CHAPTER 21

Probation, Parole and Pardon

ARTICLE 1

Board of Probation, Parole, and Pardon Services

**SECTION 24‑21‑5.** Definitions.

 As used in this chapter:

 (1) “Administrative monitoring” means a form of monitoring by the department beyond the end of the term of supervision in which the only remaining condition of supervision not completed is the payment of financial obligations. Under administrative monitoring, the only condition of the monitoring shall be the requirement that reasonable progress be made toward the payment of financial obligations. The payment of monitoring mandated fees shall continue. When an offender is placed on administrative monitoring, the offender shall register with the department’s representative in the offender’s county, notify the department of the offender’s current address each quarter, and make payments on financial obligations owed, until the financial obligations are paid in full or a consent order of judgment is filed. Written notice of petitions for civil contempt as set forth in Section 24‑21‑100, scheduled hearings or proceedings, or any other event or modification associated with administrative monitoring must be given by the department by depositing the notice in the United States mail with postage prepaid addressed to the person at the address contained in the records of the department. The giving of notice by mail is complete ten days after the deposit of the notice. A certificate by the director of the department or the director’s designee that the notice has been sent as required in this section is presumptive proof that the requirements as to notice of petitions for civil contempt as set forth in Section 24‑21‑100, scheduled hearings or proceedings, or any other event or modification associated with administrative monitoring have been met even if the notice has not been received by the offender. If an offender fails to appear for the civil contempt proceeding, the court may issue a bench warrant for the offender’s arrest for failure to appear, or the court may proceed in the offender’s absence and issue a bench warrant along with an order imposing a term of confinement as set forth in Section 24‑21‑100.

 (2) “Criminal risk factors” mean characteristics and behaviors that, when addressed or changed, affect a person’s risk for committing crimes. The characteristics may include, but not be limited to, the following risk and criminogenic need factors: antisocial behavior patterns; criminal personality; antisocial attitudes, values, and beliefs; poor impulse control; criminal thinking; substance abuse; criminal associates; dysfunctional family or marital relationships; or low levels of employment or education.

 (3) “Department” means the Department of Probation, Parole and Pardon Services.

 (4) “Evidence‑based practices” mean supervision policies, procedures, and practices that scientific research demonstrates reduce recidivism among individuals on probation, parole, or post‑correctional supervision.

 (5) “Financial obligations” mean fines, fees, and restitution either ordered by the court or statutorily imposed.

 (6) “Hearing officer” means an employee of the department who conducts preliminary hearings to determine probable cause on alleged violations committed by an individual under the supervision of the department and as otherwise provided by law. This includes, but is not limited to, violations concerning probation, parole, and community supervision. The hearing officer also conducts preliminary hearings and final revocation hearings for supervised furlough, youthful offender conditional release cases, and such other hearings as required by law.

HISTORY: 2010 Act No. 273, Section 45, eff January 1, 2011; 2016 Act No. 154 (H.3545), Section 5, eff April 21, 2016.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date.”

Effect of Amendment

2016 Act No. 154, Section 5, in (1), added the text beginning with “Written notice of petitions for civil contempt” and made gender neutral changes.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 27.50, Administrative Monitoring.

**SECTION 24‑21‑10.** Department of Probation, Parole and Pardon Services; Board of Probation, Parole and Pardon Services; board members; term; appointment; filing vacancies.

 (A) The department is governed by its director. The director must be appointed by the Governor with the advice and consent of the Senate. To qualify for appointment, the director must have a baccalaureate or more advanced degree from an institution of higher learning that has been accredited by a regional or national accrediting body, which is recognized by the Council for Higher Education Accreditation and must have at least ten years of training and experience in one or more of the following fields: parole, probation, corrections, criminal justice, law, law enforcement, psychology, psychiatry, sociology, or social work.

 (B) The Board of Probation, Parole and Pardon Services is composed of seven members. The terms of office of the members are for six years. Each of the seven members must be appointed from each of the congressional districts. At least one appointee shall have at least five years of work or volunteer experience in one or more of the following fields: parole, probation, corrections, criminal justice, law, law enforcement, psychology, psychiatry, sociology, or social work. Vacancies must be filled by gubernatorial appointment with the advice and consent of the Senate for the unexpired term. If a vacancy occurs during a recess of the Senate, the Governor may fill the vacancy by appointment for the unexpired term pending the consent of the Senate, provided the appointment is received for confirmation on the first day of the Senate’s next meeting following the vacancy. A chairman must be elected annually by a majority of the membership of the board. The chairman may serve consecutive terms.

 (C) The Governor shall deliver an appointment within sixty days of the expiration of a term, if an individual is being reappointed, or within ninety days of the expiration of a term, if an individual is an initial appointee. If a board member who is being reappointed is not confirmed within sixty days of receipt of the appointment by the Senate, the appointment is considered rejected. For an initial appointee, if confirmation is not made within ninety days of receipt of the appointment by the Senate, the appointment is deemed rejected. The Senate may by resolution extend the period after which an appointment is considered rejected. If the failure of the Senate to confirm an appointee would result in the lack of a quorum of board membership, the seat for which confirmation is denied or rejected shall not be considered when determining if a quorum of board membership exists.

 (D) Within ninety days of a parole board member’s appointment by the Governor and confirmation by the Senate, the board member must complete a comprehensive training course developed by the department using training components consistent with those offered by the National Institute of Corrections or the American Probation and Parole Association. This training course must include classes regarding the following:

 (1) the elements of the decision making process, through the use of evidence‑based practices for determining offender risk, needs and motivations to change, including the actuarial assessment tool that is used by the parole agent;

 (2) security classifications as established by the Department of Corrections;

 (3) programming and disciplinary processes and the department’s supervision, case planning, and violation process;

 (4) the dynamics of criminal victimization; and

 (5) collaboration with corrections related stakeholders, both public and private, to increase offender success and public safety.

 The department must promulgate regulations setting forth the minimum number of hours of training required for the board members and the specific requirements of the course that the members must complete.

 (E)(1) Each parole board member is also required to complete a minimum of eight hours of training annually, which shall be provided for in the department’s annual budget. This annual training course must be developed using the training components consistent with those offered by the National Institute of Corrections or American Probation and Parole Association and must offer classes regarding:

 (a) a review and analysis of the effectiveness of the assessment tool used by the parole agents;

 (b) a review of the department’s progress toward public safety goals;

 (c) the use of data in decision making; and

 (d) any information regarding promising and evidence‑based practices offered in the corrections related and crime victim dynamics field.

 The department must promulgate regulations setting forth the specific criteria for the course that the members must complete.

 (2) If a parole board member does not fulfill the training as provided in this section, the Governor, upon notification, must remove that member from the board unless the Governor grants the parole board member an extension to complete the training, based upon exceptional circumstances.

 (F) The department must develop a plan that includes the following:

 (1) establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence‑based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions;

 (2) establishment of procedures for the department on the use of the validated assessment tool to guide the department, parole board, and agents of the department in determining supervision management and strategies for all offenders under the department’s supervision, including offender risk classification, and case planning and treatment decisions to address criminal risk factors and reduce offender risk of recidivism; and

 (3) establishment of goals for the department, which include training requirements, mechanisms to ensure quality implementation of the validated assessment tool, and safety performance indicators.

 (G) The director shall submit the plan in writing to the Sentencing Reform Oversight Committee no later than July 1, 2011. Thereafter, the department must submit an annual report to the Sentencing Reform Oversight Committee on its performance for the previous fiscal year and plans for the upcoming year. The department must collect and report all relevant data in a uniform format of both board decisions and field services and must annually compile a summary of past practices and outcomes.

HISTORY: 1962 Code Section 55‑551; 1952 Code Section 55‑551; 1942 Code Section 1038‑5; 1942 (42) 1456, 1463; 1946 (44) 1516; 1976 Act No. 509, Section 1; 1981 Act No. 100, Sections 1‑3; 1988 Act No. 480, Section 1; 1993 Act No. 181, Section 4; 1995 Act No. 7, Part I, Section 38; 2010 Act No. 273, Section 46, eff January 1, 2011; 2012 Act No. 223, Section 1, eff June 7, 2012; 2012 Act No. 279, Section 8, eff June 26, 2012.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date.”

2012 Act No. 279, Section 33, provides as follows:

“Due to the congressional redistricting, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires. Further, the inability to hold an election or to make an appointment due to judicial review of the congressional districts does not constitute a vacancy.”

Effect of Amendment

The 2010 amendment rewrote the section.

The 2012 amendments in subsection (B), substituted “Each of the seven members” for “Six of the seven members” and “At least one appointee” for “and one member must be appointed at large. The at‑large appointee”.

CROSS REFERENCES

Board training, department of probation, parole and pardon services, see S.C. Code of Regulations R. 130‑30.

Department of Probation, Parole and Pardon Services reorganized, see Section 1‑30‑85.

Funds generated by courts from fines and assessments to be allocated to programs established pursuant to this chapter, see Sections 14‑1‑206 to 14‑1‑208.

Head of Probation, Parole, and Pardon Services Board being ex officio voting member of Governor’s Committee on Criminal Justice, Crime and Delinquency, see Section 23‑4‑110.

Maintenance of a separate and restricted account, the funds in which shall be available to the General Assembly for appropriation to programs under this chapter, see Section 14‑1‑230.

Powers and duties of the Sentencing Reform Oversight Committee, see Section 24‑28‑30.

Powers of the governor regarding clemency, see SC Const, Art IV, Section 14.

Library References

Courts 55.

Pardon and Parole 55.

Westlaw Topic Nos. 106, 284.

C.J.S. Courts Sections 107 to 109.

C.J.S. Pardon and Parole Sections 45 to 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 24, Powers of the Governor.

S.C. Jur. Governor Section 36, Pardon and Parole.

S.C. Jur. Probation, Parole, and Pardon Section 3, Membership on the Board.

LAW REVIEW AND JOURNAL COMMENTARIES

Palacios, Go and sin no more: rationality and release decisions by parole boards. 45 S.C. L. Rev. 567 (Spring 1994).

Attorney General’s Opinions

The holding over of an incumbent for one year after the expiration of his term of office does not change the term of the successor, but merely shortens the tenure which the successor would subsequently serve. 1987 Op. Atty Gen, No. 87‑22, p 69.

An individual who is both a full‑time state employee and a member of the Board of Probation, Parole and Pardon Services would most probably be prohibited from receiving a hearing fee as a form of per diem. 1994 Op. Atty Gen, No. 94‑46, p. 104.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Evans v. Manning (S.C. 1950) 217 S.C. 10, 59 S.E.2d 341, certiorari denied 71 S.Ct. 79, 340 U.S. 851, 95 L.Ed. 623, rehearing denied 71 S.Ct. 205, 340 U.S. 894, 95 L.Ed. 648.

**SECTION 24‑21‑11.** Removal of director or member.

 The director and members of the board shall be subject to removal by the Governor pursuant to the provisions of Section 1‑3‑240.

HISTORY: 1981 Act No. 100, Section 4; 1993 Act No. 181, Section 460.

Library References

Courts 55.

Pardon and Parole 55.

Westlaw Topic Nos. 106, 284.

C.J.S. Courts Sections 107 to 109.

C.J.S. Pardon and Parole Sections 45 to 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 3, Membership on the Board.

**SECTION 24‑21‑12.** Compensation of board members.

 The members of the board shall draw no salaries, but each member shall be entitled to such per diem as may be authorized by law for boards, commissions, and committees, plus actual and necessary expenses incurred pursuant to the discharge of official duties.

HISTORY: 1981 Act No. 100, Section 4; 1993 Act No. 181, Section 461.

Library References

Courts 55.

Pardon and Parole 55.

Westlaw Topic Nos. 106, 284.

C.J.S. Courts Sections 107 to 109.

C.J.S. Pardon and Parole Sections 45 to 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 3, Membership on the Board.

Attorney General’s Opinions

An individual who is both a full‑time state employee and a member of the Board of Probation, Parole and Pardon Services would most probably be prohibited from receiving a hearing fee as a form of per diem. 1994 Op. Atty Gen, No. 94‑46, p. 104.

**SECTION 24‑21‑13.** Director to oversee department; development of written policies and procedures; board’s duty to consider cases for parole, etc.

 (A) It is the duty of the director to oversee, manage, and control the department. The director shall develop written policies and procedures for the following:

 (1) the supervising of offenders on probation, parole, community supervision, and other offenders released from incarceration prior to the expiration of their sentence, which supervising shall be based on a structured decision‑making guide designed to enhance public safety, which uses evidence‑based practices and focuses on considerations of offenders’ criminal risk factors;

 (2) the consideration of paroles and pardons and the supervision of offenders in the community supervision program and other offenders released from incarceration prior to the expiration of their sentence. The requirements for an offender’s participation in the community supervision program and an offender’s progress toward completing the program are to be decided administratively by the Department of Probation, Parole and Pardon Services. No inmate or future inmate shall have a “liberty interest” or an “expectancy of release” while in a community supervision program administered by the department;

 (3) the operation of community‑based correctional services and treatment programs; and

 (4) the operation of public work sentence programs for offenders as provided in item (1) of this subsection. This program also may be utilized as an alternative to technical revocations. The director shall establish priority programs for litter control along state and county highways. This must be included in the “public service work” program.

 (B) It is the duty of the board to consider cases for parole, pardon, and any other form of clemency provided for under law.

HISTORY: 1981 Act No. 100, Section 4; 1986 Act No. 462, Section 10; 1988 Act No. 480, Section 2; 1993 Act No. 181, Section 462; 1995 Act No. 83, Section 39; 2010 Act No. 273, Section 47, eff January 1, 2011.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date.”

Effect of Amendment

The 2010 amendment in subsection (A)(1) added the text at the end relating to a structured decision‑making guide, and in subsection (A)(3) inserted “services and treatment”.

CROSS REFERENCES

Workers’ compensation coverage for convicted persons under custody or supervision of the Department of Probation, Parole, and Pardon Services, see Section 42‑1‑505.

Library References

Courts 55.

Pardon and Parole 55.

Westlaw Topic Nos. 106, 284.

C.J.S. Courts Sections 107 to 109.

C.J.S. Pardon and Parole Sections 45 to 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 36, Pardon and Parole.

S.C. Jur. Probation, Parole, and Pardon Section 4, Powers and Duties of the Board.

LAW REVIEW AND JOURNAL COMMENTARIES

Palacios, Go and sin no more: rationality and release decisions by parole boards 5 S.C. L Rev 567 (Spring 1994).

Attorney General’s Opinions

A court would likely find that the SC Board of Paroles and Pardons may not conduct a re‑hearing and re‑vote simply because a member of the board desires to change his or her original vote. S.C. Op.Atty.Gen. (Nov. 4, 2010) 2010 WL 4982611.

NOTES OF DECISIONS

In general 1

1. In general

Sections 24‑21‑13, 24‑21‑60, 24‑21‑70 and 24‑21‑220, which assign responsibility for the management and control of the Department of Corrections and the Department of Parole and Community Corrections and provide for the general keeping of records on prisoners, do not create any special duty to guard members of the public against violent crimes by released prisoners. Although the information contained in prison records may be incidentally useful in many types of law enforcement, the purpose of keeping the records is not primarily to prevent the commission of crimes against individual citizens. Rayfield v. South Carolina Dept. of Corrections (S.C.App. 1988) 297 S.C. 95, 374 S.E.2d 910, certiorari denied 298 S.C. 204, 379 S.E.2d 133. Prisons 381

**SECTION 24‑21‑30.** Meetings; parole and pardon panels.

 (A) A person who commits a “no parole offense” as defined in Section 24‑13‑100 on or after the effective date of this section is not eligible for parole consideration, but must complete a community supervision program as set forth in Section 24‑21‑560 prior to discharge from the sentence imposed by the court. For all offenders who are eligible for parole, the board shall hold regular meetings, as may be necessary to carry out its duties, but at least four times each year, and as many extra meetings as the chairman, or the Governor acting through the chairman, may order. The board may preserve order at its meetings and punish any disrespect or contempt committed in its presence. The chairman may direct the members of the board to meet as three‑member panels to hear matters relating to paroles and pardons as often as necessary to carry out the board’s responsibilities. Membership on these panels shall be periodically rotated on a random basis by the chairman. At the meetings of the panels, any unanimous vote shall be considered the final decision of the board, and the panel may issue an order of parole with the same force and effect of an order issued by the full board pursuant to Section 24‑21‑650. Any vote that is not unanimous shall not be considered as a decision of the board, and the matter shall be referred to the full board which shall decide it based on a vote of a majority of the membership.

 (B) The board may grant parole to an offender who commits a violent crime as defined in Section 16‑1‑60 which is not included as a “no parole offense” as defined in Section 24‑13‑100 on or after the effective date of this section by a two‑thirds majority vote of the full board. The board may grant parole to an offender convicted of an offense which is not a violent crime as defined in Section 16‑1‑60 or a “no parole offense” as defined in Section 24‑13‑100 by a unanimous vote of a three‑member panel or by a majority vote of the full board.

 Nothing in this subsection may be construed to allow any person who commits a “no parole offense” as defined in Section 24‑13‑100 on or after the effective date of this section to be eligible for parole.

 (C) The board shall conduct all parole hearings in cases that relate to a single victim on the same day.

 (D) Upon the request of a victim, the board may allow the victim and an offender to appear simultaneously before the board for the purpose of providing testimony.

HISTORY: 1962 Code Section 55‑553; 1952 Code Section 55‑553; 1942 Code Sections 3437, 3439; 1932 Code Sections 3437, 3439; Civ. C. ‘22 Sections 979, 981; Civ. C. ‘12 Sections 890, 892; 1906 (25) 14; 1981 Act No. 100 Section 5; 1995 Act No. 83, Section 40; 2004 Act No. 263, Section 13.

Library References

Pardon and Parole 23, 55.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30, 45 to 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 4, Powers and Duties of the Board.

LAW REVIEW AND JOURNAL COMMENTARIES

Palacios, Go and sin no more: rationality and release decisions by parole boards. 45 S.C. L. Rev. 567 (Spring 1994).

NOTES OF DECISIONS

In general 1

1. In general

In the absence of any statutory or other controlling provision, the common‑law rule that a majority of the whole parole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum. James v. South Carolina Dept. of Probation, Parole, and Pardon Services (S.C.App. 2008) 377 S.C. 564, 660 S.E.2d 288. Pardon And Parole 55.1

Hearing on prisoner’s request for parole conducted by five of seven parole board members did not deny prisoner of right to parole hearing; parole statutes did not require that parole requests be heard by full board, and statute governing parole for persons convicted of violent crime required two‑thirds majority vote of full board, and all five board members who heard prisoner’s appeal voted to deny parole. James v. South Carolina Dept. of Probation, Parole, and Pardon Services (S.C.App. 2008) 377 S.C. 564, 660 S.E.2d 288. Pardon And Parole 59

Cited in Evans v. Manning (S.C. 1950) 217 S.C. 10, 59 S.E.2d 341, certiorari denied 71 S.Ct. 79, 340 U.S. 851, 95 L.Ed. 623, rehearing denied 71 S.Ct. 205, 340 U.S. 894, 95 L.Ed. 648.

**SECTION 24‑21‑32.** Reentry supervision; revocation.

 (A) For purposes of this section, “release date” means the date determined by the South Carolina Department of Corrections on which an inmate is released from prison, based on the inmate’s sentence and all earned credits allowed by law.

 (B) Notwithstanding the provisions of this chapter, an inmate, who is not required to participate in a community supervision program pursuant to Article 6, Chapter 21, Title 24, shall be placed on reentry supervision with the department before the expiration of the inmate’s release date. Inmates who have been incarcerated for a minimum of two years shall be released to reentry supervision one hundred eighty days before their release date. For an inmate whose sentence includes probation, the period of reentry supervision is reduced by the term of probation.

 (C) The individual terms and conditions of reentry supervision shall be developed by the department using an evidence‑based assessment of the inmate’s needs and risks. An inmate placed on reentry supervision must be supervised by a probation agent of the department. The department shall promulgate regulations for the terms and conditions of reentry supervision. Until such time as regulations are promulgated, the terms and conditions shall be based on guidelines developed by the director.

 (D) If the department determines that an inmate has violated a term or condition of reentry supervision sufficient to revoke the reentry supervision, a probation agent must initiate a proceeding before a department administrative hearing officer. The proceeding must be initiated pursuant to a warrant or a citation describing the violations of the reentry supervision. No inmate arrested for violation of a term or condition of reentry supervision may be released on bond; however, he shall be credited with time served as set forth in Section 24‑13‑40 toward his release date. If the administrative hearing officer determines the inmate has violated a term or condition of reentry supervision, the hearing officer may impose other terms or conditions set forth in the regulations or department guidelines, and may continue the inmate on reentry supervision, or the hearing officer may revoke the inmate’s reentry supervision and the inmate shall be incarcerated up to one hundred eighty days, but the maximum aggregate time that the inmate shall serve on reentry supervision or for revocation of the reentry supervision shall not exceed an amount of time equal to the length of incarceration imposed by the court for the offense that the inmate was serving at the time of his initial reentry supervision. The decision of the administrative hearing officer on the reentry supervision shall be final and there shall be no appeal of his decision.

HISTORY: 2010 Act No. 273, Section 48, eff January 1, 2011.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date.”

CROSS REFERENCES

Reentry supervision, department of probation, parole and pardon services, see S.C. Code of Regulations R. 130‑40.

**SECTION 24‑21‑35.** Administrative recommendations available to victim prior to parole hearing.

 The Department of Probation, Parole and Pardon Services Board shall make its administrative recommendations available to a victim of a crime before it conducts a parole hearing for the perpetrator of the crime.

HISTORY: 2004 Act No. 263, Section 2.

Library References

Pardon and Parole 59.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Section 55.

**SECTION 24‑21‑40.** Record of proceedings.

 The Board shall keep a complete record of all its proceedings and hold it subject to the order of the Governor or the General Assembly.

HISTORY: 1962 Code Section 55‑554; 1952 Code Section 55‑554; 1942 Code Section 3435; 1932 Code Section 3435; Civ. C. ‘22 Section 977; Civ. C. ‘12 Section 888; 1906 (25) 14.

Library References

Pardon and Parole 23, 57.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30, 52 to 57.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 4, Powers and Duties of the Board.

**SECTION 24‑21‑50.** Hearings, arguments, and appearances by counsel or individuals.

 The board shall grant hearings and permit arguments and appearances by counsel or any individual before it at any such hearing while considering a case for parole, pardon, or any other form of clemency provided for under law. No inmate has a right of confrontation at the hearing.

HISTORY: 1962 Code Section 55‑555; 1952 Code Section 55‑555; 1942 Code Section 1038‑11; 1942 (42) 1456; 1946 (44) 1516; 1947 (45) 67; 1949 (46) 311; 1995 Act No. 83, Section 41.

Library References

Pardon and Parole 23, 59.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30, 55.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 4, Powers and Duties of the Board.

LAW REVIEW AND JOURNAL COMMENTARIES

Go and sin no more: Rationality and release decisions by parole boards. 5 S.C. L. Rev. 567 (Spring 1994).

Attorney General’s Opinions

One appearing before Probation, Parole and Pardon Board is not entitled as matter of constitutional right to have counsel appointed to represent him. 1962‑63 Op. Atty Gen, No. 1551, p 121.

NOTES OF DECISIONS

In general 1

1. In general

The recision without hearing of a prisoner’s parole by a state parole authority does not violate the prisoner’s right to due process of law under the Fourteenth Amendment, neither state law relating to parole nor the expectation resulting from the notification given to the prisoner that a parole release had been ordered in his case being sufficient to create a liberty interest within the meaning of the Amendment. Jago v. Van Curen, 1981, 102 S.Ct. 31, 454 U.S. 14, 70 L.Ed.2d 13.

**SECTION 24‑21‑55.** Hearing fee.

 The Department of Probation, Parole and Pardon Services shall receive compensation in an amount provided by the General Assembly in the annual general appropriations act.

HISTORY: 2002 Act No. 356, Section 1, Pt IV.A; 2012 Act No. 246, Section 2, eff June 18, 2012.

Effect of Amendment

The 2012 amendment substituted “compensation in an amount provided by the General Assembly in the annual appropriations act” for “a hearing fee under a plan approved by the Budget and Control Board”.

Library References

Pardon and Parole 23, 57.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30, 52 to 57.

**SECTION 24‑21‑60.** Cooperation of public agencies and officials; surveys.

 Each city, county, or state official or department shall assist and cooperate to further the objectives of this chapter. The board, the director of the department, and the probation agents may seek the cooperation of officials and departments and especially of the sheriffs, jailers, magistrates, police officials, and institutional officers. The director may conduct surveys of state correctional facilities, county jails, and camps and obtain information to enable the board to pass intelligently upon all applications for parole. The Director of the Department of Corrections and the wardens, jailers, sheriffs, supervisors, or other officers in whose control a prisoner may be committed must aid and assist the director and the probation agents in the surveys.

HISTORY: 1962 Code Section 55‑556; 1952 Code Section 55‑556; 1942 Code Section 1038‑13; 1942 (42) 1456; 1960 (51) 1917; 1988 Act No. 480, Section 3; 1991 Act No. 134, Section 1; 1993 Act No. 181, Section 463; 1995 Act No. 83, Section 42.

Library References

Pardon and Parole 23, 57.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30, 52 to 57.

NOTES OF DECISIONS

In general 1

1. In general

Sections 24‑21‑13, 24‑21‑60, 24‑21‑70 and 24‑21‑220, which assign responsibility for the management and control of the Department of Corrections and the Department of Parole and Community Corrections and provide for the general keeping of records on prisoners, do not create any special duty to guard members of the public against violent crimes by released prisoners. Although the information contained in prison records may be incidentally useful in many types of law enforcement, the purpose of keeping the records is not primarily to prevent the commission of crimes against individual citizens. Rayfield v. South Carolina Dept. of Corrections (S.C.App. 1988) 297 S.C. 95, 374 S.E.2d 910, certiorari denied 298 S.C. 204, 379 S.E.2d 133. Prisons 381

**SECTION 24‑21‑70.** Records of prisoners.

 The Director of the Department of Corrections, when a prisoner is confined in the State Penitentiary, the sheriff of the county, when a person is confined in the county jail, and the county supervisor or chairman of the governing body of the county if there is no county supervisor, when a prisoner is confined upon a work detail of a county, must keep a record of the industry, habits, and deportment of the prisoner, as well as other information requested by the board or the director and furnish it to them upon request.

HISTORY: 1962 Code Section 55‑557; 1952 Code Section 55‑557; 1942 Code Section 1038‑13; 1942 (42) 1456; 1960 (51) 1917; 1988 Act No. 480, Section 4; 1991 Act No. 134, Section 2; 1993 Act No. 181, Section 464.

Library References

Prisons 4.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 7 to 9, 50 to 60, 63, 67 to 71, 74 to 80, 91 to 123, 133, 139.

LAW REVIEW AND JOURNAL COMMENTARIES

Palacios, Go and sin no more: rationality and release decisions by parole boards. 45 S.C. L. Rev. 567 (Spring 1994).

NOTES OF DECISIONS

In general 1

1. In general

Sections 24‑21‑13, 24‑21‑60, 24‑21‑70 and 24‑21‑220, which assign responsibility for the management and control of the Department of Corrections and the Department of Parole and Community Corrections and provide for the general keeping of records on prisoners, do not create any special duty to guard members of the public against violent crimes by released prisoners. Although the information contained in prison records may be incidentally useful in many types of law enforcement, the purpose of keeping the records is not primarily to prevent the commission of crimes against individual citizens. Rayfield v. South Carolina Dept. of Corrections (S.C.App. 1988) 297 S.C. 95, 374 S.E.2d 910, certiorari denied 298 S.C. 204, 379 S.E.2d 133. Prisons 381

**SECTION 24‑21‑80.** Probationers and parolees to pay supervision fee; intensive supervision fee; hardship exemption; delinquencies; substitution of public service.

 An adult placed on probation, parole, or community supervision shall pay a regular supervision fee toward offsetting the cost of his supervision for so long as he remains under supervision. The regular supervision fee must be determined by the Department of Probation, Parole, and Pardon Services based upon the ability of the person to pay. The fee must be not less than twenty dollars nor more than one hundred dollars per month. The fee is due on the date of sentencing or as soon as determined by the department and each subsequent anniversary for the duration of the supervision period. The department shall remit from the fees collected an amount not to exceed the regular supervision fees collected during fiscal year 1992‑93 for credit to the State General Fund. All regular supervision fees collected in excess of the fiscal year 1992‑93 amount must be retained by the department, carried forward, and applied to the department’s operation. The payment of the fee must be a condition of probation, parole, or community supervision, and a delinquency of two months or more in making payments may operate as a revocation.

 If a probationer is placed under intensive supervision by a court of competent jurisdiction, or if the board places a parolee under intensive supervision, or if an inmate who is participating in the Supervised Furlough Program is placed under intensive supervision, or if a person participating in a community supervision program is placed under intensive supervision, the probationer, parolee, inmate, or community supervisee is required to pay not less than ten dollars nor more than thirty dollars each week for the duration of intensive supervision in lieu of the regular supervision fee. The intensive supervision fee must be determined by the department based upon the ability of the person to pay. Fees derived from persons under intensive supervision must be retained by the department, carried forward, and applied to the department’s operation. The department may exempt any individual supervised by the department on any community supervision program from the payment of a part or all of the yearly or weekly fee during any part or all of the supervision period only if the department determines that exceptional circumstances exist such that these payments work a severe hardship on the individual. Delinquencies of two months or more in payment of a reduced fee operates in the same manner as delinquencies for the full amount. The department may substitute public service employment for supervision fees when it considers the same to be in the best interest of the State and the individual.

HISTORY: 1980 Act No. 517, Part II, Section 6A; 1985 Act No. 201, Part II, Section 58A; 1988 Act No. 480, Section 5; 1993 Act No. 164, Part II, Section 26A; 1995 Act No. 83, Section 43.

CROSS REFERENCES

Conditions of probation, generally, see Section 24‑21‑430.

Order and conditions of parole, generally, see Section 24‑21‑650.

Library References

Costs 292.

Westlaw Topic No. 102.

C.J.S. Criminal Law Sections 1740, 1743.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 11, Fees and Costs.

S.C. Jur. Probation, Parole, and Pardon Section 11, Definition, Nature, and Purpose of Parole.

**SECTION 24‑21‑85.** Electronic monitoring fees.

 Every person placed on electronic monitoring must be assessed a fee to be determined by the Department of Probation, Parole and Pardon Services in accordance with Section 24‑21‑80, as long as he remains in the electronic monitoring program. The payment of the fee must be a condition of supervision of any program administered by the department and a delinquency of two months or more in making payments may operate as a revocation. All fees generated by this assessment must be retained by the department to support the electronic monitoring program and carried forward for the same purpose.

HISTORY: 2002 Act No. 356, Section 1, Pt IV.B.

Library References

Costs 292.

Westlaw Topic No. 102.

C.J.S. Criminal Law Sections 1740, 1743.

**SECTION 24‑21‑87.** Extradition and maintenance polygraph fees.

 (A) The department may charge offenders a fee based on the number of miles and length of time required to perform an extradition. The fee must be used to offset the cost of extradition. All unexpended revenues of this fee at year end must be retained and carried forward by the department and expended for the same purpose.

 (B) The department may charge a fee to offenders required to have maintenance polygraphs. This fee may not exceed the actual cost of the maintenance polygraph. All unexpended revenues of this fee at year end must be retained and carried forward by the department and expended for the same purpose.

HISTORY: 2008 Act No. 353, Section 2, Pt 15.B, eff July 1, 2009.

**SECTION 24‑21‑90.** Account and receipt for fee payments; deposit of funds.

 Each supervising agent shall keep an accurate account of the money he collects pursuant to Sections 24‑21‑80, 24‑23‑210(B), and 24‑23‑220 and shall give a receipt to the probationer and individual under supervision for each payment. Money collected must be forwarded to the board and deposited in the state treasury.

HISTORY: 1980 Act No. 517, Part II, Section 6B; 1982 Act No. 455, Section 5; 1988 Act No. 480, Section 6.

Library References

Costs 292.

Westlaw Topic No. 102.

C.J.S. Criminal Law Sections 1740, 1743.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 11, Fees and Costs.

**SECTION 24‑21‑100.** Administrative monitoring when fines outstanding; fee.

 (A) Notwithstanding the provisions of Section 24‑19‑120, 24‑21‑440, 24‑21‑560(B), or 24‑21‑670, when an individual has not fulfilled the individual’s obligations for payment of financial obligations by the end of the individual’s term of supervision, then the individual shall be placed under quarterly administrative monitoring, as defined in Section 24‑21‑5, by the department until such time as those financial obligations are paid in full or a consent order of judgment is filed. If the individual under administrative monitoring fails to make reasonable progress toward the payment of such financial obligations, as determined by the department, the department may petition the court to hold an individual in civil contempt for failure to pay the financial obligations. The department shall provide written notice of the petition and any scheduled contempt hearing by depositing the notice in the United States mail with postage prepaid addressed to the person at the address contained in the records of the department. The giving of notice by mail is complete ten days after the deposit of the notice. A certificate by the director of the department or the director’s designee that the notice has been sent as required in this section is presumptive proof that the requirements as to notice of petition and any scheduled contempt hearing have been met even if the notice has not been received by the offender. If the court finds the individual has the ability to pay but has not made reasonable progress toward payment, the court may hold the individual in civil contempt of court and may impose a term of confinement in the local detention center until payment of the financial obligations, but in no case to exceed ninety days of confinement. Following any term of confinement, the individual shall be returned to quarterly administrative monitoring by the department. If the individual under administrative monitoring does not have the ability to pay the financial obligations and has no reasonable likelihood of being able to pay in the future, the department may submit a consent order of judgment to the court, which shall relieve the individual of any further administrative monitoring.

 (B) An individual placed on administrative monitoring shall pay a regular monitoring fee toward offsetting the cost of his administrative monitoring for the period of time that he remains under monitoring. The regular monitoring fee must be determined by the department based upon the ability of the person to pay. The fee must not be more than ten dollars a month. All regular monitoring fees must be retained by the department, carried forward, and applied to the department’s operation.

HISTORY: 2010 Act No. 273, Section 52, eff January 1, 2011; 2016 Act No. 154 (H.3545), Section 6, eff April 21, 2016.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date.”

Effect of Amendment

2016 Act No. 154, Section 6, in (A), made gender neutral changes in the first sentence, and added the third through fifth sentences, relating to notice.

CROSS REFERENCES

Administrative monitoring defined, see Section 24‑21‑5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 27.50, Administrative Monitoring.

**SECTION 24‑21‑110.** Administrative sanctions.

 (A) In response to a violation of the terms and conditions of any supervision program operated by the department, whether pursuant to statute or contract with another state agency, the probation agent may, with the concurrence of his supervisor and, as an alternative to issuing a warrant or citation, serve on the offender a notice of administrative sanctions. The agent must not serve a notice of administrative sanctions on an offender for violations of special conditions if a sentencing court provided that those violations would be heard by the court. The administrative sanctions must be equal to or less restrictive than the sanctions available to the revoking authority, with the exception of revocation.

 (B) If the offender agrees in writing to the additional conditions set forth in the notice or order of administrative sanctions, the conditions must be implemented with swiftness and certainty. If the offender does not agree, or if after agreeing the offender fails to fulfill the additional conditions to the satisfaction of the probation agent and his supervisor, then the probation agent may commence revocation proceedings.

 (C) In addition to the notice of administrative sanctions, a hearing officer with the department may, as an alternative to sending a case forward to the revoking authority, impose on the offender an order of administrative sanctions. The order may be made only after the hearing officer has made a finding of probable cause at a preliminary hearing that an offender has violated the terms and conditions of any supervision program operated by the department, whether pursuant to statute or a contract with another state agency. The administrative sanctions must be equal to or less restrictive than the sanctions available to the revoking authority, with the exception of revocation. The sanctions must be implemented with swiftness and certainty.

 (D) The administrative sanctions shall be established by regulations of the department, as set forth by established administrative procedures. The department shall delineate in the regulations a listing of administrative sanctions for the most common types of supervision violations including, but not limited to: failure to report; failure to pay fines, fees, and restitution; failure to participate in a required program or service; failure to complete community service; and failure to refrain from the use of alcohol or controlled substances. The sanctions shall consider the severity of the current violation, the offender’s previous criminal record, the number and severity of previous supervision violations, the offender’s assessment, and the extent to which administrative sanctions were imposed for previous violations. The department, in determining the list of administrative sanctions to be served on an offender, shall ascertain the availability of community‑based programs and treatment options including, but not limited to: inpatient and outpatient substance abuse treatment facilities; day reporting centers; restitution centers; intensive supervision; electronic monitoring; community service; programs to reduce criminal risk factors; and other community‑based options consistent with evidence‑based practices.

 (E) The department shall provide annually to the Sentencing Reform Oversight Committee:

 (1) the number of offenders who were placed on administrative sanctions during the prior fiscal year and who were not returned to incarceration within that fiscal year;

 (2) the number and percentage of offenders whose supervision programs were revoked for violations of the conditions of supervision and ordered to serve a term of imprisonment. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required. The baseline revocation rate shall be the revocation rate in Fiscal Year 2010; and

 (3) the number and percentage of offenders who were convicted of a new offense and sentenced to a term of imprisonment. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required. The baseline revocation rate shall be the revocation rate in Fiscal Year 2010.

HISTORY: 2010 Act No. 273, Section 53, eff January 1, 2011.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date.”

CROSS REFERENCES

Administrative sanctions for violations, see S.C. Code of Regulations R. 130‑60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 7, General Powers and Duties.

ARTICLE 3

Executive Director of the Department of Probation, Parole, and Pardon Services; Probation Officers

**SECTION 24‑21‑220.** Powers and duties of director.

 The director is vested with the exclusive management and control of the department and is responsible for the management of the department and for the proper care, assessment, treatment, supervision, and management of offenders under its control. The director shall manage and control the department and it is the duty of the director to carry out the policies of the department. The director is responsible for scheduling board meetings, assuring that the proper cases and investigations are prepared for the board, maintaining the board’s official records, and performing other administrative duties relating to the board’s activities. The director must employ within his office such personnel as may be necessary to carry out his duties and responsibilities including the functions of probation, parole, and community supervision, community‑based programs, financial management, research and planning, staff development and training, and internal audit. The director shall make annual written reports to the board, the Governor, and the General Assembly providing statistical and other information pertinent to the department’s activities.

HISTORY: 1962 Code Section 55‑572; 1952 Code Section 55‑572; 1942 Code Section 1038‑7; 1942 (42) 1456; 1946 (44) 1516; 1981 Act No. 100, Section 7; 1991 Act No. 134, Section 4; 1993 Act No. 181, Section 465; 1995 Act No. 83, Section 44; 2010 Act No. 273, Section 49, eff January 1, 2011.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date. Regulations required pursuant to this act shall be submitted to the General Assembly no later than January 11, 2011, or six months after enactment, whichever event occurs later in time.”

Effect of Amendment

The 2010 amendment inserted “assessment,” in the first sentence.

Library References

Courts 55.

Pardon and Parole 55.

Westlaw Topic Nos. 106, 284.

C.J.S. Courts Sections 107 to 109.

C.J.S. Pardon and Parole Sections 45 to 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 5, Powers and Duties of the Director.

LAW REVIEW AND JOURNAL COMMENTARIES

Palacios, Go and sin no more: rationality and release decisions by parole boards. 5 S.C. L. Rev. 567 (Spring 1994).

NOTES OF DECISIONS

In general 1

1. In general

Sections 24‑21‑13, 24‑21‑60, 24‑21‑70 and 24‑21‑220, which assign responsibility for the management and control of the Department of Corrections and the Department of Parole and Community Corrections and provide for the general keeping of records on prisoners, do not create any special duty to guard members of the public against violent crimes by released prisoners. Although the information contained in prison records may be incidentally useful in many types of law enforcement, the purpose of keeping the records is not primarily to prevent the commission of crimes against individual citizens. Rayfield v. South Carolina Dept. of Corrections (S.C.App. 1988) 297 S.C. 95, 374 S.E.2d 910, certiorari denied 298 S.C. 204, 379 S.E.2d 133. Prisons 381

**SECTION 24‑21‑221.** Notice of hearing to consider parole; to whom required.

 The director must give a thirty‑day written notice of any board hearing during which the board will consider parole for a prisoner to the following persons:

 (1) any victim of the crime who suffered damage to his person as a result thereof or if such victim is deceased, to members of his immediate family to the extent practicable;

 (2) the solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted; and

 (3) the law enforcement agency that was responsible for the arrest of the prisoner concerned.

HISTORY: 1991 Act No. 134, Section 5; 1993 Act No. 181, Section 466.

Library References

Pardon and Parole 57.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 52 to 57.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 5, Powers and Duties of the Director.

LAW REVIEW AND JOURNAL COMMENTARIES

Palacios, Go and sin no more: rationality and release decisions by parole boards. 45 S.C. L. Rev. 567 (Spring 1994).

**SECTION 24‑21‑230.** Employment of probation agents and other staff; employment and duties of hearing officers; offender supervision specialists.

 (A) The director must employ probation agents required for service in the State and clerical assistants as necessary. The probation agents must take and pass psychological and qualifying examinations as directed by the director. The director must ensure that each probation agent receives adequate training. Until the initial employment requirements are met, no person may take the oath of a probation agent nor exercise the authority granted to them.

 (B) The director must employ hearing officers who conduct preliminary hearings to determine probable cause on violations committed by individuals under the supervision of the department and as otherwise provided by law. This includes, but is not limited to, violations concerning probation, parole, and community supervision. The hearing officer also conducts preliminary hearings and final revocation hearings for supervised furlough, youthful offender conditional release cases, and such other hearings as required by law. The department shall promulgate regulations for the qualifications of the hearing officers and the procedures for the preliminary hearings. Until regulations are adopted, the qualifications and procedures shall be based on guidelines developed by the director.

 (C) The director, in his discretion, may employ offender supervision specialists to oversee the supervision of standard and low‑risk offenders. The department shall promulgate regulations for the qualifications of offender supervision specialists and procedures for classifying offenders as standard and low‑risk offenders based on criminal risk factors.

HISTORY: 1962 Code Section 55‑573; 1952 Code Section 55‑573; 1942 Code Section 1038‑7; 1942 (42) 1456; 1946 (44) 1516; 1981 Act No. 100, Section 8; 1991 Act No. 134, Section 1993 Act No. 181, Section 467; 1995 Act No. 83, Section 45; 2010 Act No. 273, Section 51, eff January 1, 2011; 2017 Act No. 75 (H.3742), Section 1, eff May 19, 2017.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date. Regulations required pursuant to this act shall be submitted to the General Assembly no later than January 11, 2011, or six months after enactment, whichever event occurs later in time.”

Effect of Amendment

The 2010 amendment added the subsection identifiers, and added subsection (B) relating to hearing officers.

2017 Act No. 75, Section 1, added (C), providing that the director may employ offender supervision specialists.

CROSS REFERENCES

Funds generated by courts from fines and assessments to be allocated to programs established pursuant to this chapter, see Sections 14‑1‑206 to 14‑1‑208.

Hearing officer qualifications and preliminary hearing procedures, see S.C. Code of Regulations R. 130‑50.

Library References

Courts 55.

Westlaw Topic No. 106.

C.J.S. Courts Sections 107 to 109.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 5, Powers and Duties of the Director.

S.C. Jur. Probation, Parole, and Pardon Section 6, Employment and Training.

Attorney General’s Opinions

Trial judges may lawfully impose as a condition of probation a requirement that a defendant attend an ASAP or Drug Diversion program and pay the service fee for admission to such program; however, in second or third offense DUI cases, a trial judge may not require that a portion of the fine paid be applied toward the service fee for an ASAP program. 1976‑77 Op. Atty Gen, No. 77‑323, p 255.

**SECTION 24‑21‑235.** Issuance of duty clothing to department employees.

 The Department of Probation, Parole and Pardon Services is authorized to issue duty clothing for the use of department employees.

HISTORY: 2002 Act No. 356, Section 1, Pt IV.D.

Library References

Courts 55, 55.

Westlaw Topic No. 106.

C.J.S. Courts Sections 107 to 109.

**SECTION 24‑21‑237.** Employee meals.

 Meals may be provided to employees of the department who are not permitted to leave duty stations and are required to work during deployments, actual emergencies, emergency simulation exercises, and when the Governor declares a state of emergency.

HISTORY: 2002 Act No. 356, Section 1, Pt IV.E.

**SECTION 24‑21‑240.** Oath of probation agents.

 Each person appointed as a probation agent must take an oath of office as required of state officers which must be noted of record by the clerk of court.

HISTORY: 1962 Code Section 55‑574; 1952 Code Section 55‑574; 1942 Code Section 1038‑8; 1942 (42) 1456; 1991 Act No. 134, Section 7.

Library References

Courts 55.

Westlaw Topic No. 106.

C.J.S. Courts Sections 107 to 109.

**SECTION 24‑21‑250.** Pay and expenses of probation agents.

 The probation agents must be paid salaries, to be fixed by the department, payable semimonthly, and also be paid traveling and other necessary expenses incurred in the performance of their official duties when the expense accounts have been authorized and approved by the director.

HISTORY: 1962 Code Section 55‑575; 1952 Code Section 55‑575; 1942 Code Section 1038‑8; 1942 (42) 1456; 1946 (44) 1516; 1988 Act No. 480, Section 7; 1991 Act No. 134, Section 8; 1993 Act No. 181, Section 468.

Library References

Courts 55.

Westlaw Topic No. 106.

C.J.S. Courts Sections 107 to 109.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 6, Employment and Training.

**SECTION 24‑21‑260.** Probation agents’ assignment locations.

 Probation agents appointed under Section 24‑21‑230 must be assigned to serve in courts or districts or other places the director may determine.

HISTORY: 1962 Code Section 55‑576; 1952 Code Section 55‑576; 1942 Code Section 1038‑8; 1942 (42) 1456; 1946 (44) 1516; 1988 Act No. 480, Section 8; 1991 Act No. 134, Section 9; 1993 Act No. 181, Section 469.

Library References

Courts 55.

Westlaw Topic No. 106.

C.J.S. Courts Sections 107 to 109.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 6, Employment and Training.

**SECTION 24‑21‑270.** Offices for probation agents.

 The governing body of each county in which a probation agent serves shall provide, in or near the courthouse, suitable office space for such agent.

HISTORY: 1962 Code Section 55‑577; 1952 Code Section 55‑577; 1942 Code Section 1038‑15; 1942 (42) 1456; 1965 (54) 213; 1991 Act No. 134, Section 10.

Library References

Courts 55.

Westlaw Topic No. 106.

C.J.S. Courts Sections 107 to 109.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 6, Employment and Training.

Attorney General’s Opinions

**SECTION 24‑21‑270 requires office space for probation officers to be located “in or near the courthouse”.** A reasonable walking distance would meet statutes requirement of such office being located “in or near the courthouse”. 1984 Op. Atty Gen, No. 84‑28, p. 69.

**SECTION 24‑21‑280.** Duties and powers of probation agents; authority to enforce criminal laws.

 (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 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.

 (G) Offender supervision specialists have the same duties and authority granted to probation agents, except for the authority granted in subsection (B).

HISTORY: 1962 Code Section 55‑578; 1952 Code Section 55‑578; 1942 Code Section 1038‑9; 1942 (42) 1456; 1988 Act No. 480, Section 9; 1991 Act No. 134, Section 11; 1993 Act No. 181, Section 470; 1995 Act No. 83, Section 46; 2000 Act No. 352, Section 1; 2000 Act No. 396, Section 7; 2010 Act No. 273, Section 50, eff January 1, 2011; 2016 Act No. 154 (H.3545), Section 7, eff April 21, 2016; 2017 Act No. 75 (H.3742), Section 2, eff May 19, 2017.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date. Regulations required pursuant to this act shall be submitted to the General Assembly no later than January 11, 2011, or six months after enactment, whichever event occurs later in time.”

Effect of Amendment

The 2010 amendment rewrote the section.

2016 Act No. 154, Section 7, in (D), substituted “the probation agent’s supervisor” for “his supervisor”, and “under the department’s supervision” for “under the supervision of the department” in the first sentence; substituted “but must not be applied” for “but shall not be applied”, in the second sentence; and substituted “in which the department determines that the individual has substantially fulfilled all of the conditions of the individual’s supervision” for “in which he has fulfilled all of the conditions of his supervision, has no new arrests, and has made all scheduled payments of his financial obligations” in the last sentence.

2017 Act No. 75, Section 2, added (G), providing that, with some exceptions, offender supervision specialists have the same duties and authority granted to probation agents.

Library References

Courts 55.

Westlaw Topic No. 106.

C.J.S. Courts Sections 107 to 109.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney and Client Section 4, Unauthorized Practice of Law.

S.C. Jur. Probation, Parole, and Pardon Section 7, General Powers and Duties.

S.C. Jur. Probation, Parole, and Pardon Section 22, Revocation of Parole and Due Process Guarantees.

Attorney General’s Opinions

A prisoner serving on the county public works being considered for parole, if brought to Columbia to appear personally before the Probation, Parole and Pardon Board, must be transported by proper custodial authorities which could be either guards from the county public works or the State Penitentiary, and probation and parole officers are not vested with authority to transport the prisoner. 1965‑66 Op. Atty Gen, No. 2094, p 196.

The statutory provisions with regard to probation agents provide the authority for a probation officer to issue an arrest warrant in writing charging a probationer with a violation of the terms and conditions of his probationary sentence; there is no constitutional violation in a probation officer being given the authority to issue a probation violation warrant without obtaining prior approval of a neutral judicial officer. 1980 Op. Atty Gen, No. 80‑34, p 67.

If person is arrested with violation arrest warrant by probation agent and then taken to state, county, or municipal jail in South Carolina, jail is required by law to accept prisoner for detention, upon delivery of prisoner and copy of warrant; jail has no discretion to refuse to accept prisoner for detention. 1992 Op. Atty Gen 92‑04.

Detention facility may not refuse to accept custody of individual arrested by probation agent where no commitment order other than violation arrest warrant has been presented. There is no requirement that probation officer present separate commitment order. 1992 Op. Atty Gen 92‑04.

NOTES OF DECISIONS

In general 1

Probation agents 2

1. In general

State’s presentation of probation revocation cases through a non‑lawyer, i.e., a probation agent, was appropriate, as probation revocation hearing was not a formal criminal proceeding, pursuant to duties and powers of probation agents set forth by statute, probation agents were permitted to issue arrest warrants charging violation of conditions of probation, and to arrest, and probation agents were to be regarded as the official representative of the court. State v. Barlow (S.C. 2007) 372 S.C. 534, 643 S.E.2d 682. Sentencing And Punishment 2009

A ministerial recorder who was also a city probation officer did not have the authority to arrest persons as would probation officers appointed by the probation and parole board. State v. Sachs (S.C. 1975) 264 S.C. 541, 216 S.E.2d 501. Arrest 63.2

2. Probation agents

Probation agents’ presentation of state’s cases in probation revocation proceedings did not constitute the “unauthorized practice of law”; probation agents’ comments and reports to trial court did not constitute the practice of law, and, when probation agents presented cases, they were acting in their official capacity and were not holding themselves out to the public as attorneys. State v. Barlow (S.C. 2007) 372 S.C. 534, 643 S.E.2d 682. Attorney And Client 12(4)

**SECTION 24‑21‑290.** Information received by probation agents privileged.

 All information and data obtained in the discharge of his official duty by a probation agent is privileged information, is not receivable as evidence in a court, and may not be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive reports unless ordered by the court or the director.

HISTORY: 1962 Code Section 55‑579; 1952 Code Section 55‑579; 1942 Code Section 1038‑14; 1942 (42) 1456; 1988 Act No. 480, Section 10; 1991 Act No. 134, 12; 1993 Act No. 181, Section 471.

CROSS REFERENCES

Applicability to Legislative Audit Council staff members of provisions relative to confidentiality of agency records, see Section 2‑15‑62.

Library References

Witnesses 216(1).

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 361 to 364, 366 to 367.

NOTES OF DECISIONS

In general 1

1. In general

Probation officer’s observations of lacerations on defendant’s arms and hands did not constitute kind of information or data considered privileged under statute governing when information received by probation agent is privileged as observations were not “received” by officer. Hutto v. State (S.C.App. 2007) 376 S.C. 77, 654 S.E.2d 846, rehearing denied, certiorari granted, affirmed 387 S.C. 244, 692 S.E.2d 196. Privileged Communications And Confidentiality 363

Statute relating to privileged nature of information received by a probation officer in his official capacity does not allow the admission of a probationer’s statement as evidence in court simply because the judge orders it. State v. Hook (S.C. 2003) 356 S.C. 421, 590 S.E.2d 25, rehearing denied. Privileged Communications And Confidentiality 363

Statute relating to privileged nature of information received by a probation officer in his official capacity prohibits admission in court for any purpose, including impeachment, of a probationer’s statement to probation agent, regardless of whether statement is voluntarily or involuntarily given. State v. Hook (S.C. 2003) 356 S.C. 421, 590 S.E.2d 25, rehearing denied. Privileged Communications And Confidentiality 363

**SECTION 24‑21‑300.** Issuance of citation to person released pursuant to Offender Management Systems Act for violation of release terms.

