

The State of South Carolina

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Office of the Attorney General

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January 28, 1992

The Honorable Michael J. Cavanaugh  
Commissioner, Department of Probation,  
Parole, and Pardon Services  
Post Office Box 50666  
Columbia, South Carolina 29250

Dear Commissioner Cavanaugh:

In a letter to this Office you raised the following question:

If a person is arrested with an arrest warrant issued by a probation agent and then taken to any state, county, or municipal jail in South Carolina, is the jail required to accept the prisoner for detention upon delivery of the prisoner and a copy of the warrant?

Assuming the jail is required to accept the prisoner for detention, are there any exceptions to the rule that would allow a jailer to refuse to accept custody? Specifically: 1) Where the prisoner is injured? 2) Where the prisoner has not been given a bond hearing? 3) Where no commitment order other than the arrest warrant has been executed?

Consistent with the policy of this Office I asked for and received a memorandum on these issues from the attorneys for your Department. That memorandum concluded as follows:

... if a person is arrested with a violation arrest warrant by a probation agent and then taken to a state, county or municipal jail in South Carolina, the jail is required by law to accept the prisoner for detention, upon delivery of the prisoner and a

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copy of the violation arrest warrant. And the jailer has no discretion to refuse to accept the prisoner for detention ...

if a prisoner is delivered or committed to jail and has some injury requiring medical attention, the sheriff or jailer is required by law to accept delivery or commitment and then see to the prisoner's medical needs ...

the sheriff or jailer may not refuse to accept delivery or commitment of a prisoner delivered or committed to him for detention by a probation agent ... even though the prisoner has not been given a bond hearing ...

the sheriff or jailer may not refuse to accept delivery of a prisoner by a probation agent even though he has been presented with only a violation arrest warrant, properly executed, or a copy thereof. There is no requirement that the probation agent also present some form of commitment order issued by a judge.

Pursuant to Section 24-21-280 of the Code a probation agent is given specified duties in association with individuals on probation or parole under his supervision and is specifically granted in association with the execution of his duties the power to issue an arrest warrant or citation charging a violation of conditions of supervision, the power to arrest and, where necessary, the same authority to execute process granted sheriffs. Section 24-21-300 of the Code provides that during a period of supervision, a probation and parole agent may instead of issuing a warrant issue a written citation and affidavit establishing that the individual named who was released or furloughed under the Prison Overcrowding Powers Act has in the agent's judgment violated the conditions of his release or suspended sentence. Such provision further stipulates that the citation may be executed by a law enforcement officer at the request of a probation and parole agent.

Pursuant to Section 24-21-450 of the Code

At any time during the period of probation or suspension of sentence the court, or the court within the venue of which the violation occurs, or the probation agent may issue or cause the issuing of a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer or other agent with power of arrest, upon the request of the probation agent, may arrest a probationer. In case of an arrest the arresting officer or agent

must have a written warrant from the probation agent setting forth that the probationer has, in his judgment, violated the conditions of probation and such statement shall be warrant for the detention of such probationer in the county jail or other appropriate place of detention, until such probationer can be brought before the judge of the court, or of the court within the venue of which the violation occurs. Such probation agent must forthwith report such arrest and detention to the judge of the court, or of the court within the venue of which the violation occurs, and submit in writing a report showing in what manner the probationer has violated his probation. Provided, that any person arrested for the violation of the terms of probation shall be entitled to be released on bond pending a hearing, and such bond shall be granted and the amount thereof determined by a magistrate in the county where the probationer is confined, or by the magistrate in whose jurisdiction the alleged violation of probation occurred.

Section 24-21-680 of the Code provides that upon violation of parole by a prisoner released on parole

... the parole agent must issue a warrant or citation charging the violation of parole, and a final determination must be made by the board as to whether the prisoner's parole should be revoked and whether he should be required to serve any part of the remaining unserved sentence. ... any person arrested for violation of terms of parole may be released on bond, for good cause shown, pending final determination of the violation by the Probation, Parole and Pardon Board. No bond shall be granted except by the presiding or resident judge of the circuit wherein the prisoner is arrested or if there be no judge within such circuit, by the judge ... in an adjacent circuit ....

Referencing the above, while several statutes refer to the arrest of violators of parole or probation, as to your question, Section 24-21-280 appears to be the most relevant. As referenced, such provision states "a probation agent must have, in the execution of his duties, the power to issue an arrest warrant or citation charging a violation of conditions of supervision, the powers of arrest and to the extent necessary the same right to execute process given by law to sheriffs." An opinion of this Office dated August 17, 1989 commented that

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probation and parole agents are authorized to transport prisoners as an incident to any arrest. 1/

An opinion of this Office dated April 6, 1990 stated:

Parole, like probation, is a period of conditional release from the custody of the Department of Corrections for service of his term of imprisonment. While on parole, he is in the supervisory custody of the South Carolina Department of Probation, Parole and Pardon Services ... The law provides "upon failure of any prisoner released on parole under the provisions of this chapter to do or refrain from doing any of the things set forth or required to be done by and under the terms of his parole, the order of parole shall be cancelled and the prisoner shall thereupon and thereafter have the status of an escaped convict ... It also provides that any person arrested for violation of the terms of his parole may be released on bond for good cause shown pending final determination of the violation by the Probation, Parole and Pardon Board.

