ALAN WILSON
ATTORNEY GENERAL

October 8, 2012

Mark Keel, Chief
South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, SC 29221-1398

Dear Chief Keel:

We received your letter on behalf of the South Carolina Law Enforcement Division ("SLED") requesting an opinion of this Office regarding civil contempt being transmitted to SLED via live scan for placement on the National Crime Information Center ("NCIC").

Law/Analysis

By way of background, we note that in South Carolina the gathering of information upon the charging and arresting of a person for a criminal offense is a function of and is governed by statute. Chapter 3, Article 3 of Title 23 of the South Carolina Code establishes the "Criminal Information and Communication System," of which SLED has exclusive and statewide authority regarding its operation and maintenance. See S.C. Code Ann. §23-3-15(A)(4). Accordingly, a department was created within SLED to serve as a statewide criminal information and communication repository to the various criminal justice agencies in South Carolina, pursuant to §§23-3-110 *et seq*. As to the reporting of criminal justice data, §23-3-120 provides that:

> [a]ll law enforcement agencies and court officials must report all criminal data and related information within their respective jurisdictions to [SLED's] Central Record Repository at such times and in such form as [SLED] requires. [Emphasis added].

See also §14-17-325 [clerk of court is to report to SLED the disposition of each case in the Court of General Sessions].

In an opinion of this Office dated January 24, 1990 (1990 WL 482403), we addressed the dissemination of criminal data by SLED, pursuant to South Carolina's Freedom of Information Act. Generally, as to dissemination of such information, we advised that at least two statutes must be considered. In relevant part, §23-3-130 provides:

> [SLED] is authorized to determine ... the methods by which such information [compiled pursuant to § 23-3-120] shall be ... disseminated....
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> [SLED] shall disseminate criminal history conviction records upon request to local school districts for prospective teachers and to the State Department of Social Services for personnel of child day care facilities. This service must be provided to the local school districts without charge.

Additionally, we noted that §23-3-140 provides that:

> [t]he provisions of [Article 3 of Chapter 3 of Title 23] shall not be construed to require or permit the disclosure or reporting of any information in the manner prohibited by existing law.

SLED is further authorized by §23-3-130 to promulgate rules and regulations relative to collection and dissemination of criminal history records.

Pursuant to this statutory authorization, SLED has adopted 26 S.C. Code Ann. Regs. 73-20 *et seq.* [Computerized Criminal History] relative to criminal information and communications. Of importance to your opinion request, we note that Reg. 73-21 provides:

> A. The State Law Enforcement Division Criminal Justice Information System, known as SLED/CJIS, acting as the State's central criminal justice information repository shall collect, process, and store criminal justice information and records necessary to the operation of the criminal justice information system of the State Law Enforcement Division. The SLED/CJIS is comprised of the State Crime Information Center (SCIC) which includes the Computerized Criminal History (CCH) department, the Criminal Records Department, and such other departments as may be deemed necessary.
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> (1) The Computerized Criminal History (CCH) Department has the responsibility for converting manual criminal history record information to computerized data. The mission of the computerized criminal history unit is to serve criminal justice agencies and to assist non-criminal justice agencies throughout the State and nation by providing current criminal history record information. Conversion of existing computerized criminal history will be compatible with established concepts and operating policies of the Federal Bureau of Investigation's National Crime Information Center (NCIC) to enable an accurate exchange of criminal history data. . . . South Carolina offense codes are assigned to each specific charge. The offense codes must meet State and national requirements for the entering of criminal history data.

(2) The Criminal Records Department has the responsibility of collecting, processing and storing all fingerprint cards and dispositions of persons arrested in the State. The Criminal Records Department supervisor will serve as the custodian of records. Fingerprints will be the basis for establishing computerized criminal history. The Criminal Records Department is responsible for the timely processing of all supporting documents for criminal history record information as provided to the SLED/CJIS by other criminal justice agencies. The department is also responsible for handling expungements as required by South Carolina statute. After the processing at SLED is completed, the department is responsible for forwarding the necessary documentation to the FBI/CJIS Division in Clarksburg, West Virginia.

The Criminal Records Department will be responsible for entering, editing, and storing all criminal fingerprint card images on the automated fingerprint identification system.

