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The State of South Carolina
# OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 24, 1997

Officer Patrick Long, D.A.R.E. Instructor
Greenwood Police Department
P. O. Box 40
Greenwood, South Carolina 29648

Re: Informal Opinion

Dear Officer Long:

You have asked on behalf of the Honorable William Charles, Family Court Judge, whether a "Family Court Judge can, in fact, require a juvenile to obtain a haircut as part of his/her sentence."

## Law / Analysis

The authority of the Family Court with respect to the disposition of a juvenile offender is quite broad. S.C. Code Ann. Section 20-7-7805(A) provides in pertinent part that

> (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 ... .
>
> (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



Request Letter.

> 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 ... . Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well-being of the child and the child's family. Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child's personality and character, with the aid of the social resources of the community. As a condition of probation, the court may order the child to participate in a community mentor program as provided for in Section 20-7-7808.

The Supreme Court of South Carolina has commented as follows with respect to the authority of the Family Court concerning the disposition of a juvenile:

> [t]he family court is vested with broad discretion in imposing the conditions of probation. 43 C.J.S. Infants Section 78(b) (1978). The length of the probationary period constitutes a condition of probation within the lower court's discretion.

In the Matter of Westbrooks, 277 S.C. 410, 288 S.E.2d 395 (1982).

Moreover, it is well-recognized that a minor found to be delinquent becomes a "ward of the court." Each case must turn on its own unique facts; however, the court possesses broad discretion to determine what is in the best interest of the minor, as well as the public. 43 C.J.S., Infants, § 77.

Furthermore, it is also settled law that a Family Court, in exercising its broad discretion to impose conditions of probation

> ... has power to impose any condition, precedent or subsequent, provided it is not illegal, immoral or impossible of performance, and the validity of a condition of probation can not be determined solely by a categorization of the condition as punitive or rehabilitative, but is to be tested by its

> conformity to the objectives and the declared policies of applicable legislation. A condition of probation does not serve the statutory ends of probation, and is invalid, if it has no relationship to the offense charged, but relates rather to conduct which is not in itself criminal, or requires or forbids conduct which is not reasonably related to future criminality.
>
> The court may require as conditions of probation that the minor shun certain associates or refrain from law violations; and conditions of probation are not unconstitutionally vague where they provide that the juvenile "stay out of trouble," or where they require "regular" school attendance.

43, C.J.S., supra at § 78(b).

Applying these general principles, courts have upheld the particular conditions of probation imposed by juvenile courts in a variety of contexts. For example in KKB v. State of Texas, 609 S.W.2d 824 (1980), the condition that a juvenile delinquent obey all of the instructions of the foster parent was upheld. In L.M. v. State of Fla., 610 So.2d 1314 (Fla. 1992), the condition that the juvenile "obey all lawful and reasonable demands of [his] mother," including his participation in church youth programs was deemed to be reasonable. State v. Lynn C., 106 N.M. 681, 748 P.2d 978 (1988) concluded that a juvenile court could validly impose a smoking restriction as a condition of probation. In Interest of D.S. and J.V., 652 So.2d 892 (Fla. 1995) upheld a requirement that a juvenile not associate with gang members. And in Matter of ALJ, 836 P.2d 307 (Wyo. 1992), the Court deemed that the random testing for presence of alcohol as well as that of the juvenile's abode could be searched without reasonable suspicion was held to be valid.

I have not found any case which squarely adjudicates the issue of the validity of a condition imposed by a Family Court or juvenile court that the juvenile be required to cut his hair or get a haircut. However, I would note that such a requirement is not infrequently made. See, e.g. In Interest of J.B., 394 S.E.2d 143 (Ga. 1990); In the Matter of Moses, 193 S.E.2d 375 (N.C. 1972).

In addition, by analogy, courts have upheld hair length regulations for inmates as constitutional. For example, in In re Arlin J. Gatts, 145 Cal. Reptr. 419 (1978), the Court concluded that such a requirement was valid, stating that

> [o]ther courts have found that these factors constitute sufficient justification for hair regulations. (See, e.g. Brown v. Wainwright, supra, 419 F.2d 1376, 1377.) We agree and therefore find that the regulation is rationally related to the legitimate purposes of hygiene, safety, discipline, rehabilitation, prevention of escape and easy identification.

Id. at 422.

Other cases are in accord. Wellmaker v. Dahill, 836 F.Supp. 1375 (N.D. Ohio E.D. 1993); Pollock v. Marshall, 845 F.2d 656 (6th Cir. 1988); Abordo v. Hawaii, 938 F.Supp. 656 (D. Hawaii 1996). These courts have consistently held that a hair length regulation for inmates is "reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89, 107 S.Ct. 2254, 2261, 96 L.Ed.2d 64 (1987). While all of the various interests which support a hair length regulation for inmates who are confined may not be present in the case of a juvenile offender who is not incarcerated, certainly, the State's interest in promoting discipline, rehabilitation and hygiene would always be present whether or not a juvenile offender is confined in an institution or is on probation.

Accordingly, I advise that a Family Court probably does possess the authority to order a juvenile offender to receive a haircut or maintain his hair at a particular length in a particular circumstance. Of course, each case would depend upon the particular facts involved. However, requiring a juvenile or minor offender to keep his hair short could be deemed to serve several of the same interests (discipline, hygiene, rehabilitation, identity) which are present in a hair-length regulation for inmates which have been consistently upheld. Moreover, such a requirement could be deemed by a Family Court Judge to be consistent with the Family Court Act. The primary function of the Family Court Act is rehabilitation. Op. Atty. Gen., June 14, 1971. When a Family Court Judge makes a finding of delinquency, he possesses a "variety of options," including probation. Alexander S. v. Boyd, 876 F.Supp. 773 (D.S.C. 1995). The rehabilitative goal of the Family Court is to instill respect for law and order. State v. Lowry, 230 A.2d 907 (N.J. 1967). Thus, I am of the opinion that such an order could be within the Court's authority in a particular case.

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.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/an