 At any time during a period of supervision, a probation agent, instead of issuing a warrant, may issue a written citation and affidavit setting forth that the probationer, parolee, or community supervision releasee, or a person released or furloughed under the Offender Management Systems Act in the agent’s judgment violates the conditions of his release or suspended sentence. The citation must be directed to the probationer, the parolee, the community supervision releasee, or the person released or furloughed, and must require him to appear at a specified time, date, and court or other place, and must state the charges. The citation must set forth the person’s rights and contain a statement that a hearing will be held in his absence if he fails to appear and that he may be imprisoned as a result of his absence. The citation may be served by a law enforcement officer upon the request of a probation agent. A certificate of service is sufficient proof of service. The issuance of a citation or warrant during the period of supervision gives jurisdiction to the court and the board at any hearing on the violation.

HISTORY: 1988 Act No. 478; 1995 Act No. 83, Section 47.

Library References

Prisons 15.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 144 to 154.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Affidavits Section 30.1, Probation Revocation Proceedings.

Attorney General’s Opinions

Issuance of new parol arrest process tolls running of parole term pending reasonably diligent revocation hearing. To extent that dicta from prior opinions dated September 6, 1974, and November 9, 1979, could be construed to express otherwise, they are overruled. 1990 Op. Atty Gen No. 90‑33.

NOTES OF DECISIONS

In general 1

1. In general

Trial court did not err in holding probation revocation hearing and revoking defendant’s probation, because defendant was served with citation. State v. Howard (S.C.App. 2009) 384 S.C. 212, 682 S.E.2d 42, rehearing denied. Sentencing And Punishment 2012

ARTICLE 5

Probation

**SECTION 24‑21‑410.** Power to suspend sentence and impose probation; exceptions; search and seizure.

 After conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of a court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. Probation is a form of clemency. Before a defendant may be placed on probation, he must agree in writing to be subject to a search or seizure, without a search warrant, based on reasonable suspicions, of the defendant’s person, any vehicle the defendant owns or is driving, and any of the defendant’s possessions by:

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

 (2) any other law enforcement officer.

 A defendant may not be placed on probation by the court if he fails to comply with this provision and instead must be required to serve the suspended portion of the defendant’s sentence. However, a defendant 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 defendant agree to be subject to search or seizure, without a search warrant, with or without cause, of the defendant’s person, any vehicle the defendant owns or is driving, or any of the defendant’s possessions.

 Immediately before each search or seizure 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. 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 section, he is subject to discipline pursuant to the employing agency’s policies and procedures.

HISTORY: 1962 Code Section 55‑591; 1952 Code Section 55‑591; 1942 Code Section 1038‑1; 1942 (42) 1456; 1996 Act No. 341, Section 1; 2010 Act No. 151, Section 9, eff April 28, 2010.

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 2010 amendment added the text following the second sentence.

CROSS REFERENCES

Funds generated by courts from fines and assessments to be allocated to programs established pursuant to this chapter, see Sections 14‑1‑206 to 14‑1‑208.

Suspension of imposition or execution of sentence by magistrate notwithstanding limitations of this section, see Section 22‑3‑800.

Suspension of sentence in misdemeanor cases, see Section 17‑25‑110.

Library References

Sentencing and Punishment 1838.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1553.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 9, Conditions of Probation.

Attorney General’s Opinions

A circuit court judge could sentence a defendant to a term of probation and as a condition of such sentence, require the defendant to make a contribution to “Crime Stoppers” or to reimburse “Crime Stoppers” for funds expended by such organization in association with a defendant’s case. Further, while a municipal court judge would not be authorized to impose a sentence of a term of probation, a municipal court judge could suspend a sentence upon the payment of a contribution or reimbursement to “Crime Stoppers.” 1986 Op. Atty Gen, No. 86‑81, p. 253.

Circuit judge may impose condition of public service as condition of probation. 1984 Op. Atty Gen, No. 84‑56, p. 142.

Once a defendant has been properly sentenced and placed on probation, a circuit or county court judge is without power to terminate that defendant’s probation prior to its expiration date after the end of the term of court at which the sentence is imposed. 1976‑77 Op. Atty Gen, No. 77‑369, p 293.

A magistrate’s court, not being a court of record, is not empowered to suspend a sentence. 1963‑64 Op. Atty Gen, No. 1766, p 281.

A defendant can be ordered to pay support payments to his wife and children as terms of probation. 1963‑64 Op. Atty Gen, No. 1743, p 242.

Sentencing judge lacks authority to suspend all or part of monetary fine imposed upon a person convicted of felony DUI. Language contained in Section 56‑5‑2945, that no part of mandatory “sentences” may be suspended, includes fines imposed as well as imprisonment set forth. 1993 Op. Atty Gen No. 93‑22.

NOTES OF DECISIONS

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Appeal bonds 8

Distinction between parole and probation 2

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Sentencing requirements of cocaine offenses 7

Suspension of part of sentence 4

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1. In general

This section extends the power to suspend sentences to many felonies as well as misdemeanors. Moore v Patterson (1942) 203 SC 90, 26 SE2d 319, 147 ALR 653. State v Best (1972) 257 SC 361, 186 SE2d 272.

Cited in Clardy v Ford (1943) 203 SC 44, 26 SE2d 20. State v Bolin (1946) 209 SC 108, 39 SE2d 197. State v Kimbrough (1948) 212 SC 348, 46 SE2d 273.

Judges are allowed a wide, not unlimited, discretion in imposing conditions of suspension or probation and they cannot impose conditions which are illegal and void as against public policy; accordingly, castration as a condition to suspension of defendants’ sentence and probation was void as against public policy in that it inflicted cruel and unusual punishment. State v. Brown (S.C. 1985) 284 S.C. 407, 326 S.E.2d 410. Sentencing And Punishment 1962; Sentencing And Punishment 1963

Probation is not a matter of right, but a matter of grace, and may be granted to a deserving accused by the trial judge in the exercise of his sound discretion. State v. Cantrell (S.C. 1967) 250 S.C. 376, 158 S.E.2d 189. Sentencing And Punishment 1812

Applied in State v. Petty (S.C. 1964) 245 S.C. 40, 138 S.E.2d 643.

2. Distinction between parole and probation

“Probation,” a suspension of the period of incarceration, is clearly part of a criminal defendant’s term of imprisonment, as is actual incarceration, parole, and the suspended portion of a sentence. State v. Miller (S.C. 2013) 404 S.C. 29, 744 S.E.2d 532. Sentencing And Punishment 1800

Distinction between probation and parole in the context of a parole revocation hearing is that “probation” is judicially‑imposed at the time of sentencing, and whether a violation of probationary terms has occurred, and if so, the consequences of such a violation, are matters for the courts, whereas the Board of Probation, Parole, and Pardon Services determines both parole eligibility and revocations. Duckson v. State (S.C. 2003) 355 S.C. 596, 586 S.E.2d 576. Pardon And Parole 55.1; Sentencing And Punishment 2009

Trial court had jurisdiction to sentence defendant to probation for assault and battery with intent to kill to be served at same time while on parole for resisting arrest, and thus, to subsequently revoke probation for violations; probation had no bearing or effect on jurisdiction of Board of Probation, Parole and Pardon Services regarding issues of parole, but was separate and distinct function. State v. Lee (S.C.App. 2002) 350 S.C. 125, 564 S.E.2d 372. Sentencing And Punishment 2009

3. Time for exercising power to suspend

This section gives the trial judge the right, at the time of the sentence, to provide for a suspension of a part of the imprisonment, and the placing of the defendant on probation after serving a designated portion of the term of imprisonment. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272.

It is requisite to the orderly administration of justice that when a trial judge has imposed a sentence and the term of court at which such was done has terminated, or when the trial judge has completed his service in a circuit, the previous sentence should not be altered, amended, modified, or changed. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272.

The power to suspend sentences has to be exercised at the time the sentences are imposed, and the trial judge has no right thereafter to suspend the sentences. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272.

Under this section, the judge of any court of record with criminal jurisdiction is authorized to suspend, at the time of sentence, the execution of the sentence, in whole or in part, and place the defendant on probation or may impose a fine and also place the defendant on probation. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272. Sentencing And Punishment 1893; Sentencing And Punishment 1930

Suspension must be ordered at the time of sentence. Moore v. Patterson (S.C. 1943) 203 S.C. 90, 26 S.E.2d 319, 147 A.L.R. 653.

4. Suspension of part of sentence

In imposing a sentence of imprisonment, the court may require the service of a portion of the term and suspend the execution of the remainder thereof, placing the defendant on probation. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836. Sentencing And Punishment 1936

Under this section any court of record with criminal jurisdiction is authorized to suspend the execution of a sentence, in whole or in part, and place the defendant on probation. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836.

In imposing a sentence of imprisonment on the chain gang or in the State Penitentiary, the court may provide for its suspension and the release of the defendant on probation after service of a portion of the sentence. State v. Germany (S.C. 1949) 216 S.C. 182, 57 S.E.2d 165.

This section is intended to give trial judges the right, at the time of the sentence, to provide for a suspension of a part of such imprisonment and a placing of a defendant on probation after serving a designated portion of the term of imprisonment. Moore v. Patterson (S.C. 1943) 203 S.C. 90, 26 S.E.2d 319, 147 A.L.R. 653.

The General Assembly, in authorizing the suspension of sentences in certain felonies, did not intend to limit the exercise of the discretion of the trial judges, but intended that it be exercised by suspending sentences either in whole or in part. Moore v. Patterson (S.C. 1943) 203 S.C. 90, 26 S.E.2d 319, 147 A.L.R. 653. Sentencing And Punishment 1802; Sentencing And Punishment 1930

5. Mandatory minimum sentences

Statute prohibiting distribution of controlled substance within proximity of school contained no provision prohibiting the suspension of a sentence imposed pursuant to the statute, and thus, trial judge had the general authority to suspend the minimum sentence. State v. Thomas (S.C. 2007) 372 S.C. 466, 642 S.E.2d 724. Sentencing And Punishment 1848

Trial court’s statutory power to suspend sentences does not extend to offenses where the legislature has specifically mandated that no part of a sentence may be suspended. State v. Thomas (S.C. 2007) 372 S.C. 466, 642 S.E.2d 724. Sentencing And Punishment 1804

A trial court has no authority to suspend the mandatory minimum sentence for a third time conviction for driving under the influence. State v. Tisdale (S.C.App. 1996) 321 S.C. 153, 467 S.E.2d 270.

In the prosecution of a matter for driving under the influence (DUI), the trial court’s imposition of 1‑year probation did not meet the mandatory minimum sentence for a third time conviction for DUI. State v. Tisdale (S.C.App. 1996) 321 S.C. 153, 467 S.E.2d 270.

6. Life sentence

Trial court has no power to suspend a sentence imposed on a person convicted of homicide by child abuse; although the homicide by child abuse statute does not specifically prohibit suspension of a sentence, it falls within the exception provided in statute, stating that court’s power to suspend sentence does not apply to any offense punishable by death or life imprisonment, because the crime of homicide by child abuse is punishable by life imprisonment. Richardson v. State (S.C.App. 2014) 407 S.C. 482, 756 S.E.2d 404. Sentencing and Punishment 1837; Sentencing and Punishment 1853

The trial court lacked the authority to suspend the sentence for first degree burglary; statute gave the trial judge the discretion to suspend a criminal sentence in favor of probation unless the seriousness of the crime warranted a penalty of death or life imprisonment, and the punishment for first degree burglary ranged between 15 years to life imprisonment. State v. Jacobs (S.C. 2011) 393 S.C. 584, 713 S.E.2d 621. Sentencing and Punishment 1804; Sentencing and Punishment 1837

A defendant who had entered a plea of guilty to kidnapping was entitled to withdraw her plea where she had been misled by her attorney and the presiding judge into believing that the judge had some discretion in passing sentence, whereas a life sentence for kidnapping is mandatory under Section 16‑3‑910 and suspension of such sentence is prohibited by Section 24‑21‑410. State v. Hazel (S.C. 1980) 275 S.C. 392, 271 S.E.2d 602.

7. Sentencing requirements of cocaine offenses

Specific mandate of statute governing cocaine offenses that, except for a first offense, sentences had to be served in their entirety precluded trial court from relying on its general authority to suspend sentences and impose probation, and thus, trial court lacked authority to impose split sentence for defendant’s second cocaine offense by suspending defendant’s 10‑year sentence upon service of eight years and imposing five years’ probation. State v. Johnson (S.C.App. 2001) 343 S.C. 693, 541 S.E.2d 855. Sentencing And Punishment 1872(3)

Specific mandate of trafficking statute that three‑year minimum sentence for first offense of trafficking in cocaine in an amount less than 28 grams could not be suspended nor could probation be granted prevailed over general statutory authority of court to suspend a portion of a criminal sentence and grant probation as part of sentencing. State v. Taub (S.C.App. 1999) 336 S.C. 310, 519 S.E.2d 797, rehearing denied, certiorari denied. Sentencing And Punishment 1871

Fine of $25,000 for first offense of trafficking in cocaine in an amount less than 28 grams was not mandatory and, thus, trial court was authorized to suspend the imposition or execution of fine. State v. Taub (S.C.App. 1999) 336 S.C. 310, 519 S.E.2d 797, rehearing denied, certiorari denied. Controlled Substances 100(2)

8. Appeal bonds

Defendant’s sentences for his fraudulent check conviction and driving under suspension (DUS) conviction were sentences of confinement for purposes of rule governing stays of sentences pending appeals, even though committed portions of sentences were suspended to probation by trial court, and thus, defendant was required to post appeal bond to stay probationary sentences during appeal process; appeal bond relieved State of cost of supervising a probationer during appeal process, while at same time, the probationer remained under power of court as if in custody. State v. Gibbs (S.C. 2003) 353 S.C. 226, 577 S.E.2d 454. Bail 63.1; Sentencing And Punishment 475

**SECTION 24‑21‑420.** Report of probation agent on offense and defendant.

 When directed by the court, the probation agent must fully investigate and report to the court in writing the circumstances of the offense and the criminal record, social history, and present condition of the defendant including, whenever practicable, the findings of a physical and mental examination of the defendant. When the services of a probation agent are available to the court, no defendant charged with a felony and, unless the court shall direct otherwise in individual cases, no other defendant may be placed on probation or released under suspension of sentence until the report of such investigation has been presented to and considered by the court.

HISTORY: 1962 Code Section 55‑592; 1952 Code Section 55‑592; 1942 Code Section 1038‑2; 1942 (42) 1456; 1991 Act No. 134, Section 13.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑430.** Conditions of probation.

 The court may impose by order duly entered and may at any time modify the conditions of probation and may include among them any of the following or any other condition not prohibited in this section; however, the conditions imposed must include the requirement that the probationer must permit the search or seizure, without a search warrant, based on reasonable suspicions, of the probationer’s person, any vehicle the probationer owns or is driving, and any of the probationer’s possessions by:

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

 (2) any other law enforcement officer, but the conditions imposed upon a probationer 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 probationer agree to be subject to search or seizure, without a search warrant, with or without cause, of the probationer’s person, any vehicle the probationer owns or is driving, or any of the probationer’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 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 probation. 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 section, he is subject to discipline pursuant to the employing agency’s policies and procedures.

 To effectively supervise probationers, the director shall develop policies and procedures for imposing conditions of supervision on probationers. These conditions may enhance but must not diminish court imposed conditions.

 The probationer shall:

 (1) refrain from the violations of any state or federal penal laws;

 (2) avoid injurious or vicious habits;

 (3) avoid persons or places of disreputable or harmful character;

 (4) permit the probation agent to visit at his home or elsewhere;

 (5) work faithfully at suitable employment as far as possible;

 (6) pay a fine in one or several sums as directed by the court;

 (7) perform public service work as directed by the court;

 (8) submit to a urinalysis or a blood test or both upon request of the probation agent;

 (9) submit to curfew restrictions;

 (10) submit to house arrest which is confinement in a residence for a period of twenty‑four hours a day, with only those exceptions as the court may expressly grant in its discretion;

 (11) submit to intensive surveillance which may include surveillance by electronic means;

 (12) support his dependents; and

 (13) follow the probation agent’s instructions and advice regarding recreational and social activities.

HISTORY: 1962 Code Section 55‑593; 1952 Code Section 55‑593; 1942 Code Section 1038‑3; 1942 (42) 1456; 1986 Act No. 462, Section 6; 1987 Act No. 31, Section 1; 1991 Act No. 134, Section 14; 1996 Act No. 341, Section 2; 2010 Act No. 151, Section 10, eff April 28, 2010.

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 2010 amendment added the text between “prohibited in this section” in the first sentence and the undesignated paragraph following item (2).

CROSS REFERENCES

Payment of fee as condition of probation, see Section 24‑21‑80.

Regulation pertaining to public service work as a condition of probation or suspension of sentence, see S.C. Code of Regulations R. 130‑20.

Requirement that the state, as a condition of probation, be reimbursed for an award paid by State Office of Victim Assistance, see Section 16‑3‑1260.

Requirement that the state, as a condition of probation, be reimbursed for an award paid from the Victim’s Compensation Fund, see Section 16‑3‑1260.

Library References

Sentencing and Punishment 1960 to 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 1458, 1471, 1504 to 1505, 1511, 1547 to 1550, 1552 to 1562, 1564, 1771 to 1786.

RESEARCH REFERENCES

ALR Library

46 ALR 6th 241 , Propriety of Requirement, as Condition of Probation, that Defendant Refrain from Use of Intoxicants.

15 ALR 5th 391 , Measure and Elements of Restitution to Which Victim is Entitled Under State Criminal Statute.

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 9, Conditions of Probation.

S.C. Jur. Probation, Parole, and Pardon Section 10, Revocation, Modification, and Termination of Probation.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, criminal law. 41 S.C. L. Rev. 56 (Autumn 1989).

Attorney General’s Opinions

A circuit court judge could sentence a defendant to a term of probation and as a condition of such sentence, require the defendant to make a contribution to “Crime Stoppers” or to reimburse “Crime Stoppers” for funds expended by such organization in association with a defendant’s case. Further, while a municipal court judge would not be authorized to impose a sentence of a term of probation, a municipal court judge could suspend a sentence upon the payment of a contribution or reimbursement to “Crime Stoppers.” 1986 Op. Atty Gen, No. 86‑81, p. 253.

Circuit judge may impose condition of public service as condition of probation. 1984 Op. Atty Gen, No. 84‑56, p. 142.

A trial judge may not require that a portion of the fine paid, in second or third offense DUI cases, be applied toward the administrative/service fee for an ASAP Program. 1978 Op. Atty Gen, No. 78‑1, p 4.

A judge may impose as a condition of probation the stipulation that the probationer report to his probation officer within fifteen (15) days of release. 1976‑77 Op. Atty Gen, No 77‑73, p 68.

NOTES OF DECISIONS

In general 1

Ex post facto violations 3

Judicially imposed condition 2

Sex offenders 4

1. In general

Applied in State v White (1950) 218 SC 130, 61 SE2d 754. State v Petty (1964) 245 SC 40, 138 SE2d 643.

Judge at probation revocation hearing was not authorized to order defendant’s placement on sex offender registry as a condition of probation; such a condition was expressly plea bargained away by State with court approval at sentencing, presiding judge at the time of sentencing specifically ordered that defendant not be required to register as a sex offender, and no good cause for placement on registry was shown at plea hearing. State v. Davis (S.C.App. 2007) 375 S.C. 12, 649 S.E.2d 178. Criminal Law 273.1(2); Sentencing And Punishment 2040

Defendant who was convicted of sex offense was not sufficiently on notice that he was required to successfully complete a treatment program as a special condition of his probation until probation was revoked, and thus, probation revocation was in error, where probation order, which stated that defendant was to “obtain treatment for problem,” did not specifically order defendant to complete treatment or require defendant to complete a particular sex offender program or admit his guilt in order to do so, order’s vague directive resulted in confusion among probation agent, defendant’s mental health counselor, and various Department of Probation, Parole, and Pardon Services (DPPPS) employees, and defendant had complied with all other aspects of his probationary sentence. State v. Brown (S.C.App. 2002) 349 S.C. 414, 563 S.E.2d 339, certiorari dismissed as improvidently granted 356 S.C. 301, 589 S.E.2d 188. Sentencing And Punishment 2013

The trial court did not have jurisdiction to add, as a new condition of probation, the imposition of restitution where as part of the plea bargain under which the defendant pleaded guilty the sentencing judge recognized and the defendant understood that there would be no restitution. State v. Rhinehart (S.C.App. 1993) 312 S.C. 36, 430 S.E.2d 536.

The trial court did not lack subject matter jurisdiction, and properly imposed as a condition of probation for certain forgery convictions, the restitution of forgeries for which the defendant had not been indicted where (1) the defendant consented to this condition and was told in open court that if he did not want to pay such restitution, indictments would be sought on each of the forgeries, (2) the judge informed the defendant that he could either pay the restitution or receive the maximum sentence, and (3) the defendant was at all times represented by counsel; the argument that the defendant did not waive indictment and plead guilty to these forgeries was inapplicable since the order of restitution was not a conviction and sentencing for the unindicted forgeries. State v. Bynes (S.C.App. 1991) 304 S.C. 62, 403 S.E.2d 126, certiorari denied.

A condition of probation that the defendant, who had pleaded guilty to distribution of marijuana, not “be in a place of business that sells alcohol” was unreasonable in today’s society where alcohol is sold in a wide variety of businesses and the practical effect of the condition would be to prohibit the defendant from entering or working in virtually every grocery and convenience store in the state and would exclude the defendant from a large number of restaurants in the state. Beckner v. State (S.C. 1988) 296 S.C. 365, 373 S.E.2d 469. Sentencing And Punishment 1980(2)

Payment of reparations to victim of crime is a proper condition of probation under this section. State v. Wilson (S.C. 1980) 274 S.C. 352, 264 S.E.2d 414.

Probationary sentences may be terminated by the trial court upon a proper showing of “satisfactory fulfillment.” Shannon v. Young (S.C. 1978) 272 S.C. 61, 248 S.E.2d 914. Sentencing And Punishment 2009

Cited in State v. Clough (S.C. 1951) 220 S.C. 390, 68 S.E.2d 329.

Stated in Moore v. Patterson (S.C. 1943) 203 S.C. 90, 26 S.E.2d 319, 147 A.L.R. 653.

2. Judicially imposed condition

A judge is vested with a wide, but not unlimited, discretion in imposing conditions of suspension or probation. State v. Hicks (S.C.App. 2009) 382 S.C. 370, 675 S.E.2d 769, rehearing denied, vacated 387 S.C. 378, 692 S.E.2d 919. Sentencing And Punishment 1962

The Department of Probation, Parole, and Pardon Services is permitted to impose conditions of supervision that enhance conditions of probation ordered by the sentencing judge. State v. Hicks (S.C.App. 2009) 382 S.C. 370, 675 S.E.2d 769, rehearing denied, vacated 387 S.C. 378, 692 S.E.2d 919. Sentencing And Punishment 1988

Sex offender probation condition of Department of Probation, Parole and Pardon Services, preventing probationer from changing residence or employment without probation agent’s consent, was a statutorily‑permissible probation enhancement of judicially‑ordered probation condition prohibiting probationer from doing the same, and therefore revocation of probation based in part on violation of Department’s condition did not violate the separation of powers doctrine. State v. Hicks (S.C.App. 2009) 382 S.C. 370, 675 S.E.2d 769, rehearing denied, vacated 387 S.C. 378, 692 S.E.2d 919. Constitutional Law 2625(1); Sentencing And Punishment 1971(2); Sentencing And Punishment 1972(2)

Defendant’s violation of agreement with Department of Probation, Parole, and Pardon Services (DPPPS) not to enter “exclusive zones” near his former girlfriend’s home and work did not constitute a probation violation, as it was not a judicially imposed condition; although DPPPS had authority to implement “conditions of supervision” on defendant, it lacked authority to impose any probation conditions, and court chose not to require defendant to submit to intensive surveillance as a condition of probation. State v. Stevens (S.C. 2007) 373 S.C. 595, 646 S.E.2d 870, rehearing denied. Sentencing And Punishment 2003

3. Ex post facto violations

Circuit court’s imposition of additional sex offender probation conditions of the Department of Probation, Parole and Pardon Services after original sentencing with judicially‑imposed probation conditions did not violate ex post facto clauses of Federal and State Constitutions, where additional conditions merely enhanced original conditions, and statute giving Department authority to enhance court‑imposed probation condition was in effect prior to defendant’s original sentencing. State v. Hicks (S.C.App. 2009) 382 S.C. 370, 675 S.E.2d 769, rehearing denied, vacated 387 S.C. 378, 692 S.E.2d 919. Constitutional Law 2820; Sentencing And Punishment 1988

4. Sex offenders

Probation judge had statutory authority to modify defendant’s probation upon revocation of probation, by imposing additional sex offender probation conditions of the Department of Probation, Parole and Pardon Services; statute giving Department authority to enhance court‑imposed probation conditions also gave judge authority to modify conditions of probation at any time, and State did not plea bargain away the sex offender conditions. State v. Hicks (S.C.App. 2009) 382 S.C. 370, 675 S.E.2d 769, rehearing denied, vacated 387 S.C. 378, 692 S.E.2d 919. Sentencing And Punishment 2040

**SECTION 24‑21‑440.** Period of probation.

 The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended within the above limit.

HISTORY: 1962 Code Section 55‑594; 1952 Code Section 55‑594; 1942 Code Section 1038‑4; 1942 (42) 1456; 1949 (46) 311; 1991 Act No. 134, Section 15.

CROSS REFERENCES

Sentence being suspended for time prescribed in the order of suspension, see Section 17‑25‑110.

Library References

Sentencing and Punishment 1942 to 1953.

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C.J.S. Criminal Law Sections 1552, 1554, 1557 to 1559, 1563.

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S.C. Jur. Probation, Parole, and Pardon Section 9, Conditions of Probation.

Attorney General’s Opinions

When a defendant is sentenced to two consecutive sentences of five years probation each, the two sentences are equivalent to a general sentence, and the period of probation is limited to the statutory maximum of five years. 1962‑63 Op. Atty Gen, No. 1575, p 143.

NOTES OF DECISIONS

In general 1

Tolling of period 2

1. In general

Cited in Bearden v. State of S.C. (C.A.4 (S.C.) 1971) 443 F.2d 1090, certiorari granted 92 S.Ct. 965, 405 U.S. 916, 30 L.Ed.2d 785, rescinded 92 S.Ct. 1199, 405 U.S. 972, 31 L.Ed.2d 256.

Although a trial court may extend the length of probation originally given, the total period of probation may not exceed the statutory maximum of five years. State v. Miller (S.C. 2013) 404 S.C. 29, 744 S.E.2d 532. Sentencing And Punishment 1946

Probationary period, which resulted from conviction for burglary and grand larceny, was properly tolled during time in which probationer had absconded from supervision, and thus probation could be revoked without violating prohibition on extending probation beyond statutory five‑year period; statute did not prohibit tolling of probationary period, and probationer was not entitled to credit for period in which he was not under supervision of probation officer. State v. Hackett (S.C.App. 2005) 363 S.C. 177, 609 S.E.2d 553. Sentencing And Punishment 1947

Trial court’s order extending probation beyond the five‑year period authorized by statute is an illegal sentence requiring reversal. State v. Hackett (S.C.App. 2005) 363 S.C. 177, 609 S.E.2d 553. Sentencing And Punishment 2039

Trial court’s order at probation revocation hearing, that probationer remain in jail until his acceptance at restitution center and that he spend six months in center as a condition of his probation, extended probation beyond the five years authorized by statute and was an illegal sentence, where probationer had only 30 days remaining on his probation sentence. State v. Sumpter (S.C.App. 1999) 334 S.C. 369, 513 S.E.2d 373. Sentencing And Punishment 2036

Probationary sentences may be terminated by the trial court upon a proper showing of “satisfactory fulfillment.” Shannon v. Young (S.C. 1978) 272 S.C. 61, 248 S.E.2d 914. Sentencing And Punishment 2009

Stated in Maxey v. Manning (S.C. 1953) 224 S.C. 320, 78 S.E.2d 633.

Quoted in Lovell v. State (S.C. 1953) 223 S.C. 112, 74 S.E.2d 570.

2. Tolling of period

A tolling of probation must be premised on a violation of a condition of probation or a statutory directive. State v. Miller (S.C. 2013) 404 S.C. 29, 744 S.E.2d 532. Sentencing And Punishment 1947

Trial court lacked authority to toll defendant’s probation for criminal offenses until defendant was released from his involuntary civil commitment as a sexually violent predator (SVP), even though the state argued that defendant was receiving mental‑health treatment in the SVP program and was therefore unavailable for community supervision; the state did not allege that defendant violated a condition of his probation, the SVP statutes did not authorize such tolling, and any decision to allow tolling of probations of individuals committed to the SVP program was for the legislature, given that probation was governed by statute. State v. Miller (S.C. 2013) 404 S.C. 29, 744 S.E.2d 532. Sentencing And Punishment 1947

Trial court was authorized to stop and toll time remaining on defendant’s probation until his release from involuntary civil commitment as a sexually violent predator (SVP); neither Sexually Violent Predator Act nor probation statutory scheme prevented trial court from tolling defendant’s probationary period, and defendant could not benefit from rehabilitative aspect of probation while committed. State v. Miller (S.C.App. 2011) 393 S.C. 59, 709 S.E.2d 135, rehearing denied, reversed 404 S.C. 29, 744 S.E.2d 532. Sentencing and Punishment 1947

**SECTION 24‑21‑450.** Arrest for violation of terms of probation; bond.

 At any time during the period of probation or suspension of sentence the court, or the court within the venue of which the violation occurs, or the probation agent may issue or cause the issuing of a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer or other agent with power of arrest, upon the request of the probation agent, may arrest a probationer. In case of an arrest, the arresting officer or agent must have a written warrant from the probation agent setting forth that the probationer has, in his judgment, violated the conditions of probation, and such statement shall be warrant for the detention of such probationer in the county jail or other appropriate place of detention, until such probationer can be brought before the judge of the court or of the court within the venue of which the violation occurs. Such probation agent must forthwith report such arrest and detention to the judge of the court, or of the court within the venue of which the violation occurs, and submit in writing a report showing in what manner the probationer has violated his probation. Provided, that any person arrested for the violation of the terms of probation must be entitled to be released on bond pending a hearing, and such bond shall be granted and the amount thereof determined by a magistrate in the county where the probationer is confined or by the magistrate in whose jurisdiction the alleged violation of probation occurred.

HISTORY: 1962 Code Section 55‑595; 1952 Code Section 55‑595; 1942 Code Section 1038‑4; 1942 (42) 1456; 1949 (46) 311; 1955 (49) 72; 1959 (51) 320; 1991 Act No. 134, Section 16.

CROSS REFERENCES

Powers and duties of the Sentencing Reform Oversight Committee, see Section 24‑28‑30.

Library References

Arrest 63.

Westlaw Topic No. 35.

C.J.S. Arrest Sections 9, 14 to 39, 42 to 44.

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S.C. Jur. Appeal and Error Section 77, Pleadings.

S.C. Jur. Probation, Parole, and Pardon Section 10, Revocation, Modification, and Termination of Probation.

S.C. Jur. Probation, Parole, and Pardon Section 22, Revocation of Parole and Due Process Guarantees.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: Criminal law; Fourth Amendment rights; probationers. 34 S.C. L. Rev. 106, August 1982.

Attorney General’s Opinions

The statutory provisions with regard to probation agents provide the authority for a probation officer to issue an arrest warrant in writing charging a probationer with a violation of the terms and conditions of his probationary sentence; there is no constitutional violation in a probation officer being given the authority to issue a probation violation warrant without obtaining prior approval of a neutral judicial officer. 1980 Op. Atty Gen, No. 80‑34, p 67.

If person is arrested with violation arrest warrant by probation agent and then taken to state, county, or municipal jail in South Carolina, jail is required by law to accept prisoner for detention, upon delivery of prisoner and copy of warrant; jail has no discretion to refuse to accept prisoner for detention. 1992 Op. Atty Gen 92‑04.

Detention facility may not refuse to accept prisoner properly arrested even though prisoner has not been given bond hearing; instead, bail would be matter to be considered depending on circumstances after individual has been incarcerated. 1992 Op. Atty Gen 92‑04.

Detention facility may refuse to accept custody of individual arrested by probation agent where no commitment order other than violation arrest warrant has been presented. There is no requirement that probation officer present separate commitment order. 1992 Op. Atty Gen 92‑04.

Arresting officer’s obligation to provide medical treatment is readily apparent even though case law does not comment directly on arresting officer’s responsibilities vis‑a‑vis jailer’s regarding sick or injured inmates since it has emphasized general rule that due process mandates pretrial detainees are entitled to treatment. 1993 Op. Atty Gen No. 93‑3.

NOTES OF DECISIONS

In general 1

Issuance of warrant during probationary period 3

Probation warrant 2

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1. In general

Trial court did not err in holding probation revocation hearing and revoking defendant’s probation, because defendant was served with citation. State v. Howard (S.C.App. 2009) 384 S.C. 212, 682 S.E.2d 42, rehearing denied. Sentencing And Punishment 2012

State’s presentation of probation revocation cases through a non‑lawyer, i.e., a probation agent, was appropriate, as probation revocation hearing was not a formal criminal proceeding, pursuant to duties and powers of probation agents set forth by statute, probation agents were permitted to issue arrest warrants charging violation of conditions of probation, and to arrest, and probation agents were to be regarded as the official representative of the court. State v. Barlow (S.C. 2007) 372 S.C. 534, 643 S.E.2d 682. Sentencing And Punishment 2009

Because the arrest warrant for violation of terms of probation implicates the trial court’s subject matter jurisdiction, the issue can be raised at any time. State v. Crouch (S.C. 2003) 355 S.C. 355, 585 S.E.2d 288. Sentencing And Punishment 2012

Fourth Amendment’s requirement that magistrate issue arrest warrant does not apply to warrant for violation of probation conditions, and warrant issued by probation officer will not be dismissed. State v. Franks (S.C. 1981) 276 S.C. 636, 281 S.E.2d 227. Sentencing And Punishment 2012

The failure of a defendant brought before the court under a probation warrant to object timely to or seek modification of his sentence in the trial court precluded him from presenting his objection for the first time on appeal. State v. Shumate (S.C. 1981) 276 S.C. 46, 275 S.E.2d 288. Criminal Law 1042.3(1)

The revocation of the suspension of the execution of a sentence involves the exercise of judicial discretion. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836. Sentencing And Punishment 2001

The Probation, Parole and Pardon Board has no jurisdiction to revoke the suspension of a sentence and place it in execution. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836. Sentencing And Punishment 2009

2. Probation warrant

Trial court had subject matter jurisdiction to revoke probation of defendant convicted of assault and battery with intent to kill after probation violation arrest warrant was issued. State v. Lee (S.C.App. 2002) 350 S.C. 125, 564 S.E.2d 372. Sentencing And Punishment 2011

Subject matter jurisdiction to revoke probation is conferred on the General Sessions Court by either the issuance of a probation violation warrant or the issuance of a probation violation citation and affidavit in lieu of a warrant. State v. Lee (S.C.App. 2002) 350 S.C. 125, 564 S.E.2d 372. Sentencing And Punishment 2011

Failure to comply with warrant procedures set forth in Section 24‑21‑450 deprives trial court of subject matter jurisdiction to revoke probation. Gray v. State (S.C. 1981) 276 S.C. 634, 281 S.E.2d 226. Sentencing And Punishment 2012

Revocation of probation would be reversed where the trial judge had proceeded without benefit of the probation warrant required by Section 24‑21‑450. State v. Loftin (S.C. 1981) 276 S.C. 48, 275 S.E.2d 575.

Revoking the suspension of a sentence can be done only by a court of competent jurisdiction before which the defendant has been taken on a warrant charging a violation of the conditions of probation. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836. Sentencing And Punishment 2001

3. Issuance of warrant during probationary period

Probationer’s probation sentences for guilty pleas to two counts of obtaining property by false pretenses expired approximately five months prior to issuance of probation arrest warrant, and therefore judge lacked subject matter jurisdiction to revoke these sentences, since probation arrest warrant was not issued during probationary period. State v. Crouch (S.C. 2003) 355 S.C. 355, 585 S.E.2d 288. Sentencing And Punishment 2012

Probation arrest warrant issued on offender’s burglary charge was a nullity, as it was not issued during offender’s time of probation, but rather was issued when offender was on parole, and thus trial court lacked subject matter jurisdiction to toll probation on burglary sentence while offender served sentence for second‑degree burglary and grand larceny of property in another county. State v. Crouch (S.C. 2003) 355 S.C. 355, 585 S.E.2d 288. Sentencing And Punishment 1947; Sentencing And Punishment 2012

With reference to the requirement that the warrant be issued during the period of probation, it is only provided that during this period the warrant shall be issued, which is the pertinent jurisdictional fact. State v. Hutto (S.C. 1968) 252 S.C. 36, 165 S.E.2d 72.

In the absence of a showing that a warrant was issued during the probationary period charging the defendant with a violation of probation, the lower court is without jurisdiction to revoke a probationary sentence after the period of probation has ended. State v. Hutto (S.C. 1968) 252 S.C. 36, 165 S.E.2d 72. Sentencing And Punishment 2010

This section authorizes the court to issue or cause the issuing of a warrant only during the period of probation and, in the absence of the timely issuance of such warrant, the court is without authority to revoke the probation after the probationary period has passed, even though the violation occurred during such period. State v. Hutto (S.C. 1968) 252 S.C. 36, 165 S.E.2d 72.

4. Service of probation warrant

Trial court did not have subject matter jurisdiction to revoke probation, though a warrant was issued for probationer’s arrest for a violation of a condition of probation, where probationer was not served with the warrant, and he was not taken before the trial court during the revocation hearing. Martin v. State (S.C. 2000) 338 S.C. 401, 526 S.E.2d 713. Sentencing And Punishment 2011; Sentencing And Punishment 2026

5. Waiver of warrant requirements

The trial court lacked subject matter jurisdiction,in a trial for possession of crack cocaine, to revoke the defendant’s probation for a prior offense where the court failed to comply with the warrant procedures set forth in Section 24‑21‑450, even though the defendant agreed to waive the presentation of the warrant; the waiver of these statutory requirements, whether express or implied, cannot confer jurisdiction. State v. Richburg (S.C. 1991) 304 S.C. 162, 403 S.E.2d 315.

Apparent waiver of statutory warrant requirements did not confer jurisdiction upon court and revocation of probation sentence was a nullity. State v. Brunson (S.C. 1980) 274 S.C. 220, 262 S.E.2d 44.

6. Right to counsel at hearing

A knowing and intelligent waiver was not demonstrated by a probationer at a probation revocation hearing where (1) at 2 prior hearings he explained his infractions and his parole was continued, (2) he spoke with his probation officer prior to the hearing and worked out the problems underlying his infractions, (3) the hearing judge expressed the existence of public pressure against probation, and (4) the hearing judge asked the probationer if he understood that he was entitled to an attorney, asked if he waived his right, and then revoked probation without allowing the probationer to give any statement. Huckaby v. State (S.C. 1991) 305 S.C. 331, 408 S.E.2d 242.

A probationer was entitled to counsel at a probation revocation hearing and thus, where the record did not demonstrate that a knowing and intelligent waiver was made with an understanding of the risks of self‑representation, his right was violated. Huckaby v. State (S.C. 1991) 305 S.C. 331, 408 S.E.2d 242.

**SECTION 24‑21‑460.** Action of court in case of violation of terms of probation.

 Upon such arrest the court, or the court within the venue of which the violation occurs, shall cause the defendant to be brought before it and may revoke the probation or suspension of sentence and shall proceed to deal with the case as if there had been no probation or suspension of sentence except that the circuit judge before whom such defendant may be so brought shall have the right, in his discretion, to require the defendant to serve all or a portion only of the sentence imposed. Should only a portion of the sentence imposed be put into effect, the remainder of such sentence shall remain in full force and effect and the defendant may again, from time to time, be brought before the circuit court so long as all of his sentence has not been served and the period of probation has not expired.

HISTORY: 1962 Code Section 55‑596; 1952 Code Section 55‑596; 1942 Code Section 1038‑4; 1942 (42) 1456; 1949 (46) 311; 1959 (51) 320.

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C.J.S. Criminal Law Sections 1560 to 1564.

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Willful violation 6

1 2. Due process

A probationer charged with a probation violation must be afforded minimal due process. State v. Hill (S.C. 2006) 368 S.C. 649, 630 S.E.2d 274. Constitutional Law 4733(1)

1. In general

Whether a violation of probationary terms has occurred and the consequences of any such violation are matters for the courts. State v. Miller (S.C. 2013) 404 S.C. 29, 744 S.E.2d 532. Sentencing And Punishment 2009

A probationer charged with a probation violation must be afforded minimal due process. State v. Hill (S.C. 2006) 368 S.C. 649, 630 S.E.2d 274. Constitutional Law 4733(1)

While underlying probation violations may be criminal offenses, the probation‑revocation proceeding is not a criminal trial of those charges. State v. Hill (S.C. 2006) 368 S.C. 649, 630 S.E.2d 274. Sentencing And Punishment 2009

The court has discretionary authority in dealing with guilty persons who are in a probationary status. State v. Lee (S.C.App. 2002) 350 S.C. 125, 564 S.E.2d 372. Sentencing And Punishment 2001

The question of whether a defendant’s probation should be revoked in whole or in part is committed to the circuit court’s sound discretion. State v. Knapp (S.C.App. 2000) 338 S.C. 541, 526 S.E.2d 741. Sentencing And Punishment 2001

Circuit court presiding over revocation proceeding was not bound by defendant’s agreement with probation officer that termination of probation was appropriate remedy for defendant’s violation of terms and conditions of probation. State v. Hamilton (S.C.App. 1999) 333 S.C. 642, 511 S.E.2d 94. Sentencing And Punishment 2033

Section 24‑21‑460 permits either the court which imposed the probationary sentence or the court where the probation violation occurs to revoke the probation, regardless of where the probation revocation warrant may have been issued. State v. Carter (S.C. 1989) 298 S.C. 304, 379 S.E.2d 905. Sentencing And Punishment 2009

2. Revocation of probation

Rule of Brady v. Maryland, which generally requires disclosure of evidence favorable to an accused, does not apply to probation‑revocation proceedings; probation may be revoked upon an evidentiary showing of facts tending to establish a violation, and a disclosure standard that governs when nearly concrete proof is required, as in criminal trials, is unworkable and impractical in a proceeding where a party need only tendto look guilty. State v. Hill (S.C. 2006) 368 S.C. 649, 630 S.E.2d 274. Sentencing And Punishment 2013

Instead of requiring proof beyond a reasonable doubt, probation is properly revoked upon an evidentiary showing of facts tending to establish a probation violation. State v. Hill (S.C. 2006) 368 S.C. 649, 630 S.E.2d 274. Sentencing And Punishment 2020

Any error in the state’s failure to disclose police report that allegedly contained mitigating evidence was harmless, in probation‑revocation proceeding; trial court held hearing on defendant’s motion for reconsideration after he obtained police report by subpoenas, and trial court heard such evidence and affirmed its original decision to revoke defendant’s probation. State v. Hill (S.C. 2006) 368 S.C. 649, 630 S.E.2d 274. Criminal Law 1177.3(4)

Revocation of probation, in whole or in part, is the means of enforcement of the conditions of the probation. State v. Lee (S.C.App. 2002) 350 S.C. 125, 564 S.E.2d 372. Sentencing And Punishment 2000

The authority of the court revoking probation should always be predicated upon an evidentiary showing of fact tending to establish a violation of the conditions. State v. Lee (S.C.App. 2002) 350 S.C. 125, 564 S.E.2d 372. Sentencing And Punishment 2021

Defendant who was convicted of sex offense was not sufficiently on notice that he was required to successfully complete a treatment program as a special condition of his probation until probation was revoked, and thus, probation revocation was in error, where probation order, which stated that defendant was to “obtain treatment for problem,” did not specifically order defendant to complete treatment or require defendant to complete a particular sex offender program or admit his guilt in order to do so, order’s vague directive resulted in confusion among probation agent, defendant’s mental health counselor, and various Department of Probation, Parole, and Pardon Services (DPPPS) employees, and defendant had complied with all other aspects of his probationary sentence. State v. Brown (S.C.App. 2002) 349 S.C. 414, 563 S.E.2d 339, certiorari dismissed as improvidently granted 356 S.C. 301, 589 S.E.2d 188. Sentencing And Punishment 2013

Probationer whose sole violation of terms and conditions consists of nonpayment of fines or restitution, and who is willing but unable to pay, should not be penalized for being poor. State v. Hamilton (S.C.App. 1999) 333 S.C. 642, 511 S.E.2d 94. Sentencing And Punishment 2003

A court did not err in considering a defendant’s uncounseled criminal domestic violence conviction in revoking the defendant’s probation which he was serving as a result of a prior conviction for committing a lewd act on a minor. Although an uncounseled conviction may not be used to enhance punishment for a subsequent offense, the defendant’s criminal domestic violence conviction did not result in any enhancement of his “lewd acts” conviction, but rather was considered only as violation of the terms of probation. State v. Canady (S.C. 1990) 301 S.C. 202, 391 S.E.2d 248.

Where defendant in DWI proceeding was originally sentenced at a term designated for jury trial under one statute, and his suspended sentence was partially revoked under another statute for violation of probation, an order vacating the revocation of probation arising out of the second proceeding was void where not made under either of the above statutory sections, and defendant was liable for service of the remaining sentence as ordered in the revocation of probation. State v. Moulds (S.C. 1975) 264 S.C. 404, 215 S.E.2d 445.

Fourteenth Amendment precludes state court from automatically revoking probation and imposing prison term when probationer is unable to pay fine, without finding that probationer has not made bona fide effort to pay fine or that alternative forms of punishment are adequate. Bearden v. Georgia, 1983, 103 S.Ct. 2064, 461 U.S. 660, 76 L.Ed.2d 221, on remand 167 Ga.App. 334, 308 S.E.2d 63.

2.7. Standard of proof

Instead of requiring proof beyond a reasonable doubt, probation is properly revoked upon an evidentiary showing of facts tending to establish a probation violation. State v. Hill (S.C. 2006) 368 S.C. 649, 630 S.E.2d 274. Sentencing And Punishment 2020

Rule of Brady v. Maryland, which generally requires disclosure of evidence favorable to an accused, does not apply to probation‑revocation proceedings; probation may be revoked upon an evidentiary showing of facts tending to establish a violation, and a disclosure standard that governs when nearly concrete proof is required, as in criminal trials, is unworkable and impractical in a proceeding where a party need only tendto look guilty. State v. Hill (S.C. 2006) 368 S.C. 649, 630 S.E.2d 274. Sentencing And Punishment 2013

3. Hearing

Any error in the state’s failure to disclose police report that allegedly contained mitigating evidence was harmless, in probation‑revocation proceeding; trial court held hearing on defendant’s motion for reconsideration after he obtained police report by subpoenas, and trial court heard such evidence and affirmed its original decision to revoke defendant’s probation. State v. Hill (S.C. 2006) 368 S.C. 649, 630 S.E.2d 274. Criminal Law 1177.3(4)

Probationer waived his right to a hearing on probation revocation, though probation was improperly revoked in that probationer was not served with an arrest warrant and probation was revoked in probationer’s absence, where probationer answered in the negative when the trial court asked if he wished to “back up and have a hearing.” Martin v. State (S.C. 2000) 338 S.C. 401, 526 S.E.2d 713. Sentencing And Punishment 2024

4. Right to counsel

An abuse of discretion occurs when the trial court’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. State v. Allen (S.C. 2006) 370 S.C. 88, 634 S.E.2d 653. Criminal Law 1147

Probationer was entitled to counsel at probation revocation hearing, where he testified, without contradiction, to his bona fide efforts to find work in order to pay fees and make restitution as required by the terms of his probation. Barlet v. State (S.C. 1986) 288 S.C. 481, 343 S.E.2d 620. Sentencing And Punishment 2014

5. Time of revocation order

This section and what is now Section 24‑21‑450 do not require that the order of revocation be made within the probationary period. It is only provided that during this period the warrant shall be issued, which is the pertinent jurisdictional fact. Lovell v. State (S.C. 1953) 223 S.C. 112, 74 S.E.2d 570.

6. Willful violation

Circuit court was not required to find that defendant’s violation of terms and conditions of his probation was willful in order to revoke probation, as charged violation was based on his failure to report to his probation agent and failure to perform ordered public service employment. State v. Hamilton (S.C.App. 1999) 333 S.C. 642, 511 S.E.2d 94. Sentencing And Punishment 2003

Probationer who willfully neither pays nor makes a bona fide effort to pay fines or restitution indicates that the original probationary sentence was inappropriate and that imprisonment is the preferred method of rehabilitation. State v. Hamilton (S.C.App. 1999) 333 S.C. 642, 511 S.E.2d 94. Sentencing And Punishment 2003

In those cases involving the failure to pay fines or restitution, the circuit judge must, in addition to finding sufficient factual evidence of the violation of terms and conditions of probation, make an additional finding of willfulness; in the absence of such a determination, a defendant’s due process rights are contravened by the deprivation of his constitutional freedom. State v. Hamilton (S.C.App. 1999) 333 S.C. 642, 511 S.E.2d 94. Constitutional Law 4733(2); Sentencing And Punishment 2030

Deprivation of probationer’s conditional freedom without a finding of a willful violation of the terms of a probation countervenes the Fourteenth Amendment due process requirement. Barlet v. State (S.C. 1986) 288 S.C. 481, 343 S.E.2d 620. Constitutional Law 4733(2)

7. Revocation of parole

Decision by Board of Probations to continue defendant’s parole for resisting arrest at hearing on parole violations had no bearing on trial court’s subsequent decision to revoke probation for assault and battery with intent to kill based on same violations; defendant’s admission to multiple violations provided independent evidentiary basis for revocation of probation. State v. Lee (S.C.App. 2002) 350 S.C. 125, 564 S.E.2d 372. Sentencing And Punishment 2003; Sentencing And Punishment 2005

8. Review

A decision to revoke probation generally rests within the circuit court’s discretion, however, an appellate court should reverse when that decision is based on an error of law or lacks supporting evidence. State v. Crouch (S.C. 2003) 355 S.C. 355, 585 S.E.2d 288. Criminal Law 1156.7; Sentencing And Punishment 2001

Ten‑year sentence with five years suspended upon service of probation for assault and battery with intent to kill, which would run concurrently upon parole for unrelated offense, became of law of case, and thus, issue whether circuit court had statutory authority to impose such sentence was unappealable following revocation of probation, where defendant failed to challenge sentence in motion to reconsider, on direct appeal from plea hearing, or as defense to probation revocation proceedings. State v. Lee (S.C.App. 2002) 350 S.C. 125, 564 S.E.2d 372. Criminal Law 1180

Although a decision to revoke probation generally rests within the circuit court’s discretion, an appellate court should reverse the revocation when that decision is based on an error of law or lacks supporting evidence. State v. Brown (S.C.App. 2002) 349 S.C. 414, 563 S.E.2d 339, certiorari dismissed as improvidently granted 356 S.C. 301, 589 S.E.2d 188. Criminal Law 1134.81; Sentencing And Punishment 2001

9. Nature of proceedings

While underlying probation violations may be criminal offenses, the probation‑revocation proceeding is not a criminal trial of those charges. State v. Hill (S.C. 2006) 368 S.C. 649, 630 S.E.2d 274. Sentencing And Punishment 2009

10. Discretion

The determination of whether to revoke probation in whole or part rests within the sound discretion of the trial court. State v. Allen (S.C. 2006) 370 S.C. 88, 634 S.E.2d 653. Sentencing And Punishment 2001

**SECTION 24‑21‑480.** Restitution Center program; distribution of offenders’ salaries.

 The judge may suspend a sentence for a defendant convicted of a nonviolent offense, as defined in Section 16‑1‑70, for which imprisonment of more than ninety days may be imposed, or as a revocation of probation, and may place the offender in a restitution center as a condition of probation. The board may place a prisoner in a restitution center as a condition of parole. The department, on the first day of each month, shall present to the general sessions court a report detailing the availability of bed space in the restitution center program. The restitution center is a program under the jurisdiction of the department.

 The offender must have paid employment and/or be required to perform public service employment up to a total of fifty hours per week.

 The offender must deliver his salary to the restitution center staff who must distribute it in the following manner:

 (1) restitution to the victim or payment to the account established pursuant to the Victims of Crime Act of 1984, Public Law 98‑473, Title II, Chapter XIV, Section 1404, as ordered by the court;

 (2) payment of child support or alimony or other sums as ordered by a court;

 (3) payment of any fines or court fees due;

 (4) payment of a daily fee for housing and food. This fee may be set by the department with the approval of the Department of Administration. The fee must be based on the offender’s ability to pay not to exceed the actual costs. This fee must be deposited by the department with the State Treasurer for credit to the same account as funds collected under Sections 14‑1‑210 through 14‑1‑230;

 (5) payment of any costs incurred while in the restitution center;

 (6) if available, fifteen dollars per week for personal items.

 The remainder must be deposited and given to the offender upon his discharge.

 The offender must be in the restitution center for not more than six months, nor less than three months; provided, however, in those cases where the maximum term is less than one year the offender must be in the restitution center for not more than ninety days nor less than forty‑five days.

 Upon release from the restitution center, the offender must be placed on probation for a term as ordered by the court.

 Failure to comply with program requirements may result in a request to the court to revoke the suspended sentence.

 No person must be made ineligible for this program by reason of gender.

HISTORY: 1986 Act No. 462, Section 5; 1988 Act No. 480, Section 12; 1991 Act No. 134, Section 17; 2008 Act No. 353, Section 2, Pt 15A, eff July 1, 2009.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 2008 amendment rewrote item (4).

CROSS REFERENCES

Funds generated by courts from fines and assessments to be allocated to programs established pursuant to this chapter, see Sections 14‑1‑206 to 14‑1‑208.

Workers’ compensation coverage for convicted persons under custody or supervision of the Department of Parole and Community Corrections, see Section 42‑1‑505.

Federal Aspects

Provisions of the Victims of Crime Act of 1984, P.L. 98‑473, Title II, Chapter XIV, Section 1404, see 42 U.S.C.A. Section 10603.

Library References

Prisons 17(1).

Sentencing and Punishment 1976.

Westlaw Topic Nos. 310, 350H.

C.J.S. Criminal Law Sections 1554, 1556.

C.J.S. Prisons and Rights of Prisoners Sections 55, 59, 63 to 66, 68 to 69, 71 to 72, 76 to 90, 124, 129.

**SECTION 24‑21‑485.** Authority of Department of Probation, Parole, and Pardon Services with respect to establishment and maintenance of restitution centers.

 In order for the department to establish and maintain restitution centers, the director may:

 (1) develop policies and procedures for the operation of restitution centers;

 (2) fund other management options advantageous to the State including, but not limited to, contracting with public or nonpublic entities for management of restitution centers;

 (3) lease buildings;

 (4) develop standards for disciplinary rules to be imposed on residents of restitution centers;

 (5) develop standards for the granting of emergency furloughs to participants.

HISTORY: 1986 Act No. 462, Section 5; 1988 Act No. 480, Section 13; 1993 Act No. 181, Section 472.

**SECTION 24‑21‑490.** Collection and distribution of restitution.

 (A) The Department of Probation, Parole and Pardon Services shall collect and distribute restitution on a monthly basis from all offenders under probationary and intensive probationary supervision.

 (B) Notwithstanding Section 14‑17‑725, the department shall assess a collection fee of twenty percent of each restitution program and deposit this collection fee into a separate account. The department shall maintain individual restitution accounts that reflect each transaction and the amount paid, the collection fee, and the unpaid balance of the account. A summary of these accounts must be reported to the Governor’s Office, the President of the Senate, the Speaker of the House, the Chairman of the House Judiciary Committee, and the Chairman of the Senate Corrections and Penology Committee every six months following the enactment of this section.

 (C) The department may retain the collection fees described in subsection (B) and expend the fees for the purpose of collecting and distributing restitution. Unexpended funds at the end of each fiscal year may be retained by the department and carried forward for use for the same purpose by the department.

 (D) For financial obligations collected by the department pursuant to administrative monitoring requirements, payments shall be distributed by the department proportionately to pay restitution and fees based on the ratio of each category to the total financial obligation owed. Fines shall continue to be paid and collected pursuant to the provisions of Chapter 17, Title 14.

HISTORY: 1996 Act No. 437, Section 5; 2002 Act No. 356, Section 1, Pt IV.C; 2010 Act No. 273, Section 54, eff January 1, 2011.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date.”

Effect of Amendment

The 2010 amendment added subsection (D) relating to collections by administrative monitoring.

Library References

Sentencing and Punishment 1973.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 1556, 1771 to 1786.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 32, Legislative‑ Judicial Conflicts.

S.C. Jur. Probation, Parole, and Pardon Section 9, Conditions of Probation.

NOTES OF DECISIONS

In general 1

Payment required as condition precedent to probation 2

1. In general

The circuit court does not have the authority to circumvent the legislature’s intent for the Department of Probation, Parole and Pardon Services to manage the payment of restitution from individuals under its supervision; once an individual is placed on probation, any restitution owed by that individual must be collected and distributed by the Department. South Carolina Dept. of Probation, Parole and Pardon Services ex rel. State v. Reynolds (S.C.App. 2000) 343 S.C. 465, 540 S.E.2d 480. Sentencing And Punishment 2207

Sentencing court could not waive requirement that defendant pay 20% of agreed upon restitution amount to Department of Probation, Parole, and Pardon Services as statutorily‑prescribed collection fee. State v. Shelton (S.C.App. 2000) 338 S.C. 350, 526 S.E.2d 515. Costs 292

Requirement that defendant pay 20% of restitution amount ordered to Department of Probation, Parole, and Pardon Services as statutorily‑prescribed collection fee is not “unauthorized fine” or “substantial fine”; rather, it is not “fine” at all, as its goal is not to punish, but to compensate Department for any loss incurred in administering restitution center program. State v. Shelton (S.C.App. 2000) 338 S.C. 350, 526 S.E.2d 515. Costs 292; Fines 1.5

2. Payment required as condition precedent to probation

Trial court did not circumvent authority of Department of Probation, Parole and Pardon Services by ordering defendant to pay $25,000 directly to embezzlement victims; defendant was not under Department’s probationary supervision at time of order, as that payment was a condition precedent to her receiving probation. South Carolina Dept. of Probation, Parole and Pardon Services ex rel. State v. Reynolds (S.C.App. 2000) 343 S.C. 465, 540 S.E.2d 480. Sentencing And Punishment 2207

Department of Probation, Parole and Pardon Services was required to collect and distribute restitution that remained once initial payment of $25,000, which was a condition precedent to embezzlement defendant receiving probation, was paid directly to victims. South Carolina Dept. of Probation, Parole and Pardon Services ex rel. State v. Reynolds (S.C.App. 2000) 343 S.C. 465, 540 S.E.2d 480. Sentencing And Punishment 2207

ARTICLE 6

Comprehensive Community Control System

**SECTION 24‑21‑510.** Development and operation of system; basic elements.

 The department shall develop and operate a comprehensive community control system if the General Assembly appropriates sufficient funds. The system shall include community control centers and sentencing options as a condition of probation, and utilize all sentencing options set forth in Chapter 21 of Title 24.

HISTORY: 1993 Act No. 164, Part II, Section 24A; 1995 Act No. 145, Part II, Section 52A.

CROSS REFERENCES

Funds generated by courts from fines and assessments to be allocated to programs established pursuant to this chapter, see Sections 14‑1‑206 to 14‑1‑208.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑540.** Community Control Centers for higher risk offenders; guidelines for placement.

 The department shall develop and operate Community Control Centers for higher risk offenders, if the General Assembly appropriates funds to operate the centers. If the department has recommended the placement, offenders may be placed in a center for not less than thirty days nor more than six months by a judge as a condition of probation or as an alternative to probation revocation, or by the board as a condition of parole or as an alternative to parole revocation. An offender may not be placed in the center for more than six months on the same crime. There must not be consecutive sentencing to a Community Control Center.

HISTORY: 1993 Act No. 164, Part II, Section 24A.

CROSS REFERENCES

Funds generated by courts from fines and assessments to be allocated to programs established pursuant to this chapter, see Sections 14‑1‑206 to 14‑1‑208.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑550.** Probation terms involving fines, costs, assessments, or restitution.

 A probation term ordered to end upon the payment of fines, court costs, assessments, and restitution must continue until the clerk of court certifies in writing that all monies have been paid, or the probation term has expired, or the expiration of probation has been changed by a subsequent order.

HISTORY: 1993 Act No. 164, Part II, Section 24A.

Library References

Sentencing and Punishment 1948 to 1953.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 1557, 1559, 1563.

**SECTION 24‑21‑560.** Community supervision program; eligibility; time periods, supervision, and determination of completion; violations; revocation; notification of release to community supervision.

 (A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, any sentence for a “no parole offense” as defined in Section 24‑13‑100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole, and Pardon Services. No prisoner who is serving a sentence for a “no parole offense” is eligible to participate in a community supervision program until he has served the minimum period of incarceration as set forth in Section 24‑13‑150. Nothing in this section may be construed to allow a prisoner convicted of murder or a prisoner prohibited from early release, discharge, or work release by any other provision of law to be eligible for early release, discharge, or work release.

 (B) A community supervision program operated by the Department of Probation, Parole and Pardon Services must last no more than two continuous years. The period of time a prisoner is required to participate in a community supervision program and the individual terms and conditions of a prisoner’s participation shall be at the discretion of the department based upon guidelines developed by the director; however, the conditions of participation must include the requirement that the offender must permit the search or seizure, without a search warrant, with or without cause, of the offender’s person, any vehicle the offender owns or is driving, and any of the offender’s possessions by:

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

 (2) any other law enforcement officer, but the conditions for participation for an 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 offender agree to be subject to search or seizure, without a search warrant, with or without cause, of the offender’s person, any vehicle the offender owns or is driving, or any of the 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 pursuant to this subsection, 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 in a community supervision program. A law enforcement officer conducting a search or seizure without a warrant pursuant to this subsection 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.

 A prisoner participating in a community supervision program must be supervised by a probation agent of the department. The department must determine when a prisoner completes a community supervision program, violates a term of community supervision, fails to participate in a program satisfactorily, or whether a prisoner should appear before the court for revocation of the community supervision program.

 (C) If the department determines that a prisoner has violated a term of the community supervision program and the community supervision should be revoked, a probation agent must initiate a proceeding in General Sessions Court. The proceeding must be initiated pursuant to a warrant or a citation issued by a probation agent setting forth the violations of the community supervision program. The court shall determine whether:

 (1) the terms of the community supervision program are fair and reasonable;

 (2) the prisoner has complied with the terms of the community supervision program;

 (3) the prisoner should continue in the community supervision program under the current terms;

 (4) the prisoner should continue in the community supervision program under other terms and conditions as the court considers appropriate;

 (5) the prisoner has wilfully violated a term of the community supervision program.

 If the court determines that a prisoner has wilfully violated a term or condition of the community supervision program, the court may impose any other terms or conditions considered appropriate and may continue the prisoner on community supervision, or the court may revoke the prisoner’s community supervision and impose a sentence of up to one year for violation of the community supervision program. A prisoner who is incarcerated for revocation of the community supervision program is not eligible to earn any type of credits which would reduce the sentence for violation of the community supervision program.

 (D) If a prisoner’s community supervision is revoked by the court and the court imposes a period of incarceration for the revocation, the prisoner also must complete a community supervision program of up to two years as determined by the department pursuant to subsection (B) when he is released from incarceration.

 A prisoner who is sentenced for successive revocations of the community supervision program may be required to serve terms of incarceration for successive revocations, as provided in Section 24‑21‑560(C), and may be required to serve additional periods of community supervision for successive revocations, as provided in Section 24‑21‑560(D). The maximum aggregate amount of time a prisoner may be required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed limited by the amount of time remaining on the original “no parole offense”. The prisoner must not be incarcerated for a period longer than the original sentence. The original term of incarceration does not include any portion of a suspended sentence.

 If a prisoner’s community supervision is revoked due to a conviction for another offense, the prisoner must complete a community supervision program of up to two continuous years as determined by the department after the prisoner has completed the service of the sentence for the community supervision revocation and any other term of imprisonment which may have been imposed for the criminal offense, except when the subsequent sentence is death or life imprisonment.

 (E) A prisoner who successfully completes a community supervision program pursuant to this section has satisfied his sentence and must be discharged from his sentence.

 (F) The Department of Corrections must notify the Department of Probation, Parole, and Pardon Services of the projected release date of any inmate serving a sentence for a “no parole offense” one hundred eighty days in advance of his release to community supervision. For an offender sentenced to one hundred eighty days or less, the Department of Corrections immediately must notify the Department of Probation, Parole, and Pardon Services.

 (G) Victims registered pursuant to Article 15, Chapter 3, Title 16 and the sheriff’s office in the county where a prisoner sentenced for a “no parole offense” is to be released must be notified by the Department of Probation, Parole, and Pardon Services when the prisoner is released to a community supervision program.

HISTORY: 1995 Act No. 83, Section 1; 2010 Act No. 151, Section 11, eff April 28, 2010; 2010 Act No. 237, Section 94, eff June 11, 2010.

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 in subsection (B) added the text following “developed by the director” in the second sentence and before the undesignated paragraph following item (2), and made other nonsubstantive changes.

The second 2010 amendment rewrote subsection (D).

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 9, Conditions of Probation.

S.C. Jur. Probation, Parole, and Pardon Section 10, Revocation, Modification, and Termination of Probation.

NOTES OF DECISIONS

In general 1

Review 2

Validity 1/2

1 2. Validity

Holding of State v. McGrier, that Community Supervision Program (CSP) statute providing that defendant may be required to serve additional periods of community supervision for successive revocations was unconstitutional, was to be applied retroactively. Bennett v. State (S.C. 2008) 380 S.C. 215, 669 S.E.2d 594. Courts 100(1)

Because Community Supervision Program (CSP) is a collateral consequence of a conviction for a “no‑parole offense,” revocations for successive CSP violations should not extend or exceed the term of incarceration that was originally ordered for the underlying offense. State v. McGrier (S.C. 2008) 378 S.C. 320, 663 S.E.2d 15. Sentencing And Punishment 2034

Community Supervision Program (CSP) statute, providing that defendant may be required to serve additional periods of community supervision for successive revocations, was unconstitutional; if there were successive revocations, two‑year period could produce a never‑ending cycle of participation in CSP and an incarceration period which would exceed or extend past originally ordered term of incarceration, and although defendant was on notice by terms of statute that completion of CSP was a requirement of his originally‑imposed sentence, he would not have been aware that his participation in program could potentially be in perpetuity; abrogating State v. Mills, 360 S.C. 621, 602 S.E.2d 750. State v. McGrier (S.C. 2008) 378 S.C. 320, 663 S.E.2d 15. Sentencing And Punishment 1825

1. In general

A defendant’s completion of his community supervision program (CSP) term discharges any residual probation. State v. Blakney (S.C.App. 2014) 410 S.C. 244, 763 S.E.2d 622, rehearing denied. Sentencing and Punishment 1953

Defendant’s “original sentence,” within meaning of statute capping the amount of time a prisoner subject to a community supervision program (CSP) may be required to serve in prison or in a CSP, included both his 30 months served and the remainder of his 15‑year suspended sentence for burglary, and thus the aggregate amount of time he could be required to serve in prison or in a CSP was 15 years, not 30 months, although the original burglary sentence did not include a term of probation. State v. Blakney (S.C.App. 2014) 410 S.C. 244, 763 S.E.2d 622, rehearing denied. Sentencing and Punishment 1946

Defendant’s mere physical presence less than 1,000 feet from school did not constitute a willful violation of a term of his community supervision program following his release after serving a six‑year sentence for criminal sexual conduct, absent a showing of a voluntary or intentional act done in violation of a term of the community supervision program, or the voluntary and intentional failure to do something known to be required by a term of community supervision. State v. Garrard (S.C.App. 2010) 390 S.C. 146, 700 S.E.2d 269. Sentencing and Punishment 1971(3)

The trial court erred when it determined that defendant had successfully completed his community supervision program (CSP), where defendant had not served two continuous years without any violations or revocations of the CSP. State v. Picklesimer (S.C. 2010) 388 S.C. 264, 695 S.E.2d 845, rehearing denied. Sentencing and Punishment 1953

The “original sentence,” as referenced in statute governing revocation of community supervision and the maximum amount of time a prisoner could be required to serve after revocation, included both the suspended and unsuspended portions of a circuit court’s sentence; therefore, pursuant to statute, when a circuit court was faced with a defendant’s violation of the Department of Probation, Parole, and Pardon Services’ community supervision program (CSP) or normal probationary term, the court could not revoke and impose a term of further incarceration, nor lengthen the term of the CSP or probation if that would result in the aggregate period of service extending beyond the end of the term of the original sentence. State v. Picklesimer (S.C. 2010) 388 S.C. 264, 695 S.E.2d 845, rehearing denied. Sentencing and Punishment 2032; Sentencing and Punishment 2036; Sentencing and Punishment 2039

Defendant, who was sentenced for drug offense as a first offender, wrongly classified and treated as second offender, and subsequently charged with violating conditions of Community Supervision Program (CSP), had served more than original sentence of four years imprisonment, and thus, was entitled to be released from CSP; warrant, indictment, and sentencing sheet all listed statute indicating first offense, defendant’s placement and participation in CSP was result of being treated as second offender, as indicated by Criminal Docket Report (CDR) code on sentencing sheet, and additional listing of CDR code, indicating second offense, could not trump statute. State v. Bennett (S.C.App. 2007) 375 S.C. 165, 650 S.E.2d 490. Sentencing And Punishment 1945

Upon second revocation of defendant’s community supervision program (CSP), applicable sentencing statute permitted trial court to sentence defendant for up to one year, provided that total time imposed including all revocations did not exceed length of defendant’s original sentence; as defendant had originally been sentenced to six months for distribution of crack cocaine and defendant had served three weeks on his prior CSP revocation, trial court could sentence defendant to five months and seven days. State v. Mills (S.C. 2004) 360 S.C. 621, 602 S.E.2d 750. Sentencing And Punishment 2034

Defendant’s five‑year probation sentence was discharged after he successfully completed a community supervision program (CSP); penal statute governing CSP’s stated that a defendant should be discharged from his sentence after completion of a CSP. State v. Dawkins (S.C. 2002) 352 S.C. 162, 573 S.E.2d 783, rehearing denied. Sentencing And Punishment 1953

2. Review

Burglary defendant’s erroneously suspended sentence was law of the case on appeal from order revoking his community supervision program (CSP), where the State never sought to correct the error. State v. Blakney (S.C.App. 2014) 410 S.C. 244, 763 S.E.2d 622, rehearing denied. Criminal Law 1180

ARTICLE 7

Parole; Release for Good Conduct

**SECTION 24‑21‑610.** Eligibility for parole.

 In all cases cognizable under this chapter the Board may, upon ten days’ written notice to the solicitor and judge who participated in the trial of any prisoner, parole a prisoner convicted of a crime and imprisoned in the state penitentiary, in any jail, or upon the public works of any county who if:

 (1) sentenced for not more than thirty years has served at least one‑third of the term;

 (2) sentenced to life imprisonment or imprisonment for any period in excess of thirty years, has served at least ten years.

 If after January 1, 1984, the Board finds that the statewide case classification system provided for in Chapter 23 of this title has been implemented, that an intensive supervision program for parolees who require more than average supervision has been implemented, that a system for the periodic review of all parole cases in order to assess the adequacy of supervisory controls and of parolee participation in rehabilitative programs has been implemented, and that a system of contracted rehabilitative services for parolees is being furnished by public and private agencies, then in all cases cognizable under this chapter the Board may, upon ten days’ written notice to the solicitor and judge who participated in the trial of any prisoner, to the victim or victims, if any, of the crime, and to the sheriff of the county where the prisoner resides or will reside, parole a prisoner who if sentenced for a violent crime as defined in Section 16‑1‑60, has served at least one‑third of the term or the mandatory minimum portion of sentence, whichever is longer. For any other crime the prisoner shall have served at least one‑fourth of the term of a sentence or if sentenced to life imprisonment or imprisonment for any period in excess of forty years, has served at least ten years.

 The provisions of this section do not affect the parole ineligibility provisions for murder, armed robbery, and drug trafficking as set forth respectively in Sections 16‑3‑20 and 16‑11‑330, and subsection (e) of Section 44‑53‑370.

 In computing parole eligibility, no deduction of time may be allowed in any case for good behavior, but after June 30, 1981, there must be deductions of time in all cases for earned work credits, notwithstanding the provisions of Sections 16‑3‑20, 16‑11‑330, and 24‑13‑230.

 Notwithstanding the provisions of this section, the Board may parole any prisoner not sooner than one year prior to the prescribed date of parole eligibility when, based on medical information furnished to it, the Board determines that the physical condition of the prisoner concerned is so serious that he would not be reasonably expected to live for more than one year. Notwithstanding any other provision of this section or of law, no prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist.

HISTORY: 1962 Code Section 55‑611; 1952 Code Section 55‑611; 1942 Code Section 1038‑10; 1942 (42) 1456; 1949 (46) 311; 1962 (52) 1887; 1963 (53) 241; 1972 (57) 2528; 1981 Act No. 100, Section 9; 1984 Act No. 482, Section 2; 1986 Act No. 462, Section 35.

CROSS REFERENCES

Funds generated by courts from fines and assessments to be allocated to programs established pursuant to this chapter, see Sections 14‑1‑206 to 14‑1‑208.

Notwithstanding provisions of this chapter, inmate who was victim of spousal abuse may be eligible for parole after serving one‑fourth of term, see Section 16‑25‑90.

Library References

Pardon and Parole 50.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 48 to 51.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Burglary Section 7, Punishment.

S.C. Jur. Burglary Section 9, Punishment.

S.C. Jur. Post‑Conviction Relief Section 5, Illegal Sentence.

S.C. Jur. Probation, Parole, and Pardon Section 4, Powers and Duties of the Board.

S.C. Jur. Probation, Parole, and Pardon Section 14, Summary of Parole Eligibility Calculations.

S.C. Jur. Probation, Parole, and Pardon Section 15, Computation of Parole Eligibility Involving Deductions for Earned Work Credits, Education Credits, and Service Credits.

S.C. Jur. Probation, Parole, and Pardon Section 18, Statutory Requirements.

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.

United States Supreme Court Annotations

Parole standard of review, habeas corpus, due process, parole, see Swarthout v. Cooke, 2011, 131 S.Ct. 859, 562 U.S. 216, 178 L.Ed.2d 732, rehearing denied 131 S.Ct. 1845, 563 U.S. 930, 179 L.Ed.2d 796, on remand 645 F.3d 1096, on remand 475 Fed.Appx. 680, 2012 WL 3554675.

Attorney General’s Opinions

Inasmuch as a life sentence is considered the same as a sentence for more than thirty years under item (2) of this section, the aggregation of an additional ten‑year sentence would not affect the time the prisoner’s record should be considered for parole purposes because the sum total of the two would equal one general sentence of more than thirty years. 1965‑66 Op. Atty Gen, No. 1982, p 34.

Under the 1986 Omnibus Criminal Justice Improvements Act, individuals convicted of murder are not entitled to reductions in time prior to parole eligibility through the use of earned work credits. Prisoners convicted of any violent crimes, as defined in Section 16‑1‑60, for a criminal event that occurred after June 3, 1986, and who have a prior conviction at any time before or after June 3, 1986, for one of the specified crimes, would not be eligible for parole consideration on the recent conviction and must complete service of their entire sentences. Under the provisions of Sections 24‑21‑645 and 24‑21‑650, the review in two years upon rejection, of prisoners in confinement for a violent crime, is applicable to the entire violent offender population. Under the provisions of Section 24‑21‑610, all burglary in the second degree convictions would not be eligible for parole until they have served at least one‑third of their sentence. Any and all offenses of burglary in the first degree and burglary in the second degree under Section 16‑11‑312(B) carry all consequences of a “violent crime” regardless of the statutory aggravating circumstances shown. 1986 Op. Atty Gen, No. 86‑102, p 309.

The eligibility for parole consideration of a prisoner convicted of armed robbery is determined by construing the parole statutes in conjunction with the amendment to the armed robbery statute. 1975‑76 Op. Atty Gen No. 4531, p 394.

This section as amended in 1963 has the same effect as it had prior to the 1962 amendment. 1963‑64 Op. Atty Gen, No. 1606, p 21.

Procedure for parole may be changed after conviction and sentence. The procedure to be followed in determining whether a parole is to be granted, has been violated, and is to be revoked, may be changed by statute after conviction and sentence and where it is changed the later law applied and is to be used. 1963‑64 Op. Atty Gen, No. 1606, p 21.

Where part of sentence suspended, prisoner must nevertheless serve one third of original sentence. A prisoner having a sentence with a portion suspended, will be required to serve one third of the original maximum sentence, including the suspended portion, to bring his case within the jurisdiction of the Probation, Pardon and Parole Board for parole action. 1963‑64 Op. Atty Gen, No. 1606, p 21.

The words “original sentence” mean the whole of a sentence, including the unsuspended part, and the suspended portion is an inseparable part of the sentence. 1963‑64 Op. Atty Gen, No. 1606, p 21.

NOTES OF DECISIONS

In general 1

Suspended sentence 2

1. In general

The decision to grant or deny parole is within the parole board’s discretion. Bolin v. South Carolina Dept. of Corrections (S.C.App. 2016) 415 S.C. 276, 781 S.E.2d 914, rehearing denied. Pardon and Parole 47

Parole eligibility is not a matter within the jurisdiction of the trial court, but falls within the province of the Board of Probation, Parole, and Pardon Services. State v. Lee (S.C.App. 2002) 350 S.C. 125, 564 S.E.2d 372. Pardon And Parole 55.1

Trial court had jurisdiction to sentence defendant to probation for assault and battery with intent to kill to be served at same time as parole for resisting arrest and subsequently to revoke probation for violations; probation had no bearing or effect on jurisdiction of Board of Probation, Parole and Pardon Services regarding issues of parole, but was separate and distinct function. State v. Lee (S.C.App. 2002) 350 S.C. 125, 564 S.E.2d 372. Sentencing And Punishment 2009

A prisoner sentenced to life for murder was not entitled to apply earned work credits to reduce his parole eligibility time under the Omnibus Crime Bill (OCB) where Section 35 of the OCB (see Section 24‑21‑610) allows deductions for work credits by all prisoners, but Section 27 (see Section 16‑3‑20) provides that the mandatory sentence for a prisoner guilty of murder cannot be reduced by any credits; although penal statutes are to be construed strictly against the state, a specific statute prevails over a more general one. Elmore v. State (S.C. 1991) 305 S.C. 456, 409 S.E.2d 397.

Sentence on one indictment of six years, and on second indictment of five years “consecutive, suspended,” constituted sentence of eleven years for purpose of service before eligibility for parole. Mims v. State (S.C. 1979) 273 S.C. 740, 259 S.E.2d 602. Pardon And Parole 51

Cited in State v Williams (1952) 221 SC 107, 69 SE2d 371. State v. Morris (S.C. 1963) 243 S.C. 225, 133 S.E.2d 744, certiorari denied 84 S.Ct. 1935, 377 U.S. 1001, 12 L.Ed.2d 1050, rehearing denied 85 S.Ct. 24, 379 U.S. 873, 13 L.Ed.2d 81.

Applied in Bearden v. Manning (S.C. 1961) 238 S.C. 187, 119 S.E.2d 670.

2. Suspended sentence

When a person is sentenced to a term of years and the sentence is suspended after the service of a portion of that term, under the 1963 amendment to item (1) of this section an application for parole may be made only after service of one third of the entire sentence. Picklesimer v. State (S.C. 1970) 254 S.C. 596, 176 S.E.2d 536. Pardon And Parole 50

The word “term” used in the 1963 amendment to item (1) of this section refers to the whole term for which a prisoner is sentenced. It includes that portion of the sentence suspended. Picklesimer v. State (S.C. 1970) 254 S.C. 596, 176 S.E.2d 536.

When a portion of a sentence is suspended it merely means that a person is permitted to serve a portion of his sentence at home. The sentence is the total of the part served at the prison and at home. Picklesimer v. State (S.C. 1970) 254 S.C. 596, 176 S.E.2d 536. Sentencing And Punishment 1809

**SECTION 24‑21‑615.** Review of case of prisoner convicted of capital offense by Parole Board restricted.

 The board may not review the case of a prisoner convicted of a capital offense for the purpose of determining whether the person is entitled to any of the benefits provided in this chapter during the month of December of each year.

HISTORY: 1994 Act No. 286, Section 1.

Library References

Pardon and Parole 48.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 48 to 51.

**SECTION 24‑21‑620.** Review by Board of prisoner’s case after prisoner has served one fourth of sentence.

 Within the ninety‑day period preceding a prisoner having served one‑fourth of his sentence, the board, either acting in a three‑member panel or meeting as a full board, shall review the case, regardless of whether or not any application has been made therefor, for the purpose of determining whether or not such prisoner is entitled to any of the benefits provided for in this chapter; provided, that in cases of prisoners in confinement due to convictions for nonviolent crimes, an administrative hearing officer may be appointed by the director to review the case who must submit to the full board written findings of fact and recommendations which shall be the basis for a determination by the board. Upon an affirmative determination, the prisoner must be granted a provisional parole or parole. Upon a negative determination, the prisoner’s case shall be reviewed every twelve months thereafter for the purpose of such determination.

HISTORY: 1962 Code Section 55‑611.1; 1952 Code Section 55‑611.1; 1942 Code Section 1038‑10; 1942 (42) 1456; 1949 (46) 311; 1981 Act No. 100, Section 10; 1991 Act No. 134, Section 18; 1993 Act No. 181, Section 473.

CROSS REFERENCES

Notwithstanding provisions of this chapter, inmate who was victim of spousal abuse may be eligible for parole after serving one‑fourth of term, see Section 16‑25‑90.

Library References

Pardon and Parole 50.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 48 to 51.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 102, Constitutionality of Ex Post Facto Laws.

S.C. Jur. Probation, Parole, and Pardon Section 18, Statutory Requirements.

NOTES OF DECISIONS

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Validity 1

1. Validity

The application of Section 24‑21‑645 to a prisoner violates the constitutional prohibition against ex post facto laws where that statute provided that persons convicted of violent crimes would be reconsidered for parole every 2 years and, under the statutory scheme in effect when the prisoner committed the crime he was eligible for reconsideration for parole every 12 months because statutes enacted or amended after a prisoner was sentenced cannot be applied to alter the conditions of or revoke his or her pre‑existing parole eligibility. Roller v. Cavanaugh (C.A.4 (S.C.) 1993) 984 F.2d 120, certiorari granted 113 S.Ct. 2412, 508 U.S. 939, 124 L.Ed.2d 635, certiorari dismissed as improvidently granted 114 S.Ct. 593, 510 U.S. 42, 126 L.Ed.2d 409, on remand 932 F.Supp. 729.

Section Section 24‑21‑620 was amended by Section 24‑21‑645 to reduce frequency of parole reconsideration for violent offenders from annual to bi‑annual basis; retroactive application of this amendment to prisoner violated constitutional prohibition against ex post facto laws. Roller v. Cavanaugh (C.A.4 (S.C.) 1993) 984 F.2d 120, certiorari granted 113 S.Ct. 2412, 508 U.S. 939, 124 L.Ed.2d 635, certiorari dismissed as improvidently granted 114 S.Ct. 593, 510 U.S. 42, 126 L.Ed.2d 409, on remand 932 F.Supp. 729.

Prisoner made cognizable Section 1983 claim where prisoner did not assert that he was entitled to parole, but rather claimed his ex post facto rights were violated as result of statutory amendment to Section 24‑21‑620 effected by enactment of Section 24‑21‑645, which amendment was retroactively applied to increase the length of time between his parole reconsideration hearings. Roller v. Cavanaugh (C.A.4 (S.C.) 1993) 984 F.2d 120, certiorari granted 113 S.Ct. 2412, 508 U.S. 939, 124 L.Ed.2d 635, certiorari dismissed as improvidently granted 114 S.Ct. 593, 510 U.S. 42, 126 L.Ed.2d 409, on remand 932 F.Supp. 729.

Application of amended statute providing that consideration for parole eligibility for violent offenders would be biannually rather than annually did not violate prohibition against ex post facto laws; at time of inmate’s crimes, there was no statute governing frequency of parole hearings, but Department of Probation, Parole and Pardon Services had policy calling for biannual review for persons serving sentences of 30 years or more, statute allowing for annual reviews was enacted several years after inmate’s crimes were committed, and amended statute provided no greater limitation on parole eligibility than inmate was originally entitled to. James v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C.App. 2008) 376 S.C. 392, 656 S.E.2d 399. Constitutional Law 2823; Pardon And Parole 42.1

Remedy for inmate’s claim that decision by Department of Probation, Parole, and Pardon Services that review for inmate’s parole eligibility would be biannually rather than annually violated prohibition against ex post facto laws was review by Administrative Law Court, and not civil action against Department. James v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C.App. 2008) 376 S.C. 392, 656 S.E.2d 399. Pardon And Parole 62

Inmate’s failure to seek administrative review of the Department of Probation, Parole and Pardon Services’s refusal to grant inmate annual parole review warranted dismissal of inmate’s petition for a writ of mandamus to compel annual parole review; inmate’s claim that switching his parole review from annually to bi‑annually violated ex post facto laws raised a sufficient liberty interest to trigger due process requirements, the Administrative Procedures Act (APA) provided for administrative review of Department decisions, and ex post facto claims were non‑collateral or subject to administrative review. Steele v. Benjamin (S.C.App. 2004) 362 S.C. 66, 606 S.E.2d 499. Mandamus 3(8); Pardon And Parole 62

2. In general

Inmate did not have protected liberty interest in parole, but only to hearing to determine parole eligibility. James v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C.App. 2008) 376 S.C. 392, 656 S.E.2d 399. Constitutional Law 4838; Pardon And Parole 46

An inmate has a right of review by the Administrative Law Judge Division (ALJD) after a final decision that he is ineligible for parole, but a parole‑eligible inmate does not have the same right of review after a decision denying parole; the parole board is, however, required to review an inmate’s case every twelve months after a negative parole determination. Sullivan v. South Carolina Dept. of Corrections (S.C. 2003) 355 S.C. 437, 586 S.E.2d 124, certiorari denied 124 S.Ct. 1155, 540 U.S. 1153, 157 L.Ed.2d 1050. Pardon And Parole 62

3. Construction and application

A defendant convicted of second‑degree burglary will be entitled to parole after serving 1/4 of his sentence since (1) second degree burglary is not listed as a violent offense under Section 16‑1‑60 and thus is a non‑violent offense under Section 16‑1‑70; and (2) Section 24‑21‑620, which sets parole eligibility at 1/4 for non‑violent crimes, was enacted after Section 16‑11‑312, which defines second degree burglary and provides for parole eligibility after 1/3 of the sentence is served. Hair v. State (S.C. 1991) 305 S.C. 77, 406 S.E.2d 332.

4. Review

Remedy for denial of parole was request for review by Administrative Law Court, and not civil action against Department of Probation, Parole, and Pardon Services. James v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C.App. 2008) 376 S.C. 392, 656 S.E.2d 399. Pardon And Parole 62

**SECTION 24‑21‑630.** Effect of time served while awaiting trial upon determination of time required to be served for eligibility for parole.

 For the purpose of determining the time required to be served by a prisoner before he shall be eligible to be considered for parole, notwithstanding any other provision of law, all prisoners shall be given benefit for time served in prison in excess of three months while awaiting trial or between trials.

HISTORY: 1962 Code Section 55‑611.2; 1968 (55) 2717.

Library References

Pardon and Parole 50.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 48 to 51.

NOTES OF DECISIONS

In general 1

1. In general

Part of sentence conditioning parole upon making restitution was void. State v. Sanders (S.C. 1977) 269 S.C. 215, 237 S.E.2d 53.

**SECTION 24‑21‑635.** Earned work credits.

 For the purpose of determining the time required to be served by a prisoner before he shall be eligible to be considered for parole, notwithstanding any other provision of law, all prisoners shall be given benefit of earned work credits awarded pursuant to Section 24‑13‑230.

HISTORY: 1978 Act No. 496, Section 17; 1981 Act No. 100, Section 11.

Library References

Pardon and Parole 50.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 48 to 51.

Attorney General’s Opinions

Under the 1986 Omnibus Criminal Justice Improvements Act, individuals convicted of murder are not entitled to reductions in time prior to parole eligibility through the use of earned work credits. Prisoners convicted of any violent crimes, as defined in Section 16‑1‑60, for a criminal event that occurred after June 3, 1986, and who have a prior conviction at any time before or after June 3, 1986, for one of the specified crimes, would not be eligible for parole consideration on the recent conviction and must complete service of their entire sentences. Under the provisions of Sections 24‑21‑645 and 24‑21‑650, the review in two years upon rejection, of prisoners in confinement for a violent crime, is applicable to the entire violent offender population. Under the provisions of Section 24‑21‑610, all burglary in the second degree convictions would not be eligible for parole until they have served at least one‑third of their sentence. Any and all offenses of burglary in the first degree and burglary in the second degree under Section 16‑11‑312(B) carry all consequences of a “violent crime” regardless of the statutory aggravating circumstances shown. 1986 Op. Atty Gen, No. 86‑102, p 309.

**SECTION 24‑21‑640.** Circumstances warranting parole; search and seizure; criteria; reports of parolees; records subject to Freedom of Information Act.

 The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

 Before an inmate may be released on parole, he must agree in writing to be subject to search or seizure, without a search warrant, with or without cause, of the inmate’s person, any vehicle the inmate owns or is driving, and any of the inmate’s possessions by:

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

 (2) any other law enforcement officer.

 An inmate may not be granted parole release by the board if he fails to comply with this provision. However, an inmate 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 inmate agree to be subject to search or seizure, without a search warrant, with or without cause, of the inmate’s person, any vehicle the inmate owns or is driving, or any of the inmate’s possessions.

 Immediately before each search or seizure 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. 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 section, he is subject to discipline pursuant to the employing agency’s policies and procedures.

 The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner’s disciplinary and other records. The criteria must be made available to all prisoners at the time of their incarceration and the general public. The paroled prisoner must, as often as may be required, render a written report to the board giving that information as may be required by the board which must be confirmed by the person in whose employment the prisoner may be at the time. The board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16‑1‑60. Provided that where more than one included offense shall be committed within a one‑day period or pursuant to one continuous course of conduct, such multiple offenses must be treated for purposes of this section as one offense.

 Any part or all of a prisoner’s in‑prison disciplinary records and, with the prisoner’s consent, records involving all awards, honors, earned work credits and educational credits, are subject to the Freedom of Information Act as contained in Chapter 4, Title 30.

HISTORY: 1981 Act No. 100, Section 12; 1986 Act No. 462, Section 30; 1962 Code Section 55‑612; 1952 Code Section 55‑612; 1942 Code Section 1038‑11; 1942 (42) 1456; 1949 (46) 311; 1981 Act No. 100, Section 12; 1986 Act No. 462, Section 30; 1990 Act No. 510, Section 1; 2010 Act No. 151, Section 12, eff April 28, 2010.

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 2010 amendment inserted the text between the first paragraph and the last two paragraphs.

CROSS REFERENCES

Notwithstanding provisions of this chapter, inmate who was victim of spousal abuse may be eligible for parole after serving one‑fourth of term, see Section 16‑25‑90.

Power of Department of Probation, Parole and Pardon Services to require, as a condition of parole, restitution for awards by State Office of Victim Assistance, see Section 16‑3‑1260.

Power of the Department of Probation, Parole and Pardon Services to require, as a condition of parole, restitution for awards paid from the Victim’s Compensation Fund, see Section 16‑3‑1260.

Library References

Pardon and Parole 48.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 48 to 51.

RESEARCH REFERENCES

Encyclopedias

39 Am. Jur. Trials 157, Historical Aspects and Procedural Limitations of Federal Habeas Corpus.

Am. Jur. 2d Habeas Corpus Section 109, Form and Content of Petition; Filing.

S.C. Jur. Constitutional Law Section 101, Nature of Ex Post Facto Laws.

S.C. Jur. Post‑Conviction Relief Section 5, Illegal Sentence.

S.C. Jur. Probation, Parole, and Pardon Section 12, Authority and Power to Grant or Deny Parole.

S.C. Jur. Probation, Parole, and Pardon Section 16, Statutory Disqualifications from Parole Eligibility.

S.C. Jur. Probation, Parole, and Pardon Section 18, Statutory Requirements.

S.C. Jur. Probation, Parole, and Pardon Section 20, Conditions of Parole.

Attorney General’s Opinions

A defendant convicted of or pleading guilty to murder who has a previous murder conviction must be punished by death or by imprisonment for life pursuant to the provisions of Section 16‑3‑20 on the date the offense was committed, and such defendant would be ineligible for parole consideration on the new murder conviction because of the previous murder conviction. S.C. Op.Atty.Gen. (May 24, 2011) 2011 WL 2214058.

Under the 1986 Omnibus Criminal Justice Improvements Act, individuals convicted of murder are not entitled to reductions in time prior to parole eligibility through the use of earned work credits. Prisoners convicted of any violent crimes, as defined in Section 16‑1‑60, for a criminal event that occurred after June 3, 1986, and who have a prior conviction at any time before or after June 3, 1986, for one of the specified crimes, would not be eligible for parole consideration on the recent conviction and must complete service of their entire sentences. Under the provisions of Sections 24‑21‑645 and 24‑21‑650, the review in two years upon rejection, of prisoners in confinement for a violent crime, is applicable to the entire violent offender population. Under the provisions of Section 24‑21‑610, all burglary in the second degree convictions would not be eligible for parole until they have served at least one‑third of their sentence. Any and all offenses of burglary in the first degree and burglary in the second degree under Section 16‑11‑312(B) carry all consequences of a “violent crime” regardless of the statutory aggravating circumstances shown. 1986 Op. Atty Gen, No. 86‑102, p 309.

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1 2. Validity

Neither parole board’s establishment of criteria to be considered in granting or denying applications for parole, nor its application of such criteria in its consideration of application for parole from sentence imposed prior to enactment thereof, violated ex post facto clauses of state or federal constitutions, where board was statutorily authorized to establish written criteria for granting of parole, and statute granting such authority and forming basis for criteria had not been substantively amended since applicant’s conviction. Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2008) 377 S.C. 489, 661 S.E.2d 106. Constitutional Law 2823; Pardon And Parole 49; Pardon And Parole 57.1

1. In general

Supreme court modified order of circuit court resentencing defendant convicted of murder and other offenses, to extent circuit court’s findings were inconsistent with law; specifically, supreme court modified circuit court’s order to parole board requiring it to consider only defendant’s murder conviction when determining his parole eligibility, and its finding that there was no retroactive application of sentencing statute defining trafficking as a violent offense. State v. Dingle (S.C. 2008) 376 S.C. 643, 659 S.E.2d 101, rehearing denied, habeas corpus dismissed 772 F.Supp.2d 734, appeal dismissed 376 Fed.Appx. 285, 2010 WL 1745285, certiorari denied 131 S.Ct. 516, 562 U.S. 1009, 178 L.Ed.2d 381, rehearing denied 131 S.Ct. 854, 562 U.S. 1125, 178 L.Ed.2d 585. Criminal Law 1184(4.1)

Parole is a privilege, not a right. Sullivan v. South Carolina Dept. of Corrections (S.C. 2003) 355 S.C. 437, 586 S.E.2d 124, certiorari denied 124 S.Ct. 1155, 540 U.S. 1153, 157 L.Ed.2d 1050. Pardon And Parole 46

Section 24‑21‑640 specifically provides for the Probation, Parole and Pardon Board to consider the complete record of a prisoner and delegates to the Board the responsibility of determining if and when a prisoner meets the prerequisites of parole eligibility. The question of parole eligibility is separate and independent from the court’s authority to sentence an offender; the final judgment of the court in a criminal case is the sentence. State v. McKay (S.C. 1989) 300 S.C. 113, 386 S.E.2d 623.

Cited in State v. Morris (S.C. 1963) 243 S.C. 225, 133 S.E.2d 744, certiorari denied 84 S.Ct. 1935, 377 U.S. 1001, 12 L.Ed.2d 1050, rehearing denied 85 S.Ct. 24, 379 U.S. 873, 13 L.Ed.2d 81.

1.3. Due process

If a parole board deviates from, or renders its decision without consideration of, the appropriate criteria, it essentially abrogates an inmate’s right to parole eligibility, and thus infringes on a state‑created liberty interest. Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2008) 377 S.C. 489, 661 S.E.2d 106. Constitutional Law 4838

Procedure employed by parole board in denying inmate parole deprived inmate of state‑created liberty interest and triggered due process requirements, including entitlement to review by administrative law judge (ALJ), where parole board rejected inmate’s application on basis of only three statutorily enumerated factors, each of which was fixed as of date of inmate’s offense and could not be affected by inmate’s actions while incarcerated, without addressing any of the other enumerated factors, and without regard to its own criteria for parole. Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2008) 377 S.C. 489, 661 S.E.2d 106. Constitutional Law 4838; Pardon And Parole 62

1.5. Ineligibility, generally

In order to trigger the no‑parole language in the parole statute, a defendant must not only have a separate sentencing hearing, but he or she must also have a separate conviction. State v. Dingle (S.C. 2008) 376 S.C. 643, 659 S.E.2d 101, rehearing denied, habeas corpus dismissed 772 F.Supp.2d 734, appeal dismissed 376 Fed.Appx. 285, 2010 WL 1745285, certiorari denied 131 S.Ct. 516, 562 U.S. 1009, 178 L.Ed.2d 381, rehearing denied 131 S.Ct. 854, 562 U.S. 1125, 178 L.Ed.2d 585. Pardon And Parole 49

Act of resentencing murder defendant on remand following grant of post‑conviction relief (PCR) did not trigger no‑parole clause in parole statute, where defendant’s underlying convictions were not overturned in post‑conviction proceedings, and state affirmed that it would comply with defendant’s original plea bargain and would not challenge defendant’s eligibility for parole, thereby estopping any subsequent assertion that defendant was ineligible for parole. State v. Dingle (S.C. 2008) 376 S.C. 643, 659 S.E.2d 101, rehearing denied, habeas corpus dismissed 772 F.Supp.2d 734, appeal dismissed 376 Fed.Appx. 285, 2010 WL 1745285, certiorari denied 131 S.Ct. 516, 562 U.S. 1009, 178 L.Ed.2d 381, rehearing denied 131 S.Ct. 854, 562 U.S. 1125, 178 L.Ed.2d 585. Criminal Law 273.1(2); Pardon And Parole 49

2. Second or subsequent conviction

Post‑conviction court’s resentencing of defendant for murder did not result in a violent conviction that would have made him ineligible for parole under South Carolina parole statute denying parole to defendants serving a sentence for a second or subsequent conviction following a separate sentencing for a prior conviction for violent crimes, since only defendant’s sentences, not his convictions, were overturned by the post‑conviction court. Dingle v. Stevenson, 2009, 772 F.Supp.2d 734, appeal dismissed 376 Fed.Appx. 285, 2010 WL 1745285, certiorari denied 131 S.Ct. 516, 562 U.S. 1009, 178 L.Ed.2d 381, rehearing denied 131 S.Ct. 854, 562 U.S. 1125, 178 L.Ed.2d 585. Pardon And Parole 50

Defendant’s previous conviction in Ohio for abduction was not a prior violent offense for purposes of prohibition on grant of parole under subsequent violent offender statute; statute codifying which crimes are “violent offenses” provided that, “Only those offenses specifically enumerated in this section are considered violent offenses,” offense of “abduction” was not included among enumerated violent offenses, Ohio offense of abduction could be committed without violating South Carolina kidnapping statute, and Ohio conviction was not accompanied by explication of what facts supported jury’s determination of guilt. Hinton v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C.App. 2004) 357 S.C. 327, 592 S.E.2d 335, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 364 S.C. 608, 614 S.E.2d 635. Pardon And Parole 49

Defendant’s ex post facto rights were not violated when, as the result of the enactment of statute defining burglary and voluntary manslaughter as violent crimes, defendant’s prior manslaughter conviction was used to deny him parole eligibility on his subsequent burglary and larceny offenses, pursuant to law denying parole to those serving a sentence for a second or subsequent conviction for violent crimes. Furtick v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2003) 352 S.C. 594, 576 S.E.2d 146, rehearing denied, certiorari denied, certiorari denied 123 S.Ct. 2584, 539 U.S. 932, 156 L.Ed.2d 612. Constitutional Law 2823; Pardon And Parole 43

Defendant’s ex post facto rights were not violated when, as the result of the enactment of statute defining both first‑degree burglary and armed robbery as violent crimes, his prior armed robbery conviction was used to deny him parole eligibility on his subsequent burglary pleas, pursuant to law denying parole to those serving a sentence for a second or subsequent conviction for violent crimes. Phillips v. State (S.C. 1998) 331 S.C. 482, 504 S.E.2d 111, rehearing denied. Constitutional Law 2823; Pardon And Parole 42.1

Defendant, who had a prior conviction for assault and battery with intent to kill, could be denied parole following subsequent conviction for voluntary manslaughter under statute that provided that parole could not be granted to or authorized for any prisoner serving a sentence for a second or subsequent conviction for a violent crime, even though assault and battery with intent to kill was not classified as a violent crime at time of prior conviction. Sullivan v. State (S.C. 1998) 331 S.C. 479, 504 S.E.2d 110, rehearing denied. Pardon And Parole 42.1

3. Continuous offense determination

For purposes of parole eligibility under Section 24‑21‑640, the authority to determine whether multiple violent crimes have been committed pursuant to one continuous course of conduct is statutorily vested in the Board. State v. McKay (S.C. 1989) 300 S.C. 113, 386 S.E.2d 623. Pardon And Parole 55.1

4. Informing jury of parole ineligibility

In the sentencing phase of a murder trial, the trial court erred in denying defendant’s request to charge the jury on parole eligibility where, pursuant to the Omnibus Crime Act, Sections 24‑21‑10 et seq., the defendant was ineligible for parole because he had been convicted of rape in 1974; although the Act was passed after the defendant’s conviction for rape, it was passed before the murder conviction on which the sentence was based, and thus the Act was applicable in determining the defendant’s eligibility for parole. State v. Tucker (S.C. 1995) 320 S.C. 206, 464 S.E.2d 105, appeal after new sentencing hearing 1998 WL 909989, withdrawn and superseded on denial of rehearing 334 S.C. 1, 512 S.E.2d 99, certiorari denied 119 S.Ct. 2407, 527 U.S. 1042, 144 L.Ed.2d 805.

Due process requires that a defendant be allowed to bring parole ineligibility to the jury’s attention by way of argument by the defense counsel or an instruction from the court when the state puts a defendant’s future dangerousness at issue and state law prohibits defendant’s release on parole. State v. Southerland (S.C. 1994) 316 S.C. 377, 447 S.E.2d 862, rehearing denied, certiorari denied 115 S.Ct. 1136, 513 U.S. 1166, 130 L.Ed.2d 1096, denial of post‑conviction relief affirmed in part, reversed in part 337 S.C. 610, 524 S.E.2d 833.

The trial judge did not violate the defendant’s Eighth Amendment rights by refusing to instruct the jury that he would be ineligible for parole if sentenced to life where the solicitor informed the jury of the defendant’s parole ineligibility. State v. Southerland (S.C. 1994) 316 S.C. 377, 447 S.E.2d 862, rehearing denied, certiorari denied 115 S.Ct. 1136, 513 U.S. 1166, 130 L.Ed.2d 1096, denial of post‑conviction relief affirmed in part, reversed in part 337 S.C. 610, 524 S.E.2d 833. Sentencing And Punishment 1780(3)

The trial judge did not violate the defendant’s due process rights by refusing to instruct the jury that the defendant would be ineligible for parole if sentenced to life under Section 24‑21‑640 where the solicitor did not argue the defendant’s future dangerousness and the defense counsel informed the jury throughout closing argument that life imprisonment for the defendant meant that he would never be released from prison. State v. Southerland (S.C. 1994) 316 S.C. 377, 447 S.E.2d 862, rehearing denied, certiorari denied 115 S.Ct. 1136, 513 U.S. 1166, 130 L.Ed.2d 1096, denial of post‑conviction relief affirmed in part, reversed in part 337 S.C. 610, 524 S.E.2d 833. Constitutional Law 4745; Sentencing And Punishment 1780(3)

In death penalty cases in which future dangerousness is at issue under Simmons, and state law prohibits the defendant’s release on parole, the following charge must be given if the sentencing jury inquires about the meaning of “life imprisonment,” or counsel requests a jury charge concerning parole eligibility: “If you sentence the defendant to death you must assume that the sentence will be carried out. If a recommendation of death is not made the defendant shall be sentenced to life imprisonment without the possibility of parole.” State v. Southerland (S.C. 1994) 316 S.C. 377, 447 S.E.2d 862, rehearing denied, certiorari denied 115 S.Ct. 1136, 513 U.S. 1166, 130 L.Ed.2d 1096, denial of post‑conviction relief affirmed in part, reversed in part 337 S.C. 610, 524 S.E.2d 833. Sentencing And Punishment 1780(3)

The trial court committed prejudicial error in denying a defendant’s request during the penalty phase of a capital murder trial to charge the jury, pursuant to Section 24‑21‑640, that because he was already serving a life sentence for a previous, unrelated, violent crime conviction, the imposition of a life sentence in a murder case would require service of both offenses without the possibility of parole, and the judge erroneously charged the jury as to parole eligibility under Section 16‑3‑20 instead; such error was a violation of the 8th and 14th amendments of the US Constitution, and Art V, Section 21 of the SC Constitution. State v. Torrence (S.C. 1991) 305 S.C. 45, 406 S.E.2d 315. Sentencing And Punishment 1780(3); Sentencing And Punishment 1789(9)

4.5. Findings of fact and conclusions of law

Parole Board decision, indicating that Board considered all statutory factors and department’s own criteria for parole consideration, adequately supported denial of parole, notwithstanding decision’s lack of findings of fact and conclusions of law, separately stated. Compton v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2009) 385 S.C. 476, 685 S.E.2d 175, rehearing denied. Pardon And Parole 61

Because the limited appeal of parole decisions is governed by the Administrative Procedures Act (APA), the parole board and the administrative law court (ALC) must comply with its provisions, pursuant to which a final decision in an agency adjudication of a contested case shall include findings of fact and conclusions of law. Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2008) 377 S.C. 489, 661 S.E.2d 106. Pardon And Parole 62

5. Administrative review

Administrative Law Judge Division (ALJD) had jurisdiction to hear defendant’s appeal from the Department of Probation, Parole, and Pardon Services (DPPPS) decision that, as a violent offender, defendant was not parole eligible; defendant had a liberty interest in gaining access to the parole board. Furtick v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2003) 352 S.C. 594, 576 S.E.2d 146, rehearing denied, certiorari denied, certiorari denied 123 S.Ct. 2584, 539 U.S. 932, 156 L.Ed.2d 612. Pardon And Parole 62

**SECTION 24‑21‑645.** Parole and provisional parole orders; search and seizure; review schedule following parole denial of prisoners confined for violent crimes.

 (A) The board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case ninety days prior to the effective date of the parole; however, at least two‑thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16‑1‑60. A provisional parole order shall include the terms and conditions, if any, to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole.

