

1981 WL 158244 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1981

***1** Mr. Michael Grant LeFever

Department of Juvenile Placement and Aftercare

P. O. Box 5535

Columbia, S. C. 29250

Dear Mr. LeFever:

You have recently asked the opinion of this Office concerning whether the Board of Juvenile Placement and Aftercare can conditionally release an individual from the Department of Youth Services prior to his twenty-first birthday when the Family Court Judge committed the juvenile to the Department of Youth Services with the express condition that the Board transfer him to the Department of Corrections on his seventeenth birthday for a period not to exceed thirty years. It is apparent that this child's potential consideration for conditional release and the need for clarification for others who might be similarly situated has prompted your request.

It is the opinion of this Office that while the commitment order in question sufficiently authorizes the juvenile's commitment and custody, such can in no way demand retention of the juvenile by your Department for the full period as stated or require transfers to other State correctional institutions prior to his twenty-first birthday. See 1971-1972 Opinions of the Attorney General, No. 3435, p. 321.

The area of commitment, sentence, transfer and release of children under the age of seventeen is regulated by statute in this State. § 14-21-510, et seq. and 24-15-510, et seq., Code of Laws (1976), as amended. The Family Court relied on § 24-15-510 in its commitment order in this particular case. In its pertinent part it provides:

‘A child, after his tenth and before his seventeenth birthday, may be committed to the custody of the State Board of Youth Services by order of a . . . family court judge under procedures and subject to the conditions set forth in this article . . . No child under the age of seventeen years shall be committed or sentenced to any other penal or correctional institution of this state for a period exceeding thirty days.

When a child is convicted of crime or has entered a plea of guilty or nolo contendere in a court authorized to commit to the custody of the Board of Youth Services or the Board of Juvenile Placement and Aftercare, such child may be committed for an indeterminate period until he has reached his twenty-first birthday or until sooner released by the Board of Juvenile Placement and Aftercare under its discretionary powers.

Provided, however, that any sentence which includes commitment . . . for a crime which, when committed by an adult, would carry a maximum sentence of thirty years or more, shall include a further provision that the Board of Juvenile Placement and Aftercare may transfer such child to the State Department of Corrections for confinement for a period, including time served in its custody, not to exceed thirty years. Such transfer shall be within the discretion of the Board of Youth Services or the Board of Juvenile Placement and Aftercare as may be appropriate.

***2** As stated in the previously cited opinion, the Correction of Juveniles Act was enacted on July 3, 1969, and was applicable to the commitment of this fifteen year old on October 22, 1980. A reading of the Correction of Juveniles Act and the Family Court Act concerning juvenile dispositions in their entirety reveal that the State Legislature intended that the Board of Juvenile Corrections (now Department of Youth Services) and the Board (now Department) of Juvenile Placement and Aftercare, as

appropriate, would retain full discretionary power as to when and if a conditional release or transfer of juveniles committed to its custody would be effected. While a committing judge is required to include in the sentence or disposition (of any child whose crime, when committed by an adult, would carry a sentence of thirty years or more) an authorization for that child's subsequent transfer to and retention in the State Department of Corrections as was done here, the decision as to whether or not such transfers should be made and when a release, conditional or otherwise, will be allowed rests solely within the discretion of the Department of Juvenile Placement and Aftercare pursuant to §24-15-330, et seq., Code of Laws (1976).

Sincerely,

Donald J. Zelenka
Assistant Attorney General

1981 WL 158244 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.