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February 28, 1995

Samuel H. Killman, Chief of Police
City of Myrtle Beach Police Department
1101 Oak Street
Myrtle Beach, South Carolina 29577

Dear Chief Killman:

By your letter of January 24, 1995, you raised several questions concerning the 1994 amendment to S.C. Code Ann. § 20-7-600, which now requires that a law enforcement officer taking a child into custody for specified offenses must notify the principal of the child's school as to the nature of the offense. Each of your questions will be addressed separately, as follows.

It is observed that new § 20-7-600(I) was contained in at least three enactments of the General Assembly in 1994. The first was Act No. 475 (S.1199, R-544), which was signed by the Governor on July 14, 1994 and became effective at that time. The second was in the Schoolhouse Safety Alliance Act (H.4414, R-588), which was vetoed by Governor Campbell on January 11, 1995, most probably effectively repealing the earlier act. Cf., Jolly v. Atlantic Greyhound Corp., 207 S.C. 1, 35 S.E.2d 42 (1945) (latest expression of legislative will prevails, in the event of a conflict). Then, the provision was also a part of the Omnibus Crime Act (H.4323, R-585), which became law, without the approval of the Governor, immediately after midnight on January 12, 1995, by operation of Art. IV, § 21 of the South Carolina Constitution. The amendment to § 20-7-600 was contained in § 69, which took effect at that time, though other parts of the Omnibus Crime Act have different effective dates. The most recent act would effectively repeal the intermediate act and reinstate the first act. Cf., Jolly.

Thus, § 20-7-600(I) now provides:

> When a child is taken into custody by a law enforcement officer for an offense which would be a misdemeanor or

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> felony if committed by an adult, not including traffic or wildlife violations over which courts other than the family court have concurrent jurisdiction as provided for in Section 20-7-410, the law enforcement officer also shall notify the principal of the school in which the child is enrolled 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 20-7-780.

Rules of Statutory Construction

In construing any statute, the primary objective of both the courts and this Office is to ascertain and effectuate legislative intent if it is at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in the statute are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). In the absence of ambiguity, words must not be added to or taken away from a statute. Home Building & Loan Ass'n v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1938). Where the terms of a statute are clear, a court (and this Office) must apply them according to their literal meaning. Mitchell v. Mitchell, 266 S.C. 196, 222 S.E.2d 499 (1976).

Question 1

> Is the statutory notification requirement applicable to out-of-state juvenile offenders, and if so, are we in conflict with juvenile privacy statutes in other states?

The statutory requirements apply when "a child" is taken into custody by a law enforcement officer for a specified offense. The plain language of the statute makes no distinction between in-state and out-of-state residents. To interpret the statute as requiring out-of-state children to be handled differently would require insertion of language into the statute to that effect; such insertion would be a matter for the legislature to address. In addition, Section 20-7-600(I) itself does not contain a criminal penalty for failure to follow its requirements. Failure to comply with the statute could constitute nonfeasance or neglect of duty. Considering the public policy behind the enactment of § 20-7-600(I), to enhance school safety, the issue of liability for failure to comply with § 20-7-600(I) could also arise. Assessment of these risk factors suggests that the statute be followed even for out-of-state children. Accordingly, until such time as § 20-7-600(I) should be amended,

the statute would be applicable to out-of-state juvenile offenders, as well as in-state juvenile offenders.

As to the possibility of conflict with laws of other states, I first observe that the alleged offense for which the child is taken into custody occurred in this state; the child would be taken into custody in this state; any adjudication as to the alleged offense would occur in this state; and that the statute imposes an obligation of notification on the law enforcement officials of this state. The only apparent impact out-of-state would be the requirement of confidentiality imposed upon the principal receiving the information. Moreover, the juvenile confidentiality statutes of this state (such as §§ 20-7-780 and 20-7-1360, 20-7-3300, and perhaps others) relate to court records, Department of Juvenile Justice records, and the like of this state. By enacting § 20-7-600(I), the legislature created an exception that removed confidentiality with respect to juveniles who are taken into custody for alleged offenses set forth in § 20-7-600(I). While it is beyond the scope of this opinion to research the laws of the other forty-nine states, unquestionably, the laws of one state do not apply or operate outside the territorial limits of that state. 16 Am.Jur.2d Conflicts of Laws §§ 7, 10. Section 20-7-600(I) imposes an affirmative duty on the law enforcement officers of this state to transmit the information; it is then up to the principal in the receiving state to act upon the information according to the law of that state, our state statute notwithstanding. From these perspectives, therefore, I do not perceive a conflict with laws from other states.

