9322-9872

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ATTORNEY GENERAL

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Mr. Jarrod M. Bruder
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P.O. Box 11549
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Dear Mr. Bruder:

We are in receipt of your opinion request concerning Section 63-19-20 of the Code and Article XII, Section Three of the South Carolina Constitution dealing with juveniles. In particular you ask whether the amendment of Section 63-19-20's statutory definition of "juvenile" would "conflict with Article XII, Section 3" of the South Carolina Constitution. You further ask whether "Article, XII, Section 3 . . . must be amended in order for seventeen year old inmates to be housed with confined persons who are sixteen years old or younger" and inquire as to the meaning of the phrase "juvenile offender" as used in Article XII, Section Three of the South Carolina Constitution. Finally, you ask whether Article XII, Section Three's language stating, "[t]he General Assembly shall provide for the separate confinement of juvenile offenders under the age of seventeen from older confined persons" applies to local governments. Our responses follow.

I. Background

Article XII, Section Two of the South Carolina Constitution, titled "[i]nstitutions for confinement of persons convicted of crimes" generally provides that "[t]he General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates." S.C. Const. art. XII, § 2 (2007). Pursuant to the directive contained in Article XII, Section Two of the South Carolina Constitution, the Legislature, via Title 24 of the Code, has provided for the establishment of institutions for purposes of confining individuals "of such crimes as may be designated by law." S.C. Const. art. XII, § 2. In that same vein, the Legislature, again via Title 24 of the Code, has also passed legislation consistent with Article XII, Section Two's requirement that the General Assembly "provide for the custody, maintenance, health, welfare, education, and rehabilitation of . . . inmates." In fact, as codified in Section 24-1-20 of the Code, the State has established a general policy in operating and managing its' Department of Corrections ("SCDC") stating SCDC must: "manage and conduct the Department in such a manner as will be consistent with the operation of a modern prison system, and with the view of making the system self-sustaining, and that those convicted of

violating the law and sentenced to a term in the State Penitentiary shall have humane treatment, and be given opportunity, encouragement and training in the matter of reformation." S.C. Code Ann. § 24-1-20 (2007).

While Article XII, Section Two of our State Constitution generally governs the establishment of prisons and maintenance of its inmates, Article XII, Section Three of the Constitution, entitled "[s]eparate confinement of juvenile offenders" specifically adds that "[t]he General Assembly shall provide for the separate confinement of juvenile offenders under the age of seventeen from older confined persons." S.C. Const. art. XII, § 3 (2007). This Office has previously interpreted this provision as mandating "that offenders under the age of seventeen are separately confined from 'older confined persons' as provided by the legislature." Op. S.C. Att'y Gen., 1995 WL 803365 (April 10, 1995) (emphasis in original). Indeed, as far back as 1972 this Office has explained, "children or juvenile offenders under the age of seventeen years when placed in, committed or sentenced to a detention, penal or correctional facility, must be kept separate and apart from older or adult persons therein." Op. S.C. Att'y Gen., 1972 WL 26160 (July 17, 1972). In fact, our 1972 opinion, citing to Article XII, Section Three, found the separate confinement of juvenile offenders under the age of seventeen represented "the public policy of this State." Op. S.C. Att'y Gen., 1972 WL 26160 (July 17, 1972).

In keeping with Article XII, Section Three's requirement that the General Assembly provide for the "separate confinement of juvenile offenders," the General Assembly created the "Juvenile Justice Code" which occupies Title 63, Chapter 19 of the Code. See S.C. Code Ann. § 63-19-10 (2010) ("This chapter may be cited as the 'Juvenile Justice Code.'"). Pursuant to Section 63-19-310 of the Code, the Legislature created the Department of Juvenile Justice ("DJJ")[1] and tasked it with, among other things, "providing correctional institutional services for juveniles" committed under the Juvenile Justice Code. S.C. Code Ann. § 63-19-310 (2010); S.C. Code Ann. § 63-19-360(1) (2010). Under the definitions portion of the Juvenile Justice Code, the words "child" and "juvenile" are generally defined[2] as "a person less than seventeen years of age." S.C. Code Ann. § 63-19-20(1) (2010).