 (B) The conditions of parole must include the requirement that the parolee must permit the search or seizure, without a search warrant, with or without cause, of the parolee’s person, any vehicle the parolee owns or is driving, and any of the parolee’s possessions by:

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

 (2) any other law enforcement officer.

 However, the conditions of parole for a parolee 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 parolee agree to be subject to search or seizure, without a search warrant, with or without cause, of the parolee’s person, any vehicle the parolee owns or is driving, or any of the parolee’s possessions.

 (C) 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 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. 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 section, he is subject to discipline pursuant to the employing agency’s policies and procedures.

 (D) Upon satisfactory completion of the provisional period, the director or one lawfully acting for him must issue an order which, if accepted by the prisoner, shall provide for his release from custody. However, upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16‑1‑60 must have their cases reviewed every two years for the purpose of a determination of parole, except that prisoners who are eligible for parole pursuant to Section 16‑25‑90, and who are subsequently denied parole must have their cases reviewed every twelve months for the purpose of a determination of parole. This subsection applies retroactively to a prisoner who has had a parole hearing pursuant to Section 16‑25‑90 prior to the effective date of this act.

HISTORY: 1981 Act. No. 100, Section 13; 1986 Act No. 462, Section 31; 1991 Act No. 134, Section 19; 1993 Act No. 181, Section 474; 1997 Act No. 120, Section 4; 2010 Act No. 151, Section 13, eff April 28, 2010; 2010 Act No. 273, Section 58, eff January 1, 2011.

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.”

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date.”

Effect of Amendment

The first 2010 amendment inserted the text between the first paragraph and the last paragraph.

The second 2010 amendment rewrote the section.

CROSS REFERENCES

Notwithstanding provisions of this chapter, inmate who was victim of spousal abuse may be eligible for parole after serving one‑fourth of term, see Section 16‑25‑90.

Power of Department of Probation, Parole and Pardon Services to require, as a condition of parole, restitution for awards paid by State Office of Victims Assistance, see Section 16‑3‑1260.

Library References

Pardon and Parole 57.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 52 to 57.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 102, Constitutionality of Ex Post Facto Laws.

S.C. Jur. Probation, Parole, and Pardon Section 18, Statutory Requirements.

S.C. Jur. Probation, Parole, and Pardon Section 20, Conditions of Parole.

Attorney General’s Opinions

Under the 1986 Omnibus Criminal Justice Improvements Act, individuals convicted of murder are not entitled to reductions in time prior to parole eligibility through the use of earned work credits. Prisoners convicted of any violent crimes, as defined in Section 16‑1‑60, for a criminal event that occurred after June 3, 1986, and who have a prior conviction at any time before or after June 3, 1986, for one of the specified crimes, would not be eligible for parole consideration on the recent conviction and must complete service of their entire sentences. Under the provisions of Sections 24‑21‑645 and 24‑21‑650, the review in two years upon rejection, of prisoners in confinement for a violent crime, is applicable to the entire violent offender population. Under the provisions of Section 24‑21‑610, all burglary in the second degree convictions would not be eligible for parole until they have served at least one‑third of their sentence. Any and all offenses of burglary in the first degree and burglary in the second degree under Section 16‑11‑312(B) carry all consequences of a “violent crime” regardless of the statutory aggravating circumstances shown. 1986 Op. Atty Gen, No. 86‑102, p 309.

NOTES OF DECISIONS

In general 2

Retrospective application of change in frequency of parole review 1

1. Retrospective application of change in frequency of parole review

Retrospective application of amendments to South Carolina’s parole procedures did not violate ex post fact clause to extent prisoner convicted of violent crime would have case reviewed every two years, rather than every year, after initial negative parole determination. Roller v. Gunn (C.A.4 (S.C.) 1997) 107 F.3d 227, certiorari denied 118 S.Ct. 192, 522 U.S. 874, 139 L.Ed.2d 130. Constitutional Law 2823; Pardon And Parole 42.1

Retrospective application of amendment to South Carolina’s parole procedures did not violate ex post facto clause to extent it required two‑thirds vote of parole board rather than simple majority; there was no way of knowing whether particular board member would have voted the same under amended rule as predecessor. Roller v. Gunn (C.A.4 (S.C.) 1997) 107 F.3d 227, certiorari denied 118 S.Ct. 192, 522 U.S. 874, 139 L.Ed.2d 130. Constitutional Law 2823; Pardon And Parole 42.1

The application of Section 24‑21‑645 to a prisoner violates the constitutional prohibition against ex post facto laws where that statute provided that persons convicted of violent crimes would be reconsidered for parole every 2 years and, under Section 24‑21‑620, the statutory scheme in effect when the prisoner committed the crime, he was eligible for reconsideration for parole every 12 months because statutes enacted or amended after a prisoner was sentenced cannot be applied to alter the conditions of or revoke his or her pre‑existing parole eligibility. Roller v. Cavanaugh (C.A.4 (S.C.) 1993) 984 F.2d 120, certiorari granted 113 S.Ct. 2412, 508 U.S. 939, 124 L.Ed.2d 635, certiorari dismissed as improvidently granted 114 S.Ct. 593, 510 U.S. 42, 126 L.Ed.2d 409, on remand 932 F.Supp. 729.

Prisoner made cognizable Section 1983 claim where prisoner did not assert that he was entitled to parole, but rather claimed his ex post facto rights were violated as result of statutory amendment to Section 24‑21‑620 effected by enactment of Section 24‑21‑645, which amendment was retroactively applied to increase the length of time between his parole reconsideration hearings. Roller v. Cavanaugh (C.A.4 (S.C.) 1993) 984 F.2d 120, certiorari granted 113 S.Ct. 2412, 508 U.S. 939, 124 L.Ed.2d 635, certiorari dismissed as improvidently granted 114 S.Ct. 593, 510 U.S. 42, 126 L.Ed.2d 409, on remand 932 F.Supp. 729.

Application of section Section 24‑21‑645 to prisoner’s parole reconsideration violated constitutional prohibition against ex post facto laws since it affected statutory amendment to Section 24‑21‑620, which amendment retroactively reduced frequency of parole reconsideration hearings for violent offenders from annual to bi‑annual basis. Roller v. Cavanaugh (C.A.4 (S.C.) 1993) 984 F.2d 120, certiorari granted 113 S.Ct. 2412, 508 U.S. 939, 124 L.Ed.2d 635, certiorari dismissed as improvidently granted 114 S.Ct. 593, 510 U.S. 42, 126 L.Ed.2d 409, on remand 932 F.Supp. 729.

Application of amended statute providing that consideration for parole eligibility for violent offenders would be biannually rather than annually did not violate prohibition against ex post facto laws; at time of inmate’s crimes, there was no statute governing frequency of parole hearings, but Department of Probation, Parole and Pardon Services had policy calling for biannual review for persons serving sentences of 30 years or more, statute allowing for annual reviews was enacted several years after inmate’s crimes were committed, and amended statute provided no greater limitation on parole eligibility than inmate was originally entitled to. James v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C.App. 2008) 376 S.C. 392, 656 S.E.2d 399. Constitutional Law 2823; Pardon And Parole 42.1

Remedy for inmate’s claim that decision by Department of Probation, Parole, and Pardon Services that review for inmate’s parole eligibility would be biannually rather than annually violated prohibition against ex post facto laws was review by Administrative Law Court, and not civil action against Department. James v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C.App. 2008) 376 S.C. 392, 656 S.E.2d 399. Pardon And Parole 62

Retroactive application of statutory amendment that reduced frequency of parole reconsideration hearings for violent offenders from one year to two years constituted an ex post facto violation, as it produced a sufficient risk of increasing the measure of punishment attached to covered crimes; amendment applied equally to a variety of inmates, from murderers to marijuana traffickers, many of whom were likely to be paroled at some point, and amendment did not require any specific findings in order to defer parole review for two years but, rather, the two‑year interval was automatic after initial denial of parole. Jernigan v. State (S.C. 2000) 340 S.C. 256, 531 S.E.2d 507. Constitutional Law 2823; Pardon And Parole 43

The application of Section 24‑21‑645 to a prisoner did not violate the constitutional prohibition against ex post facto laws on the ground that the statute provided that persons convicted of violent crimes would be reconsidered for parole every 2 years and, under the statutory scheme in effect when the prisoner committed the crime, he was eligible for reconsideration for parole every 12 months, since the standards governing the prisoner’s parole eligibility had not been changed, but only the frequency with which the prisoner could be reconsidered for parole. Gunter v. State (S.C. 1989) 298 S.C. 113, 378 S.E.2d 443.

2. In general

Statutory requirement that at least two‑thirds of the members of the Parole Board must authorize and sign orders authorizing parole for persons convicted of a violent crime does not require an inmate seeking parole to receive votes from at least two‑thirds of the seven‑member board without regard to how many members actually attend a parole hearing, but instead requires only a two‑thirds vote of the members participating in a hearing. Barton v. South Carolina Dept. of Probation Parole and Pardon Services (S.C. 2013) 404 S.C. 395, 745 S.E.2d 110. Pardon and Parole 59

**SECTION 24‑21‑650.** Order of parole.

 The board shall issue an order authorizing the parole which must be signed by at least a majority of its members with terms and conditions, if any, but at least two‑thirds of the members of the board must sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16‑1‑60. The director, or one lawfully acting for him, then must issue a parole order which, if accepted by the prisoner, provides for his release from custody. Upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16‑1‑60 must have their cases reviewed every two years for the purpose of a determination of parole.

HISTORY: 1962 Code Section 55‑613; 1952 Code Section 55‑613; 1942 Code Section 1038‑11; 1942 (42) 1456; 1949 (46) 311; 1977 Act No. 110, Section 1; 1986 Act No. 462, Section 32; 1988 Act No. 480, Section 14; 1991 Act No. 134, Section 1993 Act No. 181, Section 475.

CROSS REFERENCES

Payment of fee as condition of parole, see Section 24‑21‑80.

Library References

Pardon and Parole 57.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 52 to 57.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 11, Definition, Nature, and Purpose of Parole.

S.C. Jur. Probation, Parole, and Pardon Section 18, Statutory Requirements.

Attorney General’s Opinions

Under the 1986 Omnibus Criminal Justice Improvements Act, individuals convicted of murder are not entitled to reductions in time prior to parole eligibility through the use of earned work credits. Prisoners convicted of any violent crimes, as defined in Section 16‑1‑60, for a criminal event that occurred after June 3, 1986, and who have a prior conviction at any time before or after June 3, 1986, for one of the specified crimes, would not be eligible for parole consideration on the recent conviction and must complete service of their entire sentences. Under the provisions of Sections 24‑21‑645 and 24‑21‑650, the review in two years upon rejection, of prisoners in confinement for a violent crime, is applicable to the entire violent offender population. Under the provisions of Section 24‑21‑610, all burglary in the second degree convictions would not be eligible for parole until they have served at least one‑third of their sentence. Any and all offenses of burglary in the first degree and burglary in the second degree under Section 16‑11‑312(B) carry all consequences of a “violent crime” regardless of the statutory aggravating circumstances shown. 1986 Op. Atty Gen, No. 86‑102, p 309.

In order for a parole to be effective a prisoner must accept the order of the Parole Board with all of its conditions and restrictions even though he is being paroled to another state for the service of a sentence imposed there. 1975‑76 Op. Atty Gen, No. 4241, p 31.

**SECTION 24‑21‑660.** Effect of parole.

 Any prisoner who has been paroled is subject during the remainder of his original term of imprisonment, up to the maximum, to the conditions and restrictions imposed in the order of parole or by law imposed. Every such paroled prisoner must remain in the jurisdiction of the board and may at any time on the order of the board, be imprisoned as and where therein designated.

HISTORY: 1962 Code Section 55‑614; 1952 Code Section 55‑614; 1942 Code Section 1038‑11; 1942 (42) 1456; 1949 (46) 311; 1991 Act No. 134, Section 21.

Library References

Pardon and Parole 64 to 67.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 58 to 61.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 19, Effect of a Grant or Denial of Parole.

NOTES OF DECISIONS

In general 1

1. In general

The word “parole” is used in contradistinction to suspended sentence and means leave of absence from prison during which the prisoner remains in legal custody until the expiration of his sentence. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836. Pardon And Parole 41

Every paroled prisoner remains in the legal custody of the Board and may at any time be imprisoned on its order. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836.

A prisoner upon release on parole continues to serve his sentence outside the prison walls. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836. Pardon And Parole 67

**SECTION 24‑21‑670.** Term of parole.

 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.

HISTORY: 1962 Code Section 55‑615; 1952 Code Section 55‑615; 1942 Code Section 1038‑12; 1942 (42) 1456.

Library References

Pardon and Parole 67.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Section 61.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 19, Effect of a Grant or Denial of Parole.

**SECTION 24‑21‑680.** Violation of parole.

 Upon failure of any prisoner released on parole under the provisions of this chapter to do or refrain from doing any of the things set forth and required to be done by and under the terms of his parole, the parole agent must issue a warrant or citation charging the violation of parole, and a final determination must be made by the board as to whether the prisoner’s parole should be revoked and whether he should be required to serve any part of the remaining unserved sentence. But such prisoner must be eligible to parole thereafter when and if the board thinks such parole would be proper. The board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed; provided, that any person arrested for violation of terms of parole may be released on bond, for good cause shown, pending final determination of the violation by the Probation, Parole and Pardon Board. No bond shall be granted except by the presiding or resident judge of the circuit wherein the prisoner is arrested, or, if there be no judge within such circuit, by the judge, presiding or resident, in an adjacent circuit, and the judge granting the bond shall determine the amount thereof.

HISTORY: 1962 Code Section 55‑616; 1952 Code Section 55‑616; 1942 Code Section 1038‑11; 1942 (42) 1456; 1947 (45) 67; 1949 (46) 311; 1962 (52) 1887; 1965 (54) 306; 1991 Act No. 134, Section 22.

CROSS REFERENCES

Powers and duties of the Sentencing Reform Oversight Committee, see Section 24‑28‑30.

Library References

Pardon and Parole 69 to 92.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 65 to 93.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 12, Authority and Power to Grant or Deny Parole.

S.C. Jur. Probation, Parole, and Pardon Section 22, Revocation of Parole and Due Process Guarantees.

Attorney General’s Opinions

Indigent defendants are not entitled to counsel in revocation proceedings before the Probation, Parole and Pardon Board. 1966‑67 Op. Atty Gen, No. 2351, p 185.

NOTES OF DECISIONS

In general 1

Assistance of counsel 4

Distinction between parole and probation 3

Hearing 2

1. In general

An order revoking parole simply restores a defendant to the status he would have occupied had this form of leniency never been extended to him. The effect of such a revocation does not exceed or transcend the effect of the original sentence. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836.

A prisoner’s parole necessarily expires with the expiration of the unsuspended portion of his sentence, because, thereafter, there is no sentence in execution which can be served outside the prison walls or which requires his confinement when the Board revokes its prior action. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836.

Where the Board issued an order purporting to revoke a prisoner’s parole, but the suspended portion of the prisoner’s sentence never had been put in execution by a court of competent jurisdiction, and the unsuspended portion of said sentence had been duly served, the court properly ordered that petitioner be discharged from custody on his petition for a writ of habeas corpus. Sanders v. MacDougall (S.C. 1964) 244 S.C. 160, 135 S.E.2d 836. Sentencing And Punishment 1953

Applied in Bearden v. State (S.C. 1953) 223 S.C. 211, 74 S.E.2d 912.

2. Hearing

Parolee must be afforded preliminary probable cause type hearing to determine whether there is reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. Russell v. Cooper (S.C. 1975) 263 S.C. 526, 211 S.E.2d 655, certiorari denied 96 S.Ct. 88, 423 U.S. 848, 46 L.Ed.2d 70.

In Morrissey v Brewer (1972) 408 US 471, 33 L Ed 2d 484, 92 S Ct 2593 the United States Supreme Court established minimal due process requirements for preliminary and final proceedings held to determine whether or not a parolee has violated the terms of his parole agreement while conditionally free from incarceration, and whether, if so, such a violation warrants revocation of the parole theretofore granted. Russell v. Cooper (S.C. 1975) 263 S.C. 526, 211 S.E.2d 655, certiorari denied 96 S.Ct. 88, 423 U.S. 848, 46 L.Ed.2d 70.

A parolee is not entitled to a preliminary hearing where the violation of parole with which he has been charged is supported by a criminal conviction in an independent criminal proceeding. Russell v. Cooper (S.C. 1975) 263 S.C. 526, 211 S.E.2d 655, certiorari denied 96 S.Ct. 88, 423 U.S. 848, 46 L.Ed.2d 70.

Where admittedly, appellant had violated conditions of his parole, the preliminary probable cause hearing was not required. Russell v. Cooper (S.C. 1975) 263 S.C. 526, 211 S.E.2d 655, certiorari denied 96 S.Ct. 88, 423 U.S. 848, 46 L.Ed.2d 70.

3. Distinction between parole and probation

Distinction between probation and parole in the context of a parole revocation hearing is that “probation” is judicially‑imposed at the time of sentencing, and whether a violation of probationary terms has occurred, and if so, the consequences of such a violation, are matters for the courts, whereas the Board of Probation, Parole, and Pardon Services determines both parole eligibility and revocations. Duckson v. State (S.C. 2003) 355 S.C. 596, 586 S.E.2d 576. Pardon And Parole 55.1; Sentencing And Punishment 2009

4. Assistance of counsel

No Sixth Amendment right to counsel exists in the context of a parole revocation hearing which is an administrative rather than a criminal proceeding. Duckson v. State (S.C. 2003) 355 S.C. 596, 586 S.E.2d 576. Pardon And Parole 89

**SECTION 24‑21‑690.** Release after service of full time less good conduct deduction.

 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.

HISTORY: 1962 Code Section 55‑617; 1952 Code Section 55‑617; 1942 Code Section 1038‑12; 1942 (42) 1456; 1955 (49) 475.

Library References

Pardon and Parole 93.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Section 64.

NOTES OF DECISIONS

In general 1

1. In general

As to jurisdiction of Parole Board over released prisoners prior to the 1955 amendment to this section [Code 1962 Section 55‑617], see Ex parte Wilson (S.C. 1951) 219 S.C. 139, 64 S.E.2d 400.

**SECTION 24‑21‑700.** Special parole of persons needing psychiatric care.

 Any prisoner who is otherwise eligible for parole under the provisions of this article, except that his mental condition is deemed by the Probation, Pardon and Parole Board to be such that he should not be released from confinement may, subject to approval by the Veterans Administration, be released to the custody of the Veterans Administration or to a committee appointed to commit such prisoner to a Veterans Administration Hospital. Such a special parole shall be granted in the sole discretion of the Board and, when so paroled, a prisoner shall be transferred directly from his place of confinement to a Veterans Administration Hospital which provides psychiatric care. When any prisoner paroled for psychiatric treatment is determined to be in a suitable condition to be released, he shall not be returned to penal custody except for a subsequent violation of the conditions of his parole.

HISTORY: 1962 Code Section 55‑618; 1968 (55) 2696.

CROSS REFERENCES

Notwithstanding provisions of this chapter, inmate who was victim of spousal abuse may be eligible for parole after serving one‑fourth of term, see Section 16‑25‑90.

Library References

Pardon and Parole 64.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 58 to 59.

LAW REVIEW AND JOURNAL COMMENTARIES

Dangerousness and the Mentally Ill Criminal. 21 S.C. L. Rev. 23.

**SECTION 24‑21‑710.** Film, videotape, or other electronic information may be considered by board in parole determination.

 (A) Film, videotape, or other electronic information that is both visual and aural, submitted pursuant to this section, must be considered by the Board of Probation, Parole, and Pardon Services in making its determination of parole.

 (B) Upon receipt of the notice required by law, the following people may submit electronic information:

 (1) the victim of the crime for which the prisoner has been sentenced;

 (2) the prosecuting solicitor’s office; and

 (3) the person whose parole is being considered.

 (C) The person submitting the electronic information shall provide the Board of Probation, Parole, and Pardon Services with the following:

 (1) identification of each voice heard and each person seen;

 (2) a visual or aural statement of the date the information was recorded; and

 (3) the name of the person whose parole eligibility is being considered.

 (D) If the film, videotape, or other electronic information is retained by the board, it may be submitted at subsequent parole hearings each time that the submitting person provides a written statement declaring that the information represents the present position of the person who is submitting the information.

 (E) The Department of Corrections may install, maintain, and operate a two‑way closed circuit television system in one or more correctional institutions of the department that confines persons eligible for parole. The Board of Probation, Parole and Pardon Services shall install, maintain, and operate closed circuit television systems at locations determined by the board and conduct parole hearings by means of a two‑way closed circuit television system provided in this section. A victim of a crime must be allowed access to this system to appear before the board during a parole hearing.

 (F) Nothing in this section shall be construed to prohibit submission of information in other forms as provided by law.

 (G) The director of the Department of Probation, Parole, and Pardon Services may develop written policies and procedures for parole hearings to be held pursuant to this section.

 (H) The Board of Probation, Parole, and Pardon Services is not required to install, maintain, or operate film, videotape, or other electronic equipment to record a victim’s testimony to be presented to the board.

HISTORY: 1995 Act No. 57, Section 1; 2004 Act No. 263, Section 14.

Library References

Pardon and Parole 58.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 52 to 54.

**SECTION 24‑21‑715.** Parole for terminally ill, geriatric, or permanently disabled inmates.

 (A) As contained in this section:

 (1) “Terminally ill” means an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing or, since the time of sentencing, has progressed to render the inmate terminally ill, and that will likely produce death within two years, and that is so debilitating that the inmate does not pose a public safety risk.

 (2) “Geriatric” means an inmate who is seventy years of age or older and suffers from chronic infirmity, illness, or disease related to aging, which has progressed so the inmate is incapacitated as determined by a licensed physician to the extent that the inmate does not pose a public safety risk.

 (3) “Permanently incapacitated” means an inmate who no longer poses a public safety risk because of a medical condition that is not terminal but that renders him permanently and irreversibly incapacitated as determined by a licensed physician and which requires immediate and long term residential care.

 (B) Notwithstanding another provision of law, only the full parole board, upon a petition filed by the Director of the Department of Corrections, may order the release of an inmate who is terminally ill, geriatric, permanently incapacitated, or any combination of these conditions.

 (C) The parole order issued by the parole board pursuant to this section must include findings of fact that substantiate a legal and medical conclusion that the inmate is terminally ill, geriatric, permanently incapacitated, or a combination of these conditions, and does not pose a threat to society or himself. It also must contain the requirements for the inmate’s supervision and conditions for his participation and removal.

 (D) An inmate granted a parole pursuant to this section is under the supervision of the Department of Probation, Parole and Pardon Services. The inmate must reside in an approved residence and abide by all conditions ordered by the parole board. The department is responsible for supervising an inmate’s compliance with the conditions of the parole board’s order as well as monitoring the inmate in accordance with the department’s policies.

 (E) The department shall retain jurisdiction for all matters relating to the parole granted pursuant to this section and conduct an annual review of the inmate’s status to ensure that he remains eligible for parole pursuant to this section. If the department determines that the inmate is no longer eligible to participate in the parole set forth in this section, a probation agent must issue a warrant or citation charging a violation of parole and the board shall proceed pursuant to the provisions of Section 24‑21‑680.

HISTORY: 2010 Act No. 273, Section 55, eff January 1, 2011.

Editor’s Note

2010 Act No. 273, Section 66, provides in part:

“The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date.”

Attorney General’s Opinions

This section’s medical parole provisions do not apply to inmates who are otherwise ineligible for parole. S.C. Op.Atty.Gen. (August 24, 2015) 2015 WL 5157544.

ARTICLE 11

Pardons; Commutation of Death Sentences

**SECTION 24‑21‑910.** Petitions for reprieve or commutation of death sentence; recommendation to governor.

 The Probation, Parole, and Pardon Services Board shall consider all petitions for reprieves or the commutation of a sentence of death to life imprisonment which may be referred to it by the Governor and shall make its recommendations to the Governor regarding the petitions. The Governor may or may not adopt the recommendations but in case he does not he shall submit his reasons for not doing so to the General Assembly. The Governor may act on any petition without reference to the board.

HISTORY: 1962 Code Section 55‑641; 1952 Code Section 55‑641; 1942 Code Section 3436; 1932 Code Section 3436; Civ. C. ‘22 Section 978; Civ. C. ‘12 Section 889; 1906 (25) 14; 1949 (46) 49; 1988 Act No. 480, Section 17; 1995 Act No. 83, Section 48.

CROSS REFERENCES

Funds generated by courts from fines and assessments to be allocated to programs established pursuant to this chapter, see Sections 14‑1‑206 to 14‑1‑208.

Powers of governor regarding clemency, see SC Const, Art 4, Section 14.

Library References

Pardon and Parole 23, 28.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 4 to 6, 11 to 30, 34 to 41.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 28, Brief History of the Clemency Power in South Carolina.

Attorney General’s Opinions

This section and Code 1962 Section 55‑309 [Section 24‑1‑200] do not constitute carte blanche authority for the granting of paroles to individuals recommended for clemency without regard to actual eligibility dates. 1971‑72 Op. Atty Gen, No. 3362, p 210.

**SECTION 24‑21‑920.** Clemency in other cases.

 In all other cases than those referred to in Section 24‑21‑910 the right of granting clemency shall be vested in the Board.

HISTORY: 1962 Code Section 55‑642; 1952 Code Section 55‑642; Const. Art. 4, Section 11.

Library References

Pardon and Parole 21.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 28, Brief History of the Clemency Power in South Carolina.

**SECTION 24‑21‑930.** Order of pardon.

 An order of pardon must be signed by at least two‑thirds of the members of the board. Upon the issue of the order by the board, the director, or one lawfully acting for him, must issue a pardon order which provides for the restoration of the pardon applicant’s civil rights.

HISTORY: 1962 Code Section 55‑643; 1952 Code Section 55‑643; 1949 (46) 311; 1988 Act No. 480, Section 15; 1991 Act No. 134, Section 23; 1993 Act No. 181, Section 476.

Library References

Pardon and Parole 23.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 30, The Order of Pardon and Its Effect.

Attorney General’s Opinions

The granting of pardon should not result in criminal record being expunged. Record of pardon should be included in criminal history records maintained by sheriffs department. 1984 Op. Atty Gen, No. 84‑115, p. 268.

A Pardon by the S. C. Probation, Parole and Pardon Board restores all the rights of a citizen. 1974‑75 Op. Atty Gen, No 4026, p 100.

**SECTION 24‑21‑940.** Definitions.

 A. “Pardon” means that an individual is fully pardoned from all the legal consequences of his crime and of his conviction, direct and collateral, including the punishment, whether of imprisonment, pecuniary penalty or whatever else the law has provided.

 B. “Successful completion of supervision” as used in this article shall mean free of conviction of any type other than minor traffic offenses.

HISTORY: 1981 Act No. 100, Section 14.