(3) The Data Communications Department has the responsibility of providing the necessary systems and programming support to develop, manage, and modify various computer applications and programs as deemed necessary by the Computerized Criminal History Department, the Criminal Records Department, the Uniform Crime Reporting Department and other criminal justice entities to facilitate the automated processing of various information. This department is further charged with the responsibility of maintaining computer equipment and associated software to ensure effective and efficient information processing and message switching, and to ensure that adequate levels of security are provided throughout the electronic data processing system. The Data Communications Department is also responsible for the maintenance and operation of the statewide communications network, the computer interface with the Federal Bureau of Investigation's National Crime Information Center, the National Law Enforcement Telecommunication System, the South Carolina Department of Public Safety, the South Carolina Automated Fingerprint Identification System, and other automated criminal justice systems.

(4) The Uniform Crime Reporting (UCR) Department has the responsibility for processing, analyzing, coding and compiling incident, supplemental, and booking reports received from law enforcement agencies, whether such reports are submitted on paper or by automated means. The Uniform Crime Reporting Department will classify and count incident, supplemental, and booking reports submitted by other agencies according to procedures defined by the International Association of Chiefs of Police Committee on Uniform Crime Reports,

> the Uniform Crime Records Committee of the National Sheriffs Association, the Uniform Crime Reports Section of the Federal Bureau of Investigation and the State Law Enforcement Division. The Uniform Crime Reporting Department will assure through training and quality control measures that all automated incident, supplemental, and arrest data submitted to the State Uniform Crime Reporting program are classified and counted according to these procedures.
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> B. When practicable, the SLED/CJIS will develop systems which will facilitate the exchange of criminal justice information between criminal justice agencies.
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> C. The SLED/CJIS will collect, process, maintain, and disseminate information and records with due regard to the privacy of individuals, and will maintain and disseminate only accurate and complete records.

Significantly, Reg. 73-23(A) provides that:

> SLED/CJIS will operate and maintain a criminal justice information system which will support the collection, storage, retrieval, and dissemination of criminal history record information, both intrastate and interstate. SLED/CJIS will make available to bona fide criminal justice agencies, upon request, any information which will aid these agencies in the performance of their official duties, provided that the dissemination of such information will not be a violation of state or federal laws and regulations restricting its use. Dissemination will include disposition and non-disposition data. [Emphasis added].

Also, Reg. 73-23(E) authorizes SLED to disseminate:

> . . .criminal history record information, unless sealed, to private persons, governmental entities, businesses, commercial establishments, professional organizations, charitable organizations and others. The dissemination of criminal history record information will include all unsealed conviction data, non-conviction data and non-disposition data as well as findings of not guilty, *nolle prosequi*, dismissals, and similar dispositions which show any final disposition of an arrest. . . . [Emphasis added].

"Criminal History Record Information" is defined in Reg. 73-20(C) as "records, fingerprint cards, dispositions, and data collected by criminal justice agencies on adult individuals who are at least seventeen years of age consisting of identifiable descriptors and notations of arrests, detentions, indictments, information, or other formal charges, and any dispositions arising therefrom. . ." In addition, Reg. 73-20(F) defines "conviction data" as "information which shows that an individual has been convicted or found guilty of a crime." Further, Reg. 73-20(O) defines "disposition" as "information which states that a criminal charge contained in a criminal history record has been dealt with by proper judicial

authority and that a final disposal of the charge has been made through a finding of guilty or not guilty, or that the charge has been dismissed, or that adjudication has been indefinitely postponed. In findings of guilt, a disposition will include information showing the final action of any court of appropriate jurisdiction including, but not limited to fines, sentencing, probation, pardon and restitution information."

