



HENRY McMASTER
ATTORNEY GENERAL

August 8, 2006

Duane M. Swygert, Chair
South Carolina Board of Juvenile Parole
Santee Building, Suite 103
Columbia, South Carolina 29210

Dear Mr. Swygert:

We received your request for an opinion of this Office seeking clarification on two issues involving the commitment and release of juvenile offenders pursuant to the South Carolina Children's Code. You describe your concerns as follows:

1) Does state law allow DJJ [(the Department of Juvenile Justice)] and SCDC [(South Carolina Department of Corrections)] to delay the transfer of 17 year old offenders, who have been committed for offences set forth in Section 16-1-60, beyond their 17th birthdays?

....

2) Does the use of the Commitment Suspended to Probation and Community Residence Placement Order (copy attached) circumvent the authority of the SC Board of Juvenile Parole as the releasing authority for all indeterminately committed juveniles? (Beginning April 2007, DJJ will be the releasing authority for misdemeanors and status offenses and probation violations for status offenses or misdemeanors.)

Law/Analysis

Delay of Transfer

In your letter, you explained the circumstances under which this issue arose.

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The Department of Juvenile Justice in circumstances they describe as very limited situations, for continuity of treatment and/or placement purposes, has elected to retain such offenders for up to three months beyond their 17th birthday rather than transferring them to SCDC. In an Agreement between DJJ and SCDC, the parties agreed that the transfer of an offender may be delayed for a period of up to three months beyond the date of the offender's birthday, if the offender will be, or is likely to be, released from custody during this time, or for other good cause being shown.

As you mentioned in your letter, section 20-7-7810(E) of the South Carolina Code (Supp. 2005) provides:

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.

(emphasis added).

“In interpreting a statute, words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Rowe v. Hyatt, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996). “If a statute’s language is plain, unambiguous, and conveys a clear meaning ‘the rules of statutory interpretation are not needed and the court has no right to impose another meaning.’” Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

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Our courts, as well as this Office, have considered the term "must" in interpreting statutes. In Horry County v. City of Myrtle Beach, 288 S.C. 412, 343 S.E.2d 36 (Ct. App. 1986) our Court of Appeals, in interpreting several provisions of the Code contained in title 1, stated:

Section 1-3-23 twice uses the word "shall" in prescribing notice requirements for the introduction of an ordinance granting a person the right to use public property. Section 1-3-25 employs the word "must" in requiring publication of an ordinance before its final reading. The words "shall" and "must" are generally regarded as making a provision mandatory.

Furthermore, in a prior opinion of this Office, we commented: "Where statutes use the terms 'must' or 'shall,' such terms connote mandatory compliance with the statutes." Op. S.C. Atty. Gen., February 23, 1984. Additionally, in another opinion we noted: "The word 'must', just as the word 'shall', typically imposes a mandatory duty." Op. S.C. Atty. Gen., April 30, 1996. See also, Ops. S.C. Atty. Gen., August 27, 2001; December 22, 1988; March 27, 1986.

In reading the plain language of section 20-7-7810(E), we believe the Legislature intended the Department of Juvenile Justice ("DJJ") to transfer a juvenile, who committed a violent offense contained in section 16-1-60 and who was committed to DJJ custody, to the Youthful Offender Division of Department of Corrections (the "Department of Corrections") by his seventeenth birthday, presuming he had not been paroled or released from custody prior to his birthday. By employing the term "must" the Legislature indicated its intent for this provision to be mandatory. We recognize DJJ and the Department of Corrections may have the best interest of all in mind in entering to an agreement allowing DJJ to retain the juvenile from treatment purposes. However, the Legislature, through its enactment of section 20-7-7810(E), did not allow for such an extension of custody by DJJ. Thus, we suggest if an agency wishes to allow for such an extension, its should request the Legislature amend this provision to provide for an extension under the circumstances the entity deems necessary.

SC Board of Juvenile Parole's Releasing Authority

With regard to this issue, you provided us with a copy of an Order of Commitment Suspended to Probation and Community Residence Placement. In addition, you stated:

Family court judges and DJJ have begun to use a Commitment Suspended to Probation and Community Residence Placement order. The order includes language that juvenile has been found to be a suitable person to be committed to the South Carolina Department of Juvenile Justice. However, should the Department determine that this juvenile qualifies for assignment to a community residence (alternative) placement, this commitment is suspended and the

Department of Juvenile Justice ordered to release this juvenile to such placement. Said commitment being for: an determinate period of ___ days; or an indeterminate period not to exceed this juvenile's 21st birthday. Provided, however, that should the Department of Juvenile Justice determine that this juvenile qualifies for placement in a community residence (alternative) placement, the above commitment is suspended and DJJ shall release this juvenile to such a program. Upon release, this juvenile shall be placed on probation for/until _____, and as a condition of probation, cooperate with and successfully complete all requirements of this placement. In addition, this juvenile shall further comply with the standard terms and conditions of probation, as provided to him/her, in writing, by the Department.

Generally, section 20-7-7810(D) of the South Carolina Code provides the Juvenile Parole Board with authority to release juveniles committed to the custody of DJJ. This section, which the Legislature recently amended, provides:

(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.

2006 S.C. Acts No. 309 § 4. Furthermore, 20-7-8303 clarifies what is a "releasing entity":

(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 for an indeterminate period for a status offense or a misdemeanor and for juveniles who have violated probation for a status offense or a misdemeanor;

(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 article, "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).

2006 S.C. Acts No. 309 § 1. Thus, pursuant to these provisions, the Juvenile Parole Board has authority to release a juvenile from a commitment ordered by a court for most offenses. However, we do not believe a court's decision to order a juvenile to be placed on probation and to be placed in community residence placement program in anyway encroaches on the Juvenile Parole Board's authority to release previously committed juveniles.

We recognize, as our Court of Appeals recognized in In Interest of Ronald S., Jr., 328 S.C. 532, 535, 492 S.E.2d 624, 625 (Ct. App. 1997), that the family court judge presiding over the disposition of a juvenile is afforded great discretion in sentencing the juvenile. See also, Op. S.C. Atty. Gen., September 24, 1997 ("The authority of the Family Court with respect to the disposition of a juvenile offender is quite broad."). Section 20-7-7805 of the South Carolina Code (Supp. 2005) sets forth the family court's authority with respect to adjudicating a juvenile offender. This provision provides, in pertinent part:

(A) When a child is found by decree of the court to be subject to this article, 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:

...

(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

...

(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.

...

(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;

...

S.C. Code Ann. § 20-7-7805(A). Given the court's broad discretion in disposing and sentencing juveniles in addition to the specific authority to place juveniles on probation provided by section 20-7-7805(A), we find the court has authority to issue an Order of Commitment Suspended to Probation and Community Residence Placement.

Furthermore, we find no conflict between the court's authority to issue these types of orders and the Juvenile Parole Board's authority to release juveniles subject to a commitment by a court. The court's order is issued under its authority to sentence juvenile offenders, whereas, the Juvenile Parole Board's authority to release is only operable after a court adjudicates a juvenile offender and, as a part of the offender's sentencing, commits him or her to DJJ custody. Accordingly, we find no circumvention of the Juvenile Parole Board's authority by the issuance of an order of Commitment Suspended to Probation and Community Residence Placement.

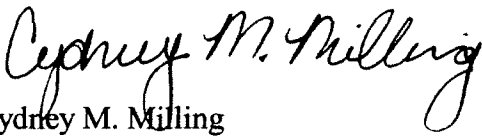
Conclusion

In our review of section 20-7-7810(E) of the South Carolina Code, we believe the Legislature mandates a juvenile committed to DJJ for a violent offense or an offense set forth under section 16-1-60 of the South Carolina Code who has not been released from custody prior to his or her seventeenth birthday must be transferred to the Youthful Offender Division of the Department of


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Corrections. Furthermore, in our review of orders of Commitment Suspended to Probation and Community Residence Placement, which you informed us are issued by the family courts, we find such orders are within the court's authority and do not encroach upon the Juvenile Parole Board's authority to release juveniles committed to DJJ custody.

Very truly yours,


Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Assistant Deputy Attorney General