ALAN WILSON
ATTORNEY GENERAL

June 13, 2018

Mr. Jerry B. Adger
Director
State Department of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, SC 29250

Dear Director Adger:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

> Do paroled inmates, who must serve on parole with no deduction for good conduct as outlined in S.C. Code § 24-21-670, qualify for compliance credits pursuant to S.C. Code § 24-21-280(D)?
>
> As you are aware, the Crime Reduction and Sentencing Reform Act of 2010 included a provision allowing for the reduction of an individual's term of supervision so long as the offender complies with the conditions of that supervision. This allows an offender who meets both the affirmative requirements of supervision and refrains from committing violations or new offenses to terminate his or her supervision earlier than originally ordered.
>
> A question has arisen regarding whether the language of S.C. Code § 24-21-670 conflicts with the compliance credits provision in S.C. Code § 24-21-280(D).
>
> Under 24-21-670, a parolee "shall continue on parole until the expiration of the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as may be provided for by law." It is because of this section that an individual on parole does not get credit for good behavior pursuant to S.C. Code § 24-13-210. The question, then, becomes whether 24-21-670 also operates to prevent a parolee from receiving compliance credits under 24-21-280(D).

Law/Analysis

It is this Office's opinion that a court would likely find that paroled inmates can qualify for compliance credits pursuant to S.C. Code Ann. § 24-21-280(D). Further, it is this Office's

opinion that the opportunity to earn compliance credits for "each individual" under the Department's supervision, including parolees, in S.C. Code Ann. § 24-21-280 does not conflict with the disallowance of a deduction in the term of a paroled prisoner for good conduct in S.C. Code Ann. § 24-21-670.

In order to respond to the issues raised in your letter, this opinion will analyze the statutes addressed according to the rules of statutory interpretation. Statutory interpretation of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The Supreme Court of South Carolina has stated, however, that where the plain meaning of the words in a statute "would lead to a result so plainly absurd that it could not have been intended by the General Assembly... the Court will construe a statute to escape the absurdity and carry the [legislative] intention into effect." Duke Energy Corp. v. S. Carolina Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). With these principles in mind, we turn to the relevant statutes and legislative acts to determine whether there is a conflict and, if so, how our state courts would likely resolve such a conflict.

Section 24-21-280 was amended substantially in the 2010 Omnibus Crime Reduction and Sentencing Reform Act, 2010 Act No. 273, § 50. The General Assembly explicitly stated its intent for this portion of the Act as follows:

> It is the intent of the General Assembly that the provisions in PART II of this Act shall provide cost-effective prison release and community supervision mechanisms and cost-effective and incentive-based strategies for alternatives to incarceration in order to reduce recidivism and improve public safety.

2010 Act No. 273, § 44.[1] Section 24-21-280 currently reads:

> (A) A probation agent must investigate all cases referred to him for investigation by the judges or director and report in writing. He must furnish to each person released on probation, parole, or community supervision under his supervision a written statement of the conditions of probation, parole, or community supervision and must instruct him regarding them. He must keep informed

[1] S.C. Code Ann. § 24-21-280 was subsequently amended by 2016 Act No. 154, § 7 and 2017 Act No. 75, § 2.

concerning the conduct and condition of each person on probation, parole, or community supervision under his supervision by visiting, requiring reports, and in other ways, and must report in writing as often as the court or director may require. He must use practicable and suitable methods that are consistent with evidence-based practices to aid and encourage persons on probation, parole, or community supervision to bring about improvement in their conduct and condition and to reduce the risk of recidivism for the offenders under his supervision. A probation agent must keep detailed records of his work, make reports in writing, and perform other duties as the director may require.

(B) A probation agent has, in the execution of his duties, the power to issue an arrest warrant or a citation charging a violation of conditions of supervision, the powers of arrest, and, to the extent necessary, the same right to execute process given by law to sheriffs. A probation agent has the power and authority to enforce the criminal laws of the State. In the performance of his duties of probation, parole, community supervision, and investigation, he is regarded as the official representative of the court, the department, and the board.

(C) A probation agent must conduct an actuarial assessment of offender risks and needs, including criminal risk factors and specific needs of each individual, under the supervision of the department, which shall be used to make objectively based decisions that are consistent with evidence-based practices on the type of supervision and services necessary. The actuarial assessment tool shall include screening and comprehensive versions. The screening version shall be used as a triage tool to determine offenders who require the comprehensive version. The director also shall require each agent to receive annual training on evidence-based practices and criminal risks factors and how to target these factors to reduce recidivism.

(D) A probation agent, in consultation with the probation agent's supervisor, shall identify each individual under the department's supervision, with a term of supervision of more than one year, and shall calculate and award compliance credits as provided in this section. Credits may be earned from the first day of supervision on a thirty-day basis, but must not be applied until after each thirty-day period of supervision has been completed. Compliance credits may be denied for noncompliance on a thirty-day basis as determined by the department. The denial of nonearned compliance credits is a final decision of the department and is not subject to appeal. An individual may earn up to twenty days of compliance credits for each thirty-day period in which the department determines that the individual has substantially fulfilled all of the conditions of the individual's supervision.

> (E) Any portion of the earned compliance credits are subject to be revoked by the department if an individual violates a condition of supervision during a subsequent thirty-day period.
>
> (F) The department shall provide annually to the Sentencing Reform Oversight Committee the number of offenders who qualify for compliance credits and the amount of credits each has earned within a fiscal year.
> ...

S.C. Code Ann. § 24-21-280 (Supp. 2017) (emphasis added).

According to the plain language of Section 24-21-280, subsection (D) provides the method for calculating how "each individual under the department's supervision" may be awarded compliance credits during periods in which "the individual has substantially fulfilled all of the conditions of the individual's supervision." The phrase "each individual" is introduced in subsection (A) to delineate that those persons under a probation agent's supervision include "each person released on probation, parole, or community supervision." Subsection (A) also tasks probation agents with "encourag[ing] persons on probation, parole, or community supervision to bring about improvement in their conduct and condition and to reduce the risk of recidivism for the offenders under his supervision." When these subsections are read together with Section 50 of the 2010 Omnibus Crime Reduction and Sentencing Reform Act, the award of compliance credits appear applicable to each of the three categories of offenders under a probation agent's supervision: persons on probation, persons on parole, or persons on community supervision. Nowhere within the text of Section 24-21-280 is there an expression of intent, either express or implied, to treat any of the three categories of offenders differently in regards to how compliance credits may be awarded. In fact, the plain language suggests a contradictory conclusion. As used in subsection (D), "each individual" conveys that every one of the persons constituting the group supervised by a probation agent is to be considered individually for compliance credits. See Merriam-Webster Online, https://www.merriam-webster.com/dictionary/each ("being one of two or more distinct individuals having a similar relation and often constituting an aggregate"). When compliance credits are viewed as a mechanism to "encourage persons on probation, parole, or community improvement in their conduct and condition and to reduce the risk of recidivism," it would seem apparent that the General Assembly intended for compliance credits to be available for parolees as well as those persons on probation and community supervision.

Moreover, the Department of Probation, Parole and Pardon Service must annually report to the Sentencing Oversight and Reform Committee the number of offenders who qualify for compliance credits during each fiscal year. S.C. Code Ann. § 24-21-280(F). Based on these reports, the Committee has published its own reports on its website detailing how compliance credits have been awarded. In fact, the Committee's June 2015 report states, "The number of offenders who have earned compliance credits while on probation or parole, allowing the offenders to shorten periods of supervision, has increased 261%." S.C. Sentencing Reform

Oversight Comm., Status Report, at 2 (June 2015), https://www.scstatehouse.gov/citizensinterestpage/SentencingReformOversightCommittee/Reports/StatusReportJune2015.pdf (emphasis added). Because the plain language of the statute and the Committee's own report states offenders on parole are included within the category of offenders who earn compliance credits, it is this Office's opinion that a court would find that parolees are eligible to earn compliance credits as provided in Section 24-21-280(D).

However, as your letter states, the compliance credit provision in Section 24-21-280(D) could be read to conflict with the prohibition on reducing terms for good conduct in S.C. Code Ann. § 24-21-670. Section 24-21-670 has not been amended since it was adopted in 1942 by Act number 562 as part of the enabling legislation for the South Carolina Probation and Parole Board. (1942 (42) 1456). Section 13 of the Act states:

> Term of parole- prisoners released on good behavior.—That any prisoner hereafter sentenced, who may be paroled under authority of this Act, shall continue on parole until the expiration of the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as is or may hereafter be provided by law.
>
> Any prisoner who shall have served the term or terms for which he shall hereafter be sentenced, less deductions allowed therefrom for good conduct, shall upon release be treated as if released on parole and shall be subject to all provision of law relating to the parole of prisoners under this Act until the expiration of the maximum term of terms specified in his sentence; ...

