

1979 S.C. Op. Atty. Gen. 98 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-75, 1979 WL 29080

Office of the Attorney General

State of South Carolina

Opinion No. 79-75

June 7, 1979

*1 'Mental injury', as defined by Section 20-10-20(G), must be proven by a showing of 'substantial impairment of the intellectual, psychological and emotional capacity of the child' resulting from inhumane or unconscionable acts and conduct of the parent, guardian or other person responsible for his welfare. Proof of such could be established through a showing of unreasonable restriction on activities set forth in subsection (G)(1), (2) and (3).

TO: The Honorable Richard L. Rigdon
Member
House of Representatives

QUESTION:

Assuming that restrictions of the type set forth in Section 20-10-20(G)(1), (2) and (3) imposed by a person responsible for a child's welfare are deemed to be unreasonable in a particular instance, does that failure alone constitute 'mental injury' and, therefore, 'harm' pursuant to Section 20-10-20(C)(1)?

STATUTES:

Section 20-10-20, Code of Laws of South Carolina (1976), as amended.

DISCUSSION:

Section 20-10-20, Code of Laws of South Carolina (1976), defines 'mental injury' as 'a substantial impairment of the intellectual, psychological or emotional capacity of a child as evidenced by inhumane, or unconscionable acts and conduct. Provided, nothing herein shall be construed as prohibiting a person responsible for a child's welfare from imposing reasonable restrictions deemed necessary by such person for the intellectual, psychological or emotional well-being of the child by any of the following means or methods:

1. Restrictions relating to attendance at amusements, concerts, social events or activities, or theaters;
2. Restrictions on amount of exposure to secular activities such as television, extra-curricular school activities or community recreational activities;
3. Instructions, directions, or mandates relating to public or private elementary and secondary education or attendance at churches or other places of religious worship.'

It appears evident from the wording of this statute that mental injury must be proved by a showing of substantial impairment of the intellectual, psychological or emotional capacity of a child resulting from inhumane, or unconscionable acts and conduct of a person responsible for a child's welfare. Furthermore, it also appears evident that such restrictions, if unreasonable, would be considered unconscionable acts and conduct as defined in the statute.

It is therefore the opinion of this office that, in order to prove 'mental injury' as defined in Section 20-10-20, it would be necessary to demonstrate substantial impairment of the intellectual, psychological or emotional capacity of a child which has resulted from the unconscionable acts or conduct of a person responsible for that child's welfare in imposing such restrictions in an unreasonable manner. A mere showing of unreasonableness of such restriction, without a commensurate showing of resulting substantial impairment of the intellectual, psychological or emotional capacity of a child, would not be sufficient to uphold a finding of mental injury.

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