CHAPTER 19

Judge William R. Byars Youthful Offender Act

Editor’s Note

2016 Act No. 164, changed the name of Chapter 19, from “Correction and Treatment of Youthful Offenders” to “Judge William R. Byars Youthful Offender Act”.

**SECTION 24‑19‑5.** Short title.

This chapter may be cited as the “Judge William R. Byars Youthful Offender Act”.

HISTORY: 2016 Act No. 164 (S.1090), Section 1, eff April 29, 2016.

**SECTION 24‑19‑10.** Definitions.

As used herein:

(a) “Department” means the Department of Corrections.

(b) “Division” means the Youthful Offender Division.

(c) “Director” means the Director of the Department of Corrections.

(d) “Youthful offender” means an offender who is:

(i) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63‑19‑1210, for allegedly committing an offense that is not a violent crime, as defined in Section 16‑1‑60, and that is a misdemeanor, a Class D, Class E, or Class F felony, as defined in Section 16‑1‑20, or a felony which provides for a maximum term of imprisonment of fifteen years or less;

(ii) seventeen but less than twenty‑five years of age at the time of conviction for an offense that is not a violent crime, as defined in Section 16‑1‑60, and that is a misdemeanor, a Class D, Class E, or Class F felony, or a felony which provides for a maximum term of imprisonment of fifteen years or less;

(iii) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63‑19‑1210, for allegedly committing burglary in the second degree (Section 16‑11‑312). If the offender committed burglary in the second degree pursuant to Section 16‑11‑312(B), the offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three‑year minimum sentence;

(iv) seventeen but less than twenty‑one years of age at the time of conviction for burglary in the second degree (Section 16‑11‑312). If the offender committed burglary in the second degree pursuant to Section 16‑11‑312(B), the offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three‑year minimum sentence;

(v) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63‑19‑1210 for allegedly committing criminal sexual conduct with a minor in the third degree, pursuant to Section 16‑3‑655(C), and the alleged offense involved consensual sexual conduct with a person who was at least fourteen years of age at the time of the act; or

(vi) seventeen but less than twenty‑five years of age at the time of conviction for committing criminal sexual conduct with a minor in the third degree, pursuant to Section 16‑3‑655(C), and the conviction resulted from consensual sexual conduct, provided the offender was eighteen years of age or less at the time of the act and the other person involved was at least fourteen years of age at the time of the act.

(e) “Treatment” means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youthful offenders; this may also include vocational and other training considered appropriate and necessary by the division.

(f) “Conviction” means a judgment in a verdict or finding of guilty, plea of guilty, or plea of nolo contendere to a criminal charge where the imprisonment is at least one year, but excluding all offenses in which the maximum punishment provided by law is death or life imprisonment.

HISTORY: 1962 Code Section 55‑392; 1968 (55) 3031; 1993 Act No. 181, Section 449; 1995 Act No. 7, Part I, Section 29; 1996 Act No. 441, Section 4; 2003 Act No. 25, Section 1; 2010 Act No. 273, Section 31, eff June 2, 2010; 2012 Act No. 255, Section 10, eff June 18, 2012; 2016 Act No. 154 (H.3545), Section 4, eff April 21, 2016.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference in item (d)(i) to Section 20‑7‑7605 was changed to Section 63‑19‑1210 in accordance with 2008 Act No. 361 (Children’s Code).

Effect of Amendment

The 2010 amendment rewrote the definition for “youthful offender”.

The 2012 amendment substituted “criminal sexual conduct with a minor in the third degree pursuant to Section 16‑3‑655(C)” for “a lewd act upon a child pursuant to Section 16‑15‑140” in subsections (d)(v) and (d)(vi).

2016 Act No. 154, Section 4, in (d), added a comma following “Section 63‑19‑1210” in (i) and (iii); and inserted “If the offender committed burglary in the second degree pursuant to Section 16‑11‑312(B),” in (iii) and (iv).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 113, Parole and Aftercare.

S.C. Jur. Probation, Parole, and Pardon Section 26, Youthful Offender Act Release.

Attorney General’s Opinions

Discussion of whether a defendant who meets the definition of a “youthful offender” at time of his conviction is eligible for an expungement under section 22‑5‑920(B) even though the defendant was not sentenced as a youthful offender pursuant to the provisions of the Youthful Offender Act. S.C. Op.Atty.Gen. (Oct. 29, 2013) 2013 WL 6009577.

