05-5523

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 10, 1995

Mr. Jeffrey B. Moore
Executive Director
South Carolina Sheriff's Association
Post Office Box 21428
Columbia, South Carolina 29221-1428

Re: Informal Opinion

Dear Mr. Moore:

You have requested an opinion of this Office regarding the effect of the recently enacted Criminal Justice Reform Act of 1994, which took effect on January 12, 1995, on certain responsibilities concerning pre-trial detention upon arrest of individuals under the age of 17 years who are charged with crimes classified as A, B, C, or D felonies. Particularly, you request clarification in two areas:

I. From a local point of view, does one confine a 16-year-old charged (but not convicted) with a Class A-D felony at a local detention facility, placing them within the general prison population; making no distinction as to their age?

II. Section 70 of the 1994 Crime Act requires that per diem cost of housing a juvenile at the Department of Juvenile Justice to be "paid by the governing body of the law enforcement agency having original jurisdiction where the offense occurred." Would this permit recoupment of costs paid prior to the change where the county incurred all the costs associated with the juvenile's detention? Would the costs of a juvenile housed by DJJ prior to the change now shift to the appropriate governing body as outlined in the new law?

Critical to the analysis of these questions and the duties and responsibilities under the new act is Section 23 of the Act which amends South Carolina Code Ann. Section 20-7-390. This Amendment defines "child" as a person less than seventeen (17) years of age where he is dealt with as a juvenile delinquent unless he is sixteen (16) years of age or older and charged with a Class A, B, C, or D felony or a felony which provides for a maximum term of imprisonment of fifteen (15) years or more." The new change removed from the definition of "child," persons who were sixteen (16) years of age and were charged with the defined felony offenses and changes the jurisdiction of the court with authority over that person. Second, Section 24 of the Act amended S.C. CODE Section 20-7-430, which revised the jurisdictional provisions of Family Court to limit it to a defined "child," rather than "juvenile," "minor,"or "person" of certain ages. It is without question that the 1995 revision removes to the original jurisdiction in General Sessions Courts persons who are charged with committing Class A, B, C, D felonies and felonies which carry a maximum sentence of fifteen (15) years or more who are sixteen (16) years of age or older at the time the crime is committed.[1]

Guiding the applicability and effect of any statutory change is South Carolina Constitution, Article XII, Section 3, which states as follows:

> Article XII, Section 3. Separate confinement of juvenile offenders. The General Assembly shall provide for the separate confinement of juvenile offenders under the age of seventeen from older confined persons.

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[1]It should be noted that Section 24 also allowed for the following:

> 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.

This provision allows, prior to conviction or sentence, for the solicitor, in his discretion, to remand to the Family Court the 16-year-old offender where the person would be subject to a guilt determination on the charge in accordance with family court procedure and appropriate commitment pursuant to the Family Court's powers set forth in Section 20-7-1330, 2170 as a delinquent. This is similar to the previously existing authority of the Solicitor to transfer a criminal case from General Sessions Court to Magistrate or Municipal Court pursuant to S.C. CODE Section 22-3-545.

This constitutional provision provides that offenders under the age of seventeen are separately confined from "older confined persons" as provided by the legislature.

Upon review of the 1994 Crime Act, there is no statutory change that specifically addresses pre-trial detention of individuals who are sixteen years of age and charged with Class A through D felonies. Prior practice when individuals under the age of seventeen were waived from Family Court to General Sessions Court was to confine them either in separate facilities or sight and sound separate cells from individuals seventeen or older until they were seventeen. The Department of Corrections and the Department of Juvenile Justice had established procedures consistent with Article XII, Section 3, South Carolina Constitution to ensure compliance with the requirement of separate confinement, even though the waived individuals were treated and sentenced as adults.

Upon enactment of the 1994 Crime Act, the Department of Corrections, the Department of Probation, Parole and Pardon Services, and the Department of Juvenile Justice reached an agreement on how the various state agencies would interpret these changes. (A copy of the February 16, 1995, D.J.J. Memorandum is attached summarizing the agreement). Recognizing the "separate confinement" requirement of Article XII, Section 3, the agencies' interpretation, in its critical part, states as follows:

> 1. Sixteen year olds charged with committing a Category A-D felony and juveniles (16 and under) who have been waived to the Court of General Sessions to be tried as adults can be detained in either adult detention facilities (jails) or in juvenile detention facilities (pre-adjudicatory jails). However, if detained in an adult detention facility, the facility must be approved by the Inspections Division of the Department of Corrections to hold "juveniles" (persons under the age of 17), and these individuals must be housed in sight and sound separation from adult detainees.
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> 2. Once a 16 year old charged with committing a Category A-D felony turns 17, that individual, if detained in an adult local detention facility, can then be detained in the general adult population. However, they may continue to be held in sight and sound separation in an approved local adult detention facility if that is the desire of the local governmental officials who are responsible for the individual's custody. If that is the desire of local governmental officials, a juvenile who has been waived to General Sessions Court may continue to be held in a juvenile detention facility or in sight and sound separation within an approved local adult detention facility even after reaching age seventeen. Sixteen year olds charged with committing