In our 1990 opinion, we discussed requirements of the federal regulations regarding dissemination of criminal history information, upon which our State regulations are based. We observed therein:

> [t]hese federal regulations are made applicable to state agencies which collect, store, and disseminate criminal history records, by virtue of 28 C.F.R. §20.20(a). The regulations are not applicable to criminal history record information contained in original records of entry maintained in chronological order which by law or custom are made public; court records of public judicial proceedings; published court or administrative opinions; public judicial or administrative proceedings; and other records specified in 28 C.F.R. §20.20(b). In addition, a criminal justice agency may release information "related to the offense for which an individual is currently within the criminal justice system," as well as specified information upon request of the news media or any other person, according to the provisions of 28 C.F.R. §20.20(c). Reference must be made to the regulation for more specific guidance.
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> As noted above, 28 C.F.R. §20.21(b) contains limitations on dissemination of data, virtually identical to [Reg.] 73-24 of our state regulations. Subsection (b) specifically states, however, that "[t]hese dissemination limitations do not apply to conviction data." Subsection (c)(3) specifically provides: "States and local governments will determine the purposes for which dissemination of criminal history record information is authorized by State law, executive order, local ordinance, court rule, decision or order." 28 C.F.R. §20.33(a)(3) governs the use of criminal history record information for certain purposes such as licensing and employment if the requirements therein are followed; other provisions of 28 C.F.R. §20.33 govern dissemination of this type information for other purposes.

Also relevant to your inquiry, we note that Congress in 1968 mandated that the United States Department of Justice ("DOJ") establish a nationalized system to track criminal history records and exchange such records with "the States, cities and penal and other institutions." See 28 U.S.C. §534(a)(4). The NCIC is the computerized information system linking local, state, and federal criminal justice agencies for the purpose of collecting and exchanging certain criminal history information. 28 C.F.R. §20.31(a)(b); 28 C.F.R. §20.33(a)(1). Information from NCIC is available to criminal justice agencies for criminal justice purposes. 28 C.F.R. §20.33(a). The Federal Bureau of Investigation is vested with authority for operation of the NCIC. 28 C.F.R. §20.31(a).

As a general matter, information to be entered into the data bases from a South Carolina criminal justice agency must be submitted from an authorized state criminal justice control terminal. 28 C.F.R. §20.36(b); see also 28 C.F.R. §20.37 ("[i]t shall be the responsibility of each criminal justice agency contributing data to the III System and the FIRS to assure that information on individuals is kept complete, accurate, and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein"). All entries into the South Carolina and NCIC data bases must be made in accordance with federal regulations and NCIC rules, policies, and procedures. 28 C.F.R. §20.36(a).

Regulations issued by the DOJ govern access to the NCIC. In part, the federal regulations provide that "[c]riminal history record information contained in [NCIC] may be made available . . . to criminal justice agencies for criminal justice purposes . . . for use in connection with licensing or employment . . . and for other for which dissemination is authorized by federal law. . . [and] to criminal justice agencies for the conduct of background checks. . ." 28 C.F.R. §20.33(a). [Emphasis added]. As set forth in the aforementioned SLED regulations, for purposes of 28 C.F.R. §§20.1 to 20.38, §20.3(d) defines "criminal history record information," stating:

> [c]riminal history record information means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records if such information does not indicate the individual's involvement with the criminal justice system.

In addition, 28 C.F.R. §20.32 further elaborates on the types of data that constitute "criminal history record information," which includes:

> (a) Criminal history record information maintained in the III System and the FIRS[1] shall include serious and/or significant adult and juvenile offenses.
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> (b) The FIRS excludes arrests and court actions concerning nonserious offenses, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic violations (except data will be included on arrests for vehicular manslaughter, driving under the influence of drugs or liquor, and hit and run), when unaccompanied by a §20.32(a) offense. These exclusions may not be applicable to criminal history records maintained in state criminal history record repositories, including those states participating in the NFF.

Pursuant to these regulations, criminal history record information collected and retained in NCIC data bases relates to the arrest, detention, prosecution, sentencing, correctional supervision, or release of an

[1]"FIRS" is the Fingerprint Identification Records System.

individual, and is made available to other criminal justice agencies for criminal justice purposes. 28 C.F.R. §20.33(a)(1).

