

The State of South Carolina



Opinion No 8724
Pg 74

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3660

March 16, 1987

Honorable Horace C. Smith
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Re: Opinion Request No. 2640
Department of Corrections Classification System
Criminal Sexual Conduct Third Degree

Dear Senator Smith:

You have requested an opinion from this office concerning whether or not the South Carolina Department of Corrections can, for its internal classification purposes, place inmates convicted of criminal sexual conduct in the third degree (an offense defined by the General Assembly as non-violent) in a classification category with offenses defined as violent pursuant to S.C. CODE ANN., § 16-1-60 (1986 Supp.). It is your apparent contention that by classifying this offense into the category, the Department has administratively defined an offense as "violent" when the General Assembly has not statutorily defined it as such. It is my opinion that the Department of Corrections has the statutory authority to classify the offenders for its internal purposes as it deems appropriate pursuant to S.C. CODE ANN., § 24-1-140 (1985).

The General Assembly has empowered the Commissioner of the South Carolina Department of Corrections with certain statutory responsibilities and powers. Among these powers, "the Commissioner, with the consent of the Board [of Corrections], shall have the power to prescribe reasonable rules and regulations governing the humane treatment, training and discipline of prisoners, and to make provision for the separation and classification of prisoners according to ... character of offense upon which the conviction of the prisoner was secured. S.C. CODE ANN. § 24-1-140 (1985).

Honorable Horace C. Smith
Page Two
March 16, 1987

Pursuant to this statutory power and as required by Nelson v. Leeke, an internal "Objective Classification Plan" was developed and on February 18, 1986, the plan was implemented on the initial classification and reclassification of inmates. Within the classification plan, the following offense category definitions were made:

1. OFFENSE CATEGORY DEFINITIONS

CATEGORY I: This category is assigned to inmates who are convicted for offenses determined to be non-violent and less serious in nature. A non-violent offense is an offense against property or a victimless crime which does not cause fear of life or human safety. Examples of Category I offenses are: housebreaking, burglary (third degree), possession of marijuana, DUI, forgery, and grand larceny.

CATEGORY II: This category is assigned to inmates who are convicted for offenses determined to be violent or serious in nature. A violent offense is an offense where a violent attack is carried out against another person including a threat or unsuccessful attempt to physically harm another, causing a present fear of immediate harm; or an offense directly related to or as an accessory to such an act. Examples of Category II offenses are: arson, assault and battery of a high and aggravated nature, burglary (first or second degree), involuntary manslaughter and unlawful weapon offenses.

CATEGORY III: This category is assigned to inmates who are convicted for offenses which are the most serious in nature, including certain infamous or notorious crimes. Examples of Category III offenses are: murder, kidnapping, criminal sexual conduct (1st, 2nd and 3rd degree), and other sex-related offenses, armed robbery, and assault and battery with intent to kill.

Your inquiry concerns whether the above classifications are statutorily valid when the General Assembly has subsequently defined violent and non-violent crimes in the Omnibus

Honorable Horace C. Smith
Page Three
March 16, 1987

Criminal Justice Improvements Act of 1986. It is important that this Act did not repeal or amend § 24-1-140, which empowered the Commissioner to make provisions for the separation and classification of prisoners according to the character of the offense among other things. The 1986 Omnibus Act definitions certainly have many effects on custody, eligibility for certain programs, and parole eligibility, but it does not divest the South Carolina Department of Corrections of its responsibility and power to classify certain crimes together based upon its experience for its own internal security controls pursuant to § 24-1-140.

Your inquiry specifically concerns the classification of the crime of criminal sexual conduct third degree which is a felony punishable by imprisonment up to ten years. S.C. CODE ANN., § 16-3-654(2) (1985). It is defined as follows:

(1) A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances; or

(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.

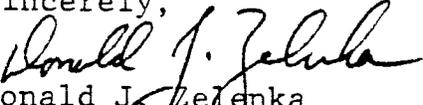
The General Assembly did not include this offense in its definition of "violent" crime. § 16-1-60.

This crime bears a rational relationship to the other crimes in its South Carolina Department of Corrections' offense Category III. A copy of the list of offenses within the classification is attached to this opinion. In its plan, the Department of Corrections stated that the purpose of classification is "to support the goals of the agency of both public safety and humane treatment, provide information for population management and planning, provide appropriate distribution of correctional resources against both inmate

Honorable Horace C. Smith
Page Four
March 16, 1987

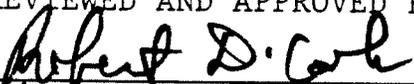
and agency needs, and classify inmates to proper security and custody supervision levels." Certainly the classification plan does not override the legislative definitions of violent crimes and the particular effects that classification has on its offenders. The South Carolina Department of Corrections classifications, however, serve other purposes, most importantly, to classify inmates to proper security and custody supervision levels. It is apparent from the classification system that the South Carolina Department of Corrections has learned that for its purposes sexual offenders as a class are similar security and supervision risks with the "most serious offenses." That decision rests with the Commissioner under present law and does not offend the definition of violent crime established in the Omnibus Act of 1986.

Sincerely,


Donald J. Zelenka
Chief Deputy Attorney General

bbb
attachment

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions