Message to the 105th South Carolina General Assembly

"The care of human life and happiness, and not their destruction, is the first and only legitimate object of good government."

—Thomas Jefferson

Providing for the Public Safety—
Our Challenge for the Future

Richard W. Riley, Governor

JANUARY 27, 1983

State of South Carolina

Office of the Governor

RICHARD W. RILEY
GOVERNOR

POST OFFICE BOX 11450
COLUMBIA 29211

January 27, 1983

Dear Mr. President and Members of the Senate:
Dear Speaker Schwartz and Members of the House of Representatives:

The safety of our citizenry and the guarantee of individual rights are among the highest concerns of South Carolinians today. The public demand for justice, equality under the law and assurance of personal protection warrants that particular attention be paid to several critical issues in the public safety area.

The high incidence of crime, inequity in sentencing, increased court caseloads and the resulting overcrowding of both adult and juvenile correctional facilities continue to burden our criminal justice system. A new partnership between juvenile justice officials and the school system can help us prevent crime among our youth. The increasing use of mopeds on our highways and the limited use of child restraint devices poses a serious problem of increased injuries and fatalities involving our young people.

I know you are as concerned as I with these issues, and will view my attached recommendations with the same degree of determined commitment. Our challenge for the future must be to take strong measures which will better fulfill government's responsibility as guardians of the public safety.

Respectfully,

Richard W. Riley

Richard W. Riley

RWR:wr

Enclosures

1983 PUBLIC SAFETY LEGISLATIVE PROPOSALS

COURT OF APPEALS

The continuing caseload in the Supreme Court and backlog of appeals calls for action this year. More than 1,000 cases were ready for consideration by the Court the end of December. Due to the urgency of this situation, I support the establishment of a statutory intermediate court of appeals with a broad constitutional inclusion to follow.

The intermediate appellate court should have a chief judge and five associate judges who would sit in two panels of three judges each. Administrative expenses should be kept at a minimum by the use of existing facilities and personnel to the extent feasible.

SENTENCING

The imposition of sentence is probably the most critical point in our system of administering criminal justice. The obvious significance of the sentencing function to the criminal defendant is that he may be poised between life and death, freedom or confinement, or short or long imprisonment. The State must provide for a sentencing process that is fair, rational, and one that holds a defendant accountable for his actions. I present a proposal to reform and modernize our system for meting out justice. The issues are complex and difficult to resolve but the potential is profound.

First, the Sentencing Commission created by executive order and which is chaired by Justice David Harwell has submitted a bill* to establish a legislatively enacted Sentencing Guidelines Commission. The mandate of this Commission, with representation from all three branches of government, will be to prescribe and promulgate sentencing guidelines within the statutory bounds set for offenses by the legislature. Sentencing guidelines is a method of virtually eliminating unwarranted disparity yet allowing for individualization of sentencing decisions. The method is based on a premise that the punishment should fit the criminal as well as the crime.

*Proposed legislation enclosed.

Second, I urge that the 105th General Assembly consider for enactment this session a rational classification system for criminal offenses. Presently South Carolina does not have such a rational system, and the result is a "non-system" of criminal penalties. There is even no basic logical division of crimes into felonies and misdemeanors; and, therefore, there are no identifiable sub-categories of felonies or misdemeanors based on similarity of authorized penalties. The existing Sentencing Commission is still developing the classification system and a bill will be submitted later this session.

ARSON

Arson Strike Force*

The incidence of arson in South Carolina continues to cost taxpayers millions of dollars annually through payment of insurance. The loss of lives, of course, cannot be measured in dollars and cents but the emotional impact on the victims and families is overwhelming.

My Arson Task Force has examined the arson problem over the past two years and has found that arson investigation in the state is many times undertaken on an ad hoc basis. SLED is limited in its capability to assist local agencies because of low manpower levels, heavy caseloads, backlog in laboratory support, and the geographical distance for responses.

For these reasons, I am recommending a .4 of 1% surcharge on all fire insurance premiums by insurance companies to support a statewide Arson Strike Force at the State Fire Marshal's Office. For the consumer, this amounts to 40¢ for every $100.00 of fire insurance premiums. I am concerned about any additional cost to the consumer even though it is small. But I feel it is essential to curb indirect costs (to the consumer) because of higher insurance premiums due to claim payments on suspicious fires. Another Southern State (Florida) which has an investigation team has experienced an arrest and conviction rate double the national average. I hope the long range effect of this action will be to lower insurance premiums.

Arson Immunity*

In the opinion of many professionals working in the field of arson reduction, arson reporting immunity is the keystone to an effective combined effort of the public and private sector. To date, all states with the exception of Nevada and South Carolina have passed some type of arson immunity legislation for insurance companies who assist law enforcement agencies. Legislation is needed to provide immunity for insurance agents on the reporting of suspicious fires.

*Proposed legislation enclosed.

Tax Liens*

A special problem which arises when commercial structures are burned is a loss of revenues to the city and/or county in which the structure is located. Frequently, in cases of arson, large amounts of back taxes are outstanding.

I support legislation which would create a lien against the proceeds of an insurance policy (exempting one or two unit owner-occupied residences) which are derived from damage to structures as a result of fire or explosion. The lien would be in favor of the county or municipality to which back taxes might be owed and would have to be paid prior to the remainder of the claim being honored.

Fire Related Deaths*

More than 150 people perish each year in South Carolina as a result of injuries sustained during fires. Many times arson and murder are not determined due to the lack of an autopsy. I support legislation to require increased use of autopsies in suspicious fire deaths unless justification is present to waive the autopsy by the solicitor and coroner.

STATE PRISON OVERCROWDING

Once again I must turn to the serious problems affecting the State's correctional facilities. Our state prisons continue to operate at 40% over their design capacity which results in conditions similar to those which have been successfully challenged in the federal courts throughout the United States. Prisons in more than 30 states have been under court order or consent decrees to reduce overcrowding and to improve prison conditions. In Alabama, Mississippi and Louisiana federal judges issued emergency court orders to enjoin state officials from accepting any new prisoners until the prison population was reduced to constitutional levels. In a few states, the federal courts have forced authorities to release some prisoners early to relieve overcrowding. In Texas, where an order of a U. S. District Judge established a minimum square footage requirement for inmates, total costs of present construction exceed $265 million.

One immediate action which has been taken to help resolve this problem is the Budget and Control Board's approval for the use of the Farmer and Moncrief Buildings at the State Park Health Center as a minimum security prison. I strongly urge the Joint Bond Review Committee to authorize the Department of Corrections to use $429,000 to begin modifications of these buildings. In addition to the increases recommended by the Budget and Control Board for the Department of Corrections for FY 83-84, I am also supporting an additional $2.4 million for this agency to operate the facility this fiscal year.

*Proposed legislation enclosed.

In South Carolina, a suit against the Central Correctional Institution regarding overcrowding led to a negotiated agreement to reduce the number of inmates housed there. More recently another suit alleges that the totality of conditions in all state facilities violate the constitutionally guaranteed rights of inmates housed there. It is clear that federal court intervention regarding the conditions of confinement of our state prisons may be near.