> Category A-D felonies may not be held in a juvenile detention center beyond their seventeenth birthday.
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> 4. If a 16 year old charged with a Category A-D felony is remanded by the Solicitor for "disposition of the charge" to the Family Court and that individual is put on probation by the Family Court, the probationary sentence will be supervised by the Department of Juvenile Justice.
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> 5. If a 16 year old charged with a Category A-D felony is convicted in General Sessions Court and sentenced to the Department of Corrections, the Department of Juvenile Justice, as a designated facility for the Department of Corrections, will house that individual until his 17th birthday. At age 17 he will be administratively transferred to the Department of Corrections and continue serving his sentence there. If sentenced after his 17th birthday this individual will go directly to the Department of Corrections.
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This interpretation of the remaining effect of Article XII, Section 3, combined with the new legislation is reasonable and consistent with the overall purpose of the new Act.[2]

Further questions have been asked of this office as to whether sixteen year olds previously waived under the prior statute or amended statute can be held in adult jails. Article XII, Section 3, mandates that "separate confinement" occurs, but these individuals are authorized to be detained in adult detention facilities provided there is sight and sound separation from individuals seventeen years of age or older. See S.C. CODE Section 20-7-600(c), Section 24-9-20, 30 (jail and prison inspection program).

The amendments to Section 20-7-390 and Section 20-7-430 clearly were intended to mandate sixteen year olds arrested for serious felony offenses to be automatically in the

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[2]In order to allow for offenders 16 years of age to be merged into the jail and "adult" prison population, Article XII, Section 3 would have to be amended to read as follows:

> The General Assembly shall provide for the separate confinement of juvenile offenders under the age of sixteen from older confined persons.

jurisdiction of the Court of General Sessions. These amendments must be interpreted to have been enacted with integrity and with an honest purpose to keep within the constitutional limits of Article XII, Section 3. The state agencies responsible for interpreting this article have consistently applied the "separate confinement" requirement where individuals below the age of seventeen were tried and sentenced in General Sessions courts as an adult. There was nothing in the 1994 Criminal Justice Reform Act to suggest that this interpretation was in error.

In the second inquiry, the question is whether Section 70 of the 1994 Crime Act permits recoupment of costs paid prior to January 12, 1995, where the county incurred all the costs associated with a juvenile's detention, rather than "the governing body of the law enforcement agency having original jurisdiction where the arrest occurred." Further, the question as to whether the costs of a particular juvenile housed by the Department of Juvenile Justice prior to January 12, 1995, now shift to the governing body of the law enforcement agency having original jurisdiction.

These inquiries focus on the effective date of Section 70 of the Act. Section 76 of the Act provides that Section 70 takes effect "upon approval of the Governor." This office has previously opined that the actual date is January 12, 1995. To allow either for recoupment or a shift of costs to a pre-January 12, 1995, juvenile detainee would require retroactive application of Section 70.[3] A review of the amendment to 20-7-3230(4) [Section 70] in its pertinent part states:

> In Department of Juvenile Justice operated facilities, the department shall determine an amount of per diem for each child detained in the 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 pre-adjudicatory 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

[3]It is without question that any child charged with a crime on or after January 12, 1995, would be subject to the new provisions of Section 70 and the costs would be incurred by the governing body of the law enforcement agency having original jurisdiction where the arrest occurred.

> 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 pre-adjudicatory state facilities ....

There is no express language in this amendment to suggest directly or indirectly retroactive application. To the contrary, the section itself suggests on-going collection of the funds by the department and does not suggest recoupment by the "committing county."

It is the opinion of this office that such costs must be borne by the "committing county" for all pre-adjudicatory offenders initially committed on a date prior to January 12, 1995, and by the "governing body of the law enforcement agency having original jurisdiction where the offense occurred" for those initially committed after January 12, 1995.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Respectfully submitted,

Donald J. Zelenka
Assistant Deputy Attorney General

bbb
enclosure
cc: James C. Williams, Esquire
Larry C. Vanderbilt, Esquire
Larry C. Batson, Esquire

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE

MEMORANDUM

TO: Executive Staff
Assistant Deputy Directors
Institutional Directors
County Directors

FROM: Larry L. Vanderbilt, General Counsel

SUBJECT: Handling of 16 Year Olds (A-D Felonies)

DATE: February 16, 1995

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On Thursday, January 26, 1995, Director Boyd met with the Interim Directors of the Department of Corrections (William D. Catoe) and the Department of Probation, Parole and Pardon Services (Eddie Gunn) to discuss our Agencies' respective roles and responsibilities in the handing of 16 year olds charged with committing Category A-D felonies and of juveniles otherwise eligible to be tried as adults. The following is what was agreed upon at this meeting. Therefore, we should base our conduct and practice accordingly:

1. Sixteen year olds charged with committing a Category A-D felony and juveniles (16 and under) who have been waived to the Court of General Sessions to be tried as adults can be detained in either adult detention facilities (jails) or in juvenile detention facilities (preadjudicatory jails). However, if detained in an adult detention facility, the facility must be approved by the Inspections Division of the Department of Corrections to hold "juveniles" (persons under the age of 17), and these individuals must be housed in sight and sound separation from adult detainees.