1942 Act No. 562, § 13. The first paragraph quoted above was substantially codified in the 1942 South Carolina Code of Laws, 1942 Code § 1038-12, and is the predecessor to Section 24-21-670. This statute is substantially unchanged and reads as follows:

> Any prisoner who may be paroled under authority of this chapter shall continue on parole until the expiration of the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as may be provided for by law.

S.C. Code Ann. § 24-21-670 (Supp. 2017) (emphasis added). When read in isolation, the plain language of Section 24-21-670 could be construed to prohibit any reduction in term for a person on parole under any program provided by law. However, the better reading takes into account the related legislation and statutory schemes enacted by subsequent Legislatures to interpret whether there is a conflict with Section 24-21-280(D). Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) ("[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers.")

The second paragraph of 1942 Act No. 562, § 13 was also codified in the 1942 Code and is the predecessor to S.C. Code Ann. § 24-21-690 (Supp. 2017). As originally enacted, the statute directed that when a prisoner was credited with a deduction from his sentence for good conduct, such a prisoner was placed on parole until the actual expiration of his sentence. 1942 Code § 1038-12. It is noteworthy that both Section 24-21-670 and Section 24-21-690 were originally codified within the same statute. However, in the 1952 Code, the statutes were separately codified at 1952 Code §§ 55-615 (current S.C. Code Ann. § 24-21-670) and 55-617 (current S.C. Code Ann. § 24-21-690) respectively. While Section 24-21-670 was left virtually unchanged, S.C. Code Ann. § 24-21-690 was amended several times. In particular, Act Number 250 of 1955, (1955 (49) 475), was entitled:

> An Act To Amend Section 55-8, Code of Laws of South Carolina, 1952, Relating to Credit Given Convicts For Good Behavior, So As To Further Provide For Such Credit Where A Paroled Person's Parole Is Revoked Or A Prisoner Is Released Upon Probation Or A Suspended Sentence; To Amend Section 55-617, Code of Laws of South Carolina, 1952, Relating To The Release Of Prisoners After Service Of Full Time Less Good Conduct Deduction, So As To Further Provide That Such Prisoner Shall Be Treated As If They Have Served The Entire Sentence And To Permit Certain Premature Releases Of Prisoners.

The 1955 Act amended Section 55-617 as follows:

> Section 55-617, 1952 Code, amended —prisoners released with good conduct deductions—to be treated as if entire term had been served:
>
> > Section 2. Section 55-617, Code of Laws of South Carolina, 1952, is amended to read as follows:
> >
> > "Section 55-617. Any person who shall have served the term for which he has been sentenced less deductions allowed therefrom for good conduct shall, upon release, be treated as if he had served the entire term for which he was sentenced."

Clearly, this amendment reflected a different legislative intent than the legislation which enacted 1942 Code § 1038-12 because a prisoner would thereafter be released as if his sentence had been served rather than "as if released on parole" when his term was reduced for good conduct. S.C. Code Ann. § 24-21-690 continues to reflect this same legislative design.[2]

---

[2] See S.C. Code Ann. § 24-21-690 ("Any person who shall have served the term for which he has been sentenced less deductions allowed therefrom for good conduct shall, upon release, be treated as if he had served the entire term for which he was sentenced.").

The 1955 Act also amended Section 55-8 of the 1952 Code as follows:

Section 55-8, 1952 Code, amended —allowance of time for good conduct to be computed only upon time prisoner actually serves:

> Section 1. Section 55-8, Code of Laws of South Carolina, 1952, is amended by adding at the end thereof the following:
>
> "In the case of a paroled person whose parole is revoked no allowance of time for good conduct shall accrue during the period from the date of his release from prison on parole until the date on which he is recommitted to prison under the above mentioned revocation; nor shall any allowance of time for good conduct accrue during the period a prisoner is released upon probation or the terms of a suspended sentence. It is the intent of this section that allowance of time for good conduct shall be computed in all cases upon time a prisoner is actually required to serve within the confines of a prison."

(emphasis added). The plain language of Section 55-8 of the 1952 Code clearly expresses the legislative intent that "good conduct" allowances only be credited for time during which a prisoner served within a prison. Section 55-8 was subsequently amended several times. It is codified in the 1976 Code at S.C. Code Ann. § 24-13-210 and is titled as "Credit given inmates for good behavior." Section 24-13-210 directs how the Department of Corrections is to compute the rate of deduction from a prisoner's sentence based on compliance with the rules of the institution and for a lack of punishment for misbehavior. Subsection (D) states that the Director of the Department of Corrections has discretion to forfeit all or a part of the good conduct credit earned by a prisoner if the prisoner breaks the rules of a facility or commits an offense during his term of imprisonment.