During the past year my office has continued to work with the Boards of the two State correctional agencies to seek solutions to this problem. Both Boards have assured me that every safe, reasonable effort has been made by the agencies to relieve overcrowding. However, the prison population is projected to increase by another 2,000 inmates in the next two years. It appears that the solution to the crisis facing the correctional facilities lies beyond the authority and resources of these two agencies. Certainly with South Carolina's economy as weak as it is, there is less money available for new prisons. However, the Department of Corrections is subjected to the legislative and judicial policies of the State which continue to increased the State inmate population at a significant rate.

It is imperative that the State's leaders take bold action to resolve the overcrowding problem. It is my hope that the legislature, through the leadership of the State Reorganization Commission's Prison Overcrowding Task Force, will take action this year to establish a State Corrections policy and action plan to effectively manage the inmate population and provide for a safe and humane prison system. We must look at a variety of approaches to assure the protection of society from serious offenders, use alternatives where possible to handle short term, less serious offenders, and at the same time meet our constitutional responsibilities. My office stands ready to assist in any way possible.

Additionally, the State must provide the necessary funds for the development and implementation of these alternative correctional programs which can satisfy justice and not jeopardize the safety of law abiding citizens. Funding for these programs is critical.

Insanity Defense

Although the insanity defense is raised in few South Carolina criminal cases and is successful in even fewer, the defense raises fundamental issues of criminal responsibility. Very importantly, the insanity defense is very often asserted in cases of considerable notoriety, which influences the public's perception of the fairness and efficiency of the criminal justice process.

I support the bill filed by Representative David Wilkins with minor modifications to allow an alternative verdict to the jury for "guilty but mentally ill". This approach offers the jury an attractive alternative to the stark choice between conviction and acquittal.

Naturally, this approach does not alter the requirement that the state prove every essential element of the offense, including the required state of mind. The verdict of "not guilty by reason of insanity" will continue to be allowed as an alternative. The due process clause requires that this be done. However, a verdict of "guilty but mentally ill" could be returned when a person is mentally ill but is not legally insane.

South Carolina now places the burden of proof on the defendant to prove that he is insane by the preponderance of the evidence. This aspect of the law would remain the same. A person adjudicated "guilty but mentally ill" should be sentenced as provided by law for a defendant found guilty except that the Department of Corrections should assign the individual to a facility for treatment until he could be moved safely to the general correctional population.

OTHER ADULT CORRECTIONAL ISSUES

Prison Industries*

Presently State law prohibits the sale of prison made goods on the open market and limits the sale of these goods to governmental or eleemosynary organizations. These laws result in a State prison industries program which does not operate at its capacity, and many inmates are not productively employed. The Department of Corrections industries program should be permitted to compete on the open market.

Legislation should be passed which would permit the Department of Corrections to sell, or offer for sale on the open market, products produced by their agency, provided that those articles are sold and distributed through wholesalers and jobbers within the State.

Earned Educational Credits*

The Earned Work Credits Program of the Department of Corrections was authorized as part of the Litter Control Act of 1978. In addition to providing for the use of inmates for litter control, the Act authorized reduction in time to be served for productive work. The program has had a significant impact on the inmate population level and operational costs through reduction in time served by inmates. The Legislative Audit Council reports that the savings to the state from the program was over $4 million in FY 81.

Although this program has proven to be successful in holding down the costs of the State's correctional system and has provided incentives for inmates to participate in work programs, inmates enrolled in vocational training or educational programs are not eligible to earn credits. Many inmates need to be enrolled in school or in vocational training; however, there is little or no incentive for their participation in these programs.

*Proposed legislation enclosed.

I support legislation to enable inmates enrolled and participating in academic or vocational training to earn credits as provided for under the Earned Work Credits provision of the Litter Control Act.

JUVENILE ISSUES

Overcrowding of Juvenile Institutions

The Department of Youth Services is faced with a serious problem of overcrowded institutions as well as insufficient coverage and treatment personnel for the number of juveniles within the institutions. The institutions' population capacity is 530 and last year they averaged a daily population of 734 children (operating on the average of 137% over capacity).

Overcrowding, combined with a shortage of staff and lack of appropriate community alternatives impacts the overall well being of all the children within the institutions. Consequently, some of the children are not receiving adequate outdoor recreation, culture enrichment activities, and other treatment programs. Further, data indicates only 10 to 20 percent of the juveniles in DYS institutions are considered to have a delinquent personality with a criminal lifestyle. Therefore, emphasis needs to be placed on providing appropriate community treatment programs for a significant percentage and providing adequate coverage and treatment personnel for those youths requiring institutionalization.

Prevention and Education*

South Carolina is faced with several problems of dealing with the child out of school through truancy, expulsion, dropout and suspension (South Carolina ranks 6th nationally in suspension rates).

Legislation requiring early screening for truancy, with early school and community intervention and less juvenile court involvement, is recommended. However, flexibility of local schools to use existing groups in accomplishing the effort is encouraged.

Jail Removal

Children in South Carolina are still being held in adult jails and lockups. In response to legislation passed in 1981, a joint plan developed between the Department of Youth Services and the Governor's Office is being submitted to the legislature to implement programs necessary to remove all juveniles from adult jails by 1986. Continued funding of existing non-secure alternatives at the Department of Youth Services is critical this year. Legislative review and approval of the phased in implementation of the plan is recommended.

*Proposed legislation enclosed.

Guardian Ad Litem

There is a lack of legislative guidance concerning who may be appointed Guardians Ad Litem in Family Court. Legislation should be presented again this year with criteria established as to who can and cannot represent a child as his/her advocate in court proceedings.

ALCOHOL PREVENTION AND EDUCATION PROGRAM

The impact of alcohol use and abuse on our society as a whole, in South Carolina and in the nation, is overwhelming. Alcohol is involved in more than two-thirds of the nation's homicides, 50% of rapes, 50% of driving fatalities, up to 70% of assaults and half of the child molestation cases. Eighty percent of the nation's suicides involved alcohol. Most alcohol use among youth begins before high school. In South Carolina, in 1981, 36.5% of all arrests were for DUI, liquor law violations and drunkenness.

It is interesting to look at the attitudes of youth towards heavy vs. periodic use of alcohol. While 2/3 perceive great risk in four or five drinks daily, only 36% perceive great risk in 5 or more drinks once or twice each weekend. There has been a steady increase in the percentage of youth who perceive heavy cigarette use as involving great risk.

This has been due largely to the wide scale media visibility and comprehensive educational initiatives concerning the potentially harmful effects of cigarette smoking. These facts and many others suggest that it is time to mount a bold media and prevention education program to turn the tide for our young people in the future about the use and misuse of alcohol.

Therefore, I am recommending an increase on the license fees for beer, wine and liquor wholesale and retail distributors for the general revenue fund and to generate additional funding of $3.7 million, $1,000,000 of which should be targeted for a comprehensive alcohol education and prevention program. The other $2.7 million would support shortfalls in state funding.

This broad based effort will leave no portion of South Carolina untouched by its message. This effort by the Governor's Office will be coordinated with other federal, state and local agencies and non profit organizations in this war against alcohol. I support the accomplishment of this objective by the passage of legislation to be introduced in the next few weeks.