Question 2

> Is this statutory notification requirement applicable when school is not in session (i.e., holidays, summer break, etc.)?

The plain language of § 20-7-600(I) does not place a time restriction on its applicability. The requirement exists even when school is not in session.

Question 3

> What is the approved form of notification (i.e., personal notification, copy of crime report or incident report, phone call, etc.)?

The statute requires that the principal be apprised as to "the nature of the offense." The "nature" of a thing is its essence, character, kind, sort, or species. People v. Harden, 78 Ill.App.2d 431, 222 N.E.2d 693 (1966); State v. Murphy, 23 Nev. 390, 48 P. 628 (1897); Jones v. McDade, 200 Ala. 230, 75 So. 98 (1917). The statute is silent as to what

form the required notification must take, though clearly the law enforcement officer must advise the principal as to the essence, sort, species, or character of the offense for which the child was taken into custody. In South Carolina, adequate notice is recognized as a question of fact, dependent upon the circumstances of a particular case. In Wheeler v. Corley, 106 S.C. 319, 91 S.E. 307 (1917), the court stated as to notice that

> one case does not much help the decision of another case. "Notice" is generally a subtle thing, evidenced as often by what was not done as what was done. ... It is elusive, and rests in silence as well as in speech. ...

Id., 106 S.C. at 322.

The general law as to notice is summarized succinctly in 58 Am.Jur.2d Notice § 28:

> It is a general rule that where a statute requires notice to be given, but does not specify the type of notice, actual personal notice is required, and the notice must be personally served on the person to be notified. It has also been stated, however, that if a statute or rule requires that notice be given, but fails to specify a particular form, that which will constitute sufficient notice will be liberally construed. In such a case, the notice, to be sufficient, must be reasonably certain to apprise those affected. ...
>
> It is dependent on the particular circumstances existing in an individual case as to whether a notice required by statute in a specific case is to be regarded as timely or sufficient.

Because § 20-7-600(I) is so new, we have no judicial guidance as to what would constitute sufficient notice, or what form of notification would be "approved." Clearly the principal must somehow be personally notified of the nature of the offense for which the child was taken into custody, by whatever means will apprise the principal. Possibly a telephone call to the principal would be sufficient; if telephone attempts prove to be unsuccessful, written communication would perhaps provide adequate notice. Whatever means may be selected, it is quite possible that the same method of notification will not be effective in each case; this may be particularly true during holiday periods when principals are not always at their assigned schools. In the absence of legislative or judicial

guidance, I would suggest taking whatever steps may be necessary to achieve the required notice.

Question 4

Is there a time requirement for notification?

The statute provides no guidance as to this question. I believe the courts would imply a requirement that notification be provided in a reasonably timely fashion. What is reasonable would depend on the circumstances of each case. For example, during summer vacation, many principals may be working at their assigned schools, and notification may be achieved easily and quickly. In other schools, it may not be possible to notify the principal until vacation or holiday periods are over; notification would therefore take longer to accomplish.

Question 5

How much time and what resources will we be expected to expend to make this notification (when applied to out-of-county and out-of-state notification if required)?

Again, the statute is silent as to this issue. I believe that law enforcement officers will be expected to expend whatever time and resources may be necessary to achieve the required notification. As observed earlier, while § 20-7-600(I) contains no criminal penalties should a law enforcement officer fail to comply with the requirements thereof, there are other potential civil and/or criminal ramifications for failure to comply with the statute. We are mindful of the potential burden this requirement will place on the law enforcement personnel in localities where young people gather for vacations or holidays, but we are also mindful of the important school safety measures which this statute can enhance by its being followed.

Out of an abundance of caution it is suggested that efforts made to comply with this statute be documented on a case-by-case basis. The various attempts made to reach a principal, some indication of how notice was effected, and the like (i.e., retaining a returned receipt if notice was mailed, telephone logs or copies of telephone bills if notification was made by telephone) would be helpful if a law enforcement officer should ever have to verify that § 20-7-600(I) was complied with, for whatever reason.

I trust that the foregoing has satisfactorily responded to your inquiries. If additional assistance should be needed, please advise.

With kindest regards, I am

Sincerely,

Charles Molony Condon
Attorney General

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