APRIL 1976

POLICE OFFICER'S HANDBOOK

THE CRIMINAL LAW

PART XXIII

BLOOD SAMPLE...
FORCIBLE TAKING
(SCHMERBER V. CALIFORNIA)

INVENTORY SEARCH...
IMPOUNDED VEHICLE...
RULE EXTENDED
(US V. BALANOW)

RANDOM STOP OF VEHICLE...
LICENSE AND REGISTRATION CHECK
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(1) Traffic Summons, Ten (10) Day Law...
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Golden v. State et al; SC Filed April 5, 1976

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LAW ENFORCEMENT - ETV TRAINING PROGRAM

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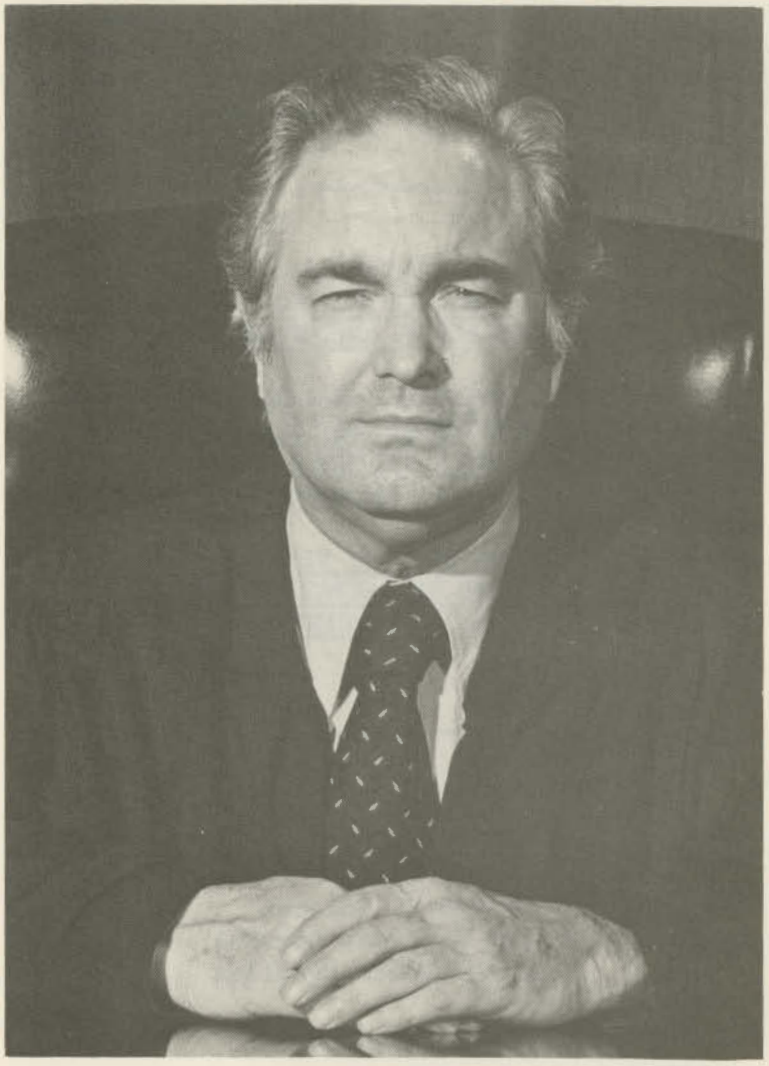

Hon. James A.K. Roper
Judge Greenville County
Family Court

"Taking of a blood sample from a DUI suspect against his will for testing is lawful when the amount of blood taken is minimal, the procedure involves virtually no risk, trauma, or pain, the blood is withdrawn in a hospital environment according to accepted medical practices, and there is probable cause to believe the suspect was driving while intoxicated."