HIGHWAY SAFETY ISSUES

MOPEDS*

Gasoline shortages and the subsequent increases in fuel costs have created a great deal of interest in mopeds as an economical means of transportation. In 1974, there were less than 25,000 mopeds in use in the United States. There are now more than one million mopeds in use and this number is expected to grow to 2½ million by 1984. While mopeds offer an attractive and economical means of transportation, they provide their riders with little protection from serious injury should the moped be involved in an accident. By 1984, an estimated 1,200 fatalities annually will result from moped accidents.

In South Carolina, moped accidents and fatality statistics, as reported in the 1981 South Carolina Traffic Accidents Report, published by the South Carolina Department of Highways and Public Transportation, indicated a continuing problem in moped accidents and fatalities. Reported moped accidents in 1981 totalled 303 with moped fatalities totalling 8. During 1982, 10 moped operators were killed in South Carolina.

The key to preventing moped accidents and the resulting deaths and injuries is the development of comprehensive moped safety programs which effectively regulate the use of these vehicles on the streets and highways of South Carolina. Of immediate concern to my administration, and in an effort to address the serious problem of increasing moped accidents and fatalities, I am proposing, as a first step that the General Assembly should consider raising the minimum age of operating a moped from 12, its present age, to 15. This recommendation is designed to insure that moped operators have demonstrated that they possess the necessary maturity, to operate safely in traffic. This recommendation is especially germane in view of the fact that the highest number of children injured and killed in moped-related accidents during 1981 were in the 10-15 year old category.

CHILD RESTRAINTS*

According to the National Safety Council, car crashes are the single leading cause of death for children above the early infancy stage. After the first six months of life, no single disease or other type of accident kills more children between the ages of 0-4 than motor vehicle accidents.

In 1978, 1979, and 1980 there were 11 (eleven) children killed in South Carolina in car crashes and more than 500 others injured each year. In 1981, however, the number killed was increased to fourteen (14) in this same age category with 568 others injured.

*Proposed legislation enclosed.

Crash tested child safety seats, currently on the market, can reduce the chances of death by 75-90% and the probability of injury by 50-60%. In 1980 alone, it is estimated that child safety seats could have prevented as many as 326 injuries and up to 10 deaths in South Carolina.

An observational survey done in 1979 indicates that the usage rate in South Carolina for child safety seats is still below the national average at 11%. The survey also indicated that parents don't use restraints because of the following reasons:

1. They are unaware of the availability of restraints

2. They are unaware of the proper usage of restraints

3. They are unaware of the dangers associated with non-use of a child protection device.

In order to make the public more aware of the importance of the use of a child restraint device, and to ensure usage, I recommend passage of the bill being considered by the General Assembly to require that all drivers of registered vehicles in the State or primarily operated on the highways and streets of this state be required to provide an appropriate child passenger restraint system when transporting a child under four years of age.

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PROPOSED LEGISLATION

Sentencing Commission

Arson Strike Force

Arson Reporting Immunity

Tax Lien

Fire Related Deaths - Autopsies

Prison Industries

Earned Educational Credits

Truancy (Prevention and Education)

Mopeds

Child Restraints

House: Hughston, Blackwell, Rawl
Attorney: Draffin
Stenographer: Boozer
Date: 1-12-82
No.: 0775A

C
S. Rawl
305A

H. 2250

A BILL

TO AMEND TITLE 24, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 27 SO AS TO ESTABLISH THE SOUTH CAROLINA SENTENCING GUIDELINES COMMISSION AND PROVIDE FOR ITS POWERS AND DUTIES INCLUDING THE AUTHORITY TO PROMULGATE SENTENCING GUIDELINES FOR THE CIRCUIT COURTS OF THIS STATE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 24 of the 1976 Code is amended by adding:

"CHAPTER 27

SOUTH CAROLINA SENTENCING GUIDELINES COMMISSION

Section 24-27-10. The General Assembly declares that the development of a rational and sound sentencing structure is in the best interest of South Carolina and has determined to create an independent commission to prescribe and promulgate sentencing guidelines.

Section 24-27-20. There is established the South Carolina Sentencing Guidelines Commission composed of eighteen members as follows:

(1) A justice of the Supreme Court, appointed by the Supreme Court.

(2) A circuit court judge, appointed by the Supreme Court.

(3) A member of the Senate Judiciary Committee designated by the chairman of the committee.

(4) A member of the House Judiciary Committee designated by the chairman of the committee.

(5) A member of the Senate Corrections and Penology Committee designated by the chairman of the committee.

(6) A member of the House Medical, Military, Public and Municipal Affairs Committee designated by the chairman of the committee.

(7) An attorney appointed by the Governor from a list of candidates submitted by the Chairman of the South Carolina Circuit Solicitors Association.

(8) An attorney appointed by the Governor from a list of candidates submitted by the President of the South Carolina Bar.

(9) The Chairman of the Commission on Appellate Defense, or his designee who is a member of the Commission or the director of the commission.

(10) A representative of the Law School of the University of South Carolina or a representative of a South Carolina College of Criminal Justice, appointed by the Governor.

(11) A representative of the Governor's office, appointed by the Governor.

(12) Two citizen representatives, neither of whom is an attorney licensed to practice law in this State, who participate in or have an interest in the criminal justice

system, appointed by the Governor.

(13) One citizen representative of a prisoner aid organization, appointed by the Governor.

(14) The South Carolina Attorney General or his designee.

(15) The Chief of the State Law Enforcement Division or his designee.

(16) The Chairman of the State Board of Corrections, or his designee who is a member of the board or the Commissioner of the Department of Corrections.

(17) The Chairman of the Board of the Department of Parole and Community Corrections, or his designee who is a member of the board or the Commissioner or Executive Director of the Department of Parole and Community Corrections.

The members of the commission appointed pursuant to items (1), (2), (3), (4), (5), (6), (8), (10), (11), (12), and (13) shall serve for terms of four years each and until their successors are appointed and qualify. The other members of the commission, and also those members appointed pursuant to items (1), (2), (3), (4), (5), and (6) shall serve as long as they hold the official position entitling them to membership on the commission. Members are eligible for reappointment, and any vacancy must be filled in the manner of original appointment for the

remainder of the unexpired term.

The members of the commission shall elect one member to serve as chairman for a term of one year. The members of the commission may also elect any additional officers they deem necessary for the efficient discharge of their duties. Members are eligible for reelection as officers of the commission.

Section 24-27-30. The South Carolina Sentencing Guidelines Commission has the following duties and responsibilities:

(1) The commission shall prescribe, on or before December 31, 1983, sentencing guidelines for the general sessions courts for all offenses for which a term of imprisonment of greater than one year is allowed.

(2) The guidelines prescribed by the commission shall establish:

(a) the circumstances under which imprisonment of an offender is proper;

(b) a presumptive range of fixed sentences for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The commission shall assure that the presumptive range takes into consideration the possibility of sentencing outside of the presumptive range and that such sentences must be accompanied by written reasons or

reasons stated in the court record, and are subject to appellate review;

(c) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively.