Prior opinions of this office have commented on the obligation of correctional facilities to accept prisoners. An opinion dated April 30, 1991 stated

Section 24-3-20, 1976 Code of Laws of South Carolina, provides in pertinent part that "any person convicted of an offense against the State of South Carolina ... shall be in the custody of the Board of Corrections ...." Section 24-3-30 is similar ... There is no indication, that the Department of

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1/ The 1989 opinion cited an earlier opinion, 1966 Op. Atty. Gen. No. 2090, which stated

A close examination of the language of ... (Section 24-21-280) ... reflects no authority has been vested in probation and parole officers to take custody of and transport state prisoners. The only instances in which a probation and parole officer would be permitted to transport a prisoner under the language of this statute would be incidental to an arrest of the prisoner by said officer when the prisoner has violated the terms of his probation or parole. (emphasis added)

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Corrections is granted any discretion to refuse to accept prisoners; indeed, it would appear that in using the word "shall", the General Assembly intended that the Department should be required to accept all prisoners duly sentenced ....

An opinion dated March 6, 1990 referenced that pursuant to Section 24-5-10 of the Code

a sheriff, as custodian of the county jail "... shall receive and safely keep in prison any person delivered or committed to ... (the jail) ....

As stated in the April 6, 1990 opinion noted above an individual on probation or parole is on conditional release from custody. In circumstances authorizing the arrest of the individual on probation or parole, such as the violation of a condition of release, where the arrest is properly made by the probation or parole agent pursuant to Section 24-21-280 or 24-21-680, the individual arrested could be taken to the appropriate place of detention depending on the individual circumstances. I am in agreement with your attorney's conclusions that in such circumstances the detention facility would be obligated to accept the prisoner. As noted, pursuant to Section 24-21-450 the warrant from the probation agent which sets forth the conditions of probation which have been violated "shall be warrant for the detention of such prisoner in the county jail or other appropriate place of detention" until the probationer can be brought before the court.

As to circumstances where the prisoner is injured, a prior opinion of this Office dated March 6, 1990 stated

It should be emphasized at the outset, however, that ...(no statute can be found)... which expressly mandates that the county ultimately bear all costs of medical treatment for all prisoners housed in county detention facilities. It can only be said that existing in South Carolina are provisions of law which express a general intent by the Legislature that medical services be provided to all prisoners in county operated facilities. Nevertheless it is evident when this statutory intent is examined in conjunction with the constitutional requirements that all prisoners be afforded adequate medical treatment and in the context of the non-existence of any statute imposing the financial obligations of this treatment upon the prisoner or

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his family, such would strongly suggest that it is the county which is ultimately responsible for payment of the medical costs of all prisoners.

Another opinion of this Office dated January 20, 1983 commented on the responsibility of medical care for a prisoner as being dependent on his status, whether the prisoner is a prisoner of the Department of Corrections or the county. The opinion also commented that contractual agreements between the county and the State Department of Corrections may influence the determination of which entity is responsible for any costs. Other opinions have also commented on the general liability of the State or its political subdivisions for the care and maintenance of prisoners. See: Opins. dated October 27, 1982, May 23, 1977 and January 20, 1985. Therefore, I am in agreement with your attorney's opinion that if a prisoner is taken to a detention facility and has an injury requiring medical attention, the facility would be required to accept the prisoner and provide medical attention. Again, the ultimate responsibility for the costs of treatment may be dependent on the status of the prisoner as to whether the prisoner should be considered a prisoner of the Department of Corrections or of a county.

You next asked whether the detention facility is required to accept a prisoner where the prisoner has not been given a bond hearing. As referenced, pursuant to Section 24-21-450 which authorizes the arrest of a defendant for violating terms of probation, the defendant shall be held until a hearing can be held regarding the probation violation. The statute provides in part that

... any person arrested for the violation of the terms of probation shall be entitled to be released on bond pending a hearing ....

Additionally, as noted, pursuant to Section 24-21-680, upon violation of parole by a prisoner released on parole, the individual is to be arrested. However the statute further provides that an individual so arrested is entitled to be released on bond pending a final determination by the Probation, Parole and Pardon Board. While a bond hearing is to be provided in the statutorily provided circumstances, I am unaware of any basis for a detention facility to refuse to accept an individual properly arrested prior to such a hearing being held. Instead, bail would be a matter to be considered depending on the circumstances after the individual has been incarcerated.

In your last question you asked whether a detention facility is authorized to refuse to accept custody of an individual arrested by a probation agent where no commitment order other than the arrest warrant

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has been executed. In response to this question I would again refer to the requirements of Section 24-21-450 which authorize the issuance of a warrant for violation of probation which would provide for the arrest of the defendant. Again I would note that in such circumstances the statute provides for a warrant from the probation agent with the statement that the probationer has violated the conditions of probation. Section 24-21-450 then provides that "... such statement shall be warrant for the detention of the probationer in the county jail or other appropriate place of detention, until such probationer can be brought ... (before the court)." Pursuant to Section 24-21-680 upon violation of parole, a warrant or citation which charges the violation is issued with any final determination as to revocation of sentence and service of any remaining sentence to be made by the Board. In both situations there does not appear to be contemplated the requirement of the issuance of any further order prior to incarceration. Therefore I am in agreement with your attorney's conclusion that a separate commitment order is not necessary in the referenced circumstances.

With kind regards, I am

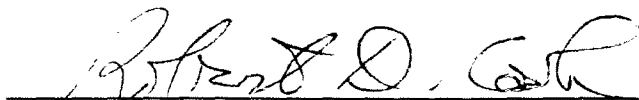
Very truly yours,



Charles H. Richardson  
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CHR/an

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