2. Once a 16 year old charged with committing a Category A-D felony turns 17, that individual, if detained in an adult local detention facility, can then be detained in the general adult population. However, they may continue to be held in sight and sound separation in an approved local adult detention facility if that is the desire of the local governmental officials who are responsible for the individual's custody. If that is the desire of local governmental officials, a juvenile who has been <u>waived</u> to General Sessions Court may continue to be held in a juvenile detention facility or in sight and sound separation within

* For purposes of this memorandum, a Category A-D felony also includes felonies which provide for a maximum term of imprisonment of fifteen years or more.

an approved local adult detention facility even after reaching age seventeen. Sixteen year olds charged with committing Category A-D felonies may not be held in a juvenile detention center beyond their seventeenth birthday.

3. If a 16 year old charged with a Category A-D felony is convicted in the Court of General Sessions and is placed on probation, that individual's probationary sentence, irrespective of his age at the time of sentencing (i.e., 16 or 17), will be supervised by the Department of Probation, Parole and Pardon Services.

4. If a 16 year old charged with a Category A-D felony is remanded by the Solicitor for "disposition of the charge" to the Family Court and that individual is put on probation by the Family Court, the probationary sentence will be supervised by the Department of Juvenile Justice.

5. If a 16 year old charged with a Category A-D felony is convicted in General Sessions Court and sentenced to the Department of Corrections, the Department of Juvenile Justice, as a designated facility for the Department of Corrections, will house that individual until his 17th birthday. At age 17 he will be administratively transferred to the Department of Corrections and continue serving his sentence there. If sentenced after his 17th birthday this individual will go directly to the Department of Corrections.

6. If a 16 year old charged with a Category A-D felony is remanded by the Solicitor for "disposition of the charge" to the Family Court and committed to DJJ for an indeterminate period, not to exceed his 21st birthday, that individual will be incarcerated at DJJ until age 19, unless sooner released by the Board of Juvenile Parole. If not released prior to age 19, that individual will be transferred to the Department of Corrections.

7. If a 16 year old convicted of a Category A-D felony is also convicted of a Category E-F felony or A-C Misdemeanor, and placed on probation by both the Court of General Sessions and by the Family Court, the Department of Probation, Parole and Pardon Services and the Department of Juvenile Justice, through a Memorandum of Agreement (not yet drafted), will work together in a cooperative and non duplicative way to supervise that individual, revoke probation if necessary, etc.

8. If a 16 year old charged with a Category A-D felony is also charged with a Category E-F felony or A-C Misdemeanor, and sentenced to confinement by both the Court of General Sessions and by the Family Court, the sentences would run concurrently with one another unless otherwise specified by the last sentencing judge.

9. If a juvenile, less than 16 years old, is waived (transferred) to the Court of General Sessions and sentenced by that Court to the Department of Corrections (whether given a straight-time sentence or a Youthful Offender sentence), that individual will be housed at the Department of Juvenile Justice as a designated facility for the Department of Corrections. If paroled or conditionally released prior to age 16, that individual will be supervised by the Department of Juvenile Justice. If paroled/conditionally released on or after his 16th birthday, that individual will be supervised by the Department of Probation, Parole and Pardon Services.

Please note that the Agreement reached by Directors Boyd, Catoe, and Gunn differ in a couple of particulars from my memorandum to you of 1/18/95 (i.e., detention of 16 year olds; incarceration of 16 year olds). Obviously their Agreement takes precedence over this earlier document. One area not addressed in this Agreement, but referenced in my memorandum of 1/18/95, regards <u>when</u> a Solicitor can remand a case "to the Family Court for disposition of the charge". While a reasonable argument, (given the use of the term disposition in the Family Court System), can be made that a remand can only be for sentencing, many Judges, Solicitors, Law Enforcement Officials and others are of the opinion that remand can occur at any point in time in an "adult" criminal proceeding. Until this issue is ruled upon by an Appellate Court, if a 16 year old charged/convicted with a Category A-D felony is remanded by the Solicitor (at any point in the proceeding) to the Family Court, our Office should provide whatever services we would normally provide to the Court, the Solicitor, the juvenile, etc. at that point in the system.

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cc: Flora Brooks Boyd