(3) In establishing the sentencing guidelines, the commission shall take into consideration current sentence and release practices and correctional resources, including, but not limited to, the capacities of local and state correctional facilities.

(4) The commission may also establish appropriate sentencing guidelines for the general sessions courts for all offenses for which a term of imprisonment of one year or less is allowed.

(5) The commission may also establish appropriate guidelines for offenders for whom traditional imprisonment is not deemed proper. Any guidelines promulgated by the commission for offenders for whom traditional imprisonment is not deemed proper must make specific reference to noninstitutional sanctions.

(6) The commission, in addition to establishing sentencing guidelines, shall serve as a clearing house and information center for the collection, preparation, analysis, and dissemination of information on state and local sentencing practices, and shall conduct ongoing

research regarding sentencing guidelines, use of imprisonment and alternatives to imprisonment, plea bargaining, and other matters relating to the improvement of the criminal justice system. The commission shall make, from time to time, recommendations to the General Assembly regarding changes in the criminal code, criminal procedures, and other aspects of sentencing.

(7) The commission may employ a staff director and other professional and clerical personnel upon the appropriation of sufficient funds by the General Assembly. The duties of the staff director and the other personnel of the commission must be set by the commission. Section 24-27-40. The commission shall receive such funding as may be provided by the General Assembly and the commission is authorized to expend federal funds and grants and gifts it may receive from other sources for the purpose of carrying out its duties and responsibilities. Section 24-27-50. The commission, by vote of a majority of the membership, has the power to establish general policies and promulgate regulations, subject to the State Administrative Procedures Act, as are necessary to carry out the purposes of this chapter.

The guidelines prescribed and promulgated pursuant to Section 24-27-30 are also subject to the State Administrative Procedures Act.

Section 24-27-60. The commission shall recommend to the General Assembly a classification system based on maximum term of imprisonment for all South Carolina criminal offenses. Thereafter, the commission shall make, from time to time, recommendations to the General Assembly regarding changes in the classification system."

SECTION 2. The classification system which the commission is required to recommend to the General Assembly must be recommended within one year after the effective date of this act.

SECTION 3 This act shall take effect upon approval by the Governor.

A BILL

TO AMEND CHAPTER 9, TITLE 23, CODE OF LAWS OF SOUTH CROLINA, 1976, BY DESIGNATING EXISTING PROVISIONS OF THE CHAPTER AS "ARTICLE 1" AND BY ADDING A NEW ARTICLE 2 SO AS TO CREATE THE STATE ARSON CONTROL PROGRAM UNDER THE OFFICE OF THE STATE FIRE MARSHAL, TO PROVIDE THE DUTIES AND RESPONSIBILITIES OF THE PROGRAM, TO PROVIDE A TAX ON THE PREMIUM RECEIPTS OF THE FIRE INSURANCE COMPANIES DOING BUSINESS IN THIS STATE TO DEFRAY THE EXPENSES OF THE PROGRAM AND TO GRANT THE INVESTIGATORS OF THE PROGRAM CERTAIN POWERS IN THE PERFORMANCE OF THEIR DUTIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 9, Title 23 of the 1976 Code is amended by grouping Sections 23-9-10 through 23-9-180 under "Article 1".

SECTION 2. Chapter 9, Title 23 of the 1976 Code is amended by adding:

"Article 2

Section 23-9-200. There is hereby created the State Arson Control Program under the office of the State Fire Marshal which shall provide administrative and logistical support to the program.

The State Law Enforcement Division shall contract with the office of the State Fire Marshal to provide all necessary labaratory services and analyses for the program.

Section 23-9-210. The State Arson Control Program shall

have the following duties and responsibilities:

(1) The investigation of all suspicious fires within unincorporated areas of the State;

(2) The investigation of all fires involving state-owned property;

(3) The investigation of all fires where there is a fatality and where assistance pertaining to the fire is requested by a local agency;

(4) The investigation of fires within incorporated areas where there is a request from a municipal or county official;

(5) Investigations directed by the Governor.

Section 23-9-220. The expenses of the State Arson Control Program shall be defrayed by the fire insurance companies doing business in this State, and a tax of four-tenths of one percent on the gross premium receipts, less premiums returned on cancelled policy contracts and less dividends and returns of unabsorbed premium deposits of all fire insurance companies, is hereby levied for this purpose. The Chief Insurance Commissioner shall collect this tax no later than March first of each year on premiums in effect as of December thirty-first of the preceding year. However, the State Budget and Control Board is authorized to approve the expenditure of up to ten percent of the generated fund in April, 1984, for the purpose of hiring a

director and initial support staff. The remaining staff and the implementation of the program shall begin on July 1, 1984. These funds shall then be forwarded to the State Treasurer who shall hold these funds in a separate account until the General Assembly approves the budget of the State Arson Control Program for the ensuing fiscal year. Approved expenditures of the program for that fiscal year as contained in the annual general appropriations act shall be disbursed to the program from those funds held by the State Treasurer and all remaining unused funds shall be refunded to the individual insurance companies paying such tax on a prorata basis. The actual impact of the program on projected costs savings from reduced claim payments by fire insurance companies shall be considered by the Chief Insurance Commissioner in any rate filings presented by fire insurance companies. In addition, the State Budget and Control Board, based on the advice of the State Fire Marshal, shall have the authority to adjust downward the tax of four-tenths of one percent of gross premiumn income imposed by this section when in its opinion such a downward adjustment is justified while at the same time leaving sufficient revenue to support the arson control program. If such an adjustment is made, it shall be passed on to the consumer by the fire insurance companies in the manner that the Chief Insurance

Commissioner shall direct.

Section 23-9-230. Investigators of the State Arson Control Program shall have the powers of other law enforcement officers of this State including agents of the State Law Enforcement Division when performing their duties including the power of arrest. In addition, all powers vested in the State Fire Marshal's office shall also be vested in the State Arson Control Program."

SECTION 3. This act shall take effect July 1, 1983.

House: Gulledge
Attorney: Draffin
Stenographer: Boozer
Date: 1-12-83
No.: 0791A

A BILL

TO AMEND TITLE 23, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LAW ENFORCEMENT AND PUBLIC SAFETY, BY ADDING CHAPTER 41, SO AS TO PROVIDE FOR CERTAIN AUTHORIZED AGENCIES TO REQUEST AND RECEIVE FROM INSURANCE COMPANIES INFORMATION RELATING TO FIRE LOSSES; TO PROVIDE FOR INSURANCE COMPANIES TO NOTIFY AUTHORIZED AGENCIES OF SUSPICIOUS FIRE LOSSES; TO PROVIDE FOR IMMUNITY TO THOSE INSURANCE COMPANIES THAT PROVIDE INFORMATION UNDER THE PROVISIONS OF THIS ACT; TO PROVIDE FOR THE EXCHANGE OF INFORMATION BETWEEN THE INSURANCE COMPANIES AND THE AUTHORIZED AGENCIES AND THE EXCHANGE OF INFORMATION BETWEEN AUTHORIZED AGENCIES; TO PROVIDE FOR CONFIDENTIALITY OF RELEASED INFORMATION; TO PROVIDE FOR TESTIMONY IN MATTERS UNDER LITIGATION AND TO PROVIDE FOR PENALTIES FOR VIOLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 23 of the 1976 Code is amended by adding:

"CHAPTER 41

Arson Reporting-Immunity Act

Section 23-41-10. This chapter may be cited as the South Carolina Arson Reporting-Immunity Act.