Based on the legislative history discussed above, it is this Office's opinion that the prohibition against a deduction in the term of a paroled prisoner for good conduct in S.C. Code Ann. § 24-21-670 refers to the good conduct credits earned according to Section 24-13-210 rather than the compliance credits awarded under Section 24-21-280(D). While Section 24-21-670 is substantially unchanged, related statutes have been fundamentally altered over the following decades. As originally enacted in 1942 Act No. 562, prisoners who were released prior to serving their full sentences as a result of deductions from their terms for good conduct were on parole for the remainder of their sentences. Subsequent amendments, particularly 1955 Act No. 250, which are reflected in S.C. Code Ann. § 24-21-690 now state that a person who has served his term less deductions allowed for good conduct "shall, upon release, be treated as if he had served the entire term for which he was sentenced." 1955 Act No. 250 also amended the statute regarding prisoners earning good conduct deductions. 1952 Code § 55-8. This statute is

now codified at S.C. Code Ann. § 24-21-690 and refers to "good conduct" deductions which are distinct from the compliance credits described in S.C. Code Ann. § 24-21-280(D).

There are important distinctions to note between the good conduct credit program and the compliance credit program. First, the decision of whether good conduct credits earned by a prisoner are forfeited for an offense is left to the discretion of the Department of Corrections in Section 24-13-210, while the denial of compliance credits is assigned to the discretion of Department of Probation, Parole and Pardon Services in Section 24-21-280(D). Second, good conduct credits are earned while in the custody of the Department of Corrections, a local detention facility, or public works, while compliance credits are awarded to those individuals under supervision by the Department of Probation, Parole and Pardon Services. Certainly good conduct credits and compliance credits were intended by the Legislature to be administered by separate departments and to be available in mutually exclusive circumstances; while serving a sentence within a correction facility or while under the supervision of a probation agent. It is the opinion of this Office that a court would find that Section 24-21-280(D) which allows for compliance credits and Section 24-13-210 which governs good conduct credits are separate statutory schemes.

Because it is this Office's opinion that the prohibition against a deduction in the term of a paroled prisoner for good conduct in Section 24-21-670 refers to the good conduct credits computed according to Section 24-13-210, it is this Office's opinion that S.C. Code Ann. § 24-21-670 does not conflict with the separate compliance credits awarded according to the terms of Section 24-21-280(D). Alternatively, in the event that a court found Section 24-21-670 and Section 24-21-280(D) are in conflict, it is this Office's opinion that a court would likely determine that the 2010 Omnibus Crime Reduction and Sentencing Reform Act and subsequent amendments to Section 24-21-280 would be controlling as the more recently enacted legislation. See State v. Mancke, 18 S.C. 81, 85 (1882) ("[I]t is recognized that one Legislature cannot absolutely bind another upon subjects of substantial legislation ..."); 1960 S.C. Op. Att'y Gen. 227 (1960) ("[I]t must be borne in mind that one Legislature cannot bind those which follow it and that the succeeding Legislatures have the right to repeal or modify statutes enacted by their predecessors.").

Conclusion

It is this Office's opinion that a court would likely find paroled inmates can qualify for compliance credits pursuant to S.C. Code Ann. § 24-21-280(D). Further, it is this Office's opinion that the opportunity to earn compliance credits for "each individual" under the Department's supervision, including parolees, in S.C. Code Ann. § 24-21-280(D) does not conflict with the disallowance of a deduction in the term of a paroled prisoner for "good conduct" in S.C. Code Ann. § 24-21-670. As discussed above, the method of computing good conduct credits is now codified at S.C. Code Ann. § 24-13-210 and is distinct from the compliance credits described in S.C. Code Ann. § 24-21-280(D). In the event that a court finds

Section 24-21-670 and Section 24-21-280(D) are in conflict, it is this Office's opinion that a court would likely determine that the 2010 Omnibus Crime Reduction and Sentencing Reform Act and subsequent amendments to Section 24-21-280 would be controlling as the more recently enacted legislation. See State v. Mancke, 18 S.C. 81, 85 (1882) ("[I]t is recognized that one legislature cannot absolutely bind another upon subjects of substantial legislation ..."); 1960 S.C. Op. Att'y Gen. 227 (1960) ("[I]t must be borne in mind that one Legislature cannot bind those which follow it and that the succeeding Legislatures have the right to repeal or modify statutes enacted by their predecessors.").

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General