Youthful offender cannot be sentenced for burglary under Youthful Offenders Act since burglary carries punishment provided by law of life imprisonment. 1984 Op. Atty Gen, No. 84‑75, p. 190.

NOTES OF DECISIONS

In general 1

Child 4

Construction with other statutes 2

Expungement of record 3

1. In general

There was no denial of due process for those convicted of safecracking to be excluded from consideration for sentencing under Youthful Offender Act. Stockton v. Leeke (S.C. 1977) 269 S.C. 459, 237 S.E.2d 896. Constitutional Law 3741

Seventeen‑year‑old minor who pled guilty to 3 indictments charging possession and distribution of heroin was properly tried in general sessions court where county had no Family Court at time of trial, and said minor waived any jurisdictional objection on basis of age by failing to assert alleged defect (i.e. that minor was 16 years old at time offense was committed) prior to entering guilty pleas. Shedden v. State (S.C. 1975) 265 S.C. 334, 218 S.E.2d 421.

Quoted in Creel v. State (S.C. 1974) 262 S.C. 558, 206 S.E.2d 825.

District court properly considered defendant’s convictions under South Carolina’s Youthful Offender Act in designating defendant a career offender, as defendant’s state convictions were adult convictions, for which defendant received and served an adult sentence. U.S. v. Brown (C.A.4 (S.C.) 2009) 324 Fed.Appx. 231, 2009 WL 1114074, Unreported, post‑conviction relief denied 2011 WL 825719. Sentencing And Punishment 1292

2. Construction with other statutes

A youthful offender convicted of possession with intent to distribute crack cocaine is not precluded from receiving a sentence under the Youthful Offender Act (YOA), even though the YOA permits the trial judge to suspend a sentence and grant probation while the crack statute prohibits suspension and probation. Since the legislature has specifically excluded YOA sentences for certain offenses ‑ convictions which carry a sentence of less than one year or a maximum sentence of death or life imprisonment as set forth in Section 24‑19‑10(f), and armed robbery as set forth in Section 16‑11‑330(1) ‑ it can be inferred that the legislature intended the YOA to apply to youthful offenders guilty of all other offenses. Although the legislature has provided for a mandatory minimum sentence for possession with intent to distribute crack cocaine, there is no conflict between the crack statute and the YOA since a YOA sentence is not specifically excluded by the crack statute. State v. Burton (S.C. 1990) 301 S.C. 305, 391 S.E.2d 583.

3. Expungement of record

Statutory provision governing expungement of the record of a conviction as a youthful offender requires only that a person be convicted as a youthful offender; sentencing as an adult does not render the person ineligible. Gay v. Ariail (S.C. 2009) 381 S.C. 341, 673 S.E.2d 418. Infants 3187

Defendant who pleaded guilty to assault and battery of a high and aggravated nature (ABHAN) when he was 22 years old was convicted as a youthful offender and, therefore, was eligible to apply for expungement of the record of his conviction, even though defendant was sentenced as an adult, given that defendant had no other convictions; defendant was 17 but less than 25 years of age at the time of the conviction, and the conviction was for a misdemeanor offense that was not a violent crime. Gay v. Ariail (S.C. 2009) 381 S.C. 341, 673 S.E.2d 418. Infants 3187

4. Child

South Carolina state court conviction that defendant received at age 17, pursuant to Youthful Offender Act (YOA), could serve as a predicate offense for determining his career offender status, since under the conviction he was considered an adult, rather than a juvenile; YOA defined “child” as an individual under the age of 17 and granted family court exclusive jurisdiction over such offenses, and defendant was aged 17 at the time of conviction and had been sentenced to maximum six‑year term of imprisonment for the crime. U.S. v. Crumblin (C.A.4 (S.C.) 2011) 441 Fed.Appx. 180, 2011 WL 3207362, Unreported, certiorari denied 132 S.Ct. 1037, 565 U.S. 1127, 181 L.Ed.2d 763. Sentencing and Punishment 1291

**SECTION 24‑19‑20.** Youthful Offender Division created in Department of Corrections; staff.

There is hereby created within the Department of Corrections a Youthful Offender Division. The division shall be staffed by appointees and designees of the Director of the Department of Corrections. The staff members shall be delegated such administrative duties and responsibilities as may be required to carry out the purpose of this chapter.

HISTORY: 1962 Code Section 55‑391; 1968 (55) 3031; 1993 Act No. 181, Section 450.