Section 23-41-20. For the purpose of this chapter:

(a) 'Authorized agencies' means:

(1) The State Fire Marshal when authorized or charged with the investigation of fires at the place where the fire actually took place;

(2) The Chief of the State Law Enforcement Division;

(3) The South Carolina Attorney General;

(4) The solicitor responsible for prosecution in the county where the fire occurred;

(5) The chief of any police department;

(6) The sheriff of any county;

(b) 'Relevant' means having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

(c) Material will be 'deemed important' if such material is requested by an authorized agency.

(d) 'Action' shall include affirmative acts and the failure to take action.

(e) 'Immune' means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this chapter unless actual malice on the part of the insurance company or authorized agency against the insured or gross negligence or reckless disregard for his rights is present.

Section 23-41-30. (a) Any authorized agency may require, in writing, the insurance company at interest to release to the requesting agency any or all relevant information or evidence deemed important to the authorized

agency which the company may have in its possession, relating to the fire loss in question. Relevant information includes:

(1) Pertinent insurance policy information relevant to a fire loss under investigation and any application for such a policy;

(2) Policy premium payment records which are available;

(3) History of previous claims made by the insured;

(4) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.

(b) When an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, the company shall notify, in writing, an authorized agency and provide it with any or all material developed from the company's inquiry into the fire loss; however, that when such information includes possible evidence of arson or other unlawful burning involving specifically named persons, the information in all cases must be furnished to the solicitor in the circuit where the fire occurred and he shall furnish the information to other proper authorized agencies if he deems such action to be appropriate. When

an insurance company provides any one of the authorized agencies with notice of a fire loss, it is sufficient notice for the purpose of this chapter.

(c) The authorized agency provided with information pursuant to this chapter may release or provide such information to any of the other authorized agencies.

(d) Any insurance company providing information to an authorized agency pursuant to this chapter has the right to be informed, upon written request, as to the status of the case by such agency within a reasonable time, as determined by the authorized agency.

(e) Any insurance company or authorized agency which releases information, whether oral or written, and any person acting in their behalf, pursuant to this chapter is immune from any liability arising out of such release.

Section 23-41-40. (a) Any authorized agency or insurance company which receives any information furnished pursuant to this chapter, must hold the information in confidence until such time as its release is required pursuant to a criminal or civil action or proceeding.

(b) Any authorized agency, its agents or employees, may be required to testify in any litigation in which the insurance company at interest is named as a party until such litigation is completed.

Section 23-41-50. (a) No person shall intentionally or knowingly refuse to release any information requested pursuant to this chapter.

(b) No person shall fail to hold in confidence information required to be held in confidence by this chapter.

Section 23-41-60. Any person violating any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned not more than two years, or both."

SECTION 2. This act shall take effect upon approval by the Governor.

A BILL

TO AMEND CHAPTER 9 OF TITLE 38, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CONDUCT OF INSURANCE BUSINESS GENERALLY, BY ADDING ARTICLE 5 SO AS TO CREATE A LIEN AGAINST THE PROCEEDS OF ANY INSURANCE POLICY WHICH ARE DERIVED FROM THE TOTAL DAMAGE OR LOSS TO CERTAIN BUILDINGS OR STRUCTURES AS A RESULT OF A FIRE OR EXPLOSION WHERE THE TOTAL DAMAGE OR LOSS EXCEEDS TWENTY-FIVE THOUSAND DOLLARS, TO PROVIDE THAT THE LIEN IS IN FAVOR OF ANY COUNTY OR MUNICIPALITY OF THIS STATE WHICH LEVIES TAXES OR ASSESSMENTS AND SHALL BE IN THE AMOUNT EQUAL TO THE UNPAID TAXES OR ASSESSMENTS, AND TO PROVIDE THE PROCEDURES FOR ENFORCING, COLLECTING, AND ADMINISTERING SUCH LIENS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 9 of Title 38 of the 1976 Code is amended by adding:

"ARTICLE 5

Liens in Insurance Proceeds

Section 38-9-700. There is created a lien in favor of any county or municipality of this State, which levies taxes, in the proceeds of any insurance policy which are derived from a claim made for the total damage or loss to a building or other structure caused by or arising out of any fire or explosion where the total damage or loss exceeds twenty-five thousand dollars. The lien shall

arise out of and be in an amount equal to any due and unpaid tax, special ad valorem levy, special assessment, or other such charge imposed upon the real property by or on behalf of the county or municipality which tax or levy is an encumbrance on the real property, whether or not evidenced by written instrument, and such tax, levy, assessment or other charge has remained undischarged for at least one year prior to the filing of a proof of loss. Section 38-9-710. No insurance company authorized to do business in this State shall pay any claim for a total fire or explosion loss to a building or other structure where the total damage or loss exceeds twenty-five thousand dollars without having first obtained from the insured certificates stating either:

(a) that no lien exists, as defined in Section 38-9-700, in favor of any county or municipality which levies taxes within the area where the building or structure is located; or

(b) the amount of any such lien attached to the insured building or structure giving rise to the claim.

All certificates must be in the form prescribed by the Chief Insurance Commissioner and shall be issued to the insured by each county or municipality which levies taxes within the area where the building or structure is located. Section 38-9-720. If any such lien exists, the proceeds

of the policy may not be released by the insurer to the insured until the insured has authorized the insurer in writing to pay all such liens from the proceeds whereupon such liens shall be forthwith paid.

Section 38-9-730. All policies insuring against fire or explosion hazards to buildings or structures which are issued in this State after the effective date of this article shall include a provision setting forth a summary of this article, such summary provision to be prescribed by the Chief Insurance Commissioner prior to its inclusion in the policies.

Section 38-9-740. The provisions of this article shall apply to fire and explosion claims arising on all buildings or structures, except owner-occupied one or two family dwellings, including commercial, other residential, and industrial buildings or structures, regardless of occupancy status at the time of the fire or explosion loss.

Section 38-9-750. This article shall not make any county or municipality a party to any insurance contract nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy. If the insured in the certificates required by the provisions of Section 38-9-710 falsely or erroneously states that no such liens in favor of a county or municipality exist when in fact one does and the insurer

on this basis releases the full proceeds to the insured, the insurer shall not in this event be further responsible for the payment of any such lien to the county or municipality.

Section 38-9-760. Any lien arising under this article is superior to all liens and interests of any other party, including any insured owner, mortgagee, or assignee.

Section 38-9-770. Insurers complying with this article, or attempting in good faith to comply with this article, are immune from any civil and criminal liability arising thereform and such actions are not deemed to be unfair claims practices, including withholding payment of any insurance proceeds pursuant to this article, or releasing or disclosing any information pursuant to this article.