We refer to the opinion of the Ohio Attorney General dated April 12, 1999 (1999 WL 221301), which discussed an analogous query regarding the entry of contempt citations into NCIC and Ohio's Law Enforcement Automated Data System ("LEADS") wanted persons databases. After discussing the aforementioned federal regulations and relevant Ohio laws regulating LEADS, the opinion explained:

> . . . pursuant to 28 C.F.R. §§20.3(b), 20.32, and 20.33(a), criminal history record information collected and retained in the data bases of NCIC relates to the arrest, detention, prosecution, sentencing, or correctional supervision of an individual, and is made available to state criminal justice agencies for criminal justice purposes. Therefore, information may be entered into NCIC through LEADS only if the information pertains to the arrest, detention, prosecution, sentencing, or correctional supervision of a person and is used by state criminal justice agencies for criminal justice purposes.
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> Although no definition of the phrase "criminal justice purposes" appears in the federal regulations, the use of this phrase connotes purposes that relate to the administration and enforcement of the criminal laws. As defined in Black's Law Dictionary 372 (6th ed. 1990), the word "criminal," as an adjective, means "[t]hat which pertains to or is connected with the law of crimes, or the administration of penal justice, or which relates to or has the character of crime. Of the nature of or involving a crime." Black's Law Dictionary at 370, in turn, defines "crime," in part, as "[a] positive or negative act in violation of penal law; an offense against the State or United States.... A crime may be defined to be any act done in violation of those duties which an individual owes to the community, for the breach of which the law has provided that the offender shall make satisfaction to the public." See generally In re Jacoby, 74 Ohio App. 147, 150, 57 N.E.2d 932, 934 (Marion County 1943) ("[a] 'crime' is a wrong which the government notices as injurious to the public"); State v. Bundy, 79 Ohio L. Abs. 253, 255, 154 N.E.2d 924, 926 (Findlay Mun. Ct. 1956) ("a 'crime' may be defined as a violation of, or neglect to perform, a legal duty of such importance to the protection of society that the State takes notice thereof and imposes a penalty or punishment for such violation or neglect"). In addition, the phrase "justice" is defined in Black's Law Dictionary at 864 as "[p]roper administration of laws."
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> The phrase "criminal justice" thus connotes the administration or enforcement of the criminal laws. . . . Accordingly, the use of the words "criminal justice" to modify "purposes" thus indicates that the federal regulations refer to purposes that further the enforcement of the criminal laws.

> This conclusion is buttressed by the definition of "administration of criminal justice" set forth in 28 C.F.R. §20.3(d), which reads as follows:
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> > The administration of criminal justice means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information. State and Federal Inspector General Offices are included.
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> . . . The definition of "administration of criminal justice" set forth in 28 C.F.R. §20.3(d) clearly illustrates that the term "criminal justice" refers to proceedings by which a person is charged with a crime, tried, and, if convicted, sentenced. Therefore, as used in 28 C.F.R. §§20.1 to 20.38, the phrase "criminal justice purposes" refers to purposes that advance the enforcement of the criminal laws.

Most relevant to our analysis here, the Ohio Attorney General considered the reporting of civil contempt citations and concluded:

> [i]t is our opinion that a contempt citation or bench warrant issued by a court of record against a person for the person's failure to pay spousal or child support, to surrender real property to his spouse, to seek work, to accept responsibility for marital debts, or to appear for a hearing in a civil proceeding is not a matter that advances or relates to the enforcement of the criminal laws of this state. . . . Accordingly, such contempt citations do not constitute "criminal history record information," as defined in 28 C.F.R. §§20.3(b) and 20.32, for purposes of being entered into the LEADS/NCIC wanted persons data base.

Generally, in South Carolina "[t]he power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." Miller v. Miller, 375 S.C. 443, 652 S.E.2d 754, 759 (Ct. App. 2007) [quoting Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915, 917 (1982)]; see also In re Brown, 333 S.C. 414, 511 S.E.2d 351, 355 (1998) ["The power to punish for contempt is inherent in all courts and is essential to preservation of order in judicial proceedings"]; State *ex rel.* McLeod v. Hite, 272 S.C. 303, 251 S.E.2d 746, 748 (1979) [instructing that a court has the inherent authority to punish offenses calculated to obstruct, degrade, and undermine the administration of justice, and such power cannot be abridged].

