

1983 S.C. Op. Atty. Gen. 113 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-72, 1983 WL 142741

Office of the Attorney General

State of South Carolina

Opinion No. 83-72

September 21, 1983

**\*1 Re: Pre-Adjudicatory Detention of Juveniles**

Honorable Joseph W. Board  
Judge  
Thirteenth Judicial  
Circuit of the Family Court  
Post Office Box 777  
Pickens, South Carolina 29671

Dear Judge Board:

You have requested an opinion from this Office regarding the pre-adjudicatory detention of juveniles pursuant to [Section 20-7-600, CODE OF LAWS](#) (1976). In particular, you have requested our opinion on the following questions:

1. When a law enforcement officer has taken a juvenile into custody or is holding a juvenile in detention prior to the matter being heard in a detention hearing before the Family Court, does the law enforcement agency have the authority and power to release the juvenile at any time prior to the detention hearing?
2. In a case where a juvenile is being held in custody for detention prior to a detention hearing in the Family Court and where such juvenile is charged with a misdemeanor offense or status offense, does the authorized representative of the Department of Youth Services have the power to release the juvenile from custody or detention at any time prior to the detention hearing before the Family Court?

It is the opinion of this Office that the law enforcement agency that takes the child into custody has the authority and power to release the juvenile at any time prior to a detention hearing in Family Court, subject to the order of the Family Court Judge. [Section 20-7-600\(a\), CODE OF LAWS](#) (1976) in its pertinent part states as follows:

Unless otherwise ordered by the court, the person taking the child into custody may release the child to a parent, responsible adult, a responsible agent of a court approved foster home, group home, facility or program separate from any secure facility upon the written promise . . . to bring the child to court . . .

But see: Rule 37, RULES OF PRACTICE IN THE FAMILY COURTS. Therefore, it is clear that the arresting agency has the statutory authority to release a juvenile under the stated conditions at any time within the initial forty-eight (48) hour period between taking into custody and the mandatory Family Court detention hearing if the child is still in custody. [Section 20-7-600\(a\), CODE OF LAWS](#) (1976), Rules 35-38, RULES OF PRACTICE IN THE FAMILY COURT FOR JUVENILE MATTERS. After this initial forty-eight hour period and the detention hearing, continued detention or release prior to an adjudicatory hearing is a matter solely to be determined by the Family Court Judge rather than law enforcement or the Department of Youth Services. Rule 36, RULES OF PRACTICE OF THE FAMILY COURT IN JUVENILE MATTERS.

Your second inquiry concerns whether the Department of Youth Services (hereafter DYS) has the power to release a detained juvenile prior to a detention hearing where the juvenile is charged with a misdemeanor or a status offense. [Section 20-7-600\(b\), CODE OF LAWS](#) (1976), provides that when a child is not released the arresting law enforcement agency and the representative

of DYS determines that detention is not necessary for the protection of the community or the best interest of the child, the child shall be released by DYS to the custody of his parents or other responsible adult upon their written promise to bring the child to court. If the person is an adult other than a parent, guardian, or custodian, specific approval of the Family Court is required prior to such release. Rule 37, RULES OF PRACTICE IN THE FAMILY COURTS. Therefore, the Department of Youth Services has the concurrent power to release a child who is detained for a misdemeanor or status offense, unless its representative finds that detention is necessary for the protection of the community or to serve the best interest of the child. It should be noted that the consent of the officer who took the child into custody is not required if the child is detained for a misdemeanor or status offense, but such consent is required if the offense for which the child was taken into custody would be a felony if committed by an adult. [Section 20-7-600\(b\), CODE OF LAWS \(1976\)](#).

\*2 If you have any further questions on these matters, please feel free to contact me.

Sincerely,

Donald J. Zelenka  
Assistant Attorney General

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