

1983 S.C. Op. Atty. Gen. 103 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-65, 1983 WL 142735

Office of the Attorney General

State of South Carolina

Opinion No. 83-65

September 1, 1983

***1 Re: Prison Overcrowding Powers Act and the Authority of the Board of Corrections to Establish Conditions Precedent Prior to the Release of an Inmate Based Upon Public Safety Concerns**

Honorable Richard W. Riley
Governor
The State of South Carolina
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:

An opinion from this Office has been requested by you concerning the implementation of the Prison Overcrowding Powers Act. In particular, the question asked is as follows:

Does Section 24–3–2030 of the Prison Overcrowding Powers Act give the South Carolina Board of Corrections the authority to set conditions precedent to the release of individual inmates?

[Section 24–3–2030, CODE OF LAWS](#) (1976), reads in its pertinent part as follows:

The Board of Corrections shall prescribe conditions of advancement of the release date applicable prior to release from the jurisdiction of the Department of Corrections . . .

Your inquiry is whether the Board of Corrections can establish conditions to prevent particular inmates from being released to the community for public safety concerns. In particular, the three specific conditions precedent would be to retain in a custodial status (1) any inmate who in the last six months has been revoked in a community correctional setting, such, as parole, probation, supervised furlough, or extended work release; (2) any inmate currently serving a period of administrative segregation or lock-up for a disciplinary violation; and (3) any inmate required to be transferred to a mental health or mental retardation institution pursuant to [Sections 44–23–210, 44–17–510, CODE OF LAWS](#) (1976). You have advised this Office that these conditions would be necessary to insure public safety based upon the experiences of the entire correctional system.

Section 24–3–1120(i) defines a ‘qualified prisoner’ as a prisoner not presently committed to the Department of Corrections under a conviction for the crime of murder, armed robbery, criminal sexual assault, assault and battery with intent to kill, trafficking in illegal drugs, or kidnapping, nor sentenced as a habitual offender. [Section 24–3–1170, CODE OF LAWS](#) (1976), states that ‘upon the declaration or commencement of a state of emergency, the release dates of qualified inmates must be conditionally advanced by the Board of Corrections.’ (Emphasis added). The only part of the Act that prescribes these conditions can be found in [Section 24–3–2030, CODE OF LAWS](#) (1976), which requires the Board of Corrections to prescribe ‘conditions of advancement of the release date applicable prior to release’ and the Board of Parole to prescribe conditions of supervision . . . applicable after release.’ Therefore, the Act clearly provides that the conditions precedent be set by the Board of Corrections and conditions subsequent to be set by the parole authorities subject to revocation of the conditional advancement.

***2** The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. [Bankers Trust v. Bruce](#), 275 S.C. 35, 267 S.E.2d 424 (1980). The General Assembly established in the purpose of the Act that despite

the need to alleviate prison overcrowding, high priority must be given to public safety and that the public officers charged with implementing the Act shall give full consideration to this priority. Section 1, Act No. 123, ACTS AND JOINT RESOLUTIONS (1983). In addition, the

Governor must take into account whether the commencement of a state of emergency would be injurious to the public good, or raise the potential of threatening the safety of the public in the State as a whole or in a particular community. [Section 24–3–1160\(b\), CODE OF LAWS \(1976\)](#). The intent of the Act therefore is to insure public safety while easing the overcrowded state of our prisons.

Since the conditions precedent by the Board of Corrections and the conditions subsequent by the Parole Board are the only vehicles provided in the Act that may be determined to protect the public safety on an individual inmate basis, it cannot seriously be questioned that the purpose of the Act which requires the agencies to take public safety into account mandates that the agencies establish proper conditions to implement and insure these concerns to protect the public. The three conditions precedent set out previously each has a rational and identifiable relationship to the protection of the public. It would be inconsistent with the purposes of the Act to provide for the release back to the community of an inmate who had recently failed in a community corrections program or who had failed to maintain proper discipline in the Board of Corrections. The remaining condition concerning possible commitment to a mental health or mental retardation institution is required under law. Each of these conditions bears a proper nexus to the Act's intent for public safety.

In conclusion, it is the opinion of this Office that the Board of Corrections can establish conditions precedent prior to the release of an inmate to the community after conditional advancement of his release date has been declared under the Prison Overcrowding Act. Each of the conditions specified bears a proper relationship to the purposes of the Act that requires the Department of Corrections to give a high priority to public safety.

If you have any questions on this matter, please advise me.
Sincerely,

T. Travis Medlock
Attorney General

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