Relevant to our analysis, the determination of whether contempt is civil or criminal depends on the underlying purpose of the contempt ruling.[2] In Miller, the South Carolina Court of Appeals provided a comprehensive review of the differences between civil and criminal contempt:

> The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant.
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> The primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.
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> An unconditional penalty is criminal in nature because it is solely and exclusively punitive in nature. The relief cannot undo or remedy what has been done nor afford any compensation and the contemnor cannot shorten the term by promising not to repeat his offense. If the relief provided is a sentence of imprisonment, ... it is punitive if the sentence is limited to imprisonment for a definite period. If the sanction is a fine, it is punitive when it is paid to the court. However, a fine that is payable to the court may be remedial when the contemnor can avoid paying the fine simply by performing the affirmative act required by the court's order.
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> In civil contempt cases, the sanctions are conditioned on compliance with the court's order. The conditional nature of the punishment renders the relief civil in nature because the contemnor can end the sentence and discharge himself at any moment by doing what he had previously refused to do. If the relief provided is a sentence of imprisonment, it is remedial if the defendant stands committed unless and until he performs the affirmative act required by the court's order.... Those who are imprisoned until they obey the order, carry the keys of their prison in their own pockets. If the sanction is a fine, it is remedial

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[2]Contempt proceedings are divided into two general classes, direct and indirect. "Direct contempt" is defined as contemptuous conduct occurring in the presence of the court. Miller, 652 S.E.2d at 760. "Constructive contempt" is contemptuous conduct occurring outside the presence of the court. Id. The Miller Court explained that "[t]he distinction between direct and constructive contempt is important because it determines how the contempt proceedings must be brought . . . A rule to show cause for direct contempt may be issued without a supporting affidavit or verified petition. . . However, a charge of constructive contempt brought by a rule to show cause must be based on an affidavit or verified petition." Id.

> and civil if paid to the complainant even though the contemnor has no opportunity to purge himself of the fine or if the contemnor can avoid the fine by complying with the court's order. [Citations omitted].

Id., 652 S.E.2d at 761 [citing Poston v. Poston, 331 S.C. 106, 502 S.E.2d 86, 88-89 (1998)].[3]

Certainly and within the discretion of the court, "[i]ncarceration under certain factual circumstances may be included as a component of civil contempt." Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 567 S.E.2d 514, 521 (Ct. App. 2002). However, unlike the constitutional protection afforded a criminal contemnor, the United States Supreme Court has held that a civil contempt proceeding resulting in incarceration does not require a jury trial. Shillitani v. United States, 384 U.S. 364 (1966). In Shillitani, two witnesses refused to testify before a grand jury after being given immunity. They were sentenced to two years imprisonment for contempt of court with the provision for release if they answered the grand jury's questions. Id. at 368. The Court reasoned the character and purpose of the contempt rendered it civil rather than criminal. The sentence of imprisonment was conditional, imposed for the obvious purpose of compelling the two grand jury witnesses to obey the court's orders to testify. The Court stated that "[w]hile any imprisonment has punitive and deterrent effects, it must be viewed as remedial if the court conditions the release upon the contemnor's willingness to [obey a court's order]." Id. "The conditional nature of the imprisonment, based entirely upon the contemnor's continued defiance, justified holding civil contempt proceedings absent the safeguards of indictment and a jury." Id. at 370-71. Thus, when the court orders imprisonment for contempt, whether the sanction is civil or criminal depends upon whether the sentence is conditional or for a definite period. See Poston, 502 S.E.2d at 89.

In Curlee, the South Carolina Supreme Court followed the Shillitani test to determine whether a jury trial was warranted in a contempt proceeding. In Curlee, the appellant had been brought before the Greenville County Family Court on a Rule to Show Cause for violating provisions of a child custody order. As a result of the appellant's violations, the respondent had incurred expenses in excess of $12,000 to obtain a return of lawful custody of her children. The family court found the appellant in contempt, sentenced him to one year imprisonment, but provided that he be allowed to purge himself of the contempt by paying the expenses incurred by the respondent. The issue on appeal was whether the family court had the authority to issue such an excessive sentence without a jury trial. In examining the sentence, the Court characterized the action as one for civil contempt, not criminal contempt, because its purpose was "to compel appellant to pay the expenses, not for punishment." The Court explained that criminal contempt and civil contempt serve separate functions. The principal purpose of criminal contempt is punishment. In civil contempt, however, the contemnors "carry the keys of prison in their own pockets"