James A.K. Roper
Judge Greenville County
Family Court

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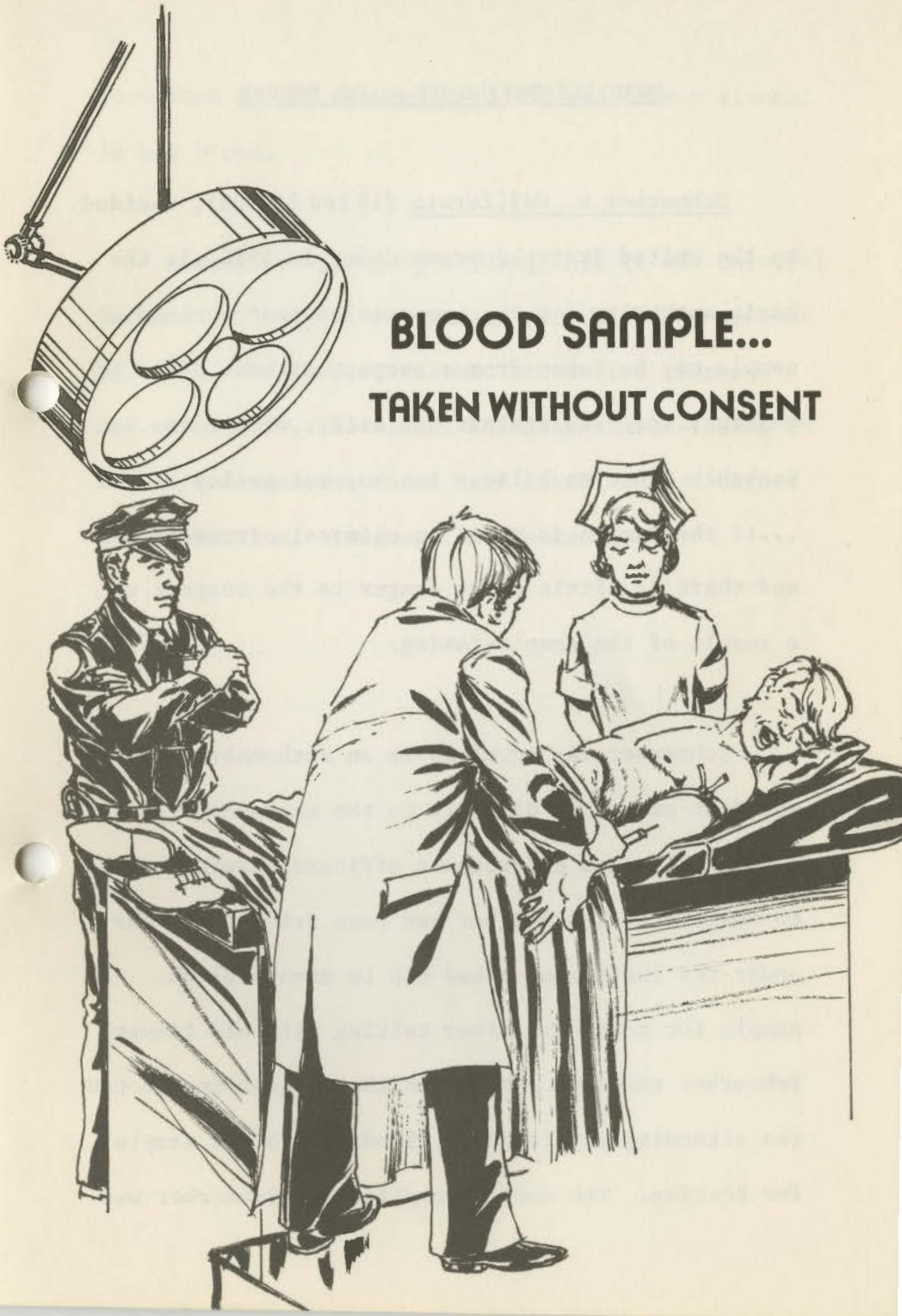


FORCIBLE TAKING OF BLOOD SAMPLE

Schmerber v. California (16 Led 2d 908), decided by the United States Supreme Court in 1966, is the basic authority for the proposition that a blood sample may be taken from a suspect without his consent...or even against his will...when there is probable cause to believe the suspect guilty of DUI ...if the sample is taken in clinical circumstances and there is little or no danger to the suspect as a result of the sample-taking.

Schmerber was involved in an authomobile accident and taken directly to the emergency room of a hospital. Law enforcement officers, having reason to believe that Schmerber had been driving the car under the influence, asked him to give a blood sample for testing. After talking with his lawyer, Schmerber refused...whereupon the officer instructed the attending physician to withdraw a blood sample for testing. The doctor complied and Schmerber was

convicted of DUI upon evidence of sufficient alcohol in his blood.

Schmerber appealed, arguing that it was unlawful for a blood sample to be taken from his body against his will. His appeal reached the United States Supreme Court. That Court held the sample-taking in the circumstances to have been lawful and sustained the conviction. Language of the Court:

BLOOD TAKEN IN REASONABLE MANNER

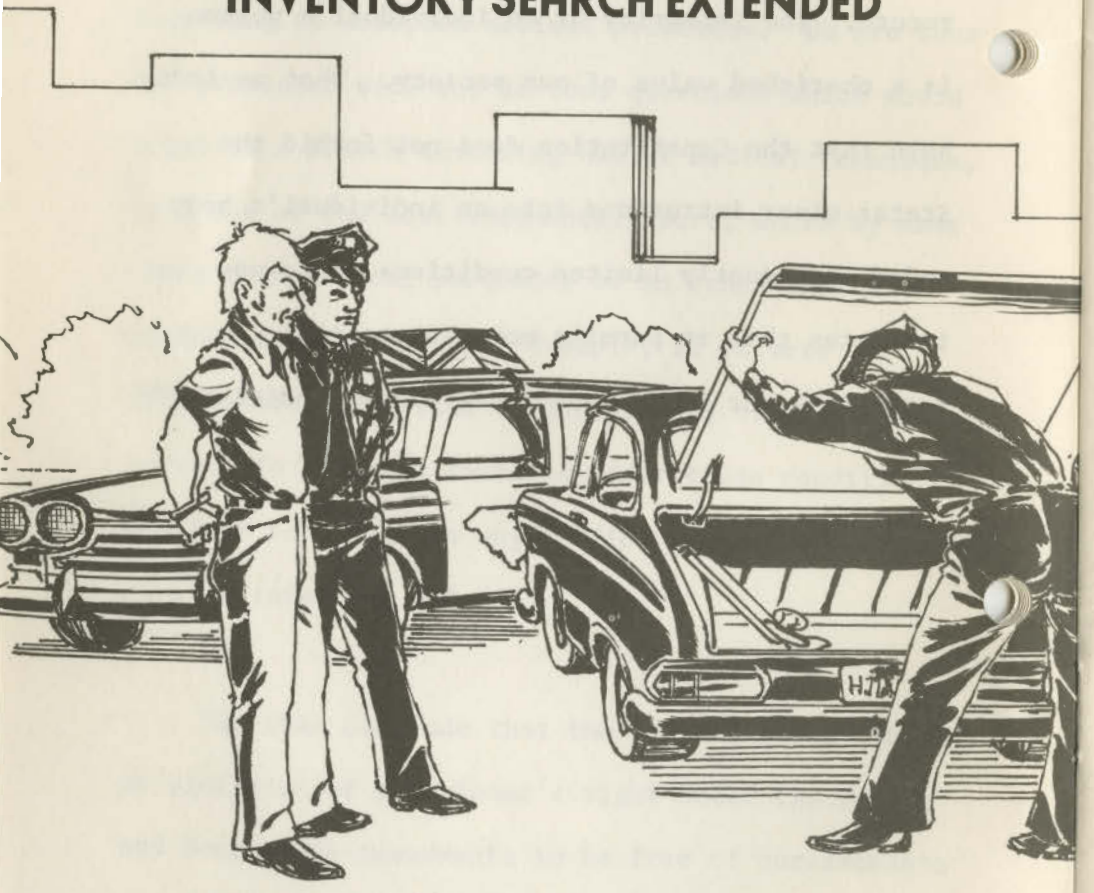
"...the record shows that the test was performed in a reasonable manner. Petitioner's blood was taken by a physician in a hospital environment according to accepted medical practices. We are thus not presented with the serious questions which would arise if a search involving use of medical technique, even out of the most ruidmentary sort, where by made other than medical personnel or in other than a medical environment - for example, if it were administered by police in the privacy of the station-house. To tolerate searches under these conditions might be to invite an unjustified element of personal risk of infection and pain.

"We thus conclude that the present record shows no violation of petitioner's right under the Fourth and Fourteenth Amendments to be free of unreasonable searches and seizures."

COURT'S WARNING ABOUT POSSIBLE UNLAWFUL METHODS

"It bears repeating, however, that we reach this judgment only on the facts of the present record. The integrity of an individual's person is a cherished value of our society. That we today hold that the Constitution does not forbid the States minor intrusions into an individual's body under stringently limited conditions in no way indicates that it permits more substantial intrusions, or intrusions under other conditions."