Library References

Infants 69(3), 223, 271 to 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 304 to 305, 307 to 308, 310, 370 to 379.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Criminal Law: Youthful Offenders. 27 S.C. L. Rev. 363.

NOTES OF DECISIONS

In general 1

1. In general

Cited in McLamore v State (1972) 257 SC 413, 186 SE2d 250, cert den 409 US 934, 34 L Ed 2d 189, 93 S Ct 240. Bethea v. State (S.C. 1974) 262 S.C. 255, 204 S.E.2d 12.

**SECTION 24‑19‑30.** Duties of Division generally.

The division shall consider problems of treatment and correction; shall consult with and make recommendations to the director with respect to general treatment and correction policies and procedures for committed youthful offenders, and recommend orders to direct the release of youthful offenders conditionally under supervision and the unconditional discharge of youthful offenders; and take such further action and recommend such other orders to the director as may be necessary or proper to carry out the purpose of this chapter.

HISTORY: 1962 Code Section 55‑393; 1968 (55) 3031; 1993 Act No. 181, Section 451.

Library References

Infants 69(3), 223, 271 to 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 304 to 305, 307 to 308, 310, 370 to 379.

**SECTION 24‑19‑40.** Adoption of rules.

The division shall adopt such rules as the South Carolina Department of Corrections approves and promulgate them as they apply directly or indirectly to its procedure.

HISTORY: 1962 Code Section 55‑394; 1968 (55) 3031; 1993 Act No. 181, Section 452.

**SECTION 24‑19‑50.** Powers of courts upon conviction of youthful offenders.

In the event of a conviction of a youthful offender the court may:

(1) suspend the sentence and place the youthful offender on probation;

(2) release the youthful offender to the custody of the division before sentencing for an observation and evaluation period of not more than sixty days. The observation and evaluation must be conducted by the Reception and Evaluation Center operating under joint agreement between the Department of Vocational Rehabilitation and the Department of Corrections and the findings and recommendations for sentencing must be returned with the youthful offender to the court for sentencing;

(3) if the offender is under the age of twenty‑one, without his consent, sentence the youthful offender indefinitely to the custody of the department for treatment and supervision pursuant to this chapter until discharged by the division, the period of custody not to exceed six years. If the offender is twenty‑one years of age but less than twenty‑five years of age, he may be sentenced in accordance with this item if he consents in writing;

(4) if the court finds that the youthful offender will not derive benefit from treatment, may sentence the youthful offender under any other applicable penalty provision. The youthful offender must be placed in the custody of the department;

(5) not sentence a youthful offender more than once under this chapter.

HISTORY: 1962 Code Section 55‑395; 1968 (55) 3031; 1996 Act No. 441, Section 5.

Library References

Infants 69, 223.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 303 to 311.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 26, Youthful Offender Act Release.

LAW REVIEW AND JOURNAL COMMENTARIES

Penal Incarceration and Cruel and Unusual Punishment. 25 S.C. L. Rev. 579.

Sentencing. 24 S.C. L. Rev. 523.

Attorney General’s Opinions

The statutory provisions with respect to the sentencing of youthful offenders are obligatory upon sentencing courts and an individual sentenced pursuant to the provision (1962 Code Section 55‑395(c)) [1976 Code Section 24‑19‑50] setting up an indeterminate sentencing procedure cannot receive a sentence for a definite term. 1975‑76 Op. Atty Gen, No. 285, p 97.

NOTES OF DECISIONS

In general 1

Sentence as adult 4

Sentence to department for treatment and supervision 2

Sentence under other applicable penalty provision 3

1. In general

Defendant, who is twenty‑one years or more at time of conviction of armed robbery, may not be sentenced under the Youthful Offenders Act even though he was twenty years old when crime was committed. State v. Cutler (S.C. 1980) 274 S.C. 376, 264 S.E.2d 420. Infants 3036(4)

Defendant who was 16 years of age at time of armed robbery but turned 17 prior to final disposition of the charge should not have been sentenced as “youthful offender” under this section but should have been dealt with under Section 14‑21‑620 dealing with “children.” State v. England (S.C. 1978) 271 S.C. 129, 245 S.E.2d 608. Infants 2958

Applied in Herring v. State (S.C. 1974) 262 S.C. 597, 206 S.E.2d 885.

The effect of the enactment of this section was to provide alternative methods of sentencing youthful offenders, leaving the decision as to its application in each case to the discretion of the trial judge. Powell v. State (S.C. 1974) 262 S.C. 592, 206 S.E.2d 883.

