



HENRY McMASTER
ATTORNEY GENERAL

October 1, 2010

Hubert Harrell, Director
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, SC 29212

Dear Mr. Harrell:

We received your letter requesting an opinion of this Office concerning the effect of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 on S.C. Code §§ 63-19-820 and 63-19-1210. You asked whether the references to “‘assault and battery of a high and aggravated nature’ in [S.C. Code §§ 63-19-820 and 63-19-1210 have] changed to ‘assault and battery with intent to kill’ or ‘attempted murder?’” Additionally, you asked “‘since these statutes were not formally amended by the Omnibus Crime Reduction and Sentencing Reform Act of 2010, if someone were quoting these code sections, would they be properly quoted as written in the code . . . or would they be properly quoted by removing the words ‘assault and battery of a high and aggravated nature’ and replacing them with either ‘assault and battery with intent to kill’ or ‘attempted murder’ as may be appropriate?’”

This opinion will address relevant statutes and caselaw to answer the questions posed above.

Law/Analysis

Title 63, Chapter 19 is the Juvenile Justice Code in the South Carolina Code of Law of 1976. As a way of background, your office explained that you have been receiving many questions on interpreting the two statutes below in light of the Omnibus Crime Reduction and Sentencing Reform Act of 2010. 2010 Act No. 273; S. 1154.

S.C. Code § 63-19-820 governs out-of-home placement for juveniles. In relevant part S.C. Code § 63-19-820(B)(8) reads as follows:

- (B) A child is eligible for detention in a secure juvenile detention facility only if the child:
 - ... (8) is charged with an **assault and battery or an assault and battery of a high and aggravated nature** on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity. . . .

S.C. Code § 63-19-820 (Supp. 2008) (emphasis added).

S.C. Code § 63-19-1210 governs transfer of jurisdiction. In relevant part, S.C. Code § 63-19-1210(9) reads as follows:

In accordance with the jurisdiction granted to the family court pursuant to Sections 63-3-510, 63-3-520, and 63-3-530, jurisdiction over a case involving a child must be transferred or retained as follows:

- ... (9) If a child fourteen years of age or older is charged with a violation of Section 16-23-430(1), Section 16-23-20, **assault and battery of a high and aggravated nature**, or Section 44-53-445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult. . . .

S.C. Code § 63-19-1210 (Supp. 2008) (emphasis added).

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 was signed into law on June 2, 2010; it states in relevant part as follows:

SECTION 7.

- A. Sections 16-3-612¹, 16-3-620², 16-3-630³, and 16-3-635⁴ of the 1976 Code are repealed.
- B. The common law offenses of assault and battery with intent to kill, assault with intent to kill, assault and battery of a high and aggravated nature, simple assault and battery, assault of a high and aggravated nature, aggravated assault, and simple assault are abolished for offenses occurring on or after the effective date of this act.
- C. 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**

¹ Student committing assault and battery against school personnel.

² Assault and battery with intent to kill.

³ Conviction of assault upon state or local correctional facility employee.

⁴ Assault and battery upon emergency medical service provider, firefighter or home healthcare worker.

battery with intent to kill, as contained in repealed section 16-3-620⁵, and, except for references in Section 16-1-60⁶ and Section 17-25-45,⁷ wherever in the 1976 Code reference is made to **assault and battery with intent to kill**, it means **attempted murder** as defined in Section 16-3-29.⁸

Omnibus Crime Reduction and Sentencing Reform Act of 2010; 2010 Act No. 273; S. 1154 (emphasis added).

In interpreting any legislative act, the primary objective is to ascertain and effectuate legislative intent if at all possible. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996). "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning. The words must be given their plain and ordinary meaning without resort to subtle or forced construction which limit or expand the statute's operation." Strickland v. Strickland, 372 S.C. 76, 88-89, 650 S.E.2d 465, 472 (2007) (citations omitted).