IMPOUNDED VEHICLE...
INVENTORY SEARCH EXTENDED



INVENTORY SEARCH OF

IMPOUNDED VEHICLE EXTENDED

(US v. Balanow, 528 F2d 923)

Indiana State Troopers on routine patrol duty observed a vehicle weaving from lane to lane in a prohibited manner. They stopped it to investigate and ascertained that the operator was driving under suspension. Balanow, the driver, was placed under arrest and his car impounded. Another officer, arriving on the scene to offer help, was handed the keys to Balanow's car and asked to make an inventory search. The second officer complied, including a search of the locked trunk without consent of the owner. There was no probable cause to believe contraband was in the trunk.

The searching officer found a sawed-off shotgun in the trunk. Balanow was convicted of the fire-arms violation. He appealed, arguing unlawful search of the locked trunk and seizure of the shotgun.

Holding of the United States Court of Appeals, Seventh Circuit, January 19, 1976:

Verdict of guilty upheld. The search of the locked trunk without the consent of the owner, and without probable cause, was lawful as part of an 'inventory search'. Language:

"The ultimate test of the legality of the search and seizure is the reasonableness of the police officer's conduct. In this case it was unassailable. The Indiana State Police had probable cause to arrest defendant for his improper change of lanes and driving while his license was suspended. Because of the defendant's suspended driver's license, it would have been improper to allow him to continue to drive his car, and Indiana law permitted the State Police to protect the vehicle by removing it from the roadway. Id. Furthermore, the Indiana State Police Training and Personnel Bulletin (April 1, 1960) authorized the impoundment of the car. The officer's

decision to seize the car was not unreasonable.

"Under normal state procedure, defendant's car was searched at the time of impounding. The police had a right to inventory the contents of the impounded car."

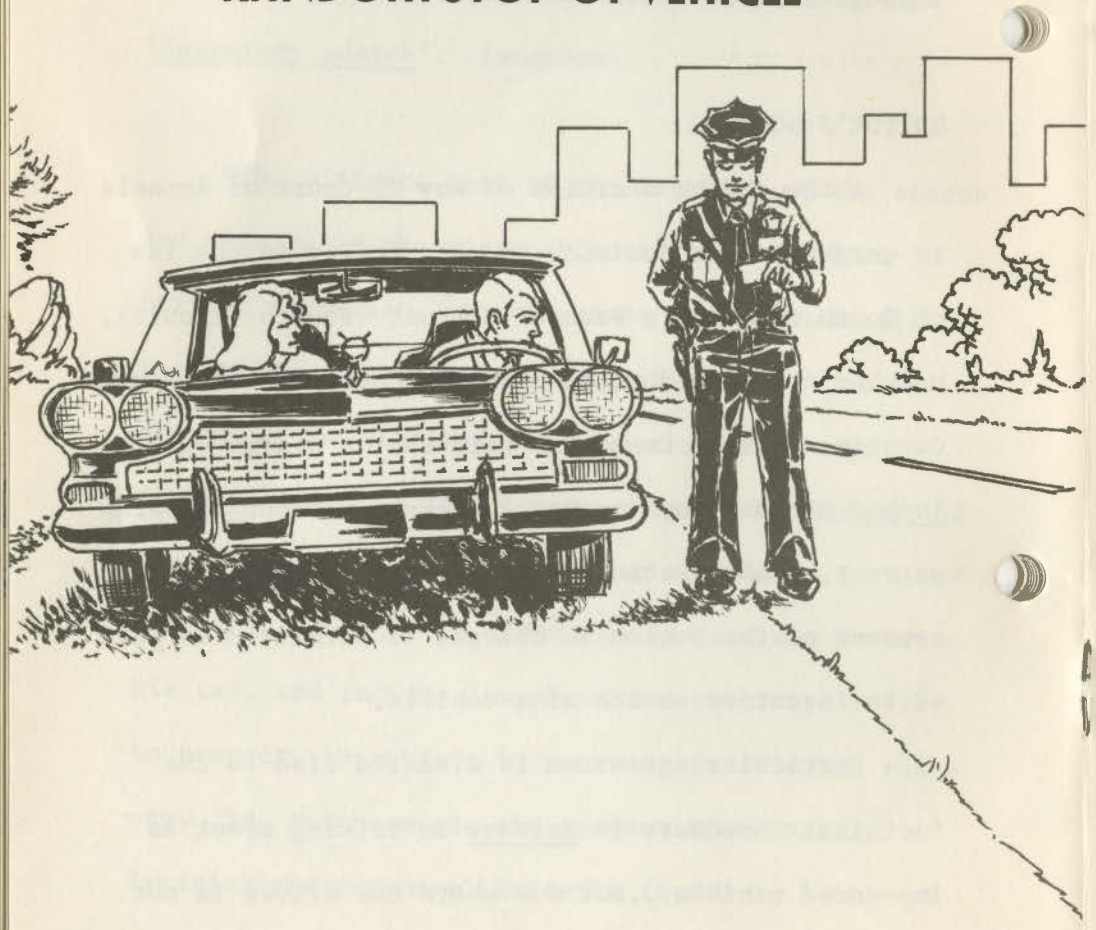
EDITOR'S NOTE:

