or both, as a condition of probation. The Department of Juvenile Justice, in coordination with local community agencies, shall develop and encourage employment of a constructive nature designed to make reparation and to promote the rehabilitation of the child. When considering the appropriate amount of monetary restitution to be ordered, the court shall establish the monetary loss suffered by the victim and then weigh and consider this amount against the number of individuals involved in causing the monetary loss, the child’s particular role in causing this loss, and the child’s ability to pay the amount over a reasonable period of time. The Department of Juvenile Justice shall develop a system for the transferring of court‑ordered restitution from the child to the victim or owner of property injured, destroyed, or stolen. As a condition of probation the court may impose upon the child a fine not exceeding two hundred dollars when the offense is one in which a magistrate, municipal, or circuit court judge has the authority to impose a fine. A fine may be imposed when commitment is suspended but not in addition to commitment;

(4) order the child to participate in a community mentor program as provided in Section 63‑19‑1430;

(5) commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in family homes or under the guardianship of a suitable person. Commitment must be for an indeterminate period but in no event beyond the child’s twenty‑second birthday;

(6) require that a child under twelve years of age who is adjudicated delinquent for an offense listed in Section 23‑3‑430(C) be given appropriate psychiatric or psychological treatment to address the circumstances of the offense for which the child was adjudicated; and

(7) dismiss the petition or otherwise terminate its jurisdiction at any time on the motion of either party or on its own motion.

(B) Whenever the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and the institution or agency shall give to the court information concerning the child which the court may require. Counsel of record, if any, must be notified by the court of an adjudication under this section, and in the event there is no counsel of record, the child or the child’s parents or guardian must be notified of the adjudication by regular mail from the court to the last address of the child or the child’s parents or guardian.

(C) No adjudication by the court of the status of a child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction, nor may a child be charged with crime or convicted in a court, except as provided in Section 63‑19‑1210(6). The disposition made of a child or any evidence given in court does not disqualify the child in a future civil service application or appointment.

HISTORY: 2008 Act No. 361, Section 2; 2016 Act No. 268 (S.916), Section 5, eff July 1, 2019.

Editor’s Note

2016 Act No. 268, Section 12, provides as follows:

“SECTION 12. Section 10 of this act takes effect upon approval by the Governor. Sections 1 through 9 and Section 11 of this act take effect on July 1, 2019, contingent upon the Department of Juvenile Justice having received any funds that may be necessary for implementation. If the report submitted to the General Assembly on September 1, 2017, reflects any additional funds needed by the Department of Juvenile Justice to ensure implementation will be possible on July 1, 2019, the department shall include these funds in its budget requests to the General Assembly as part of Fiscal Years 2017‑2018 and 2018‑2019. Beginning on September 1, 2017, all state and local agencies and courts involved with the implementation of the provisions of this act may begin undertaking and executing any and all applicable responsibilities so that the provisions of this act may be fully implemented on July 1, 2019.”

Effect of Amendment

2016 Act No. 268, Section 5, in (A)(3), substituted “not after the twentieth birthday of the child” for “not after the eighteenth birthday of the child”; and in (5), substituted “the child’s twenty‑second birthday” for “the child’s twenty‑first birthday”.

Library References

Infants 194.1, 208, 210, 221, 223, 232.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 39 to 41, 43 to 45, 51 to 59, 61 to 62, 66 to 67, 69 to 95, 310.

Attorney General’s Opinions

Suspended sentences in juvenile adjudications. S.C. Op.Atty.Gen. (February 3, 2016) 2016 WL 963700.

NOTES OF DECISIONS

In general 1

1. In general

Mere fact that defendant’s prior juvenile burglary adjudications were not considered criminal convictions under South Carolina law for purposes of felony in possession conviction did not render consideration of such convictions inappropriate for Armed Career Criminal Act (ACCA) purposes, since statutory treatment of juvenile adjudications under the Armed Career Criminal Act (ACCA) was distinct from juvenile offenders’ treatment under felon in possession prohibition; ACCA specifically indicated that not only prior felonies but also prior juvenile adjudications involving or carrying of firearms could be considered. U.S. v. Wright (C.A.4 (S.C.) 2010) 594 F.3d 259, certiorari denied 131 S.Ct. 507, 562 U.S. 1006, 178 L.Ed.2d 376. Sentencing And Punishment 1292

Defendant’s argument that because juvenile adjudications were not considered criminal convictions under South Carolina law they could not be considered prior convictions for Armed Career Criminal Act (ACCA) purposes, was waived for appellate review, since argument was not raised until literally hours before oral argument on appeal. U.S. v. Wright (C.A.4 (S.C.) 2010) 594 F.3d 259, certiorari denied 131 S.Ct. 507, 562 U.S. 1006, 178 L.Ed.2d 376. Criminal Law 1042.5

Juvenile’s probationary sentence for “indefinite period,” after being adjudicated delinquent for possession of stolen motor vehicle, continued even after juvenile was committed to Department of Juvenile Justice (DJJ) on different crime, and thus Family Court had jurisdiction to order restitution in possession of stolen motor vehicle case; juvenile’s probation had never been revoked, and he had not yet attained age of 18. In re Terrence M. (S.C.App. 2006) 368 S.C. 276, 628 S.E.2d 295. Infants 2687; Infants 2692(2)

Probation counselor’s placement of juvenile delinquent, after he was expelled from his foster home, was an administrative, rather than a judicial or quasi‑judicial function, and family court’s mere knowledge that counselor placed juvenile with his family, without more, was insufficient to convert that placement into a judicial act that was entitled to judicial or quasi‑judicial immunity in action brought on behalf of child who was violently assaulted by juvenile while he was on probation. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Courts 55

Murder defendant was not eligible for mandatory life without possibility of parole (LWOP) sentencing under recidivist statute based upon his juvenile adjudication of delinquency for voluntary manslaughter; juvenile adjudications were not included in statutory list of qualifying events, and Children’s Code specifically provided that family court adjudication of juvenile’s status was not a conviction. State v. Ellis (S.C. 2001) 345 S.C. 175, 547 S.E.2d 490. Sentencing And Punishment 1291

**SECTION 63‑19‑1420.** Driver’s license suspension.

Section effective until July 1, 2019. See, also, section 63‑19‑1420 effective July 1, 2019. See Editor’s Note for contingency.

(A) If a child is adjudicated delinquent for a status offense or is found in violation of a court order relating to a status offense, the court may suspend or restrict the child’s driver’s license until the child’s seventeenth birthday.

(B) If a child is adjudicated delinquent for violation of a criminal offense or is found in violation of a court order relating to a criminal offense or is found in violation of a term or condition of probation, the court may suspend or restrict the child’s driver’s license until the child’s eighteenth birthday.

(C) If the court suspends the child’s driver’s license, the child must submit the license to the court, and the court shall forward the license to the Department of Motor Vehicles for license suspension. However, convictions not related to the operation of a motor vehicle shall not result in increased insurance premiums.

(D) If the court restricts the child’s driver’s license, the court may restrict the child’s driving privileges to driving only to and from school or to and from work or as the court considers appropriate. Upon the court restricting a child’s driver’s license, the child must submit the license to the court and the court shall forward the license to the Department of Motor Vehicles for reissuance of the license with the restriction clearly noted.

(E) Notwithstanding the definition of a “child” as provided for in Section 63‑19‑20, the court may suspend or restrict the driver’s license of a child under the age of seventeen until the child’s eighteenth birthday if subsection (B) applies.

(F) Upon suspending or restricting a child’s driver’s license under this section, the family court judge shall complete a form provided by and which must be remitted to the Department of Motor Vehicles.

HISTORY: 2008 Act No. 361, Section 2.

**SECTION 63‑19‑1420.** Driver’s license suspension.

Section effective July 1, 2019. See, also, section 63‑19‑1420 effective until July 1, 2019. See Editor’s Note for contingency.

(A) If a child is adjudicated delinquent for a status offense or is found in violation of a court order relating to a status offense, the court may suspend or restrict the child’s driver’s license until the child’s eighteenth birthday.

(B) If a child is adjudicated delinquent for violation of a criminal offense or is found in violation of a court order relating to a criminal offense or is found in violation of a term or condition of probation, the court may suspend or restrict the child’s driver’s license until the child’s twentieth birthday.

(C) If the court suspends the child’s driver’s license, the child must submit the license to the court, and the court shall forward the license to the Department of Motor Vehicles for license suspension. However, convictions not related to the operation of a motor vehicle shall not result in increased insurance premiums.

(D) If the court restricts the child’s driver’s license, the court may restrict the child’s driving privileges to driving only to and from school or to and from work or as the court considers appropriate. Upon the court restricting a child’s driver’s license, the child must submit the license to the court and the court shall forward the license to the Department of Motor Vehicles for reissuance of the license with the restriction clearly noted.

(E) Notwithstanding the definition of a “child” as provided for in Section 63‑19‑20, the court may suspend or restrict the driver’s license of a child under the age of seventeen until the child’s eighteenth birthday if subsection (B) applies.

(F) Upon suspending or restricting a child’s driver’s license under this section, the family court judge shall complete a form provided by and which must be remitted to the Department of Motor Vehicles.

HISTORY: 2008 Act No. 361, Section 2; 2016 Act No. 268 (S.916), Section 6, eff July 1, 2019.

Editor’s Note

2016 Act No. 268, Section 12, provides as follows:

“SECTION 12. Section 10 of this act takes effect upon approval by the Governor. Sections 1 through 9 and Section 11 of this act take effect on July 1, 2019, contingent upon the Department of Juvenile Justice having received any funds that may be necessary for implementation. If the report submitted to the General Assembly on September 1, 2017, reflects any additional funds needed by the Department of Juvenile Justice to ensure implementation will be possible on July 1, 2019, the department shall include these funds in its budget requests to the General Assembly as part of Fiscal Years 2017‑2018 and 2018‑2019. Beginning on September 1, 2017, all state and local agencies and courts involved with the implementation of the provisions of this act may begin undertaking and executing any and all applicable responsibilities so that the provisions of this act may be fully implemented on July 1, 2019.”

Effect of Amendment

2016 Act No. 268, Section 6, in (A), substituted “the child’s eighteenth birthday” for “the child’s seventeenth birthday”; and in (B), substituted “the child’s twentieth birthday” for “the child’s eighteenth birthday”.

Library References

Infants 223.1.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 310.

**SECTION 63‑19‑1430.** Youth Mentor Act.

(A) This section may be cited as the “Youth Mentor Act”.