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[3]The distinction between civil and criminal contempt is critical, because criminal contempt triggers additional safeguards. See, *e.g.*, Bloom v. Illinois, 391 U.S. 194 (1968) [holding prosecutions for serious criminal contempts are subject to the jury trial protections of the Sixth Amendment]; Floyd, 615 S.E.2d at 476 [in a criminal contempt proceeding, the burden of proof is beyond a reasonable doubt; civil contempt must be proved by clear and convincing evidence]; State v. Bevilacqua, 316 S.C. 122, 447 S.E.2d 213, 217 (Ct. App. 1994) [intent for purposes of criminal contempt is subjective, not objective, and must necessarily be ascertained from all the acts, words, and circumstances surrounding the occurrence].

as the contempt serves to secure "compliance with judicial decrees." Id., 287 S.E.2d at 919. The Court concluded that "[t]he conditional nature of the imprisonment, based entirely upon appellant's refusal to pay respondent's expenses, justified the civil contempt proceeding without a jury trial." Id.[4]

By way of illustration, this Office has previously characterized "arrest orders" for failure to pay child support or obey a child support order of a family court as "civil" in nature. See, *e.g.*, Ops. S.C. Atty. Gen., June 9, 1998 (1998 WL 746076); August 18, 1982 (1982 WL 155024). Our courts have similarly characterized contempt actions for failure to pay child support as typically civil in nature. See, *e.g.*, Taylor v. Taylor, 294 S.C. 296, 363 S.E.2d 909 (1987); In the Matter of Mixson, 258 S.C. 408, 189 S.E.2d 12 (1972); see also §63-3-620 [providing for, among other penalties, imprisonment for up to one year for contempt of family court].[5]

The Taylor Court noted the following:

> [t]he evidence indicates and the trial judge found, the husband was in a perilous financial situation. He sentenced him to six months in jail but provided he could purge himself by paying ($60) per month. By ordering the husband to pay the arrearage in this manner, he was ensuring the payments could be made by him. The primary purpose of civil contempt is to exact compliance with the court's order, not to punish the contemnor. McMiller v. McMiller, 77 N.C. App. 808, 336 S.E.2d 134 (1985).

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[4]In Poston, the South Carolina Supreme Court provided the following examples of civil contempt sanctions: (1) the contemnor is ordered to pay a fine to the court; however, he may purge himself of the fine by complying with the prior court order; (2) the contemnor is given a jail sentence to be served until he agrees to comply with the prior court order; (3) the contemnor is ordered to pay a fine/damages to complainant and is ordered to pay a fine to the court; however, the contemnor may purge himself of the fine payable to the court by complying with the prior court order; and (4) the contemnor is ordered to pay a fine/damages to complainant and is given a jail sentence to be served until he agrees to comply with the prior court order. The Court also provided examples of criminal contempt sanctions: (1) the contemnor is ordered to pay a fine to the court. Even if the contemnor performs the affirmative act required by the prior court order, the fine must still be paid; (2) the contemnor is sentenced to jail for a definite period of time. Even if the contemnor performs the affirmative act required by the prior court order, the contemnor must still serve the entire jail sentence; (3) the contemnor is given a choice between paying a fine to the court or serving a definite period of time in jail. The contemnor must do one or the other, thus he cannot purge himself entirely of the sanction. Id., 502 S.E.2d at 90-91.

[5]In Price v. Turner, 387 S.C. 142, 691 S.E.2d 470 (2010), *vacated on other grounds*, Turner v. Rogers, ___ U.S. ___, 131 S.Ct. 2507 (2010), the South Carolina Supreme Court observed that the family court found Turner in willful contempt of the support order and sentenced him to twelve months in a detention facility, stating, "[h]e may purge himself of the contempt and avoid the sentence by having a zero balance on or before his release." The Court concluded, "[t]his conditional sentence is a classic civil contempt sanction." Turner, 691 S.E.2d at 472.