Although the decision of any US Court of Appeals is weighty, this decision is not binding as the law of South Carolina's Federal Circuit (Fourth Circuit). Neither the United States Supreme Court nor the South Carolina Supreme Court has held that a search of locked parts of an impounded vehicle without a search warrant, probable cause to suspect contraband, or the consent of the person in charge, is permitted as part of an inventory search of a vehicle.

Particular attention is directed also to the fact that the Court in Balanow is talking about an impounded vehicle...not one where the driver is not placed under custodial arrest.

LICENSE AND REGISTRATION CHECK...

RANDOM STOP OF VEHICLE



RANDOM STOP OF VEHICLE

FOR LICENSE AND REGISTRATION CHECK

(US v. Jenkins, 528 F2d 713)

A New Mexico State Trooper made a random stop of a single vehicle on the highway for the purpose of driver license and registration check. There was no road block or other check-point procedure in operation.

The suspect car was stolen and the operator, Jenkins, was driving with an expired driver license.

Conviction and appeal followed. It was argued for Jenkins that the initial stop of the vehicle was unlawful because the license and registration check was nothing more than a 'pretext' to investigate other possible violations of law...and the officer had no probable cause to suspect any such violations. Facts recited by the Court:

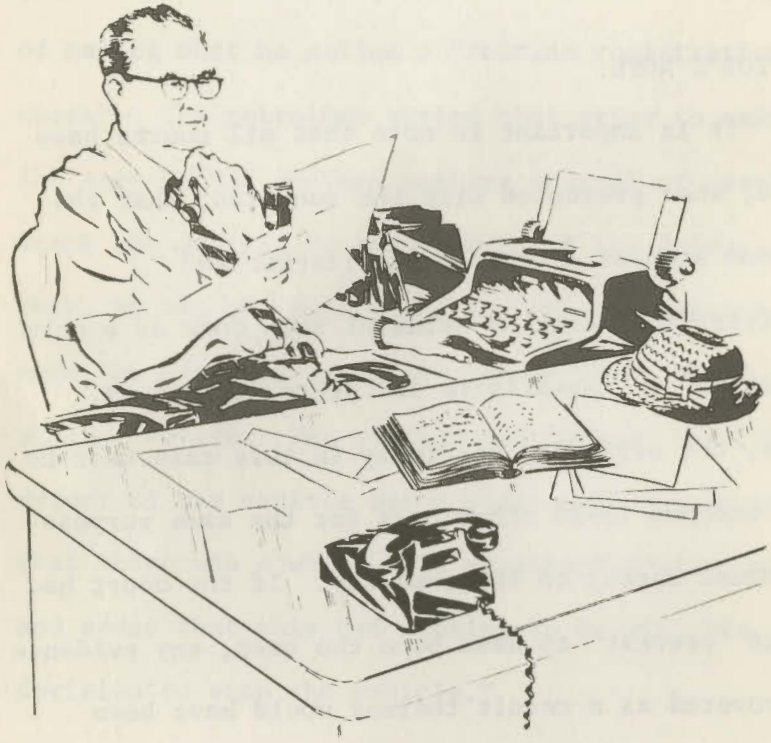
"At the hearing on the motion to suppress, a patrolman for the New Mexico State Police testified that he made a random stop of a vehicle bearing California license plates on Interstate Highway 40 just west of Tucumcari, New Mexico, for the purpose of making what he called a "routine registration check". The patrolman stated that prior to making the stop he had noticed nothing unusual or suspicious about the vehicle or the conduct of its driver, and that, as was his custom, on the day in question he made some fifteen to twenty random stops of a similar nature. The officer had noticed that the driver of the vehicle was a black male person and that there was a white male passenger in the car, and added that this had nothing to do with his decision to stop the vehicle."