II. Law/Analysis

A. Questions One and Two—Relationship Between S.C. Code Ann. § 63-19-20(1) and S.C. Const. art. XII, § 3 of the South Carolina Constitution

[1] Pursuant to Section 63-19-20(4) of the South Carolina Code, DJJ is referred to as the "Department" within the Juvenile Justice Code. S.C. Code Ann. § 63-19-20(4) ("When used in this chapter and unless otherwise defined or the specific context indicates otherwise: Department means the Department of Juvenile Justice.") (internal quotations omitted).

[2] While Section 63-19-20(1) generally defines "child" and "juvenile" as an individual "less than seventeen years of age" this definition does not apply to "a person sixteen years of age or older 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." S.C. Code Ann. § 63-19-20(1) (2010).

With this understanding in mind, we return to the source of your first two questions—whether amending Section 63-19-20(1)'s definition of "juvenile" to individuals under the age of eighteen would conflict with Article XII, Section Three's definition of the same term. We believe that it would and, as a result, it appears, that under such circumstances, an amendment to Article XII, Section Three would be required in order to house seventeen year old inmates with individuals who, under the proposed statutory amendment, would be considered a juvenile.

1. **Amending the Definition of "Juvenile" in S.C. Code § 63-19-20(1) would Create a Conflict with S.C. Const. art. XII, § 3's Definition of "Juvenile"**

Currently, Section 63-19-20(1)'s general definition of the words "child" or "juvenile" are consistent with the definition of "juvenile" contained within Article XII, Section Three of our Constitution. Notably, both generally define a "juvenile" as an individual under the age of seventeen. Compare S.C. Code Ann. § 63-19-20(1) (defining "juvenile" generally as an individual "less than seventeen years of age") with S.C. Const. art XII, § 3 (explaining a "juvenile offender" is an individual under the age of seventeen). Indeed, this conclusion is consistent with this Office's previous opinions interpreting Article XII, Section Three as not only directing the Legislature to provide for separate confinement of juvenile offenders but also defining the phrase "juvenile offender." Op. S.C. Att'y Gen., 1995 WL 803365 (April 10, 1995); Op. S.C. Att'y Gen., 1972 WL 26160 (July 17, 1972). Understanding this, to change one definition without the other would obviously create a conflict between the two definitions as the proposed statutory amendment mentioned in your letter—changing Section 63-19-20(1)'s definition of "juvenile" to include seventeen year olds—would result in Section 63-19-20(1)'s definition of juvenile being inconsistent with the definition contained in Section Three of Article XII.

2. **Assuming the Definition of "Juvenile" in S.C. Code Ann. § 63-19-20(1) is Amended to Include Seventeen-Year Olds, Article XII, Section Three would also need to be Amended to Avoid Conflicting Definitions of the Term "Juvenile"**

In light of our conclusion with respect to your first question—that amending Section 63-19-20(1)'s definition of "juvenile" without amending Article XII, Section Three's definition of "juvenile" produces conflicting definitions—we believe Article XII, Section Three would need to be amended. This conclusion is consistent with footnote two of our 1995 opinion which explained that if the precursor to Section 63-19-20(1) was amended to "allow for offenders 16 years of age to be merged into the jail and 'adult' prison population," Article XII, Section Three would need to be amended to provide for the separate confinement of "juvenile offenders under the age of sixteen." Op. S.C. Att'y Gen., 1995 WL 803365 n.2 (April 10, 1995) (emphasis in original). In other words, this Office has previously determined the statutory and constitutional

definitions of the term "juvenile" are linked to one another such that the amendment of one requires the amendment of the other. As a result, we believe that in order to avoid a conflict in the definition of the term "juvenile," Article XII, Section Three of the South Carolina Constitution would need to be amended to conform with any amendment to the term as is used in Section 63-19-20(1) of the Code.

B. Question Three—Scope of Article XII, Section Three as Applied to Adjudicated and Non-Adjudicated Juveniles

We now move to your third question, whether the phrase "juvenile offender" as used in Article XII, Section Three, includes both adjudicated juveniles and those who have been charged but not brought before the Family Court. Based on our prior opinions on this matter, we believe that it does.

