

1980 WL 121182 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1980

*1 Mr. Clifford A. Moyer
Executive Director
Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29210

Dear Mr. Moyer:

In a letter to this Office, you raised several questions concerning traffic offenses committed by juveniles. You specifically asked:

1. If a juvenile fails to appear for court to answer to the charges of a traffic violation, and fails to post bond for the offense, does the trial judge have the authority to issue a warrant for the arrest of the juvenile? If so, where would the juvenile be housed when arrested?
2. If a juvenile is found guilty of a traffic offense and the sentence is the payment of a fine or the service of a period of time in jail, and the juvenile can not pay the fine, does the magistrate or city judge have the authority to sentence the juvenile to serve a jail term, the same as in the case of an adult?
3. In the case of a juvenile charged with Driving Under the Influence of alcohol and/or drugs, does the officer have the authority to place the juvenile in the common jail, the same as in the case of an adult, and does the officer have to notify the parents of the juvenile as required in [Section 14-21-590 of the Code](#) of Laws of 1976 as amended?

As to such questions, you referenced [Section 14-21-515, Code of Laws of South Carolina](#), 1976, as amended, which specifically provides as to the jurisdiction of traffic violations committed by juveniles under seventeen years of age:

‘(n)otwithstanding any other provisions of this article, the magistrate courts, municipal courts and circuit courts of this State shall have concurrent jurisdiction with the family courts for the trial of persons under seventeen years of age charged with traffic violations when such courts would have jurisdiction of the offense charged if committed by an adult.’

Prior to the enactment of such section in 1978, juveniles under seventeen years of age charged with traffic violations were within the jurisdiction of the family courts in this State, and received the accompanying special treatment afforded such minors. However, clearly, by enacting the legislation codified as [Section 14-21-515](#), *supra*, the Legislature was of the opinion that cases involving juveniles under seventeen years of age charged with traffic offenses would be handled by the magistrate courts, the municipal courts and the circuit courts in the same manner as if such cases involved adult offenders.

As to your first question concerning the authority of the trial judge to issue a warrant for the arrest of a juvenile who, having been arrested for a traffic violation, fails to appear in court and who has failed to post bond, in the opinion of this Office, an arrest warrant should be issued inasmuch as such a warrant would be issued to an adult offender under the same circumstances. This policy was recommended generally in a letter from this Office dated March 8, 1979. It was stated in such letter that upon arrest the person could be brought before the court, bond could be set, and a trial date also set.

*2 If incarceration is necessary, inasmuch as a juvenile is involved, the juvenile must be incarcerated separate from any adult offenders. Such a requirement is in keeping with general constitutional and statutory provisions. In keeping with [Article XII](#),

[Section 3 of the South Carolina Constitution](#), the Legislature provided by Section 43-17-70, Code of Laws of South Carolina, 1976, that if incarceration of a juvenile under eighteen is necessary,

‘. . . the child shall not be incarcerated in the same room with adult criminals but in a separate room of detention, and when the county or municipal authorities have made suitable provision therefor, such room shall be outside the jail or guardhouse. Separate accommodations shall be provided for boys and girls.’

Similar language is found in [Section 14-21-590\(c\), Code of Laws of South Carolina](#), 1976. Therefore, any incarceration of a juvenile must be in keeping with such statutes.

As to your second question concerning the inability of a juvenile to pay a fine imposed as an alternative sentence to a jail term, such a juvenile, if determined to be indigent, must be provided a schedule for payment of a fine. [Section 17-25-350, Code of Laws of South Carolina](#), 1976, provides generally that:

‘(i)n any offense carrying a fine or imprisonment, the judge or magistrate hearing the case shall, upon a decision of guilty of the accused being determined and it being established that he is indigent at that time, set up a reasonable payment schedule for the payment of such fine, taking into consideration the income, dependents and necessities of life of the individual. Such payments shall be made to the magistrate or clerk of court as the case may be until such fine is paid in full. Failure to comply with the payment schedule shall constitute contempt of court; . . . No person found to be indigent shall be imprisoned because of inability to pay the fine in full at the time of conviction.’ (Emphasis added.)

Inasmuch as [Section 14-21-515, supra.](#), confers jurisdiction on magistrate, municipal, and circuit courts to hear cases involving juveniles under seventeen charged with traffic offenses, such juvenile offenders should be accorded any rights provided other offenders which would include the schedule of payments allowed indigents.

Please be advised, however, that there is no question that a magistrate is authorized to sentence a juvenile to serve a jail term. Section 24-15-510, Code of Laws of South Carolina, 1976 states in part:

‘(t)he provisions of this section shall not prevent magistrates or recorders from sentencing children under seventeen years of age to county or municipal jails for periods not to exceed thirty days where jurisdiction presently exists.’

As to your third question concerning the incarceration of a juvenile charged with driving under the influence in the common jail, as stated previously, if incarceration of a juvenile is necessary, such incarceration must be separate from any adult offenders. As to your question of whether pursuant to [Section 14-21-590, Code of Laws of South Carolina](#), 1976, the parents of the juvenile must be notified, in the opinion of this Office, such section apparently is not absolutely controlling as to juveniles arrested for traffic offenses. However, without question, the parents of the juvenile should be notified as soon as possible.

*3 If there are any further questions, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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