This section grants to the trial judge a broad discretion in determining under which subsection sentence will be imposed. Powell v. State (S.C. 1974) 262 S.C. 592, 206 S.E.2d 883.

The trial judge has complete discretion to determine which subsection of this section is the proper sentence for the convicted youthful offender. Creel v. State (S.C. 1974) 262 S.C. 558, 206 S.E.2d 825.

When a defendant between the ages of 17 and 25 is convicted he is before the court for sentencing under this chapter. He must be sentenced in accordance with this section and cannot be sentenced in any other fashion. Creel v. State (S.C. 1974) 262 S.C. 558, 206 S.E.2d 825. Infants 3035; Infants 3036(4)

The absence of a request for sentencing under this chapter by defense counsel has no effect upon the validity of the defendant’s sentence because the statute requires that he be considered as a youthful offender by the trial judge. Creel v. State (S.C. 1974) 262 S.C. 558, 206 S.E.2d 825. Infants 3037

The fact that one youthful offender is sentenced pursuant to this chapter and another offender is not accorded its benefits does not give rise to a violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. Bethea v. State (S.C. 1974) 262 S.C. 255, 204 S.E.2d 12.

This section does not require that specific factual findings with respect to grant or denial of sentence thereunder be made a part of the record. Bethea v. State (S.C. 1974) 262 S.C. 255, 204 S.E.2d 12. Criminal Law 1086.13

2. Sentence to department for treatment and supervision

Circuit Court has no discretion to sentence youthful offender to the department for treatment and supervision for an determinate term; treatment and ultimate discharge of youthful offender committed to Youthful Offender Division of Department of Corrections rests with Division. Craft v. State (S.C. 1984) 281 S.C. 205, 314 S.E.2d 330. Infants 3135; Infants 3157

Circuit Court is required to sentence youthful offender to the department for treatment and supervision to indefinite term not to exceed 6 years or maximum term prescribed if sentenced as adult, whichever is less; Circuit Court’s direction that youthful offender serve “indeterminate term not to exceed 2 years” is therefore merely recommendation to Youthful Offender Division that defendant not be held beyond 2 years. Craft v. State (S.C. 1984) 281 S.C. 205, 314 S.E.2d 330. Infants 3041; Infants 3043

3. Sentence under other applicable penalty provision

This section does not require the trial judge, in sentencing under under other applicable penalty provision, to make an extended record on the issue of whether or not one should be sentenced under this chapter. There is no requirement that specific factual findings be made a part of the record. Nor is there any requirement for observation and evaluation. Ballard v State (1972) 258 SC 91, 187 SE2d 224. Powell v State (1974) 262 SC 592, 206 SE2d 883.

Defendant’s prior conviction for possession with intent to distribute crack cocaine, in violation of South Carolina law, was a “serious drug offense” punishable by possible term of imprisonment of 10 years or more, under the Armed Career Criminal Act (ACCA), notwithstanding that defendant was sentenced under the South Carolina’s Youthful Offender Act (YOA); although the YOA contained provision permitting sentencing court to commit youthful offenders to an indefinite period of treatment not to exceed six years, it also stated that the court could sentence the offender under any other applicable penalty provision, the YOA gave the sentencing court discretion to employ one of many sentencing alternatives, and defendant could have received a 15‑year prison sentence for his prior offense. U.S. v. Williams (C.A.4 (S.C.) 2007) 508 F.3d 724, certiorari denied 128 S.Ct. 2501, 553 U.S. 1067, 171 L.Ed.2d 791, post‑conviction relief denied 2009 WL 2762502, vacated and remanded 396 Fed.Appx. 951, 2010 WL 3760015. Sentencing And Punishment 1292

While an explicit finding that the offender would not benefit from Youthful Offender treatment is not a prerequisite to imposition of sentence under other applicable penalty provision, the better practice is to make an explicit finding for the record that the defendant will receive no benefit from Youthful Offender treatment. Bell v. Leeke (S.C. 1976) 266 S.C. 563, 225 S.E.2d 188. Infants 3039

The decision or finding of the trial judge that the defendant will receive no benefit from youthful offender treatment is a discretionary one and may appear explicitly, or implicitly, from the imposition of sentence under other penalty provisions. Powell v. State (S.C. 1974) 262 S.C. 592, 206 S.E.2d 883.

While the better practice is to make an explicit finding for the record that the defendant will receive no benefit from youthful offender treatment, such explicit finding is not a legal prerequisite to the imposition of sentence pursuant to other applicable penalty provision. Powell v. State (S.C. 1974) 262 S.C. 592, 206 S.E.2d 883.

This section does not make it obligatory upon the court to specifically find that a youthful offender will not derive benefit from treatment before the court may impose sentence under other applicable penalty provisions. Ballard v. State (S.C. 1972) 258 S.C. 91, 187 S.E.2d 224.

4. Sentence as adult

Sentence of 10 years, suspended upon service of 7 years, with 5 years probation upon 23 year old defendant convicted of assault and battery of a high and aggravated nature constituted implicit finding that defendant was not suitable person for sentencing as youthful offender. State v. Brewington (S.C. 1976) 267 S.C. 97, 226 S.E.2d 249. Infants 3039

Sentencing of 19 year old defendant to “be confined in the State Penitentiary for a period nine (9) years with the direction (he) be confined in the facility of the Youthful Offender until (he) reached (his) twenty‑third birthday” did not constitute implicit finding that defendant would benefit from Youthful Offender treatment requiring that he should have been sentenced for an indeterminate period not to exceed 6 years; rather, such sentence is a finding that the trial judge did not think that the defendant would benefit from Youthful Offender treatment and that he should be sentenced as an adult; direction as to the place of confinement until defendant reached his twenty‑third birthday was merely precatory and not mandatory upon the Department of Corrections. Bell v. Leeke (S.C. 1976) 266 S.C. 563, 225 S.E.2d 188.

In sentencing a youthful offender as an adult, judge was not required to state his reasons in so exercising his discretion; sentence showed implicitly the judge’s finding that appellant, who committed the crime of armed robbery while on probation for housebreaking, would not benefit by the treatment afforded under the Youthful Offender Act. Brown v. State (S.C. 1975) 265 S.C. 516, 220 S.E.2d 125, certiorari denied 96 S.Ct. 2657, 426 U.S. 939, 49 L.Ed.2d 392.

This section imposes no requirement that the trial judge state his reasons for sentencing a youthful offender as an adult or that an explicit finding be made thereabout. Powell v. State (S.C. 1974) 262 S.C. 592, 206 S.E.2d 883.

South Carolina state court conviction that defendant received at age 17, pursuant to Youthful Offender Act (YOA), could serve as a predicate offense for determining his career offender status, since under the conviction he was considered an adult, rather than a juvenile; YOA defined “child” as an individual under the age of 17 and granted family court exclusive jurisdiction over such offenses, and defendant was aged 17 at the time of conviction and had been sentenced to maximum six‑year term of imprisonment for the crime. U.S. v. Crumblin (C.A.4 (S.C.) 2011) 441 Fed.Appx. 180, 2011 WL 3207362, Unreported, certiorari denied 132 S.Ct. 1037, 565 U.S. 1127, 181 L.Ed.2d 763. Sentencing and Punishment 1291

**SECTION 24‑19‑60.** Institutions for treatment of youthful offenders.

Youthful offenders shall undergo treatment in minimum security institutions, including training schools, hospitals, farms, forestry and other camps, including vocational training facilities and other institutions and agencies that will provide the essential varieties of treatment.

The director, as far as is advisable and necessary, shall designate, set aside and adopt institutions and agencies under the control of the department and the division for the purpose of carrying out the objectives of this chapter. The director may further maintain a cooperative program with the Department of Vocational Rehabilitation involving the operation of reception and evaluation centers, utilizing funds and staffing services of the department which are appropriate for matching with Federal Vocational Rehabilitation funds.

Insofar as practical and to the greatest degree possible, such institutions, facilities and agencies shall be used only for the treatment of committed youthful offenders, and such youthful offenders shall be segregated from other offenders, and classes of committed youthful offenders shall be segregated according to their needs for treatment.

HISTORY: 1962 Code Section 55‑396; 1968 (55) 3031; 1993 Act No. 181, Section 453.

CROSS REFERENCES

Constitutional provision for separate confinement of juvenile offenders, see SC Const, Art 12, Section 3.

Library References

Infants 69, 223, 271 to 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 303 to 311, 370 to 379.

**SECTION 24‑19‑70.** Facilities for Division provided by Department.

Facilities for the Division are to be provided from facilities of the Department.

HISTORY: 1962 Code Section 55‑397; 1968 (55) 3031.