As noted above, this Office has previously interpreted Article XII, Section Three of the South Carolina Constitution to require separation of juvenile offenders from their adult counterparts regardless of whether their case or cases have been adjudicated. See Op. S.C. Att'y Gen., 1972 WL 26160 (July 17, 1972) ("[C]hildren or juvenile offenders under the age of seventeen years when *placed in, committed or sentenced to a detention, penal or correctional facility*, must be kept separate and apart from older or adult persons therein.") (emphasis added). Further, this Office has previously explained Article XII, Section Three's separation language represents "the public policy of this State." Op. S.C. Att'y Gen., 1972 WL 26160 (July 17, 1972). Indeed, subsequent opinions from our Office have reaffirmed this conclusion. See Op. S.C. Att'y Gen., 1980 WL 121182 (April 21, 1980) (noting Article XII, Section Three applies within the context of pre-trial detention); Op. S.C. Att'y Gen., 1981 WL 158090 (December 30, 1981) (citing Article XII, Section Three as requiring juveniles in pre-trial detention to be sight and sound separated from adult detainees); Op. S.C. Att'y Gen., 1995 WL 803365 (April 10, 1995) (discussing the treatment of pre-trial detainees in light of Article XII, Section Three's separate confinement requirement). Additionally, this construction of Article XII, Section Three is in accord with state law, which requires juvenile offenders who are taken into custody and placed in secure confinement prior to being brought before the Family Court to be separated by sight and sound from adult offenders. See S.C. Code Ann. § 63-19-820(C) (2010) (stating that juveniles taken into custody and placed in a cell or its equivalent within an adult jail must be "separated by sight and sound from adults similarly confined."). As a result, we believe Article XII, Section Three of the South Carolina Constitution applies to both adjudicated juveniles as well as juveniles who have been charged but not brought before the Family Court.

C. Question Four—Applicability of Article XII, Section Three to Local Governments

In your fourth question you ask whether Article XII, Section Three's juvenile separation requirement applies to local governments. We believe that it does.

Initially, we reiterate that this Office has previously determined Article XII, Section Three's separation language represents "the public policy of this State." Op. S.C. Att'y Gen., 1972 WL 26160 (July 17, 1972). Further, we note our prior opinions interpreting Article XII, Section Three's separation language indicates the "public policy of the State" verbiage used in our 1972 opinion was not intended to mean Article XII, Section Three applies only at a state level, but rather that it applies at all levels of government across the State of South Carolina. See Op. S.C. Att'y Gen., 1980 WL 121182 (April 21, 1980) (applying Article XII, Section Three's separation language at all levels of government within the State rather than at a state level alone); Op. S.C. Att'y Gen., 1981 WL 158090 (December 30, 1981) (citing Article XII, Section Three as requiring juveniles in pre-trial detention to be sight and sound separated from adult detainees independent of whether the juvenile is in state or local custody); Op. S.C. Att'y Gen., 1995 WL 803365 (April 10, 1995) (discussing the treatment of juvenile pre-trial detainees in light of Article XII, Section Three's separate confinement requirement and failing to distinguish treatment of such detainees on the basis of the governmental authority overseeing the detainee). Moreover, this conclusion is consistent with Section 63-19-820(C), which, like Article XII, Section Three, mandates sight and sound separation of juveniles from adults after a juvenile is taken into custody and does not distinguish its applicability based upon the governmental authority in custody of the juvenile. See S.C. Code Ann. § 63-19-820(C) (requiring that *all juveniles taken into custody* and placed in a cell or its equivalent within an adult jail must be "separated by sight and sound from adults similarly confined."). Accordingly, it is the opinion of this Office that Article XII, Section Three's separate confinement language applies not only on the state level, but also, based on our prior opinions, across all levels of government throughout the State of South Carolina.

III. Conclusion

In conclusion, to address your first and second questions regarding the potential amendment of Section 63-19-20(1), we believe amending Section 63-19-20(1)'s definition of "juvenile" to individuals under the age of eighteen would conflict with Article XII, Section Three's present definition of the same term, and, as a result, an amendment of Article XII, Section Three would be necessary in order to house seventeen year old inmates with individuals who, under the proposed statutory amendment, would be considered a juvenile. Additionally, with respect to your third question, it is the opinion of this Office that the phrase "juvenile offender" as used in Article XII, Section Three, includes both adjudicated juveniles and those who have been charged but not brought before the Family Court. Finally, as to your question of

whether Article XII, Section Three's juvenile separation requirement applies to local governments, we believe our prior opinions reflect these requirements are applicable not only to state governments, but local governments as well.

Sincerely,

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REVIEWED AND APPROVED BY:

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