(B) The Attorney General’s Office shall establish a Youth Mentor Program to serve juvenile offenders under the jurisdiction of the family court. The program shall consist of a church mentor program and a community mentor program. Participation in the program may be required as a pretrial diversion option by a solicitor or as an optional, alternative disposition by a family court judge. The circuit solicitor may charge a juvenile offender who participates in the Youth Mentor Program a fee to offset the actual cost of administering the program; however, no juvenile offender is barred from the program because of indigence. This program must be available for juveniles who commit nonviolent offenses. For purposes of this subsection, nonviolent offenses mean all offenses not listed in Section 16‑1‑60.

(C) When a child is charged with a nonviolent offense which places him under the jurisdiction of the family court and the solicitor is of the opinion that justice would be better served if the child completed a church mentor program, the solicitor may divert the child to such a program. Upon completion of the program, the proceedings in family court must be dismissed.

Participation in the church mentor program is voluntary, and the child or his parents or guardians may refuse to participate based upon their religious beliefs or for any other reason.

The Attorney General must establish guidelines for the program, the mentors, and the churches, mosques, masjids, synagogues, and other religious organizations that participate in the church mentor program.

(D) When a child is adjudicated delinquent for a nonviolent offense in family court, the family court judge may order the child to participate in the community mentor program. When a child is ordered to participate in the community mentor program, he must be assigned to a community organization which shall assign a mentor to the child. The mentor shall monitor the academic and personal development of the child for a minimum period of six months and a maximum period not exceeding one year as ordered by the court. Failure to complete the program shall result in the child being brought before the family court for appropriate sanctions or revocation of suspended commitment.

The Attorney General must establish guidelines for the program, the mentors, and the community organizations that participate in the community mentor program.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Violent crimes defined, see Section 16‑1‑60.

Library References

Infants 191.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41, 46 to 48.

**SECTION 63‑19‑1435.** Use of restraints on juveniles in court.

(A) If a juvenile appears before the court wearing instruments of restraint, such as handcuffs, chains, irons, or straightjackets, the court in any proceeding may not continue with the juvenile required to wear instruments of restraint unless the court first finds that:

(1) the use of restraints is necessary due to one of the following factors:

(a) the juvenile poses a threat of serious harm to himself or others;

(b) the juvenile has a demonstrable recent record of disruptive courtroom behavior that has placed others in potentially harmful situations; or

(c) there is reason to believe the juvenile is a flight risk; and

(2) there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the juvenile or another person, including, but not limited to, court personnel, law enforcement officers, or bailiffs.

(B) The court shall provide the juvenile’s attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall make findings of fact in support of the order.

HISTORY: 2014 Act No. 186 (S.440), Section 1, eff June 2, 2014.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 108, Adjudicatory Hearing.

**SECTION 63‑19‑1440.** Commitment.

Section effective until July 1, 2019. See, also, section 63‑19‑1440 effective July 1, 2019. See Editor’s Note for contingency.

(A) A child, after the child’s twelfth birthday and before the seventeenth birthday or while under the jurisdiction of the family court for disposition of an offense that occurred prior to the child’s seventeenth birthday, may be committed to the custody of the Department of Juvenile Justice which shall arrange for placement in a suitable corrective environment. Children under the age of twelve years may be committed only to the custody of the department which shall arrange for placement in a suitable corrective environment other than institutional confinement. No child under the age of seventeen years may be committed or sentenced to any other penal or correctional institution of this State.

(B) All commitments to the custody of the Department of Juvenile Justice for delinquency as opposed to the conviction of a specific crime may be made only for the reasons and in the manner prescribed in Sections 63‑3‑510, 63‑3‑520, 63‑3‑580, 63‑3‑600, 63‑3‑650, and this chapter, with evaluations made and proceedings conducted only by the judges authorized to order commitments in this section. When a child is committed to the custody of the department, commitment must be for an indeterminate sentence, not extending beyond the twenty‑first birthday of the child unless sooner released by the department, or for a determinate commitment sentence not to exceed ninety days.

(C) The court, before committing a child as a delinquent or as a part of a sentence including commitments for contempt, shall order a community evaluation or temporarily commit the child to the Department of Juvenile Justice for not more than forty‑five days for evaluation. A community evaluation is equivalent to a residential evaluation, but it is not required to include all components of a residential evaluation. However, in either evaluation the department shall make a recommendation to the court on the appropriate disposition of the case and shall submit that recommendation to the court before final disposition. The department is authorized to allow any child adjudicated delinquent for a status offense, a misdemeanor offense, or violation of probation or contempt for any offense who is temporarily committed to the department’s custody for a residential evaluation, to reside in that child’s home or in his home community while undergoing a community evaluation, unless the committing judge finds and concludes in the order for evaluation, that a community evaluation of the child must not be conducted because the child presents an unreasonable flight or public safety risk to his home community. The court may waive in writing the evaluation of the child and proceed to issue final disposition in the case if the child:

(1) has previously received a residential evaluation or a community evaluation and the evaluation is available to the court;

(2) has been within the past year temporarily or finally discharged or conditionally released for parole from a correctional institution of the department, and the child’s previous evaluation or other equivalent information is available to the court; or

(3) receives a determinate commitment sentence not to exceed ninety days.

(D) When a juvenile is adjudicated delinquent or convicted of a crime or has entered a plea of guilty or nolo contendere in a court authorized to commit to the custody of the Department of Juvenile Justice, the juvenile may be committed for an indeterminate period until the juvenile has reached age twenty‑one or until sooner released by the releasing entity or released by order of a judge of the Supreme Court or the circuit court of this State, rendered at chambers or otherwise, in a proceeding in the nature of an application for a writ of habeas corpus. A juvenile who has not been paroled or otherwise released from the custody of the department by the juvenile’s nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. If not sooner released by the releasing entity, the juvenile must be released by age twenty‑one according to the provisions of the juvenile’s commitment; however, notwithstanding the above provision, any juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(E) A juvenile committed to the Department of Juvenile Justice following an adjudication for a violent offense contained in Section 16‑1‑60 or for the offense of assault and battery of a high and aggravated nature, who has not been paroled or released from the custody of the department by his seventeenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. A juvenile who has not been paroled or released from the custody of the department by his nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections at age nineteen. If not released sooner by the Board of Juvenile Parole, a juvenile transferred pursuant to this subsection must be released by his twenty‑first birthday according to the provisions of his commitment. Notwithstanding the above provision, a juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(F) Notwithstanding subsections (A) and (E), a child may be committed to the custody of the Department of Juvenile Justice or to a secure evaluation center operated by the department for a determinate period not to exceed ninety days when:

(1) the child has been adjudicated delinquent by a family court judge for a status offense, as defined in Section 63‑19‑20, excluding truancy, and the order acknowledges that the child has been afforded all due process rights guaranteed to a child offender;

(2) the child is in contempt of court for violation of a court order to attend school or an order issued as a result of the child’s adjudication of delinquency for a status offense, as defined in Section 63‑19‑20; or

(3) the child is determined by the court to have violated the conditions of probation set forth by the court in an order issued as a result of the child’s adjudication of delinquency for a status offense, as defined in Section 63‑19‑20 including truancy.

Orders issued pursuant to this subsection must acknowledge:

(a) that the child has been advised of all due process rights afforded to a child offender; and

(b) that the court has received information from the appropriate state or local agency or public entity that has reviewed the facts and circumstances causing the child to be before the court.

(G) A child committed under this section may not be confined with a child who has been determined by the department to be violent.

(H) After having served at least two‑thirds of the time ordered by a court, a child committed to the Department of Juvenile Justice for a determinate period pursuant to this section may be released by the department prior to the expiration of the determinate period for “good behavior” as determined by the department. The court, in its discretion, may state in the order that the child is not to be released prior to the expiration of the determinate period ordered by the court.

(I) Juveniles detained in any temporary holding facility or juvenile detention center or who are temporarily committed for evaluation to a Department of Juvenile Justice evaluation center for the offense for which they were subsequently committed by the family court to the custody of the Department of Juvenile Justice shall receive credit toward their parole guidelines, if indeterminately sentenced, or credit toward their date of release, if determinately sentenced, for each day they are detained in or temporarily committed to any secure pre‑dispositional facility, center, or program.

HISTORY: 2008 Act No. 361, Section 2; 2008 Act No. 353, Section 2, Pt 28B.1; 2012 Act No. 227, Section 1, eff June 18, 2012.

**SECTION 63‑19‑1440.** Commitment.

Section effective July 1, 2019. See, also, section 63‑19‑1440 effective until July 1, 2019. See Editor’s Note for contingency.

(A) A child, after the child’s twelfth birthday and before the eighteenth birthday or while under the jurisdiction of the family court for disposition of an offense that occurred prior to the child’s eighteenth birthday, may be committed to the custody of the Department of Juvenile Justice which shall arrange for placement in a suitable corrective environment. Children under the age of twelve years may be committed only to the custody of the department which shall arrange for placement in a suitable corrective environment other than institutional confinement. No child under the age of eighteen years may be committed or sentenced to any other penal or correctional institution of this State.

(B) All commitments to the custody of the Department of Juvenile Justice for delinquency as opposed to the conviction of a specific crime may be made only for the reasons and in the manner prescribed in Sections 63‑3‑510, 63‑3‑520, 63‑3‑580, 63‑3‑600, 63‑3‑650, and this chapter, with evaluations made and proceedings conducted only by the judges authorized to order commitments in this section. When a child is committed to the custody of the department, commitment must be for an indeterminate sentence, not extending beyond the twenty‑second birthday of the child unless sooner released by the department, or for a determinate commitment sentence not to exceed ninety days.

(C) The court, before committing a child as a delinquent or as a part of a sentence including commitments for contempt, shall order a community evaluation or temporarily commit the child to the Department of Juvenile Justice for not more than forty‑five days for evaluation. A community evaluation is equivalent to a residential evaluation, but it is not required to include all components of a residential evaluation. However, in either evaluation the department shall make a recommendation to the court on the appropriate disposition of the case and shall submit that recommendation to the court before final disposition. The department is authorized to allow any child adjudicated delinquent for a status offense, a misdemeanor offense, or violation of probation or contempt for any offense who is temporarily committed to the department’s custody for a residential evaluation, to reside in that child’s home or in his home community while undergoing a community evaluation, unless the committing judge finds and concludes in the order for evaluation, that a community evaluation of the child must not be conducted because the child presents an unreasonable flight or public safety risk to his home community. The court may waive in writing the evaluation of the child and proceed to issue final disposition in the case if the child:

(1) has previously received a residential evaluation or a community evaluation and the evaluation is available to the court;

(2) has been within the past year temporarily or finally discharged or conditionally released for parole from a correctional institution of the department, and the child’s previous evaluation or other equivalent information is available to the court; or

(3) receives a determinate commitment sentence not to exceed ninety days.

(D) When a juvenile is adjudicated delinquent or convicted of a crime or has entered a plea of guilty or nolo contendere in a court authorized to commit to the custody of the Department of Juvenile Justice, the juvenile may be committed for an indeterminate period until the juvenile has reached age twenty‑two or until sooner released by the releasing entity or released by order of a judge of the Supreme Court or the circuit court of this State, rendered at chambers or otherwise, in a proceeding in the nature of an application for a writ of habeas corpus. A juvenile who has not been paroled or otherwise released from the custody of the department by the juvenile’s nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. If not sooner released by the releasing entity, the juvenile must be released by age twenty‑two according to the provisions of the juvenile’s commitment; however, notwithstanding the above provision, any juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(E) A juvenile committed to the Department of Juvenile Justice following an adjudication for a violent offense contained in Section 16‑1‑60 or for the offense of assault and battery of a high and aggravated nature, who has not been paroled or released from the custody of the department by his eighteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. A juvenile who has not been paroled or released from the custody of the department by his nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections at age nineteen. If not released sooner by the Board of Juvenile Parole, a juvenile transferred pursuant to this subsection must be released by his twenty‑second birthday according to the provisions of his commitment. Notwithstanding the above provision, a juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(F) Notwithstanding subsections (A) and (E), a child may be committed to the custody of the Department of Juvenile Justice or to a secure evaluation center operated by the department for a determinate period not to exceed ninety days when:

(1) the child has been adjudicated delinquent by a family court judge for a status offense, as defined in Section 63‑19‑20, excluding truancy, and the order acknowledges that the child has been afforded all due process rights guaranteed to a child offender;

(2) the child is in contempt of court for violation of a court order to attend school or an order issued as a result of the child’s adjudication of delinquency for a status offense, as defined in Section 63‑19‑20; or

(3) the child is determined by the court to have violated the conditions of probation set forth by the court in an order issued as a result of the child’s adjudication of delinquency for a status offense, as defined in Section 63‑19‑20 including truancy.

Orders issued pursuant to this subsection must acknowledge:

(a) that the child has been advised of all due process rights afforded to a child offender; and

(b) that the court has received information from the appropriate state or local agency or public entity that has reviewed the facts and circumstances causing the child to be before the court.

(G) A child committed under this section may not be confined with a child who has been determined by the department to be violent.

(H) After having served at least two‑thirds of the time ordered by a court, a child committed to the Department of Juvenile Justice for a determinate period pursuant to this section may be released by the department prior to the expiration of the determinate period for “good behavior” as determined by the department. The court, in its discretion, may state in the order that the child is not to be released prior to the expiration of the determinate period ordered by the court.

(I) Juveniles detained in any temporary holding facility or juvenile detention center or who are temporarily committed for evaluation to a Department of Juvenile Justice evaluation center for the offense for which they were subsequently committed by the family court to the custody of the Department of Juvenile Justice shall receive credit toward their parole guidelines, if indeterminately sentenced, or credit toward their date of release, if determinately sentenced, for each day they are detained in or temporarily committed to any secure pre‑dispositional facility, center, or program.

HISTORY: 2008 Act No. 361, Section 2; 2008 Act No. 353, Section 2, Pt 28B.1; 2012 Act No. 227, Section 1, eff June 18, 2012; 2016 Act No. 268 (S.916), Section 7, eff July 1, 2019.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

2016 Act No. 268, Section 12, provides as follows:

“SECTION 12. Section 10 of this act takes effect upon approval by the Governor. Sections 1 through 9 and Section 11 of this act take effect on July 1, 2019, contingent upon the Department of Juvenile Justice having received any funds that may be necessary for implementation. If the report submitted to the General Assembly on September 1, 2017, reflects any additional funds needed by the Department of Juvenile Justice to ensure implementation will be possible on July 1, 2019, the department shall include these funds in its budget requests to the General Assembly as part of Fiscal Years 2017‑2018 and 2018‑2019. Beginning on September 1, 2017, all state and local agencies and courts involved with the implementation of the provisions of this act may begin undertaking and executing any and all applicable responsibilities so that the provisions of this act may be fully implemented on July 1, 2019.”

Effect of Amendment

The 2012 amendment rewrote subsection (C).

2016 Act No. 268, Section 7, in (A), twice substituted “eighteenth birthday” for “seventeenth birthday”, and substituted “eighteen years” for “seventeen years”; in (B), substituted “twenty‑second birthday” for “twenty‑first birthday”; in (D), twice substituted “age twenty‑two” for “age twenty‑one”; and in (E), substituted “eighteenth birthday” for “seventeenth birthday” and “twenty‑second birthday” for “twenty‑first birthday”.

Library References

Infants 223.1.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 310.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 112, Commitment.

United States Supreme Court Annotations

Sentencing, mandatory sentence of life without parole for juvenile convicted of homicide violates Eighth Amendment, see Miller v. Alabama, 2012, 132 S.Ct. 2455, 183 L.Ed.2d 407, on remand 2013 Ark. 175, 426 S.W.3d 906, on remand 148 So.3d 78. Homicide 1572; Sentencing and Punishment 1607

NOTES OF DECISIONS

In general 1

1. In general

Juvenile’s sentence for contempt for violating probation imposed for truancy could not exceed 90 days; truancy was a status offense and would not be a crime if committed by an adult. In re Tonisha G. (S.C. 1999) 336 S.C. 407, 520 S.E.2d 807. Contempt 64; Infants 1866

Family court’s power to commit delinquent juvenile contemnor to custody of Department of Juvenile Justice (DJJ) for period of time exceeding 90 days is not limited by statute prohibiting determinate commitment sentence of more than 90 days; that provision refers only to delinquency proceedings, not to all juvenile proceedings. In re Vincent J. (S.C. 1998) 333 S.C. 233, 509 S.E.2d 261. Contempt 64; Infants 2683

**SECTION 63‑19‑1450.** Commitment of juvenile with mental illness or mental retardation.

(A) No juvenile may be committed to an institution under the control of the Department of Juvenile Justice who is seriously handicapped by mental illness or retardation. If, after a juvenile is referred to the Reception and Evaluation Center, it is determined that the juvenile is mentally ill, as defined in Section 44‑23‑10, or a person with intellectual disability to an extent that the juvenile could not be properly cared for in its custody, the department through the voluntary admission process or by instituting necessary legal action may accomplish the transfer of the juvenile to another state agency which in its judgment is best qualified to care for the juvenile in accordance with the laws of this State. This legal action must be brought in the juvenile’s resident county. The department shall establish standards with regard to the physical and mental health of juveniles whom it can accept for commitment.

(B) When the state agency to which a juvenile is transferred determines that it is appropriate to release from commitment that juvenile, the state agency must submit a request for release to the releasing entity. If the releasing entity does not grant the request to release the juvenile, the juvenile must be placed in an environment consistent with the provisions of this section.

(C) If a juvenile transferred to another state agency pursuant to this section is absent from a treatment facility without proper authorization, any state or local law enforcement officer upon the request of the director, or a designee, of the state agency to which the juvenile has been transferred and without the necessity of a warrant or a court order, may take the juvenile into custody and return the juvenile to the facility designated by the agency director or the designee.

HISTORY: 2008 Act No. 361, Section 2.

Code Commissioner’s Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted “intellectual disability” for “mentally retarded” and “person with intellectual disability” or “persons with intellectual disability” for “mentally retarded”.

Library References

Infants 227.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41, 43, 46 to 48, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 113, Parole and Aftercare.

**SECTION 63‑19‑1460.** Conveyance by sheriff.

A child committed under the terms of this chapter must be conveyed by the sheriff, deputy sheriff, or persons appointed by the sheriff of the county in which the child resides to the custody of the department, and the expense of the conveyance and delivery must be borne by the county. The committing judge may order that the child be transferred to the custody of the department without the attendance of an officer or in a manner as may be advisable.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 274, 277.

Westlaw Topic No. 211.

C.J.S. Infants Sections 372, 375.

**SECTION 63‑19‑1470.** Adult commitment.

Notwithstanding any other provision of law, an adult sentenced for more than ninety days under this chapter may serve the time in a minimum security state facility.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 69(1), 274.

Westlaw Topic No. 211.

C.J.S. Infants Sections 303 to 305, 307 to 311, 372.

ARTICLE 15

Department’s Commitment Responsibilities

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑1610 | 20‑7‑8005 |
| 63‑19‑1620 | 20‑7‑8010 |
| 63‑19‑1630 | 20‑7‑8015 |
| 63‑19‑1640 | 20‑7‑8020 |
| 63‑19‑1650 | 20‑7‑8025 |
| 63‑19‑1660 | 20‑7‑8030 |
| 63‑19‑1670 | 20‑7‑8035 |
| 63‑19‑1680 | 20‑7‑8040 |

**SECTION 63‑19‑1610.** Exclusive care; payment by local governments for use of facilities.

From the time of lawful reception of a child by the Department of Juvenile Justice and during the child’s stay in custody in a correctional institution, facility, or program operated by the department, the child shall be under the exclusive care, custody, and control of the department. All expenses must be borne by the State except local governments utilizing the juvenile detention services provided by the Department of Juvenile Justice must pay the department a per diem of fifty dollars a day per child. The department may apply the remainder of the funds generated by this item, if any, to operational or capital expenses associated with juvenile services provided by the department. If adequate funding is not received, the department shall have flexibility to use funds from other programmatic areas to maintain an appropriate level of service.

HISTORY: 2008 Act No. 361, Section 2; 2008 Act No. 353, Section 2, Pt 28D.

Library References

Infants 275, 279.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 307, 373, 377.

**SECTION 63‑19‑1620.** Further care; education.

From the time of the lawful reception of a child into custody by the department and during the period of the custody, the department shall provide for, either solely or in cooperation with other agencies, the care, custody, and control of the child, as well as make available instruction as may be suited to the child’s years and capacity that will enable the child to learn a useful trade.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 275.

Westlaw Topic No. 211.

C.J.S. Infants Sections 307, 373.

**SECTION 63‑19‑1630.** Institutional transfer.

A child committed to an institution under the provisions of this chapter may be transferred by the department to an institution, facility, or vocational training center under its jurisdiction.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 277.

Westlaw Topic No. 211.

C.J.S. Infants Section 375.

**SECTION 63‑19‑1640.** Furloughs.

The department may grant furloughs, not to exceed thirty days, under prescribed conditions to children domiciled in its custody unaccompanied by a custodial agent. Failure by the child to return from a furlough as directed must be deemed an escape.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

**SECTION 63‑19‑1650.** Youthful Offender Division transfer.

(A) The Department of Juvenile Justice, when authorized by an order of a circuit judge, must, after notice to the Department of Corrections, temporarily shall transfer to the custody of the Youthful Offender Division a child who has been committed to the custody of the department who is more than seventeen years of age and whose presence in the custody of the Department of Juvenile Justice appears to be seriously detrimental to the welfare of others in custody. The director of the Department of Corrections shall receive these children and shall properly care for them. Each child transferred to the Youthful Offender Division is subject to all the rules and discipline of the division. Children transferred to the Youthful Offender Division pursuant to this section are under the authority of the division but are subject to release Board of Juvenile Parole.

(B) The Youthful Offender Division at least quarterly shall recommend to the parole board possible release of each child transferred to the department or the child’s return to institutions of the Department of Juvenile Justice.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 277.

Westlaw Topic No. 211.

C.J.S. Infants Section 375.

**SECTION 63‑19‑1660.** Interference.

(A) It is unlawful for a person to:

(1) cause, aid, encourage, or influence a child who is a ward of the Department of Juvenile Justice to:

(a) enter or remain in a house of prostitution or a house or lodging place used for immoral purposes or gambling place;

(b) violate a law of this State or ordinance of a city;

(c) indulge in vicious or immoral conduct; or

(d) violate the child’s conditional release or run away from the supervision of the Department of Juvenile Justice.

(2) harbor a child who has escaped from authorities or who is running away from their supervision.

(B) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 13.

Westlaw Topic No. 211.

C.J.S. Infants Sections 110 to 114, 118 to 121.

**SECTION 63‑19‑1670.** Contraband.

(A) While on the institutional grounds of the department, it is unlawful to furnish, attempt to furnish, or to possess with the intent to furnish, contraband to a juvenile committed to the custody of the Department of Juvenile Justice. “Juvenile”, for purposes of this section, is defined as a person committed to the custody of the Department of Juvenile Justice. It is unlawful for a juvenile committed to the custody of the department to possess contraband.

(B) For purposes of this section, “contraband” is defined as:

(1) a device which may be used as a weapon including, but not limited to, firearms, knives, blades, clubs, or billies;

(2) drugs of any type or description including, but not limited to, marijuana, cocaine, and any other controlled substance as listed in Chapter 53 of Title 44, for which a juvenile does not possess a current lawful prescription;

(3) poisons or other dangerous chemicals which can cause injury or death;

(4) flammable liquids of any type including, but not limited to, gasoline, kerosene, or lighter fluid;

(5) any type of alcohol and any liquid containing any concentration of intoxicating alcohol;

(6) keys, locks, or tools of any description not officially issued to the juvenile by the department; or

(7) any additional items determined to be contraband by the Director of the Department of Juvenile Justice.

(C) If the director determines any additional items to be contraband, a list of these items must be published and posted in conspicuous places so as to be seen readily by a person entering the institutional grounds or on the institutional grounds of the Department of Juvenile Justice.

(D) An adult found violating this section is guilty of a felony and, upon conviction, must be fined not less than one thousand dollars nor more than ten thousand dollars or imprisoned for not less than one year nor more than ten years, or both.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 13.

Westlaw Topic No. 211.

C.J.S. Infants Sections 110 to 114, 118 to 121.

**SECTION 63‑19‑1680.** Child support payments.

Whenever a child is committed by the court to custody other than that of the child’s parents or is given medical, psychological, or psychiatric treatment under order of the court, the solicitor of the county where the child is a resident may petition the court to order the parent or parents of the child to pay child support when the child is committed to or detained in the custody of an approved local detention facility or the Department of Juvenile Justice. If the parents of the child are living apart, the court shall pursue child support payments from both parents. The court, after giving the parent a reasonable opportunity to be heard, may order the parent to pay, in the manner the court directs, in accordance with child support guidelines promulgated by the Department of Social Services to cover in whole or in part the support and treatment of the child. In making its determination whether to order child support, the court shall consider the conduct of the parent in supervising and providing care for the child. If the parent wilfully fails or refuses to pay the amount ordered, the court may proceed against the parent for contempt.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 228(2).

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41, 43, 46 to 48, 71 to 95.

ARTICLE 17

Parole and Aftercare

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑1810 | 20‑7‑8303 |
| 63‑19‑1820 | 20‑7‑8305 |
| 63‑19‑1830 | 20‑7‑8310 |
| 63‑19‑1840 | 20‑7‑8315 |
| 63‑19‑1850 | 20‑7‑8320 |
| 63‑19‑1860 | 20‑7‑8325 |
| 63‑19‑1870 | 20‑7‑8330 |
| 63‑19‑1880 | 20‑7‑8335 |

**SECTION 63‑19‑1810.** Determination of release.

(A) The release and revocation of release of juveniles adjudicated delinquent and committed to the department must be determined by:

(1) the department for juveniles adjudicated delinquent and committed after March 31, 2007, for an indeterminate period for a status offense or a misdemeanor, other than assault and battery of a high and aggravated nature or assault with intent to kill, and for juveniles who have violated probation for a status offense or a misdemeanor, other than assault and battery of a high and aggravated nature or assault with intent to kill;

(2) the Board of Juvenile Parole for juveniles adjudicated delinquent and committed for an offense other than an offense provided for in item (1).

(B) For purposes of this chapter, “releasing entity” means:

(1) the department for juveniles described in subsection (A)(1);

(2) the Board of Juvenile Parole for juveniles described in subsection (A)(2).

HISTORY: 2008 Act No. 361, Section 2.

Editor’s Note

2010 Act No. 273, Section 7.B, provides:

“The common law offenses of assault and battery with intent to kill, assault with intent to kill, assault and battery of a high and aggravated nature, simple assault and battery, assault of a high and aggravated nature, aggravated assault, and simple assault are abolished for offenses occurring on or after the effective date of this act [June 2, 2010].”

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 97, Intake.

S.C. Jur. Children and Families Section 98, Custody and Detention.

S.C. Jur. Children and Families Section 113, Parole and Aftercare.

**SECTION 63‑19‑1820.** Board of Juvenile Parole; review and appearance procedures.

(A)(1) The Board of Juvenile Parole shall meet monthly and at other times as may be necessary to review the records and progress of juveniles committed to the custody of the Department of Juvenile Justice for the purpose of deciding the release or revocation of release of these juveniles. The board shall make periodic inspections, at least quarterly, of the records of these juveniles and may issue temporary and final discharges or release these juveniles conditionally and prescribe conditions for release into aftercare. Before a juvenile is conditionally released, the juvenile must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the juvenile’s person, any vehicle the juvenile owns or is driving, and any of the juvenile’s possessions by:

(a) the juvenile’s aftercare counselor;

(b) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(c) any other law enforcement officer.

A juvenile may not be conditionally released by the parole board if he fails to comply with this provision. However, a juvenile who was adjudicated delinquent of a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not be required to agree to be subject to search or seizure, without a search warrant, with or without cause, of the juvenile’s person, any vehicle the juvenile owns or is driving, or any of the juvenile’s possessions.

Immediately before each search or seizure conducted pursuant to this item, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole or probation or that the individual is currently subject to the provisions of his conditional release. A law enforcement officer conducting a search or seizure without a warrant pursuant to this item shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this item, he is subject to discipline pursuant to the employing agency’s policies and procedures.

(2)(a) It is the right of a juvenile who has not committed a violent offense, as defined by Section 16‑1‑60, and for whom the board is the releasing entity, to appear personally before the board every three months for the purpose of parole consideration, but no appearance may begin until the board determines that an appropriate period of time has elapsed since the juvenile’s commitment.

(b) The board may waive the quarterly review of juveniles committed to the department, for whom the board is the releasing entity, for the commission of a violent crime, as defined in Section 16‑1‑60, until the juvenile reaches the minimum parole guidelines the board establishes for the juvenile. At that point, the board may schedule its first review of the juvenile from three months up to twelve months after the juvenile reaches the minimum parole guidelines established by the board. The scheduling of subsequent reviews is in the discretion of the board but must occur within three to twelve months of the juvenile’s last appearance.

(3) In order to allow reviews and appearances by juveniles, for whom the board is the releasing entity, the board may assign the members or individuals to meet in panels of not less than three members or individuals, to receive progress reports and recommendations, review cases, meet with juveniles, meet with counselors, and to hear matters and consider cases for release, parole, and parole revocation. Membership on these panels must be periodically rotated on a random basis. At the meetings of the panels, a unanimous vote must be considered the final decision. A panel vote that is not unanimous must not be considered as a final decision, and the matter must be referred to the full parole board, which shall determine the matter by a majority vote of its membership.

(4) The board may conduct parole hearings by means of a two‑way, closed circuit television system.

(5) The board shall develop written guidelines for the consideration of parole release of juveniles committed to the department for offenses for which the parole board is the releasing entity.

The board shall provide these guidelines to juveniles, for whom the board is the releasing entity, upon commitment and periodically reviewed with each juvenile to assess the progress made toward achieving release on parole.

(B) In the cases of juveniles for whom the department is the releasing entity, the department shall establish policies and procedures governing the review and release procedures for these juveniles.

(C) In the determination of the type of discharges or conditional releases granted, the releasing entity shall consider the interests of the person involved and the interests of society and shall employ the services of and consult with the personnel of the Department of Juvenile Justice. The releasing entity may from time to time modify the conditions of discharges or conditional releases previously granted.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 151, Section 3, eff April 28, 2010.

Editor’s Note

2010 Act No. 151, Sections 2 and 16, provide:

“SECTION 2. It is the intent of the General Assembly of South Carolina to provide law enforcement officers with the statutory authority to reduce recidivism rates of probationers and parolees, apprehend criminals, and protect potential victims from criminal enterprises.”

“SECTION 16. In any instance in which a law enforcement officer has failed to make the reports necessary to the State Law Enforcement Division for warrantless searches, then in the absence of a written policy by the employing agency enforcing the reporting requirements, the otherwise applicable state‑imposed, one‑day suspension without pay applies.”

Effect of Amendment

The 2010 amendment in subsection (A)(1) added the text following the second sentence.

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 113, Parole and Aftercare.

**SECTION 63‑19‑1830.** Legal representation before board.

The parole board shall permit legal representation of a juvenile who appears before it for the purpose of parole or parole revocation. The department shall allocate funds to contract with a public defender corporation or similar type legal program for legal assistance for the purpose of appearing before the parole board for a juvenile who desires this service but who cannot either personally or through the juvenile’s family afford the assistance.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

**SECTION 63‑19‑1835.** Compliance reductions for probationers and parolees.

The department may grant up to a ten‑day reduction of the probationary or parole term to probationers and parolees who are under the department’s supervision for each month they are compliant with the terms and conditions of their probation or parole order.

HISTORY: 2012 Act No. 227, Section 2, eff June 18, 2012.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 113, Parole and Aftercare.

**SECTION 63‑19‑1840.** Aftercare investigations.

(A) The department shall conduct aftercare investigations to determine suitable placement for juveniles considered for conditional release from the correctional schools. The department also shall supervise the aftercare program, making revocation investigations and submitting findings to the releasing entity.

(B) The director and such staff as the director shall designate in the performance of their duties of investigation, counseling and supervision, and revocation investigations are considered official representatives of the releasing entity.

(C) The directors and their staff are subject to the regulations for parole and parole revocation promulgated by the releasing entity and shall meet with the releasing entity at its meetings when requested. Community‑based counselors, or their supervisors, with assigned clients committed to institutions of the department shall periodically visit the institutions in order to counsel their clients and accomplish the duties as outlined in this subarticle.

(D) Recognizing the need to maintain autonomy and to provide a check and balance system, the parole board shall employ a director of parole and other staff necessary to carry out the duties of parole examinations, victim liaison, and revocation hearings. The director serves at the will and pleasure of the parole board. All staff are employees of the parole board and are directly responsible to the parole board both administratively and operationally. Funds allocated for the functions designated in this section must be incorporated as a line item within the department’s budget and are subject to administrative control by the parole board.

(E) The department shall continue to provide the budgetary, fiscal, personnel, and training information resources and other support considered necessary by the parole board to perform its mandated functions.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 113, Parole and Aftercare.

NOTES OF DECISIONS

In general 1

1. In general

When a party is in a position to monitor, supervise, and control a person’s conduct, a special relationship between the defendant and the dangerous person may trigger a common law duty to warn potential victims of the danger posed by the individual; however, this special duty is limited to situations where the person under the defendant’s control has made a specific threat directed at a specific individual. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Negligence 221

**SECTION 63‑19‑1850.** Conditional release; search and seizure.

Text of (A) effective until July 1, 2019. See Editor’s Note for contingency.

(A) A juvenile who shall have been conditionally released from a correctional facility shall remain under the authority of the releasing entity until the expiration of the specified term imposed in the juvenile’s conditional aftercare release. The specified period of conditional release may expire before but not after the twenty‑first birthday of the juvenile. Each juvenile conditionally released is subject to the conditions and restrictions of the release and may at any time on the order of the releasing entity be returned to the custody of a correctional institution for violation of aftercare rules or conditions of release. The conditions of release must include the requirement that the juvenile parolee must permit the search or seizure, without a search warrant, with or without cause, of the juvenile parolee’s person, any vehicle the juvenile parolee owns or is driving, and any of the juvenile parolee’s possessions by:

(1) his aftercare counselor;

(2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(3) any other law enforcement officer.

However, the conditions of release of a juvenile parolee who was adjudicated delinquent of a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the juvenile parolee agree to be subject to search or seizure, without a search warrant, with or without cause, of the juvenile parolee’s person, any vehicle the juvenile parolee owns or is driving, or any of the juvenile parolee’s possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure conducted pursuant to this subsection, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole or probation or that the individual is currently subject to the provisions of his conditional release. A law enforcement officer conducting a search or seizure without a warrant pursuant to this subsection shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this subsection, he is subject to discipline pursuant to the employing agency’s policies and procedures.

Text of (A) effective July 1, 2019. See Editor’s Note for contingency.

(A) A juvenile who shall have been conditionally released from a correctional facility shall remain under the authority of the releasing entity until the expiration of the specified term imposed in the juvenile’s conditional aftercare release. The specified period of conditional release may expire before but not after the twenty‑second birthday of the juvenile. Each juvenile conditionally released is subject to the conditions and restrictions of the release and may at any time on the order of the releasing entity be returned to the custody of a correctional institution for violation of aftercare rules or conditions of release. The conditions of release must include the requirement that the juvenile parolee must permit the search or seizure, without a search warrant, with or without cause, of the juvenile parolee’s person, any vehicle the juvenile parolee owns or is driving, and any of the juvenile parolee’s possessions by:

(1) his aftercare counselor;

(2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(3) any other law enforcement officer.

However, the conditions of release of a juvenile parolee who was adjudicated delinquent of a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the juvenile parolee agree to be subject to search or seizure, without a search warrant, with or without cause, of the juvenile parolee’s person, any vehicle the juvenile parolee owns or is driving, or any of the juvenile parolee’s possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure conducted pursuant to this subsection, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole or probation or that the individual is currently subject to the provisions of his conditional release. A law enforcement officer conducting a search or seizure without a warrant pursuant to this subsection shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this subsection, he is subject to discipline pursuant to the employing agency’s policies and procedures.

(B) As a condition of release, the releasing entity may enforce participation in restitution, work ordered by the court, and community service programs established or approved by the Department of Juvenile Justice.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 151, Section 4, eff April 28, 2010; 2016 Act No. 268 (S.916), Section 8, eff July 1, 2019.

Editor’s Note

2010 Act No. 151, Sections 2 and 16, provide:

“SECTION 2. It is the intent of the General Assembly of South Carolina to provide law enforcement officers with the statutory authority to reduce recidivism rates of probationers and parolees, apprehend criminals, and protect potential victims from criminal enterprises.”

“SECTION 16. In any instance in which a law enforcement officer has failed to make the reports necessary to the State Law Enforcement Division for warrantless searches, then in the absence of a written policy by the employing agency enforcing the reporting requirements, the otherwise applicable state‑imposed, one‑day suspension without pay applies.”

2016 Act No. 268, Section 12, provides as follows:

“SECTION 12. Section 10 of this act takes effect upon approval by the Governor. Sections 1 through 9 and Section 11 of this act take effect on July 1, 2019, contingent upon the Department of Juvenile Justice having received any funds that may be necessary for implementation. If the report submitted to the General Assembly on September 1, 2017, reflects any additional funds needed by the Department of Juvenile Justice to ensure implementation will be possible on July 1, 2019, the department shall include these funds in its budget requests to the General Assembly as part of Fiscal Years 2017‑2018 and 2018‑2019. Beginning on September 1, 2017, all state and local agencies and courts involved with the implementation of the provisions of this act may begin undertaking and executing any and all applicable responsibilities so that the provisions of this act may be fully implemented on July 1, 2019.”

Effect of Amendment

The 2010 amendment in subsection (A) added the text following the third sentence.

2016 Act No. 268, Section 8, in (A), substituted “the twenty‑second birthday” for “the twenty‑first birthday”.

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 113, Parole and Aftercare.

**SECTION 63‑19‑1860.** Conditional release violation.

(A) At any time during the period of conditional release, an aftercare counselor or the counselor’s supervisor or a probation or parole agent may issue or cause to be issued a warrant for the juvenile to be taken into custody for violating any of the conditions of the release. A police officer or other officer with power to arrest, upon request of an aftercare counselor or a probation or parole agent, may take the juvenile into custody. The arresting officer shall obtain a warrant signed by the aftercare counselor or a probation or parole agent setting forth that the juvenile, in the counselor’s judgment, violated the conditions of the release which is authority for the detention of the juvenile in an appropriate place of detention. If an aftercare release revocation is necessary, the aftercare counselor or a probation or parole agent shall submit in writing a thorough report to the releasing entity, showing in what manner the delinquent juvenile has violated the conditional release. A juvenile returned to the custody of a correctional school by aftercare revocation shall have a hearing or review of the juvenile’s case by the releasing entity. The releasing entity is the final authority to determine whether or not the juvenile failed to abide by the aftercare rules and conditions of release.

(B) An aftercare counselor or probation or parole agent who has successfully completed Class I or II law enforcement officer training and received a certificate from the South Carolina Law Enforcement Training Council pursuant to the provisions of Chapter 23, Title 23 has the power, when commissioned by the department, to take a juvenile conditionally released from the custody of the department and subject to the jurisdiction of the releasing entity into custody upon the issuance of a warrant for violating the conditions of his release.

HISTORY: 2008 Act No. 361, Section 2; 2014 Act No. 225 (H.3958), Section 4, eff June 2, 2014.

Effect of Amendment

2014 Act No. 225, Section 4, in subsection (B), substituted “South Carolina Law Enforcement Training Council pursuant to the provisions of Chapter 23, Title 23” for “Department of Public Safety pursuant to the provisions of Article 9, Chapter 6 of Title 23”.

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 113, Parole and Aftercare.

**SECTION 63‑19‑1870.** Revocation of conditional release.

The order of revocation of a conditional release may be issued and made effective after the period of aftercare supervision prescribed in the release has expired when the violations of the conditions or release occurred during the aftercare supervision period.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 379.

**SECTION 63‑19‑1880.** Probation counselors.

(A) To be eligible for appointment as a probation counselor, an applicant must possess:

(1) a college degree involving special training in the field of social science or its equivalent;

(2) a personality and character as would render the applicant suitable for the functions of the office.

(B) Probation counselors shall live in districts as determined by the director. Each counselor periodically shall visit the schools under the supervision of the Department of Juvenile Justice and become familiar with the records, background, and needs of the children and shall make periodic reports to the school.

(C)(1) The duties of probation counselors include:

(a) conducting an investigation of the child and the child’s home as may be required by the court;

(b) being present in court at the hearing of cases;

(c) furnishing to the court information and assistance as the judge may require; and

(d) taking charge of a child before and after hearings as may be directed by the court.

(2) During the probationary period of a child and during the time that the child may be committed to an institution or to the care of an association or person for custodial or disciplinary purposes, the child is always subject to visitation by the probation counselors or other agents of the court.

(D) A probation counselor who has successfully completed Class I or II law enforcement officer training and received a certificate from the South Carolina Law Enforcement Training Council pursuant to the provisions of Chapter 23, Title 23 has the authority, when commissioned by the department, in the execution of his duties, to take a child under the jurisdiction of the family court into custody pursuant to an order issued by the court directing that the child be taken into custody.

(E) In the performance of the duties of probation, parole, community supervision, and investigation, the probation counselor is regarded as the official representative of the court, the department, and the Juvenile Parole Board.

HISTORY: 2008 Act No. 361, Section 2; 2014 Act No. 225 (H.3958), Section 5, eff June 2, 2014.

Effect of Amendment

2014 Act No. 225, Section 5, in subsection (D), substituted “South Carolina Law Enforcement Training Council pursuant to the provisions of Chapter 23, Title 23” for “Department of Public Safety pursuant to the provisions of Article 9, Chapter 6 of Title 23”.

Library References

Courts 55.

Infants 225.

Westlaw Topic Nos. 106, 211.

C.J.S. Courts Sections 136 to 144.

C.J.S. Infants Sections 43, 71 to 95.

NOTES OF DECISIONS

In general 1

1. In general

When a party is in a position to monitor, supervise, and control a person’s conduct, a special relationship between the defendant and the dangerous person may trigger a common law duty to warn potential victims of the danger posed by the individual; however, this special duty is limited to situations where the person under the defendant’s control has made a specific threat directed at a specific individual. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Negligence 221

ARTICLE 19

Juvenile Records

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑2010 | 20‑7‑8505 |
| 63‑19‑2020 | 20‑7‑8510 |
| 63‑19‑2030 | 20‑7‑8515 |
| 63‑19‑2040 | 20‑7‑8520 |
| 63‑19‑2050 | 20‑7‑8525 |

**SECTION 63‑19‑2010.** Records.

The court shall make and keep records of all cases brought before it. The records of the court are confidential and open to inspection only by court order to persons having a legitimate interest in the records and to the extent necessary to respond to that legitimate interest. These records must always be available to the legal counsel of the child and are open to inspection without a court order where the records are necessary to defend against an action initiated by a child.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

**SECTION 63‑19‑2020.** Confidentiality.

(A) Except as provided herein, all information obtained and records prepared in the discharge of official duty by an employee of the court or department are confidential and must not be disclosed directly or indirectly to anyone, other than the judge, the child’s attorney, or others entitled under this chapter or any other provision of law to receive this information, unless otherwise ordered by the court. The court may order the records be disclosed to a person having a legitimate interest and to the extent necessary to respond to that legitimate interest. However, these records are open to inspection without a court order where the records are necessary to defend against an action initiated by a child.

(B) The director of the department must develop policies providing for the transmission of necessary and appropriate information to ensure the provision and coordination of services or assistance to a child under the custody or supervision of the department. This information must include that which is required for the admission or enrollment of a child into a program of services, treatment, training, or education. The information may be provided to another department or agency of state or local government, a school district, or a private institution or facility licensed by the State as a child‑serving organization. This information may be summarized in accordance with agency policy.

(C) The director is authorized to enter into interagency agreements for purposes of sharing information about children under the supervision or in the custody of the department. The agencies entering into these agreements must maintain the confidentiality of the information.

(D) Reports and recommendations produced by the department for the court for the purpose of a dispositional hearing must be disseminated by the agency to the court, the solicitor, and the child’s attorney.

(E)(1) The department must notify the principal of a school in which a child is enrolled, intends to be enrolled, or was last enrolled upon final disposition of a case in which the child is charged with any of the following offenses:

(a) a violent crime, as defined in Section 16‑1‑60;

(b) a crime in which a weapon, as defined in Section 59‑63‑370, was used;

(c) assault and battery against school personnel, as defined in Section 16‑3‑612;

(d) assault and battery of a high and aggravated nature committed on school grounds or at a school‑sponsored event against any person affiliated with the school in an official capacity; or

(e) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

(2) Each school district is responsible for developing a policy for schools within the district to follow to ensure that the confidential nature of a child offense history and other information received is maintained. This policy must provide for, but is not limited to:

(a) the retention of the child offense history and other information relating to the child offense history in the child’s school disciplinary file or in some other confidential location;

(b) the destruction of the child offense history upon the child’s completion of secondary school or upon reaching twenty‑one years of age; and

(c) limiting access to the child’s school disciplinary file to school personnel. This access must only occur when necessary and appropriate to meet and adequately address the educational needs of the child.

(F) When requested, the department must provide the victim of a crime with the name of the child and the following information retained by the department concerning the child charged with the crime:

(1) other basic descriptive information, including but not limited to, a photograph;

(2) information about the juvenile justice system;

(3) the status and disposition of the delinquency action including hearing dates, times, and locations;

(4) services available to victims of child crime; and

(5) recommendations produced by the department for the court for the purpose of a dispositional hearing.

(G) The department or the South Carolina Law Enforcement Division, or both, must provide to the Attorney General, a solicitor, or a law enforcement agency, upon request, a copy of a child offense history for criminal justice purposes. This information must not be disseminated except as authorized in Section 63‑19‑2030. The department and the South Carolina Law Enforcement Division must maintain the child offense history of a person for the same period as for offenses committed by an adult.

(H) Other information retained by the department may be provided to the Attorney General, a solicitor, or a law enforcement agency pursuant to an ongoing criminal investigation or prosecution.

(I) The department may fingerprint and photograph a child upon the filing of a petition, release from detention, release on house arrest, or commitment to a juvenile correctional institution. Fingerprints and photographs taken by the department remain confidential and must not be transmitted to the State Law Enforcement Division, the Federal Bureau of Investigation, or another agency or person, except for the purpose of:

(1) aiding the department in apprehending an escapee from the department;

(2) assisting the Missing Persons Information Center in the location or identification of a missing or runaway child;

(3) locating and identifying a child who fails to appear in court as summoned;

(4) locating a child who is the subject of a house arrest order; or (5) as otherwise provided in this section.

(J) Nothing in this section shall be construed to waive any statutory or common law privileges attached to the department’s internal reports or to information contained in the file of a child under the supervision or custody of the department.

HISTORY: 2008 Act No. 361, Section 2.

Code Commissioner’s Note

Section 16‑3‑612, referenced in subsection (E)(1)(c), was repealed by 2010 Act. No. 273, Section 7.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

**SECTION 63‑19‑2030.** Law enforcement records.

(A) Except as provided herein, law enforcement records and information identifying children pursuant to this chapter are confidential and may not be disclosed directly or indirectly to anyone, other than those entitled under this chapter to receive the information.

(B) Law enforcement records of children must be kept separate from records of adults. Information identifying a child must not be open to public inspection, but the remainder of these records are public records.

(C) Law enforcement agencies must maintain admission and release records on children held in secure custody, nonsecure custody, or both. The records must include the times and dates of admission and release from secure and nonsecure custody and, if appropriate, the times and dates of transfer from one custody status to another.

(D) Law enforcement information or records of children created pursuant to the provisions of this chapter may be shared among law enforcement agencies, solicitors’ offices, the Attorney General, the department, the Department of Mental Health, the Department of Corrections, and the Department of Probation, Parole and Pardon Services for criminal justice purposes without a court order.

(E) Incident reports in which a child is the subject are to be provided to the victim of a crime pursuant to Section 16‑3‑1520. Incident reports, including information identifying a child, must be provided by law enforcement to the principal of the school in which the child is enrolled when the child has been charged with any of the following offenses:

(1) a violent crime, as defined in Section 16‑1‑60;

(2) an offense that would carry a maximum term of imprisonment of fifteen years or more if committed by an adult;

(3) a crime in which a weapon, as defined in Section 59‑63‑370, was used;

(4) assault and battery against school personnel, as defined in Section 16‑3‑612;

(5) assault and battery of a high and aggravated nature committed on school grounds or at a school‑sponsored event against any person affiliated with the school in an official capacity; or

(6) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

Incident reports involving other offenses must be provided upon request of the principal. This information must be maintained by the principal in the manner set forth in Section 63‑19‑2020(E) and must be forwarded with the child’s permanent school records if the child transfers to another school or school district.

(F) A child charged with any offense may be photographed by the law enforcement agency that takes the child into custody. If the child is taken into secure custody and detained, the detention facility must photograph the child upon admission. These photographs may only be disseminated for criminal justice purposes or to assist the Missing Persons Information Center in the location or identification of a missing or runaway child.

(G) A child charged with an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult must be fingerprinted by the law enforcement agency that takes the child into custody. If the child is taken into secure custody and detained, the detention facility must fingerprint the child upon admission. In addition, a law enforcement agency may petition the court for an order to fingerprint a child when:

(1) the child is charged with any other offense; or

(2) the law enforcement agency has probable cause to suspect the child of committing any offense.

(H) The fingerprint records of a child must be kept separate from the fingerprint records of adults. The fingerprint records of a child must be transmitted to the files of the State Law Enforcement Division.

(I) The fingerprint records of a child may be transmitted by the State Law Enforcement Division to the files of the Federal Bureau of Investigation only when the child has been adjudicated delinquent for having committed an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult.

(J) The fingerprint records of a child adjudicated delinquent for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult must be provided by the State Law Enforcement Division or the law enforcement agency who took the child into custody to a law enforcement agency upon request by that agency for criminal justice purposes or to assist the Missing Person Information Center in the location or identification of a missing or runaway child.

(K) The fingerprints and any record created by the South Carolina Law Enforcement Division as a result of the receipt of fingerprints of a child pursuant to this section must not be disclosed for any purpose not specifically authorized by law or court order.

(L) Upon notification that a child has not been adjudicated delinquent for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult, the South Carolina Law Enforcement Division and the law enforcement agency who took the child into custody must destroy the fingerprints and all records created as a result of such information.

HISTORY: 2008 Act No. 361, Section 2.

Code Commissioner’s Note

Section 16‑3‑612, referenced in subsection (E)(4), was repealed by 2010 Act No. 273, Section 7.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

Attorney General’s Opinions

Discussion of a request under the Freedom of Information Act for an incident report concerning an alleged sexual assault committed by one minor child against another that took place at a local middle school. S.C. Op.Atty.Gen. (Dec. 30, 2013) 2013 WL 6924891.

**SECTION 63‑19‑2040.** Release of information.

(A) The name, identity, or picture of a child under the jurisdiction of the court, pursuant to this chapter, must not be provided to a newspaper or radio or television station unless:

(1) authorized by court order;

(2) the solicitor has petitioned the court to waive the child to circuit court;

(3) the child has been bound over to a court which would have jurisdiction of the offense if committed by an adult; or

(4) the child has been adjudicated delinquent in court for one of the following offenses:

(a) a violent crime, as defined in Section 16‑1‑60;

(b) grand larceny of a motor vehicle;

(c) a crime in which a weapon, as defined in Section 59‑63‑370, was used; or

(d) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

(B) When a child is bound over to the jurisdiction of the circuit court, the provisions of this section pertaining to the confidentiality of fingerprints and identity do not apply.