RESEARCH REFERENCES

ALR Library

77 ALR 6th 197 , Removal of Adults from State Sex Offender Registries.

97 ALR 5th 293 , Pardoned or Expunged Conviction as “Prior Offense” Under State Statute or Regulation Enhancing Punishment for Subsequent Conviction.

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 168, Penalties.

S.C. Jur. Probation, Parole, and Pardon Section 30, The Order of Pardon and Its Effect.

Treatises and Practice Aids

Drinking/Driving Litigation: Criminal and Civil 2d Section 3:1, Challenges to Prior Convictions.

Attorney General’s Opinions

A pardoned conviction may be used as a conviction for enhanced charging and sentencing purposes for a subsequent crime that the offender has committed. 1988 Op. Atty Gen, No. 88‑87, p 244.

NOTES OF DECISIONS

In general 1

1. In general

State’s pardon of sex offender with respect to his convictions for two counts of “peeping Tom” offenses, relieved him from all direct and collateral consequences of his pardoned crimes, including placement on the sex offender registry and continuous compliance with its registration requirements. Edwards v. State Law Enforcement Div. (S.C. 2011) 395 S.C. 571, 720 S.E.2d 462. Mental Health 469(2)

Pardoned conviction can be considered as a “prior offense” under statute enhancing punishment for subsequent conviction. State v. Baucom (S.C.App. 1999) 334 S.C. 371, 513 S.E.2d 112, rehearing denied, certiorari granted, reversed 340 S.C. 339, 531 S.E.2d 922, 97 A.L.R.5th 685. Sentencing And Punishment 1342

**SECTION 24‑21‑950.** Guidelines for determining eligibility for pardon.

 (A) The following guidelines must be utilized by the board when determining when an individual is eligible for pardon consideration.

 (1) Probationers must be considered upon the request of the individual anytime after discharge from supervision.

 (2) Persons discharged from a sentence without benefit of parole must be considered upon the request of the individual anytime after the date of discharge.

 (3) Parolees must be considered for a pardon upon the request of the individual anytime after the successful completion of five years under supervision. Parolees successfully completing the maximum parole period, if less than five years, must be considered for pardon upon the request of the individual anytime after the date of discharge.

 (4) An inmate must be considered for pardon before a parole eligibility date only when he can produce evidence comprising the most extraordinary circumstances.

 (5) The victim of a crime or a member of a convicted person’s family living within this State may petition for a pardon for a person who has completed supervision or has been discharged from a sentence.

 (B) Persons discharged from a sentence without benefit of supervision must be considered upon the request of the individual anytime after the date of discharge.

HISTORY: 1981 Act No. 100, Section 14; 1988 Act No. 322, Section 1; 1995 Act No. 83, Section 49.

Library References

Pardon and Parole 23.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 19, Effect of a Grant or Denial of Parole.

S.C. Jur. Probation, Parole, and Pardon Section 29, Eligibility for a Pardon.

**SECTION 24‑21‑960.** Pardon application fee; re‑application after denial.

 (A) Each pardon application must be accompanied with a pardon application fee of one hundred dollars. The pardon application fee must be retained and applied by the department toward the pardon process.

 (B) Any individual who has an application for pardon considered but denied, must wait one year from the date of denial before filing another pardon application and fee.

HISTORY: 1981 Act No. 100, Section 14; 1993 Act No. 164, Part II, Section 27A; 2008 Act No. 353, Section 2, Pt 15C, eff July 1, 2009.

Effect of Amendment

The 2008 amendment, in subsection (A), substituted “one hundred dollars” for “fifty dollars”.

Library References

Pardon and Parole 23.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 29, Eligibility for a Pardon.

**SECTION 24‑21‑970.** Pardon considered in cases of terminal illness.

 Consideration shall be given to any inmate afflicted with a terminal illness where life expectancy is one year or less.

HISTORY: 1981 Act No. 100, Section 14.

Library References

Pardon and Parole 23.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 29, Eligibility for a Pardon.

**SECTION 24‑21‑980.** Pardon obtained through fraud.

 Once delivered, a pardon cannot be revoked unless it was obtained through fraud. If a pardon is obtained through fraud, it is void.

HISTORY: 1981 Act No. 100, Section 14.

Library References

Pardon and Parole 23.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 30, The Order of Pardon and Its Effect.

**SECTION 24‑21‑990.** Civil rights restored upon pardon.

 A pardon shall fully restore all civil rights lost as a result of a conviction, which shall include the right to:

 (1) register to vote;

 (2) vote;

 (3) serve on a jury;

 (4) hold public office, except as provided in Section 16‑13‑210;

 (5) testify without having the fact of his conviction introduced for impeachment purposes to the extent provided by Rule 609(c) of the South Carolina Rules of Evidence;

 (6) not have his testimony excluded in a legal proceeding if convicted of perjury; and

 (7) be licensed for any occupation requiring a license.

HISTORY: 1981 Act No. 100, Section 14; 1991 Act No. 134, Section 24; 1995 Act No. 104, Section 6.

Library References

Pardon and Parole 24.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 11 to 12, 14 to 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 30, The Order of Pardon and Its Effect.

Treatises and Practice Aids

Drinking/Driving Litigation: Criminal and Civil 2d Section 3:1, Challenges to Prior Convictions.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Criminal Law. 38 S.C. L. Rev. 72 (Autumn 1986).

Attorney General’s Opinions

Amendments to Section 23‑23‑50, by 1989 Act No. 60, dealing with training at Criminal Justice Academy, do not alter former Attorney General Opinion that pardon does not have effect of removing any record of prior suspensions resulting from driving offenses committed by individual, but rather, enhances that opinion. Inasmuch as “good character” remains requirement to attend Criminal Justice Academy, fact that individual has received pardon does not automatically qualify individual for attendance. 1991 Op. Atty Gen, No. 91‑61, p 155.

A pardoned conviction may be used as a conviction for enhanced charging and sentencing purposes for a subsequent crime that the offender has committed. 1988 Op. Atty Gen, No. 88‑87, p 244.

NOTES OF DECISIONS

In general 1

Purchase of firearm 2

1. In general

Pardoned conviction can be considered as a “prior offense” under statute enhancing punishment for subsequent conviction. State v. Baucom (S.C.App. 1999) 334 S.C. 371, 513 S.E.2d 112, rehearing denied, certiorari granted, reversed 340 S.C. 339, 531 S.E.2d 922, 97 A.L.R.5th 685. Sentencing And Punishment 1342

Section 24‑21‑990(6) merely restates the common law rule relating to the restoration of civil rights upon pardon; it does not alter the plain intent of Section 19‑11‑60 to permit testimony by convicted, but unpardoned, criminals. State v. Merriman (S.C.App. 1985) 287 S.C. 74, 337 S.E.2d 218.

2. Purchase of firearm

Applicant’s right to purchase a firearm was restored when he was pardoned of criminal sexual conduct with a minor. Brunson v. Stewart (S.C.App. 2001) 345 S.C. 283, 547 S.E.2d 504, rehearing denied, certiorari denied. Pardon And Parole 24

**SECTION 24‑21‑1000.** Certificate of pardon.

 For those applicants to be granted a pardon, a certificate of pardon shall be issued by the Board stating that the individual is absolved from all legal consequences of his crime and conviction, and that all of his civil rights are restored.

HISTORY: 1981 Act No. 100, Section 14.

Library References

Pardon and Parole 23.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 1 to 2, 5 to 6, 11 to 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 30, The Order of Pardon and Its Effect.

ARTICLE 12

Interstate Compact for Adult Offender Supervision

**SECTION 24‑21‑1100.** Short title.

 This article may be cited as the “Interstate Compact for Adult Offender Supervision”.

HISTORY: 2002 Act No. 273, Section 1.

**SECTION 24‑21‑1105.** Purpose.

 The purpose of this compact and the Interstate Commission created under it, through means of joint and cooperative action among the compacting states, is to:

 (1) promote public safety by providing adequate supervision in the community of adult offenders who are subject to the compact;

 (2) provide a means for tracking offenders subject to supervision under this compact;

 (3) provide a means of transferring supervision authority in an orderly and efficient manner;

 (4) provide a means of returning offenders to the originating jurisdictions when necessary;

 (5) provide a means for giving timely notice to victims of the location of offenders subject to supervision under this compact;

 (6) distribute the costs, benefits, and obligations of this compact equitably among the compacting states;

 (7) establish a system of uniform data collection for offenders subject to supervision under this compact and to allow access to information by authorized criminal justice officials;

 (8) monitor compliance with rules established under this compact; and

 (9) coordinate training and education regarding regulations relating to the interstate movement of offenders, for officials involved in this activity.

HISTORY: 2002 Act No. 273, Section 1.

**SECTION 24‑21‑1110.** Definitions.

 As used in this compact, unless the context clearly requires a different construction:

 (A) “Adult” means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

 (B) “By‑laws” mean those by‑laws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission’s actions or conduct.

 (C) “Compact administrator” means the individual in each compacting state appointed to administer and manage the state’s supervision and transfer of offenders subject to the terms of this compact and the rules adopted by the Interstate Commission.

 (D) “Compacting state” means any state which has enacted the enabling legislation for this compact.

 (E) “Commissioner” means the voting representative of each compacting state appointed pursuant to Section 24‑21‑1120 and this compact.

 (F) “Interstate Commission” means the Interstate Commission for Adult Offender Supervision.

 (G) “Member” means the commissioner of a compacting state or designee, who must be a person officially connected with the commissioner.

 (H) “Noncompacting state” means a state which has not enacted the enabling legislation for this compact.

 (I) “Offender” means an adult placed under, or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of a court, paroling authority, corrections, or other criminal justice agency.

 (J) “Person” means any individual, corporation, business enterprise, or other legal entity, either public or private.

 (K) “Rules” means acts of the Interstate Commission, promulgated pursuant to Section 24‑21‑1160 of this compact, substantially affecting interested parties in addition to the Interstate Commission, which have the force and effect of law in the compacting states.

 (L) “State” means a state of the United States, the District of Columbia, and any territorial possession of the United States.

 (M) “State Council” means the resident members of the state council for Interstate Adult Offender Supervision created by each state under Section 24‑21‑1120.

HISTORY: 2002 Act No. 273, Section 1.

**SECTION 24‑21‑1120.** Interstate Commission for Adult Offender Supervision; state council; creation; commissioners and noncommissioner members; quorum; meetings; Executive Committee.

 (A) The compacting states hereby create the “ Interstate Commission for Adult Offender Supervision”. The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties contained in this article, including the power to sue and be sued, and any additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

 (B)(1) The Interstate Commission shall consist of commissioners selected and appointed by the compacting states. The Governor shall appoint as commissioner from the State of South Carolina the Director of the South Carolina Department of Probation, Parole and Pardon Services, or his designee. The commissioner, acting jointly with similar officers appointed in other states, shall promulgate rules and regulations necessary to effectively carry out the terms of this compact.

 (2) The Director of the South Carolina Department of Probation, Parole and Pardon Services, or his designee, must serve as Compact Administrator for the State of South Carolina.

 (3) The Director of the South Carolina Department of Probation, Parole and Pardon Services must establish a state council for Interstate Adult Offender Supervision. The membership of the state council must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators. The state council shall act as an advisory body to the commissioner regarding the activities of the state’s interstate compact office, engage in advocacy activities concerning the state’s participation in interstate commission activities, and perform other duties determined by the commissioner.

 (C) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations. The noncommissioner members must include a member of the National Organization of Governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the Interstate Commission shall be ex‑officio nonvoting members. The Interstate Commission may provide in its by‑laws for additional ex‑officio nonvoting members as it considers necessary.

 (D) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by‑laws of the Interstate Commission.

 (E) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty‑seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

 (F) The Interstate Commission shall establish an Executive Committee which shall include commission officers, members, and others as shall be determined by the by‑laws. The Executive Committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of making rules and amendments to the compact. The Executive Committee shall oversee the day‑to‑day activities managed by the Executive Director and Interstate Commission staff. It shall administer enforcement and compliance with the provisions of the compact, its by‑laws, and as directed by the Interstate Commission and perform other duties as directed by the commission or set forth in the by‑laws.

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑1130.** Powers.

 The Interstate Commission shall have the following powers:

 (1) to adopt a seal and suitable by‑laws governing the management and operation of the Interstate Commission;

 (2) to promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

 (3) to oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any by‑laws adopted and rules promulgated by the compact commission;

 (4) to enforce compliance with compact provisions, Interstate Commission rules, and bylaws using all necessary and proper means including, but not limited to, the use of the judicial process;

 (5) to establish and maintain offices;

 (6) to purchase and maintain insurance and bonds;

 (7) to borrow, accept, or contract for services of personnel including, but not limited to, members and their staffs;

 (8) to establish and appoint committees and hire staff which it considers necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Section 24‑21‑1120(F) which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties;

 (9) to elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications, and to establish the Interstate Commission’s personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

 (10) to accept donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of them;

 (11) to lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any real, personal, or mixed property;

 (12) to sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any real, personal, or mixed property;

 (13) to establish a budget and make expenditures and levy dues as provided in Section 24‑21‑1180;

 (14) to sue and be sued;

 (15) to provide for dispute resolution among compacting states;

 (16) to perform the functions as may be necessary or appropriate to achieve the purposes of this compact;

 (17) to report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. The reports shall also include any recommendations that may have been adopted by the Interstate Commission;

 (18) to coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in this activity; and

 (19) to establish uniform standards for the reporting, collecting, and exchanging of data.

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑1140.** Adoption of by‑laws.

 (A) The Interstate Commission, by a majority of the members, within twelve months of the first Interstate Commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including, but not limited to:

 (1) establishing the fiscal year of the Interstate Commission;

 (2) establishing an executive committee and other committees as may be necessary;

 (3) providing reasonable standards and procedures for the establishment of committees and governing any general or specific delegation of any authority or function of the Interstate Commission;

 (4) providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each meeting;

 (5) establishing the titles and responsibilities of the officers of the Interstate Commission;

 (6) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of a compacting state, the bylaws shall exclusively govern the personnel policies and programs of the Interstate Commission;

 (7) providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment reserving of all of its debts and obligations;

 (8) providing transition rules for “start up” administration of the compact; and

 (9) establishing standards and procedures for compliance and technical assistance in carrying out the compact.

 (B)(1) The Interstate Commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have the authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided, that subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

 (2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for a period, upon terms and conditions and for compensation as the Interstate Commission considers appropriate. The executive director shall serve as secretary to the Interstate Commission and hire and supervise other staff as may be authorized by the Interstate Commission. The executive director is not a member of the Interstate Commission.

 (C) The Interstate Commission shall maintain its corporate books and records in accordance with the by‑laws.

 (D)(1) The members, officers, executive director, and employees of the Interstate Commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that nothing in this subsection may be construed to protect any person from liability for any damage, loss, injury, or liability caused by the person’s intentional, willful, or wanton misconduct.

 (2) The Interstate Commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the Interstate Commission’s representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of that person.

 (3) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the Interstate Commission’s representatives or employees harmless in the amount of any settlement or judgment obtained against the persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of that person.

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑1150.** Conduct of business; voting; public access to meetings and official records; closed meetings; minutes; interstate movement of offender data collection.

 (A) The Interstate Commission shall meet and take such actions as are consistent with the provisions of this compact.

 (B) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the Interstate Commission, the act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

 (C) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person on behalf of the State and shall not delegate a vote to another member state. However, a state council may appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members’ participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication is subject to the same quorum requirements of meetings where members are present in person.

 (D) The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

 (E) The Interstate Commission’s bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating these rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

 (F) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission shall promulgate rules consistent with the principles contained in the “Government in Sunshine Act”, 5 U.S.C. Section 552(b), as amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two‑thirds vote that an open meeting would be likely to:

 (1) relate solely to the Interstate Commission’s internal personnel practices and procedures;

 (2) disclose matters specifically exempted from disclosure by statute;

 (3) disclose trade secrets or commercial or financial information which is privileged or confidential;

 (4) involve accusing a person of a crime or formally censuring a person;

 (5) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

 (6) disclose investigatory records compiled for law enforcement purposes;

 (7) disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of that entity;

 (8) disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; or

 (9) specifically relate to the Interstate Commission’s issuance of a subpoena or its participation in a civil action or proceeding.

 (G) For every meeting closed pursuant to this provision, the Interstate Commission’s chief legal officer shall publicly certify that, in counsel’s opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action must be identified in the minutes.

 (H) The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection and data exchange, and reporting requirements.

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑1160.** Promulgation of rules and amendments; emergency rules.

 (A) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

 (B) Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. The rulemaking shall substantially conform to the principles of the federal Administrative Procedures Act, 5 U.S.C.S. Section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C.S. app. 2, Section 1 et seq., as amended (hereinafter “APA”).

 (C) All rules and amendments shall become binding as of the date specified in each rule or amendment.

 (D) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then the rule shall have no further force and effect in any compacting state.

 (E) When promulgating a rule, the Interstate Commission shall:

 (1) publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

 (2) allow persons to submit written data, facts, opinions, and arguments, which information must be publicly available;

 (3) provide an opportunity for an informal hearing; and

 (4) promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.

 (F) Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the federal district court where the Interstate Commission’s principal office is located for judicial review of the rule. If the court finds that the Interstate Commission’s action is not supported by substantial evidence, as defined in the APA, in the rulemaking record, the court shall hold the rule unlawful and set it aside.

 (G) Subjects to be addressed within twelve months after the first meeting must at a minimum include:

 (1) notice to victims and opportunity to be heard;

 (2) offender registration and compliance;

 (3) violations and returns;

 (4) transfer procedures and forms;

 (5) eligibility for transfer;

 (6) collection of restitution and fees from offenders;

 (7) data collection and reporting;

 (8) the level of supervision to be provided by the receiving state;

 (9) transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

 (10) mediation, arbitration, and dispute resolution.

 The existing rules governing the operation of the previous compact superseded by this act shall be null and void twelve months after the first meeting of the Interstate Commission created hereunder.

 (H) Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to the emergency rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑1170.** Oversight of interstate movement of adult offenders; enforcement of compact; resolution of disputes among states; mediation.

 (A) The Interstate Commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

 (B) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact’s purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any proceeding and shall have standing to intervene in the proceeding for all purposes.

 (1) The compacting states shall report to the Interstate Commission on issues or activities of concern to them, cooperate with, and support the Interstate Commission in the discharge of its duties and responsibilities.

 (2) The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

 (3) The Interstate Commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

 (C) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Section 24‑21‑1200(B).

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑1180.** Establishment and operating costs; assessments from compacting states; accounting.

 (A) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

 (B) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff that must be in a total amount sufficient to cover the Interstate Commission’s annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the State and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs the assessment.

 (C) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

 (D) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission must be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the Interstate Commission.

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑1190.** Compact membership eligibility; effective date; amendments.

 (A) Any state is eligible to become a compacting state.

 (B) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty‑five of the states. The initial effective date must be the later of July 1, 2001, or upon enactment into law by the thirty‑fifth jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in Interstate Commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

 (C) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑1200.** Withdrawal; termination and other penalties for performance default by compacting state; legal actions; dissolution.

 (A)(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law.

 (2) The effective date of withdrawal is the effective date of the repeal.

 (3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.

 (4) The Interstate Commission shall notify the other compacting states of the withdrawing state’s intent to withdraw within sixty days of its receipt thereof.

 (5) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extend beyond the effective date of withdrawal.

 (6) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon a later date as determined by the Interstate Commission.

 (B)(1) If the Interstate Commission determines that any compacting state has at a time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

 (a) fines, fees, and costs in amounts as are considered reasonable as fixed by the Interstate Commission;

 (b) remedial training and technical assistance as directed by the Interstate Commission; or

 (c) suspension and termination of membership in the compact. Suspension must be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension must be given by the Interstate Commission to the Governor, the Chief Justice of the State, the majority and minority leaders of the defaulting state’s legislature, and the state commissions. The grounds for default include, but are not limited to, failure of a compacting state to perform the obligations or responsibilities imposed upon it by this compact, Interstate Commission bylaws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of suspension.

 (2) Within sixty days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the Governor, the Chief Justice, the majority and minority leaders of the defaulting state’s legislature, and the state commissioners of the termination.

 (3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

 (4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state.

 (5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

 (C) The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and by‑laws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation including reasonable attorney fees.

 (D)(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

 (2) Upon the dissolution of this compact, the compact becomes null and void and of no further force or effect, and the business and affairs of the Interstate Commission must be wound up, and any surplus funds must be distributed in accordance with the bylaws.

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑1210.** Severability.

 (A) The provisions of this compact must be severable, and if a phrase, clause, sentence, or provision is considered unenforceable, the remaining provisions of the compact must be enforceable.

 (B) The provisions of this compact must be liberally constructed to effectuate its purposes.

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

**SECTION 24‑21‑1220.** Construction and application.

 (A)(1) Nothing in this article prevents the enforcement of another law of a compacting state that is consistent with this compact.

 (2) All compacting states’ laws conflicting with this compact are superseded to the extent of the conflict.

 (B)(1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

 (2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

 (3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding the meaning or interpretation.

 (4) In the event a provision of this compact exceeds the constitutional limits imposed on the legislature of a compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by the provision upon the Interstate Commission must be ineffective and the obligations, duties, powers, or jurisdiction must remain in the compacting state and must be exercised by the agency to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

HISTORY: 2002 Act No. 273, Section 1.

Library References

Sentencing and Punishment 1988.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 1559.

ARTICLE 13

Day Reporting Centers

**SECTION 24‑21‑1300.** Definitions.

 (A) The Department of Probation, Parole and Pardon Services may develop and operate day reporting centers within the State.

 (B) “Day reporting center” means a state facility providing supervision of inmates or offenders placed on supervision, which includes, but is not limited to, mandatory reporting, program participation, drug testing, community service, and any other conditions as determined by the Department of Corrections and the Department of Probation, Parole and Pardon Services.

 (C) “Eligible inmate” means a person sentenced to imprisonment for more than three months, excluding a person sentenced for:

 (1) a violent crime, as provided for in Section 16‑1‑60;

 (2) a Class A, B, or C felony, as provided for in Section 16‑1‑20;

 (3) the following Class D felonies:

 (a) robbery, as provided for in Section 16‑11‑325;

 (b) disseminating obscene material to a minor twelve years of age or younger, as provided for in Section 16‑15‑355; and

 (c) aggravated stalking, as provided for in Section 16‑3‑1730(C);

 (4) an unclassified crime which carries a maximum term of imprisonment of fifteen years or more, as provided for in Section 16‑1‑10(D);

 (5) the unclassified crime of assault and battery of a high and aggravated nature in which the original indictment was for an offense that would require registration as a sex offender, as provided for in Section 23‑3‑430; or

 (6) a crime which requires a registration as a sex offender, as provided for in Section 23‑3‑430. “Eligible inmate” does not include a person who does not provide an approved in‑state residence as determined jointly by the Department of Corrections and the Department of Probation, Parole and Pardon Services.

 (D) “Eligible offender” means a person placed on probation, parole, community supervision, or any other supervision program operated by the Department of Probation, Parole and Pardon Services, excluding a person sentenced for:

 (1) a violent crime, as provided for in Section 16‑1‑60;

 (2) a Class A, B, or C felony, as provided for in Section 16‑1‑20;

 (3) the following Class D felonies:

 (a) robbery, as provided for in Section 16‑11‑325;

 (b) disseminating obscene material to a minor twelve years of age or younger, as provided for in Section 16‑15‑355; and

 (c) aggravated stalking, as provided for in Section 16‑3‑1730(C);

 (4) an unclassified crime which carries a maximum term of imprisonment of fifteen years or more, as provided for in Section 16‑1‑10(D);

 (5) the unclassified crime of assault and battery of a high and aggravated nature in which the original indictment was for an offense that would require registration as a sex offender, as provided for in Section 23‑3‑430; or

 (6) a crime which requires a registration as a sex offender, as provided for in Section 23‑3‑430. “Eligible offender” does not include a person who does not provide an approved in‑state residence as determined jointly by the Department of Corrections and the Department of Probation, Parole and Pardon Services.

HISTORY: 2008 Act No. 284, Section 1, eff June 11, 2008.

Editor’s Note

2008 Act No. 284, Section 3, provides as follows:

“This act takes effect upon approval by the Governor and must be implemented upon the appropriations of sufficient funds by the General Assembly.”

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

**SECTION 24‑21‑1310.** Development and operation; inmate eligibility.

 (A) Notwithstanding another provision of law, the Department of Probation, Parole and Pardon Services may develop and operate day reporting centers for eligible inmates and eligible offenders, if the General Assembly appropriates funds to operate these centers. The Department of Probation, Parole and Pardon Services shall develop policies, procedures, and guidelines for the operation of day reporting centers. The period of time an eligible inmate or offender is required to participate in a day reporting program and the individual terms and conditions of an eligible inmate’s or offender’s placement and participation are at the joint discretion of the Department of Corrections and the Department of Probation, Parole and Pardon Services.

 (B) An inmate or offender has no right to be placed in a day reporting center. The Department of Corrections and the Department of Probation, Parole and Pardon Services have absolute discretion to place an eligible inmate or offender in a day reporting center and nothing in this article may be construed to entitle an inmate or offender to participate in a day reporting center program.

HISTORY: 2008 Act No. 284, Section 1, eff June 11, 2008.

**SECTION 24‑21‑1320.** Conditions of placement; removal.

 (A) An eligible inmate or offender placed in a day reporting center must agree to abide by the conditions established by the Department of Corrections and the Department of Probation, Parole and Pardon Services, which may include, but are not limited to:

 (1) seek and maintain employment;

 (2) participate in any educational, vocational training, counseling, or mentoring program recommended by the department;

 (3) refrain from using alcohol or nonprescription medication; and

 (4) pay a reasonable supervision fee, which may be waived by the department, that must be retained by the department to assist in funding this program.

 (B) An eligible inmate or offender who fails to abide by the conditions established by the Department of Corrections and the Department of Probation, Parole and Pardon Services may be removed from the community and brought before an administrative hearing officer of the Department of Probation, Parole and Pardon Services. The Department of Probation, Parole and Pardon Services is the sole authority for determining whether any condition has been violated and for determining the actions to be taken in response to the violation. A participant revoked from participation in a day reporting center may be subject to further criminal proceedings or the institution of internal disciplinary sanctions for violations of any conditions associated with his placement in the day reporting center program. An inmate who fails to report as instructed, or whose whereabouts are unknown, may be considered to be an escapee by the department and may be apprehended and returned to custody as any other inmate who is deemed an escapee by the department.

 (C) If a sentence to a day reporting center is revoked, the inmate must serve the remainder of his sentence within the Department of Corrections.

HISTORY: 2008 Act No. 284, Section 1, eff June 11, 2008.

**SECTION 24‑21‑1330.** Pilot project day reporting center program; termination.

 The pilot project day reporting center program terminates twelve months from its opening, unless extended by the General Assembly.

HISTORY: 2008 Act No. 284, Section 1, eff June 11, 2008.