Library References

Infants 271 to 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 307, 370 to 379.

**SECTION 24‑19‑80.** Reception and evaluation centers.

The director may establish agreements with the Department of Vocational Rehabilitation for the operation of reception and evaluation centers. The reception and evaluation centers shall make a complete study of each committed youthful offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The reception and evaluation center shall forward to the director and to the division a report of its findings with respect to the youthful offender and its recommendations as to his treatment. At least one member of the division shall, as soon as practicable after commitment, interview the youthful offender, review all reports concerning him and make such recommendations to the director and to the division as may be indicated.

HISTORY: 1962 Code Section 55‑398; 1968 (55) 3031; 1993 Act No. 181, Section 454.

CROSS REFERENCES

Constitutional provision for separate confinement of juvenile offenders, see SC Const, Art 12, Section 3.

Library References

Infants 271 to 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 307, 370 to 379.

Attorney General’s Opinions

A regional corrections center has the authority to fingerprint and photograph all individuals arrested and committed to the custody of the center. 1975‑76 Op. Atty Gen, No. 4530, p 393.

**SECTION 24‑19‑90.** Director’s options upon receiving report and recommendations from Reception and Evaluation Center and members of Division.

On receipt of the report and recommendations from the Reception and Evaluation Center and from the members of the division, the director may:

(a) recommend to the division that the committed youthful offender be released conditionally under supervision; or

(b) allocate and direct the transfer of the committed youthful offender to an agency or institution for treatment; or

(c) order the committed youthful offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public.

HISTORY: 1962 Code Section 55‑399; 1968 (55) 3031; 1993 Act No. 181, Section 455.

Library References

Infants 271 to 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 307, 370 to 379.

**SECTION 24‑19‑100.** Transfer of youthful offenders.

The director may transfer at any time a committed youthful offender from one agency or institution to any other agency or institution.

HISTORY: 1962 Code Section 55‑400; 1968 (55) 3031; 1993 Act No. 181, Section 456.

Library References

Infants 277.

Westlaw Topic No. 211.

C.J.S. Infants Section 375.

**SECTION 24‑19‑110.** Procedure for conditional release of youthful offenders; search and seizure; fee; victim notification.

(A) The division may at any time after reasonable notice to the director release conditionally under supervision a committed youthful offender. Before a youthful offender may be conditionally released, the youthful offender must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the youthful offender’s person, any vehicle the youthful offender owns or is driving, and any of the youthful offender’s possessions by:

(1) his supervisory agent;

(2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(3) any other law enforcement officer. A youthful offender must not be conditionally released by the division if he fails to comply with this provision.

However, a youthful offender who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not be required to agree to be subject to search or seizure, without a search warrant, with or without cause, of the youthful offender’s person, any vehicle the youthful offender owns or is driving, or any of the youthful offender’s possessions. When, in the judgment of the director, a committed youthful offender should be released conditionally under supervision, he shall so report and recommend to the division. The conditions of release must include the requirement that the youthful offender must permit the search or seizure, without a search warrant, with or without cause, of the youthful offender’s person, any vehicle the youthful offender owns or is driving, and any of the youthful offender’s possessions by:

(1) his supervisory agent;

(2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(3) any other law enforcement officer.

However, the conditions of release of a youthful offender who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the youthful offender agree to be subject to search or seizure, without a search warrant, with or without cause, of the youthful offender’s person, any vehicle the youthful offender owns or is driving, or any of the youthful offender’s possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure conducted pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole or probation or that the individual is currently subject to the provisions of his conditional release. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this subsection, he is subject to discipline pursuant to the employing agency’s policies and procedures.

(B) The division may regularly assess a reasonable fee to be paid by the youthful offender who is on conditional release to offset the cost of his supervision.

(C) The division may discharge a committed youthful offender unconditionally at the expiration of one year from the date of conditional release.

(D) The division must notify a victim registered pursuant to Article 15, Chapter 3, Title 16 before conditionally releasing or unconditionally discharging a youthful offender. The division has the authority to deny conditional release and unconditional discharge based upon information received from the victim as to the suitability of the release.

HISTORY: 1962 Code Section 55‑400.1; 1968 (55) 3031; 1980 Act No. 634; 1993 Act No. 181, Section 457; 2010 Act No. 151, Section 5, eff April 28, 2010; 2010 Act No. 273, Section 33, eff June 2, 2010.