(C) The provisions of this section do not prohibit the distribution of information pursuant to the provisions of Article 7, Chapter 3 of Title 23.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

Notes of Decisions

Constitutional issues 1

1. Constitutional issues

Deputy clerk of court who lost election to incumbent county clerk of court, her boss, was a public employee in a confidential, policymaking, or public contact role who spoke out as a private citizen on a matter of public concern but in a manner that communicated a lack of political loyalty to county clerk, which could have interfered with or undermined the operation of the clerk’s office, and therefore party affiliation or political allegiance was to be considered in analyzing deputy clerk’s Section 1983 claim that she was terminated for exercising her freedom of speech; county clerk appointed deputy clerk, and deputy clerk was a direct representative of county clerk in her role as supervisor within the family court division of clerk’s office. Lawson v. Gault, 2014, 63 F.Supp.3d 584, vacated and remanded 828 F.3d 239, as amended. Clerks of Courts 6; Constitutional Law 1947

**SECTION 63‑19‑2050.** Petition for expungement of official records.

(A)(1) A person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense or a nonviolent crime, as defined in Section 16‑1‑70, may petition the court for an order expunging all official records relating to:

(a) being taken into custody;

(b) the charges filed against the person;

(c) the adjudication; and

(d) the disposition.

(2) A person may not petition the court if the person has a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult.

(B) A prosecution or law enforcement agency may file an objection to the expungement. If an objection is filed, the expungement must be heard by the court. The prosecution or law enforcement agency’s reason for objecting must be that the person has other charges pending or the charges are not eligible for expungement. The prosecution or law enforcement agency shall notify the person of the objection. The notice must be given in writing at the most current address on file with the court, or through the person’s counsel of record.

Text of (C) effective until July 1, 2019. See Editor’s Note for contingency.

(C)(1) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense, the court shall grant the expungement order. If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed multiple status offenses, the court may grant an expungement order for the multiple status offenses.

(2) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a nonviolent crime, as defined in Section 16‑1‑70, the court may grant the expungement order.

(3) The court shall not grant the expungement order unless the court finds that the person is at least seventeen years of age, has successfully completed any dispositional sentence imposed, has not been subsequently adjudicated for or convicted of any criminal offense, and does not have any criminal charges pending in family court or general sessions court. If the person was found not guilty in an adjudicatory hearing in the family court, the court shall grant the expungement order regardless of the person’s age and the person must not be charged a fee for the expungement. An adjudication for a violent crime, as defined in Section 16‑1‑60, must not be expunged.

Text of (C) effective July 1, 2019. See Editor’s Note for contingency.

(C)(1) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense, the court shall grant the expungement order. If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed multiple status offenses, the court may grant an expungement order for the multiple status offenses.

(2) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a nonviolent crime, as defined in Section 16‑1‑70, the court may grant the expungement order.

(3) The court shall not grant the expungement order unless the court finds that the person is at least eighteen years of age, has successfully completed any dispositional sentence imposed, has not been subsequently adjudicated for or convicted of any criminal offense, and does not have any criminal charges pending in family court or general sessions court. If the person was found not guilty in an adjudicatory hearing in the family court, the court shall grant the expungement order regardless of the person’s age and the person must not be charged a fee for the expungement. An adjudication for a violent crime, as defined in Section 16‑1‑60, must not be expunged.

(D) If the expungement order is granted by the court, the records must be destroyed or retained by any law enforcement agency or municipal, county, state agency, or department pursuant to the provisions of Section 17‑1‑40.

(E) The effect of the expungement order is to restore the person in the contemplation of the law to the status the person occupied before being taken into custody. No person to whom the expungement order has been entered may be held thereafter under any provision of law to be guilty of perjury or otherwise giving false statement by reason of failing to recite or acknowledge the charge or adjudication in response to an inquiry made of the person for any purpose.

(F) For purposes of this section, an adjudication is considered a previous adjudication only if the adjudication occurred prior to the date the subsequent offense was committed.

(G) The judge, at the time of adjudication, shall notify the person of the person’s ability to have the person’s record expunged, the conditions that must be met, as well as the process for receiving an expungement in the particular jurisdiction pursuant to this section.

HISTORY: 2008 Act No. 361, Section 2; 2015 Act No. 22 (S.133), Section 2, eff June 1, 2015; 2016 Act No. 268 (S.916), Section 9, eff July 1, 2019.

Editor’s Note

2016 Act No. 268, Section 12, provides as follows:

“SECTION 12. Section 10 of this act takes effect upon approval by the Governor. Sections 1 through 9 and Section 11 of this act take effect on July 1, 2019, contingent upon the Department of Juvenile Justice having received any funds that may be necessary for implementation. If the report submitted to the General Assembly on September 1, 2017, reflects any additional funds needed by the Department of Juvenile Justice to ensure implementation will be possible on July 1, 2019, the department shall include these funds in its budget requests to the General Assembly as part of Fiscal Years 2017‑2018 and 2018‑2019. Beginning on September 1, 2017, all state and local agencies and courts involved with the implementation of the provisions of this act may begin undertaking and executing any and all applicable responsibilities so that the provisions of this act may be fully implemented on July 1, 2019.”

Effect of Amendment

2015 Act No. 22, Section 2, rewrote the section.

2016 Act No. 268, Section 9, in (C)(3), substituted “at least eighteen years of age” for “at least seventeen years of age”.

CROSS REFERENCES

Applications for expungement, administration, see Section 17‑22‑910.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

ARTICLE 21

Interstate Compact for Juveniles

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑2210 | 20‑7‑8705  [Repealed] |
| 63‑19‑2220 | 20‑7‑8800 |

Editor’s Note

Section 63‑19‑2210 (former Section 20‑7‑8705), the Interstate Compact on Juveniles, was repealed by 2006 Act No. 305, Section 2, upon the formation of the Interstate Compact for Juveniles. The Compact was formed on August 26, 2008, when it was adopted by the thirty‑fifth state.

**SECTION 63‑19‑2220.** Interstate Compact for Juveniles.

The State of South Carolina hereby contracts to enter into the “Interstate Compact for Juveniles” according to the terms and in the form substantially as follows:

Subarticle I

Purpose

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

(A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(C) return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(E) provide for the effective tracking and supervision of juveniles;

(F) equitably allocate the costs, benefits, and obligations of the compacting states;

(G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

(H) insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(J) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and

(M) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact.

The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

Subarticle II

Definitions

As used in this compact, unless the context clearly requires a different construction:

A. “By‑laws” means those by‑laws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

B. “Compact administrator” means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission.

C. “Compacting state” means any state which has enacted the enabling legislation for this compact.

D. “Commissioner” means the voting representative of each compacting state appointed pursuant to Subarticle III of this compact.

E. “Court” means any court having jurisdiction over delinquent, neglected, or dependent children.

F. “Deputy compact administrator” means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.

G. “Interstate Commission” means the Interstate Commission for Juveniles created by Subarticle III of this compact.

H. “Juvenile” means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) accused delinquent—a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) adjudicated delinquent—a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) accused status offender—a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) adjudicated status offender—a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) nonoffender—a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. “Noncompacting state” means any state which has not enacted the enabling legislation for this compact.

J. “Probation or parole” means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. “Rule” means a written statement by the Interstate Commission promulgated pursuant to Subarticle VI of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. “State” means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

Subarticle III

Interstate Commission for Juveniles

A. The compacting states hereby create the “Interstate Commission for Juveniles”. The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex‑officio (nonvoting) members. The Interstate Commission may provide in its by‑laws for such additional ex‑officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by‑laws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the by‑laws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day‑to‑ day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by‑laws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the by‑laws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The by‑laws may provide for members’ participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission’s by‑laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two‑thirds vote that an open meeting would be likely to:

1. relate solely to the Interstate Commission’s internal personnel practices and procedures;

2. disclose matters specifically exempted from disclosure by statute;

3. disclose trade secrets or commercial or financial information which is privileged or confidential;

4. involve accusing any person of a crime, or formally censuring any person;

5. disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. disclose investigative records compiled for law enforcement purposes;

7. disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

8. disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

9. specifically relate to the Interstate Commission’s issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission’s legal counsel shall publicly certify that, in the legal counsel’s opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up‑to‑date technology and coordinate its information functions with the appropriate repository of records.

Subarticle IV

Powers and Duties of the Interstate Commission

The commission shall have the following powers and duties to:

1. provide for dispute resolution among compacting states;

2. promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

3. oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any by‑laws adopted and rules promulgated by the Interstate Commission;

4. enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by‑laws, using all necessary and proper means, including, but not limited to, the use of judicial process;

5. establish and maintain offices which shall be located within one or more of the compacting states;

6. purchase and maintain insurance and bonds;

7. borrow, accept, hire, or contract for services of personnel;

8. establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Subarticle III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;

9. elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission’s personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;

10. accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it;

11. lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;

12. sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

13. establish a budget and make expenditures and levy dues as provided in Subarticle VIII of this compact;

14. sue and be sued;

15. adopt a seal and by‑laws governing the management and operation of the Interstate Commission;

16. perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

17. report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission;

18. coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity;

19. establish uniform standards of the reporting, collecting, and exchanging of data; and

20. maintain its corporate books and records in accordance with the by‑laws.

Subarticle V

Organization and Operation of the Interstate Commission

A. By‑laws

1. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt by‑laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including, but not limited to:

a. establishing the fiscal year of the Interstate Commission;

b. establishing an executive committee and such other committees as may be necessary;

c. providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

d. providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

e. establishing the titles and responsibilities of the officers of the Interstate Commission;

f. providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

g. providing “start‑up” rules for initial administration of the compact; and

h. establishing standards and procedures for compliance and technical assistance in carrying out the compact.

B. Officers and Staff

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the by‑laws. The chairperson or, in the chairperson’s absence or disability, the vice chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

C. Qualified Immunity, Defense, and Indemnification

1. The commission’s executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person’s employment or duties for acts, errors, or omissions occurring within such person’s state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner’s representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner’s representatives or employees, or the Interstate Commission’s representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

Subarticle VI

Rulemaking Functions of the Interstate Commission

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this subarticle and the by‑laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the “Model State Administrative Procedures Act”, 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. publish the proposed rule’s entire text stating the reason(s) for that proposed rule;

2. allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available;

3. provide an opportunity for an informal hearing if petitioned by ten or more persons; and

4. promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission’s principal office is located for judicial review of such rule. If the court finds that the Interstate Commission’s action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this act shall be null and void twelve months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

Subarticle VII

Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

A. Oversight

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact’s purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

B. Dispute Resolution

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its by‑laws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Subarticle XI of this compact.

Subarticle VIII

Finance

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission’s annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by‑laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Subarticle IX

The State Council

A. Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state’s participation in Interstate Commission activities and other duties as may be determined by that state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

B. The director of the South Carolina Department of Juvenile Justice, or his designee, must serve as Compact Administrator for the State of South Carolina. The director of the South Carolina Department of Juvenile Justice shall appoint the members of the state council. The state council shall act as an advisory body to the director regarding the activities of the Interstate Compact.