Section 38-9-780. The Chief Insurance Commissioner is authorized to promulgate regulations necessary to implement the provisions of this article."

SECTION 2. This act shall take effect upon approval by the Governor.

House: Gulledge
Attorney: Draffin
Stenographer: Boozer
Date: 1-12-83
No.:0807A

A BILL

TO AMEND CHAPTER 7 OF TITLE 17, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO AUTOPSIES AND INQUESTS BY ADDING SECTION 17-7-17, SO AS TO PROVIDE THAT AUTOPSIES MUST BE PERFORMED IN ALL CASES WHEN THE APPARENT CAUSE OF DEATH IS A RESULT OF FIRE UNLESS SUCH AUTOPSY UNDER CERTAIN CONDITIONS IS WAIVED BY THE SOLICITOR AND CORONER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 7 of Title 17 of the 1976 Code is amended by adding:

"Section 17-7-17. In any case of death where the apparent cause of death is a result of fire, the coroner and solicitor of the county in which death occurs must be notified and officials shall arrange for an autopsy on the body to be performed to ascertain the cause of death; provided, that if the solicitor and coroner in conjunction determine after investigation that the circumstances of the death were such that there is no reason to believe that the fire involved originated by other than accidental or natural causes and that there is no reason to believe that foul play was involved, the solicitor and coroner may then in their discretion waive the conduct of the autopsy. The waiver of the autopsy shall not prevent or interfere with an autopsy on the body concerned pursuant to other provisions of law or legal process."

SECTION 2. This act shall take effect upon approval by the Governor.

Proposed Modification in Prison Industries Article
to Allow Sales of Prison-Made Goods on the Open Market

Proposed New Section

In addition to sales authorized by §24-3-330, the Department of Corrections may sell or offer for sale on the open market agricultural products; items produced in the "hobbycraft program;" products sold to non-profit corporations incorporated under the provisions of Article 1, Chapter 31, Title 33, or to organizations operating in this state which have been granted an exemption under §501(c) of the Internal Revenue Code of 1954; road and street designation signs sold to private developers; products or articles made in adult work activity centers established by the Department of Corrections; all other articles or products produced by the Department of Corrections provided, however, that those articles and products are sold and distributed through wholesalers and jobbers within this state. Proceeds of the sale of these products, when produced by an instrumentality under the control of the State Board of Corrections, shall be applied as provided in §24-3-40.

Amendment to §24-3-410

"Except as authorized by §24-3-30 and §___-___-___, it shall be unlawful to sell or offer for sale on the open market of this state any articles or products manufactured or produced wholly or in part by convicts or prisoners in this or any other state except convicts or prisoners on parole or probation.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred dollars nor more than five thousand dollars, or by imprisonment in jail for not less than three months or more than one year, or by such fine and imprisonment. Each such sale or offer for sale shall constitute a separate offense of this section."

Calendar No. H. 2426

Introduced by MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS COMMITTEE

Printer's No. 95—H. Read the first time February 18, 1981.

A BILL

To Amend Section 24-13-230, as Amended, Code of Laws of South Carolina, 1976, Relating to the Reduction of Sentences of Inmates in the Custody of the State Board of Corrections for Productive Duty Assignments, so as to Provide for Sentence Reductions for Those Inmates Enrolled and Participating in Academic and Vocational Training.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-13-230 of the 1976 Code as last amended by Act 496 of 1978 is further amended to read:

"Section 24-13-230. The Commissioner of the Department of Corrections may allow any prisoner in the custody of the department, who is assigned to a productive duty assignment or regularly enrolled and actively participating in an academic or vocational training program, a reduction from the term of his sentence of zero to one day for every two days so employed; *provided*, however, no inmate suffering the penalty of life imprisonment shall be entitled to credits under this provision. A maximum annual credit shall be limited to one hundred eighty days. The amount of credit to be earned for each duty classification shall be determined by the Commissioner and published by him in a conspicuous place available to inmates at each correctional institution. No credits earned under this section shall be applied in a manner which will prevent full participation in the department's pre-release program."

SECTION 2. This act shall take effect upon approval by the Governor.

—XX—

A BILL

TO AMEND ARTICLE 1, CHAPTER 65, TITLE 59, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COMPULSORY SCHOOL ATTENDANCE, SO AS TO REVISE THE REQUIREMENTS FOR COMPULSORY SCHOOL ATTENDANCE, TO PROVIDE THAT ALL SCHOOL DISTRICTS MUST PROVIDE AN IN-SCHOOL SUSPENSION PROGRAM, TO PROVIDE THAT A TRUANCY SCREENING COMMITTEE SHALL BE APPOINTED FOR EVERY PUBLIC SCHOOL, TO PROVIDE THE DUTIES AND RESPONSIBILITIES OF THE TRUANCY SCREENING COMMITTEE, TO ESTABLISH A PROCEDURE FOR REVIEW OF CERTAIN TRUANCY CASES BY THE FAMILY COURT AND FOR THE REPRESENTATION BY AND PAYMENT OF LEGAL COUNSEL IN SUCH CASES, AND TO PROVIDE THAT CERTAIN PERSONS VIOLATING THE PROVISIONS OF FAMILY COURT ORDERS PERTAINING TO THESE PROCEEDINGS MAY BE PUNISHED FOR CONTEMPT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 65, Title 59 of the 1976 Code is amended to read:

ARTICLE 1

COMPULSORY ATTENDANCE

Section 59-65-10. This article is known and may be cited as the 'South Carolina Compulsory School Attendance Law of 1983'.

~~Section 59-65-10~~/ Section 59-65-20. (A) All parents ~~or~~ , guardians, or persons in this State having custody of a child shall cause their children or wards who are in the age group of six to sixteen years, inclusive, to

regularly attend a public or private school or kindergarten of this State which has been approved by the State Board of Education or a member school of the South Carolina Independent Schools' Association or some similar organization, or a parochial or denominational school, or other programs which have been approved by the State Board of Education.

The provisions of this section shall not be deemed to modify or be in conflict with Section 59-63-20.

(B) School districts shall attempt to contact parents or guardians of children who will reach six ~~////~~ ~~/////////~~ prior to November first in the applicable school year and who are not enrolled in public or private schools to encourage them to enroll their eligible children at the beginning of the school year and make substantial efforts to publicize the availability of public kindergarten.

(C) Each school district ~~shall~~ must provide transportation to and from public school for all pupils enrolled in public kindergarten classes who request such transportation. Regulations of the State Board of Education governing the operation of school buses shall apply.

(D) All school districts should consider the development of an in school suspension program that is available

to all children within the district.