Code Commissioner’s Note

At the direction of the Code Commissioner the subsection identifiers were added to accommodate the amendment made by 2010 Act No. 273, Section 33.

Editor’s Note

2010 Act No. 151, Sections 2 and 16, provide:

“SECTION 2. It is the intent of the General Assembly of South Carolina to provide law enforcement officers with the statutory authority to reduce recidivism rates of probationers and parolees, apprehend criminals, and protect potential victims from criminal enterprises.”

“SECTION 16. In any instance in which a law enforcement officer has failed to make the reports necessary to the State Law Enforcement Division for warrantless searches, then in the absence of a written policy by the employing agency enforcing the reporting requirements, the otherwise applicable state‑imposed, one‑day suspension without pay applies.”

Effect of Amendment

The first 2010 amendment rewrote the section.

The second 2010 amendment inserted subsection (D) relating to victim notification.

Library References

Infants 276.

Westlaw Topic No. 211.

C.J.S. Infants Section 374.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 26, Youthful Offender Act Release.

LAW REVIEW AND JOURNAL COMMENTARIES

Sentencing. 24 S.C. L. Rev. 523.

NOTES OF DECISIONS

In general 1

1. In general

Statutory scheme of Youthful Offender Act (YOA) envisions a youthful offender’s continued service of a YOA sentence beyond his initial, possibly temporary, conditional release. State v. Proctor (S.C.App. 2001) 345 S.C. 299, 546 S.E.2d 673. Infants 3049(3)

**SECTION 24‑19‑120.** Time for release of youthful offenders.

(A) A youthful offender shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

(B) The division must notify a victim registered pursuant to Article 15, Chapter 3, Title 16 before conditionally releasing or unconditionally discharging a youthful offender.

HISTORY: 1962 Code Section 55‑400.2; 1968 (55) 3031; 2010 Act No. 273, Section 34, eff June 2, 2010.

Effect of Amendment

The 2010 amendment added the subsection identifiers and added subsection (B) relating to notification to a registered victim.

CROSS REFERENCES

Administrative monitoring when fines outstanding, fee, see Section 24‑21‑100.

Library References

Infants 278.

Westlaw Topic No. 211.

C.J.S. Infants Section 376.

**SECTION 24‑19‑130.** Revocation or modification of orders of Division.

The Division may revoke or modify any of its previous orders respecting a committed youthful offender except an order of unconditional discharge.

HISTORY: 1962 Code Section 55‑400.3; 1968 (55) 3031.

Library References

Infants 271 to 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 307, 370 to 379.

**SECTION 24‑19‑140.** Supervisory agents.

Committed youthful offenders permitted to remain at liberty under supervision or conditionally released shall be under the supervision of supervisory agents appointed by the Division. The Division is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors. The powers and duties of voluntary supervisory agents and sponsors shall be limited and defined by regulations adopted by the Division.

HISTORY: 1962 Code Section 55‑400.4; 1968 (55) 3031.

Library References

Infants 271 to 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 307, 370 to 379.

**SECTION 24‑19‑150.** Further treatment of youthful offenders; return to custody.

If, at any time before the unconditional discharge of a committed youthful offender, the Division is of the opinion that such youthful offender will be benefited by further treatment in an institution or other facility any member of the Division may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by an appointed supervisory agent, or any policeman. Upon return to custody, such youthful offender shall be given an opportunity to appear before the Division or a member thereof. The Division may then or at its discretion revoke the order of conditional release.

HISTORY: 1962 Code Section 55‑400.5; 1968 (55) 3031.

Library References

Infants 271 to 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 307, 370 to 379.

**SECTION 24‑19‑160.** Courts’ powers not affected; jurisdiction of Department of Probation, Parole and Pardon Services.

Nothing in this chapter limits or affects the power of a court to suspend the imposition or execution of a sentence and place a youthful offender on probation.

Nothing in this chapter may be construed to amend, repeal, or affect the jurisdiction of the Department of Probation, Parole, and Pardon Services or the Probation, Parole, and Pardon Services Board. For purposes of community supervision or parole, a sentence pursuant to Section 24‑19‑50(e) shall be considered a sentence for six years.

HISTORY: 1962 Code Section 55‑400.6; 1968 (55) 3031; 1988 Act No. 480, Section 17; 1993 Act No. 181, Section 458; 1995 Act No. 83, Section 37.

Library References

Infants 271 to 281.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 307, 370 to 379.