Id., 363 S.E.2d at 911. In Mixson, the Court emphasized that:

> ... under the circumstances, ... [respondent's] civil contempt sentence is not a ground for disciplinary action. The contempt power was involved in respondent's case not as a punishment but in an effort to secure compliance with his obligations of alimony and child support. Civil contempt in such cases, though a drastic remedy, does not differ in purpose from other civil remedies available for use in enforcing a money judgment. It carries, *per se*, no connotation of moral dereliction.

Id., 189 S.E.2d at 13.

Significantly, we note prior opinions of this Office advising that civil contempt is not a crime or offense against the State. See, *e.g.*, Ops. S.C. Atty. Gen., December 7, 1983 (1983 WL 142762); February 15, 1979 (1979 WL 29035). This remains the opinion of this Office. Therefore, we conclude that a civil contempt citation issued by a court of competent jurisdiction would not constitute "criminal history record information" as defined by federal or SLED regulations for purposes of being entered into the respective databases.

Also relevant is the decision of the South Carolina Court of Appeals in White v. State, 375 S.C. 1, 649 S.E.2d 172 (Ct. App. 2007), discussing whether "offenses" and/or "convictions" could be considered under the South Carolina Sexually Violent Predator Act (the "Act"). Specifically, the Court explained as follows:

> . . . [o]ffense is commonly defined as "a violation of the law; a crime, often a minor one." Black's Law Dictionary 885 (7th ed. 2000). Further, "the terms 'crime,' 'offense,' and 'criminal offense' are all said to be synonymous, and ordinarily used interchangeably." 22 C.J.S. Criminal Law §3 (2007). Distinguished from a crime or offense, a conviction is "[t]he act or process of judicially finding someone guilty of a crime [or][t]he judgment ... that a person is guilty of a crime." Black's Law Dictionary 271 (7th ed. 2000) . . .

White, 649 S.E.2d at 176; see id. [holding that, because the Legislature failed to limit or was silent on whether offenses can include only convictions, the Legislature intended to include in the Act both convictions and offenses not resulting in convictions].

Further supportive of our analysis here is the opinion of this Office dated July 29, 1998 (1998 WL 746101), where we discussed whether a commitment for contempt is eligible for a reduction of a term of imprisonment by "good time" credits, such as those authorized in §24-13-210.[6] We advised that where the

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[6]This statute provides, in part, that:

> (A) An inmate convicted of an offense against this State, except a "no parole offense" as defined in Section 24-13-100, and sentenced to the custody of the

contempt is civil, good time credits are not applicable. To reach this conclusion, the opinion defined civil contempt in the following explanation:

> [i]n civil contempt cases, the sanctions are conditioned on compliance with the court's order... "The conditional nature of the punishment renders the relief civil in nature because the contemnor 'can end the sentence and discharge himself at any moment by doing what he had previously refused to do.' " . . . Civil contempt includes situations where ... the contemnor is given a jail sentence to be served until he agrees to comply with the prior court order . . . [T]he rationale of these authorities is that, because the civil contemnor "holds the keys to his incarceration," good time credits are not part of his indefinite and indeterminate sentence.

Accord Ops. S.C. Atty. Gen., May 19, 2004 (2004 WL 1182084); July 8, 1977 (1977 WL 24555).

Conclusion

The purpose of criminal contempt is to punish a party for disobedience and disrespect. Criminal contempt sanctions are unconditional. By contrast, civil contempt is intended to coerce the individual to comply with the court's order. Civil contempt sanctions are conditioned on compliance with the court's order. A contemnor imprisoned for civil contempt is said to hold the keys to his cell, because he may end the imprisonment and purge himself of the sentence at any time by doing the act he had previously refused to do.

The primary purpose of NCIC and the State's Criminal Information and Communication System is to collect and disseminate "criminal history record information," for criminal justice purposes, as defined by federal and SLED regulations. A civil contempt citation is not a matter that advances or relates to the enforcement of the criminal laws of this State. Therefore, it is the opinion of this Office that

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> Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement . . . whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of twenty days for each month served. . . .
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> (C) An inmate convicted of an offense against this State and sentenced to a local detention facility, or upon the public works of any county in this State, whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined, and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of one day for every two days served. . .

citations for civil contempt would not constitute "criminal history record information" for purposes of being entered into the State's Criminal Information and Communication System or NCIC databases.

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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