



HENRY McMASTER
ATTORNEY GENERAL

September 25, 2008

Rosalyn W. Frierson, Director
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201\

Dear Ms. Frierson:

In a letter to this office you referenced a recent amendment to S.C. Code Ann. § 5-7-12(A) which states in part:

[i]n all circumstances in which a school resource officer arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event. Notwithstanding another provision of law, a student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrates court within twenty-four hours of his arrest.

Referencing such, you have raised the following questions:

1. Does the legislation apply only to students over the age of seventeen years, or is it also applicable to students under the age of seventeen years who commit crimes and who are otherwise defined as a "child" pursuant to Section 20-7-6605(1)?
2. Does the amendment to Section 5-7-12(A) confer new jurisdiction on the summary courts, as the jurisdictional statute for juvenile delinquency, Section 2-7-410, was not amended in conjunction with the passage of this law?
3. Does the amendment to Section 5-7-12(A) alter Section 20-7-7415 requiring that all charges against a juvenile be brought by petition in the family court?
4. The new legislation refers to the issuance of a courtesy summons. Is this referring to a uniform traffic ticket?

5. Since the juvenile must be brought before the magistrate for a bond hearing within 24 hours, and the subject matter jurisdiction for most misdemeanors lies exclusively within the family court, must the Department of Juvenile Justice appear and provide any recommendations at the bond hearing?

6. During bond court, will the summary courts be required to keep the juveniles sight and sound separate from the adults who are also appearing in bond court?

7. Subsequent to the bond hearing, should the summary courts forward all paperwork to the family court clerk or the solicitor for filing in the family court?

As to your first question, Section 20-7-6605(1) defines a "child" as "...a person less than seventeen years of age." Pursuant to S.C. Code Ann. § 20-7-7205(A), "[w]hen a child found violating a criminal law or ordinance is taken into custody, the taking into custody is not an arrest." (emphasis added). Therefore, for purposes of your question, inasmuch as the referenced provision of Section 5-7-12(A) provides that when "a school resource arrests a student for a misdemeanor offense....", and pursuant to Section 20-7-7205(A), a child less than seventeen may not be arrested, in the opinion of this office, the provision of Section 5-7-12(A) applies only to a student seventeen and older. Such conclusion is consistent with the rule of statutory construction as expressed in a prior opinion of this office dated February 19, 1988 that "[i]t is presumed that the legislature is familiar with prior legislation dealing with the same subject matter when it passed the law involved." See also: Op. Atty. Gen. dated October 9, 2002. Therefore, it must be presumed that the General Assembly when it enacted the amendment to Section 5-7-12 was familiar with its previously enacted statute that the taking into custody of a child less than seventeen is not deemed an "arrest" and, therefore, could not have intended that such provision apply to students less than seventeen years of age.

In your next question you asked whether the amendment to Section 5-7-12(A) confers new jurisdiction on the summary courts. Inasmuch as the amendment is applicable only to a student seventeen years of age or older, there is no requirement of new jurisdiction being granted to the summary courts inasmuch as cases involving those seventeen and older are not entitled to any special treatment. Cases involving individuals seventeen and older are handled in a manner as any other cases involving adult offenders.

As to your question of whether the amendment to Section 5-7-12(A) alters the requirement of Section 20-7-7415 that charges against a juvenile be brought by petition in the family court, again, inasmuch as the amendment is applicable only to students seventeen and above, these cases would not be brought in family court. See: S.C. Code Ann. § 20-7-400(A).

You next indicated that the legislation refers to the issuance of a courtesy summons. You questioned whether that type of summons is a uniform traffic ticket.

A charging document referred to as a "courtesy summons" was created by Act No. 348 of 2002 which added S.C. Code Ann. § 22-5-115 which provides that:

[n]otwithstanding any other provision of law, a summary court or municipal judge may issue a summons to appear for trial instead of an arrest warrant, based upon a sworn statement of an affiant who is not a law enforcement officer investigating the case, if the sworn statement establishes probable cause that the alleged crime was committed. The summons must express adequately the charges against the defendant. If the defendant fails to appear before the court, he may be tried in his absence or a bench warrant may be issued for his arrest. The summons must be served personally upon the defendant. (emphasis added).

An amendment to S.C. Code Ann. § 22-5-110 was set forth in Act No. 346 of 2008. Such provision adds subsection (B) to the statute and states that

[n]otwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons. (emphasis added).