~~Section 59-65-20. Any parent or guardian who neglects to enroll his child or ward or refuses to make such child or ward attend school shall upon conviction be fined not more than fifty dollars or be imprisoned not more than thirty days; each day's absence shall constitute a separate offense provided the court may in its discretion suspend the sentence of anyone convicted of the provisions of this article.~~

Section 59-65-30. The provisions of this article shall not apply to:

(a) Any child who has been graduated from high school or has received the equivalent of a high school education from a school approved by the State Board of Education, or member school of South Carolina Independent Schools' Association, or a private school in existence at the time of the passage of this article;

(b) Any child who obtains a certificate from a psychologist ~~certified by the State Department of Education~~ licensed by the State Board of Psychology Examiners or from a licensed physician stating that he is unable to attend school because of a physical or mental disability; provided there are not suitable special classes available for such child in the school district where he resides;

(c) Any child who has completed the eighth grade and who is determined by the court to be legally and gainfully employed whose employment is further determined by such court to be necessary for the maintenance of his home;

(d) ~~Any child who/ at the time this article becomes law/ is ten years of age or older and has been out of school for three years or more/ provided there are no special classes in the school district for the child to attend/~~

Any child who is the biological parent of a child and is unable to arrange a reasonable alternative for the care and supervision of the child while attending school;

(e) ~~Any child who is married or has been married/ any unmarried child who is pregnant or any child who has had a child outside of wedlock/~~

Any child who is fifteen years of age may request to withdraw from attendance at school, with the approval of the Family Court and the consent of the parent, guardian or person having custody of the child. In granting such approval, the Court must find that the child is emancipated to the degree that the child is reasonably self-sufficient, and that further attendance at school would be of minimal benefit to the child's career or occupation.

~~(f) Any child who has reached the age of sixteen~~

years and whose further attendance in school/ vocational school or available special classes is determined by a court of competent jurisdiction to be disruptive to the educational program of the school/ unproductive of further learning/ or not in the best interest of the child/ and who is authorized by such court to enter into suitable gainful employment under the supervision of the court until age seventeen is attained/ Provided/ However/ that prior to being exempted from the provisions of this article/ the court may first require that the child concerned be examined physically and tested mentally to assist the court to determine whether or not gainful employment would be more suitable for the child than continued attendance in school/ Such examination and testing shall be conducted by the Department of Youth Services or by any local agency which the court determines to be appropriate/ provided/ further/ that the court shall revoke the exemption herein provided upon a finding that the child fails to continue in his employment until reaching the age of seventeen years/

Section 59-65-40. Instruction during the school term at a place other than a school may be substituted for school attendance; provided, such instruction is approved by the State Board of Education as substantially equivalent to

instruction given to children of like ages in the public or private school where such children reside.

Section 59-65-50. [illegible]

Every public school in the State licensed by the South Carolina Department of Education for the purpose of educating children must establish procedures for truancy screening which procedures shall be subject to the provisions of this article. These procedures shall include the appointment of a truancy screening committee selected by the principal based upon their expertise and willingness to serve. Existing committees, subcommittees or groups can be utilized to perform the functions of the truancy screening committee. The committee may utilize the expertise of any other state agency or resource group including the Department of Youth Services, Department of Social Services, Department of

Mental Health, Department of Mental Retardation, or the Commission on Alcohol and Drug Abuse in order to comply with the purposes of this article. Such agencies shall cooperate to the fullest extent possible. At the request of any agency, an agency representative shall be included on the committee but on a case by case basis only.

Section 59-65-60. (a) Upon receipt of such report, the court may forthwith order the appearance before such court of the responsible parent or guardian and if it deems necessary, the minor involved, for such action as the court may deem necessary to carry out the provisions of this article.

(b) The court may, after hearing upon ten days notice, order such parent or guardian to require such child to attend school and upon failure of such parent to comply with such order may punish such parent or guardian as by contempt, provided, that punishment for such contempt cannot exceed fifty dollars or thirty days imprisonment for each offense.

The procedure herein provided shall be alternative to the penalties provided in Section 59-65-20.

(a) The truancy screening committee shall meet periodically to review cases of children who fail to attend school.

(b) Cases of such children shall be referred to the

truancy screening committee by the county or district attendance supervisor, or school principal, together with such information regarding the child and the child's family as may be required by the truancy screening committee. However, in any case after three consecutive or five accumulated unexcused absences have occured, the referral must be sent to the truancy screening committee.

(c) Upon referral, the truancy screening committee shall schedule a conference or conferences with the parent, guardian, or person having custody of the child, and the child, at a time and place reasonably convenient for all persons involved. The school shall make every reasonable effort to notify the parents and child of the time and place of the conference. In the event that the parents and child do not attend following timely notice of the conference, the conference shall be held and a plan developed in their absence. However, in no case shall the conference be held later than five school days after the referral is received. The purpose of the conference is to develop a simple, brief, straight forward plan for reducing school absences by analyzing the causes of the child's absences, and to identify the necessary steps to eliminate or reduce the child's absences. These steps may include where appropriate adjusting the child's school program, school, or course assignment, or assisting the parent or student to obtain

supplementary services that might eliminate or ameliorate the causes of the absences from school. The plan shall be reduced to writing at the conference and signed by all participants, and must include any dissenting views of the conference participants. A copy shall be furnished the parent and child.

(d) The obligation conferred by Section 59-65-20 to attend school shall continue concurrent with any deliberations of the individuals under this section.

Section 59-65-70. ~~If the court determines that the reported absence occurred without the knowledge/ consent or connivance of the responsible parent or guardian or that a bona fide attempt has been made to control and keep the child in school/ the court may declare such child to be a delinquent and subject to the provisions of law in such cases/~~

(a) If action taken by the truancy screening committee pursuant to Section 59-65-60 is not successful in substantially reducing the student's absences from school, the school district shall refer the case to the Department of Youth Services for intake as defined in Section 20-7-3220.

(b) The referral must contain a statement of the dates and number of days missed, the date the school officials were first made aware of the nonattendance, and the date

of the first official response or inquiry. The referral must also contain a statement that the truancy screening committee developed and implemented a plan which was ineffective in reducing the child's absences. A copy of the plan shall be attached to the petition.

(c) Upon filing of the Petition, where the evidence indicates to the court or the parties that the child has been neglected, the court may interplead the Department of Social Services as a party to the proceeding.

Section 59-65-80. ~~Nothing herein shall be construed as granting authority to require enrollment or attendance of a child who has been or may be expelled or suspended by the board of trustees of the district or any other person acting with authority from the board of trustees/~~

Notwithstanding the provisions of Section 59-65-70, any parent, guardian, or person having custody of a child, or any child, who is aggrieved by a decision of the truancy screening committee may petition the family court for review under the terms of Section 59-65-90. Forms for such review shall be provided by the school after the aggrieved person is given notice by the committee of the right of petition the court.

Section 59-65-90. (a) In order to establish grounds for court intervention pursuant to this section, the school district must establish by clear and convincing evidence

that:

(1) The child has failed to attend school without legal cause or excuse;

(2) The truancy screening committee has met or made every effort to meet the parent and child, and devised a plan designed to reduce or eliminate absences pursuant to Section 59-65-60;

(3) The school has taken steps to implement the plan and arrange services consistent with the plan to reduce or eliminate absences;

(4) The plan has not been successful in reducing or eliminating the absences of the child.