The US Tenth Circuit Court of Appeals held that the random stop of a vehicle for license and registration check was lawful in the circumstances ...and the conviction was upheld.

EDITOR'S NOTE:

It is important to note that all courts have held, when presented with the question, that the random stop of a vehicle for license and registration check is unlawful when done as a mere 'pretext' to investigate for other violations. Thus, the officer's testimony in this case that he had stopped 15-20 other cars for the same purpose (license check) on the same day. If the court had found 'pretext' to have been the case, any evidence discovered as a result thereof would have been inadmissable '<u>fruit of the poison tree</u>'.

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK...Chapter 123

TRAFFIC SUMMONS
1976 ACT

Act No.482, Acts of 1976, General Assembly of South Carolina, effective March 2, 1976, provides that a traffic offender may not be forced to trial in less than ten days following the date of arrest. When the uniform traffic ticket is issued, the date of trial must be shown as no less than ten days following the date of arrest.

COUNTING DAYS

In counting the days under the new act, the count starts on the day following the arrest. For example, when the arrest is on the 3rd of the month, the count would begin on the 4th. The 10th day would fall on the 13th day of the month...so, the 13th would be the earliest day on which the case could be set for trial.

When the 10th day falls on Sunday, it would then be set on the Monday following. Sundays are counted when they fall on 1st through the 9th days, but not when they fall on the 10th day.

VOLUNTARY PLEA, TRIAL, OR FORFEITURE

An offender may lawfully forfeit bail, enter a plea, or be tried before the 10th day if he consents to the earlier date.

RULE OF THUMB

(1) Date of trial shown on the uniform traffic ticket should never be less than ten (10) days following the date of arrest. When the 10th day falls on Sunday, the trial date would be no sooner than the 11th day.

(2) When an offender volunteers to have his case disposed of earlier than the 10th day, it would be a good idea to have some signed statement to that effect on the back of the ticket. Example:

"I consent to (bond forfeiture) (trial) (entry of plea of guilty) on this charge on the_____day of_____, 19_____."

_____
(offender's signature)

SENTENCING JUVENILES

IN SERIOUS CASES

(Golden v. State et al, SC, April 5, 1976)

Thertofore, there has been considerable doubt at to the sentence that could be imposed by a court on juvenile defendants (under age 17) convicted of more serious crimes, such as murder, rape, manslaughter et al.

It has been assumed by many judges and attorneys that the maximum punishment possible was sentence to the Department of Youth Services until age 21, at which time release would be mandatory. See Section 55-50.30, 1962 Code of Laws of South Carolina, as amended.

The South Carolina Supreme Court has now held (Golden v. State et al) that a juvenile convicted in General Sessions Court for a serious offense may be sentenced by the presiding judge to a specific term

(21 years for rape in the Golden case), committed to the Department of Youth Services until 21, then transferred to the State Penitentiary or other adult facility for service of the remainder of the sentence. It is further held by the decision that in the case of juvenile defendants convicted in General Sessions Court, the judge may sentence the juvenile in either of two ways:

(1) To a specific sentence, to be served in the Department of Youth Services until 21, then the remainder, if any, at an adult corrections facility.

(2) To an indeterminate sentence in custody of the Department of Youth Services until age 21, or unless released sooner by the Department. Release at age 21 would be mandatory.

In the Golden case, the rape defendant was 13 at the time of sentence. He was sentenced in York County Court of General Sessions to 21 years, to be served in custody of the Board of Youth Services until 21, then to be transferred to the State Penitentiary for the remainder of the sentence.

Less than a year later, the Board of Youth Services granted the defendant his conditional release, but cancelled the release order 11 days later upon learning that the judge who imposed the original sentence was preparing to enforce it by judicial action.

The State Supreme Court held that the Board of Youth Services had no authority to grant a conditional release under the sentence imposed, and that it could only retain custody of the defendant until age 21, then transfer him to the State Penitentiary for service of the remainder of the sentence.

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