As set forth, a courtesy summons is issued by a summary court judge based upon the sworn statement of an affiant "who is not a law enforcement officer" or is issued to "nonlaw enforcement personnel."

Pursuant to S.C. Code Ann. § 5-7-12,

(A) [t]he governing body of a municipality or county may upon the request of any other governing body or of any other political subdivision of the State, including school districts, designate certain officers to be assigned to the duty of a school resource officer and to work within the school systems of the municipality or county. The person assigned as a school resource officer shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. When acting pursuant to this section and outside of the sworn municipality or county of the school resource officer, the officer shall enjoy all authority, rights, privileges, and immunities, including coverage under the workers' compensation laws that he would have enjoyed if operating in his sworn jurisdiction.

(B) For purposes of this section, a "school resource officer" is defined as a person who is a sworn law enforcement officer pursuant to the requirements of any jurisdiction of this State, who has completed the basic course of instruction for School Resource Officers as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who

is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district. (emphasis added).

Therefore, consistent with such provisions, a school resource officer is a law enforcement officer and would not be considered nonlaw enforcement personnel for purposes of Section 22-5-110 or 22-5-115 regarding the issuance of a courtesy summons. As stated above, it is generally presumed that the General Assembly is familiar with prior legislation dealing with the same subject matter when it passes a particular law. Therefore, in the opinion of this office, the General Assembly must have meant that in circumstances when an arrest is made for a misdemeanor offense, a uniform traffic ticket would be used in association with the arrest. Of course, pursuant to S.C. Code Ann. § 56-7-15, a uniform traffic ticket "...may be used by law enforcement officers to arrest a person for an offense committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrates court and municipal court."¹ Such is in addition to the specified offenses as set forth in S.C. Code Ann. § 56-7-10 for which a uniform traffic ticket may be used. I presume that for any serious offense beyond an offense for which a uniform traffic ticket may be issued, standard arrest procedures would be followed.

You next stated that pursuant to the recent legislation "[s]ince the juvenile must be brought before the magistrate for a bond hearing within 24 hours, and the subject matter jurisdiction for most misdemeanors lies exclusively with the family court, must the Department of Juvenile Justice appear and provide any recommendations at the bond hearing?" You also questioned whether during bond court, will the summary courts be required to keep juveniles sight and sound separate from adults appearing at bond court. You also asked whether subsequent to the bond hearing, should the summary courts forward all paperwork to the family court clerk or the solicitor for filing in the family court.

While Article XII, Section 3 of the State Constitution requires the "[t]he General Assembly shall provide for the separate confinement of juvenile offenders under the age of seventeen from older confined persons", I am generally unaware of any specific statute commenting on keeping juveniles sight and sound separate from adults at bond hearings. See also: S.C. Code Ann. §§ 20-7-6845 and 20-7-7210 (sight and sound separation for purposes of detention of juveniles). Regardless, as set forth above, inasmuch as the amendment to Section 5-7-12(A) regarding the arrest of a student

¹ As noted in a prior opinion of this office dated November 13, 2003, a uniform traffic ticket may be used as a charging document where the offense has been "freshly committed." The opinion stated that where an officer has probable cause to believe that a misdemeanor offense has been "freshly committed" and subsequently serves a uniform traffic ticket upon the defendant for such offense, such would be sufficient to give a magistrate or municipal court jurisdiction to hear the offense.

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for a misdemeanor offense is applicable only to students seventeen and above, these cases would not be brought in family court and there would be no requirement of keeping juveniles sight and sound separate from adults or transferring the paperwork to the family court. Likewise, there does not appear to be any basis requiring the appearance of the Department of Juvenile Justice at the bond hearing. See: S.C. Code Ann. § 20-7-7205(B) (notification of Department of Juvenile Justice following the taking of a child, i.e., a person less than seventeen years of age into custody).

If there are any questions, please advise.

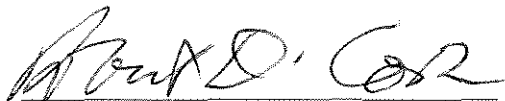
Sincerely,

Henry McMaster
Attorney General

A handwritten signature in black ink, appearing to read "Charles H. Richardson", with a long horizontal flourish extending to the right.

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook", with a horizontal line underneath.

Robert D. Cook
Deputy Attorney General