Neither S.C. Code § 63-19-820 nor S.C. Code § 63-19-1210 are mentioned in the Omnibus Crime Reduction and Sentencing Reform Act of 2010 in regards to assault and battery of a high and aggravated nature, assault and battery with intent to kill, or attempted murder. However, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 explained in Section 7 that any place in the code that originally referenced "Assault and Battery of a High and Aggravated Nature" (ABHAN) should now be replaced with "Assault and Battery with Intent to Kill" (ABWIK). It

⁵ S.C. Code § 16-3-620 states, "The crime of assault and battery with intent to kill shall be a felony in this State and any person convicted of such crime shall be punished by imprisonment not to exceed twenty years." The Omnibus Crime Reduction and Sentencing Reform Act of 2010 (2010 Act No. 273) repeals S.C. Code § 16-3-620.

⁶ Currently, S.C. Code § 16-1-60 states in relevant part, "For purposes of definition under South Carolina law, a violent crime includes the offenses of: murder (Section 16-3-10) . . . assault and battery with intent to kill (Section 16-3-620) . . . attempt to commit any of the above offenses (Section 16-1-80) . . ." The Omnibus Crime Reduction and Sentencing Reform Act of 2010 adds "attempted murder (Section 16-3-29) . . . [and] assault and battery of a high and aggravated nature (Section 16-3-600(B))" to the list.

⁷ Currently, S.C. Code § 17-25-45(C)(1) states in relevant part, "As used in this section: (1) 'Most serious offense' means: . . . 16-1-80 Attempt, for any offense enumerated in this item; 16-3-10 Murder . . . 16-3-620 Assault and battery with intent to kill. . ." The Omnibus Crime Reduction and Sentencing Reform Act of 2010 uses the same language, but includes "16-3-29 Attempted Murder" as a most serious offense. (S.1154).

⁸ The Omnibus Crime Reduction and Sentencing Reform Act of 2010 adds S.C. Code § 16-3-29 which creates the offense of attempted murder and provides a penalty.

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further explained that any place in the code that originally referenced "Assault and Battery with Intent to Kill" (ABWIK) should now be replaced with "Attempted Murder." Omnibus Crime Reduction and Sentencing Reform Act of 2010; 2010 Act No. 273, Section 7.

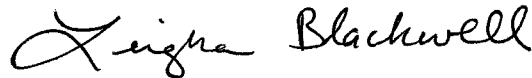
Conclusion

Consistent with legislative intent and statutory interpretation of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, it is the opinion of this Office that a court would likely find that references to "assault and battery of a high and aggravated nature" (ABHAN) in S.C. Code § 63-19-820 and S.C. Code § 63-19-1210 should be changed to "assault and battery with intent to kill" (ABWIK).

S.C. Code §§ 63-19-820 and 63-19-1210 may be quoted as they are currently written in the South Carolina Code of Laws; however, indication should be made that the crime of ABHAN has been eliminated and replaced with the crime of ABWIK. When appropriate, one should also indicate that any time the crime ABWIK was originally referenced in the South Carolina Code of Laws of 1976, it should be replaced with the crime Attempted Murder. For example, if one was citing S.C. Code § 63-19-820, he or she could write something similar to the following: "A child is eligible for detention in a secure juvenile detention facility only if the child . . . is charged with an assault and battery or an assault and battery of a high and aggravated nature on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity. S.C. Code § 63-19-820(B)(8). One should note that under the Omnibus Crime Reduction and Sentencing Reform Act of 2010 whenever 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. Omnibus Crime Reduction and Sentencing Reform Act of 2010; 2010 Act No. 273; S. 1154. This act was signed into law on June 2, 2010. Therefore, the crime assault and battery of a high and aggravated nature (ABHAN) is replaced with the crime assault and battery with intent to kill (ABWIK)."

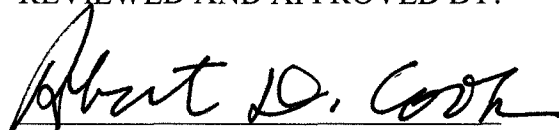
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General