(b) Where the school establishes that grounds for intervention exist, and in the absence of an exception to attendance under Section 59-65-30, the court may order the parents, the child, and school officials to cooperate in a remedial plan designed to ensure the child's attendance at school. The plan shall take into account the educational or other needs of the child bearing on the child's education, and the responsibilities of the parent, child, and school district in meeting those needs. In arriving at such a plan, the court may consider the recommendations of the truancy screening committee, and alternative recommendations of other parties, including the parent and child. The court may also require additional testing

through the school system or other appropriate agency to determine the child's educational or other needs.

(c) Where it is determined that the child will not attend school without being removed from home, whether at the initial proceeding or at a subsequent proceeding after attempts at compliance with the plan have failed, the court may refer placement of the child to a foster home, group home, or educational non-secure facility depending on the child's age, maturity and educational needs. Placement may be in a privately or publicly operated facility; however the court may commit the child to the Department of Youth Services for a residential evaluation not to exceed forty-five days as provided in Section 20-7-3450. Where removal is sought by any party, including the child, as a means to ensure school attendance, removal may take place only after a petition has been filed pursuant to Section 20-7-736.

(d) The court may schedule reviews of progress of the parties in compliance with the plan. However, where the child has been removed from home, the court on motion of the agency having custody must review the placement of the child at least every six months to determine whether the child should be returned home or emancipated.

Section 59-65-100. (a) Any parent, guardian, or person having custody of a child who fails to comply with the

terms of a court order under Section 59-65-90 may be punished by the court for contempt. However, it is a defense under this section to show that the individual exercised reasonable diligence in attempting to cause the child to attend school, or that the school did not perform its duties under the previous order of the court.

(b) Any school or other official who fails to comply with the terms of a court order under Section 59-65-80 may be punished by the court for contempt.

Section 59-65-110. (a) Any child who is the subject of family court proceedings under this article shall have counsel appointed for him, who in no case is that of the parent or other interested party. Where the parent or other person responsible for the child is not indigent, the court may assess attorney's fees for the child's counsel.

(b) A parent, guardian, or person having custody of the child who is a party to family court proceedings under this article shall have a right to retain counsel for representation in such proceedings. However, where the parent, guardian, or person having custody of the child faces contempt proceedings under Section 59-65-100, the individual shall have a right to appointed counsel when the individual is found by the court to be indigent.

~~Section 59-65-90~~/ Section 59-65-120. The State Board

of Education shall establish rules and regulations defining lawful and unlawful absences beyond tho se specifically named in this article and such additional regulations as are necessary for the orderly enrollment of pupils so as to provide for uniform dates of entrance."

SECTION 2. This act shall take effect upon approval by the Governor.

Drafted By:

The Governor's Office of Highway Safety
Division of Public Safety Programs
Date 1-24-83

A BILL

TO AMEND CHAPTER 5, SECTION 56-5-3510, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BICYCLES WITH HELPER MOTORS (MOPEDS), SO AS TO INCREASE THE AGE OF OPERATION OF BICYCLES WITH HELPER MOTORS (MOPEDS) FROM A MINIMUM OF TWELVE YEARS OF AGE TO A MINIMUM OF FIFTEEN YEARS OF AGE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 56-5-3510 is amended to read:

"Section 56-5-3510. The definition of a bicycle as defined in item (2) of 56-19-10 and 56-5-160 of the 1976 Code shall include pedal bicycles with helper motors rated less than one brake horsepower which produce only ordinary pedaling speeds up to a maximum of twenty miles per hour and shall not be operated on highways or public roads of this State by anyone less than ~~twelve~~ fifteen years of age. This section and the penalty provided herein shall not apply to any bicycle which does not have a helper motor.

Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed twenty-five dollars.

All sellers of pedal bicycles of one horsepower or more shall post in a conspicuous place the provisions of this section.

Rushing, Leatherman, McConnell, Theodore, T. Bruce, SMITH
Attorney: Williams
Stenographer: Mills
Date: December 6, 1982
No.: 0350A

A BILL

TO AMEND CHAPTER 5, TITLE 56, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 47 SO AS TO REQUIRE CHILDREN UNDER FOUR YEARS OF AGE TO BE SECURED BY CERTAIN CHILD RESTRAINT SYSTEMS WHEN BEING TRANSPORTED IN MOTOR VEHICLES, TO PROVIDE EXCEPTIONS, AND TO PROVIDE PENALTIES FOR VIOLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 5 of Title 56 of the 1976 Code is amended by adding:

"ARTICLE 47

Section 56-5-6410. Every driver of a motor vehicle (passenger car, pickup truck, van or recreational vehicle) registered in this State or primarily operated on the highways and streets of this State when transporting a child under four years of age must provide an appropriate child passenger restraint system and must secure the child as follows:

(1) Any child less than one year of age must be properly secured in a child restraint system which meets the standards prescribed by the National Highway Traffic Safety Administration.

(2) Any child under four years of age when

transported in the front seat must be properly secured in a child restraint system meeting standards prescribed by the National Highway Traffic Safety Administration.

(3) Any child one year through three years of age when transported in a rear seat must be properly secured in a child restraint system which meets the standards prescribed by the National Highway Traffic Safety Administration unless the child is secured by a safety belt provided in the motor vehicle.

Any child restraint system of a type sufficient to meet the physical standards prescribed by the National Highway Traffic Safety Administration at the time of its manufacture is sufficient to meet the requirements of this article.

Section 56-5-6420. If all the seating positions with restraint devices are occupied by children age three and under, a child may be transported and the driver of the motor vehicle shall not be in violation of the provisions of this article, but priority must be given to children age three and under, according to their ages.

Section 56-5-6430. The provisions of this article do not apply if a child being transported is being fed, has a physical impairment, a medical problem or any distress which makes it impractical to use a child restraint system. Alternate restraint protection, such as the

vehicle safety belt, must be utilized if possible.

Section 56-5-6440. The provisions of this article do not apply to:

(1) Taxi drivers.

(2) Drivers of emergency vehicles when operating in an emergency situation.

(3) Church and school bus drivers.

(4) Public transportation operators.

(5) Commercial vehicles.

Section 56-5-6450. No person shall be subjected to a custodial arrest for violation of the provisions of this article. Any person violating the provisions of this article shall upon conviction be fined not more than twenty-five dollars. The court shall waive any fine against any person who, before, or upon the appearance date on the summons, supplies the court with evidence of acquisition, purchase or rental of a child restraint system meeting the requirements of this article.

Section 56-5-6460. A violation of this article shall not constitute negligence, per se, contributory negligence nor be admissible as evidence in any trial of any civil action.

Section 56-5-6470. After June 30, 1984, any person violating the provisions of Article 47 of Chapter 5 of Title 56 may be, when apprehended, issued a summons, to appear in court for the violation, but no person shall at

any time be placed under arrest or taken into custody for such a violation, other than upon a warrant issued for failure to appear in court in accordance with the summons or upon failure to pay a fine duly imposed by a court upon conviction."

SECTUIB 2, Notwithstanding the provisions of Section 56-5-6450 of the 1976 Code, until July 1, 1984, any person violating the provisions of Article 47 of Chapter 5 of Title 56 of the Code shall be, when apprehended, issued a warning ticket only.

SECTION 3. This act shall take effect July 1, 1983.