Subarticle X

Compacting States, Effective Date, and Amendment

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Subarticle II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty‑five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Subarticle XI

Withdrawal, Default, Termination, and Judicial Enforcement

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the Chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state’s intent to withdraw within sixty days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Technical Assistance, Fines, Suspension, Termination, and Default

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the by‑laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. remedial training and technical assistance as directed by the Interstate Commission;

b. alternative dispute resolution;

c. fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. suspension or termination of membership in the compact, which shall be only imposed after all other reasonable means of securing compliance under the by‑laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice, or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state’s legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the by‑laws, or duly promulgated rules and any other grounds designated in commission by‑laws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a defaulting state, the commission shall notify the Governor, the Chief Justice, or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state’s legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and by‑laws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney’s fees.

D. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the by‑laws.

Subarticle XII

Severability and Construction

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

Subarticle XIII

Binding Effect of Compact and Other Laws

A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states’ laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and by‑laws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

HISTORY: 2008 Act No. 361, Section 2.

Editor’s Note

2006 Act No. 305, Section 3, provided that this section would take effect upon formation of the Interstate Compact for Juveniles. The Compact was formed on August 26, 2008, when it was adopted by the thirty‑fifth state.

Library References

Infants 151, 192, 225, 277, 281.

States 6.

Westlaw Topic Nos. 211, 360.

C.J.S. Infants Sections 14, 16, 24 to 29, 41 to 43, 46 to 48, 58 to 59, 71 to 95, 375, 379.

C.J.S. States Sections 13, 67 to 71, 257.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 103, Interstate Compact on Juveniles.

ARTICLE 23

Offenses Involving Minors

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑19‑2410 | 20‑7‑8905 |
| 63‑19‑2420 | 20‑7‑8910 |
| 63‑19‑2430 | 20‑7‑8915 |
| 63‑19‑2440 | 20‑7‑8920 |
| 63‑19‑2450 | 20‑7‑8925 |
| 63‑19‑2460 | 20‑7‑320 |

**SECTION 63‑19‑2410.** Misrepresentation of age for admission to theater.

A minor who gains admission to any theater by falsely claiming to be eighteen years of age or older is guilty of a misdemeanor and, upon conviction, must be fined not more than fifty dollars.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 153.

Westlaw Topic No. 211.

C.J.S. Infants Sections 15, 23 to 28, 40, 42, 44 to 45, 62 to 63, 69 to 70.

**SECTION 63‑19‑2420.** Loitering in a billiard room.

It is unlawful for a person under eighteen years of age to loiter in a billiard or pocket billiard room or to play billiards or pocket billiards in a billiard room unless accompanied by the person’s parent or guardian or with the written consent of the person’s parent or guardian. A person violating this section or Chapter 11 of Title 52 or any billiard room proprietor or manager who permits such a violation must be fined not less than ten nor more than one hundred dollars or be imprisoned not less than two days nor more than thirty days. In the event the keeper of a billiard room is of the opinion that a person desiring admission is under the age of eighteen years the keeper shall require the person to certify the person’s age in writing. It is a misdemeanor, punishable by a fine of not less than twenty‑five nor more than one hundred dollars, for a minor to make a false certificate of age or use a forged permit from the minor’s parent or guardian.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 153.

Westlaw Topic No. 211.

C.J.S. Infants Sections 15, 23 to 28, 40, 42, 44 to 45, 62 to 63, 69 to 70.

**SECTION 63‑19‑2430.** Playing pinball.

It is unlawful for a minor under the age of eighteen to play a pinball machine.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 153.

Westlaw Topic No. 211.

C.J.S. Infants Sections 15, 23 to 28, 40, 42, 44 to 45, 62 to 63, 69 to 70.

**SECTION 63‑19‑2440.** Beer and wine purchase, consumption, or possession.

(A) It is unlawful for a person under the age of twenty‑one to purchase, attempt to purchase, consume, or knowingly possess beer, ale, porter, wine, or other similar malt or fermented beverage. Possession is prima facie evidence that it was knowingly possessed. Notwithstanding another provision of law, if the law enforcement officer has probable cause to believe that a person is under age twenty‑one and has consumed alcohol, the law enforcement officer or the person may request that the person submit to any available alcohol screening test using a device approved by the State Law Enforcement Division. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than two hundred dollars or must be imprisoned for not more than thirty days, or both.

(B) A person who violates the provisions of this section also is required to successfully complete a DAODAS approved alcohol prevention education or intervention program. The program must be a minimum of eight hours and the cost to the person may not exceed one hundred fifty dollars.

(C) A person eighteen years of age and over lawfully employed to serve or remove beer, wine, or alcoholic beverages in establishments licensed to sell these beverages is not considered to be in unlawful possession of the beverages during the course and scope of his duties as an employee. The provisions of this subsection do not affect the requirement that a bartender must be at least twenty‑one years of age.

(D) This section does not apply to an employee lawfully engaged in the sale or delivery of these beverages in an unopened container.

(E) The provisions of this section do not apply to a student who:

(1) is eighteen years of age or older;

(2) is enrolled in an accredited college or university and a student in a culinary course that has been approved through review by the State Commission on Higher Education;

(3) is required to taste, but not consume or imbibe, any beer, ale, porter, wine, or other similar malt or fermented beverage as part of the required curriculum; and

(4) tastes a beverage pursuant to item (3) only for instructional purposes during classes that are part of the curriculum of the accredited college or university.

The beverage must remain at all times in the possession and control of an authorized instructor of the college or university who must be twenty‑one years of age or older. Nothing in this subsection may be construed to allow a student under the age of twenty‑one to receive any beer, ale, porter, wine, or other similar malt or fermented beverage unless the beverage is delivered as part of the student’s required curriculum and the beverage is used only for instructional purposes during classes conducted pursuant to the curriculum.

(F) The provisions of this section do not apply to a person under the age of twenty‑one who is recruited and authorized by a law enforcement agency to test an establishment’s compliance with laws relating to the unlawful transfer or sale of beer or wine to a minor. The testing must be under the direct supervision of a law enforcement agency, and the agency must have the person’s parental consent.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Commission on Higher Education approval of culinary arts course requiring underage student to taste alcoholic beverage, see Section 59‑103‑195.

Limited immunity for a person who seeks medical assistance for another, see Section 44‑53‑1920.

Suspension of driver’s license upon conviction of offense under this section, see Section 56‑1‑746.

Suspension of license or permit or denial of issuance of license or permit to persons under the age of twenty‑one who drive motor vehicles with certain amount of alcohol concentration, see Section 56‑1‑286.

Library References

Intoxicating Liquors 139.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 323, 361 to 364, 366 to 368.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 20, Suspension of License‑For Specific Alcohol or Driver’s License Convictions.

S.C. Jur. Intoxicating Liquors Section 34, South Carolina Constitution.

S.C. Jur. Magistrates and Municipal Judges Section 24, Revocation or Suspension of Driver’s License.

NOTES OF DECISIONS

In general 1

1. In general

Constitutional provision affording full legal rights and responsibilities to persons age 18 or over, subject to legislature’s authority to prohibit “sale” of alcoholic beverages to persons until age 21, did not prohibit enactment of statute prohibiting possession and consumption of alcoholic beverages by persons under age 21. City of Rock Hill v. Harris (S.C. 2011) 391 S.C. 149, 705 S.E.2d 53.

State did not have a right to appeal magistrate court’s ruling, granting defendant’s motion for a directed verdict on the ground that possession of alcohol by a minor statute was unconstitutional as applied to defendant, to the circuit court; whether or not the magistrate erred in his ruling of law, defendant was acquitted and was now out of court. State v. Tillinghast (S.C. 2007) 375 S.C. 201, 652 S.E.2d 400. Criminal Law 1024(5)

**SECTION 63‑19‑2450.** Alcoholic beverages purchase, consumption, or possession.

(A) It is unlawful for a person under the age of twenty‑one to purchase, attempt to purchase, consume, or knowingly possess alcoholic liquors. Possession is prima facie evidence that it was knowingly possessed. It is also unlawful for a person to falsely represent his age for the purpose of procuring alcoholic liquors. Notwithstanding another provision of law, if the law enforcement officer has probable cause to believe that a person is under age twenty‑one and has consumed alcohol, the law enforcement officer or the person may request that the person submit to any available alcohol screening test using a device approved by the State Law Enforcement Division.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than two hundred dollars or must be imprisoned for not more than thirty days, or both.

(C) A person who violates the provisions of this section also is required to successfully complete a DAODAS approved alcohol prevention education or intervention program. The program must be a minimum of eight hours and the cost to the person may not exceed one hundred fifty dollars.

(D) The provisions of this section do not apply to a student who:

(1) is eighteen years of age or older;

(2) is enrolled in an accredited college or university and a student in a culinary course that has been approved through review by the State Commission on Higher Education;

(3) is required to taste, but not consume or imbibe, any alcoholic liquor as part of the required curriculum; and

(4) tastes the liquor pursuant to item (3) only for instructional purposes during classes that are part of the curriculum of the accredited college or university.

The alcoholic liquor must remain at all times in the possession and control of an authorized instructor of the college or university who must be twenty‑one years of age or older. Nothing in this subsection may be construed to allow a student under the age of twenty‑one to receive alcoholic liquor unless it is delivered as part of the student’s required curriculum, and it is used only for instructional purposes during classes conducted pursuant to the curriculum.

(E) The provisions of this section do not apply to a person under the age of twenty‑one who is recruited and authorized by a law enforcement agency to test an establishment’s compliance with the laws relating to the unlawful transfer or sale of alcoholic liquors to a minor. The testing must be under the direct supervision of a law enforcement agency, and the agency must have the person’s parental consent.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Commission on Higher Education approval of culinary arts course requiring underage student to taste alcoholic beverage, see Section 59‑103‑195.

Suspension of driver’s license upon conviction of offense under this section, see Section 56‑1‑746.

Suspension of license or permit or denial of issuance of license or permit to persons under the age of twenty‑one who drive motor vehicles with certain amount of alcohol concentration, see Section 56‑1‑286.

Library References

Intoxicating Liquors 139.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 323, 361 to 364, 366 to 368.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 20, Suspension of License‑For Specific Alcohol or Driver’s License Convictions.

S.C. Jur. Magistrates and Municipal Judges Section 24, Revocation or Suspension of Driver’s License.

**SECTION 63‑19‑2460.** Alcoholic beverages in home; religious use exception.

No provision of law prohibiting the use or possession of beer, wine, or alcoholic beverages by minors shall apply to any minor in the home of his parents or guardian or to any such beverage used for religious ceremonies or purposes so long as such beverage was legally purchased.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Intoxicating Liquors 139.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 323, 361 to 364, 366 to 368.