

1981 S.C. Op. Atty. Gen. 107 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-84, 1981 WL 96610

Office of the Attorney General

State of South Carolina

Opinion No. 81-84

October 12, 1981

***1 SUBJECT: Juveniles, Family Courts**

(1) The General Assembly evinced its clear intent that the substantive provision of the Youth Services Act of 1981 would become effective on October 1, 1981, although provisions pertaining to the selection of the respective Board members, and the selection of the Commissioner of the Department of Youth Services became effective upon the signing of the bill into law by the Governor on June 24, 1981.

(2) The legislative enactment of Sections 20-7-3450 and 20-7-3530, Code of Laws of South Carolina, Act No. 124 of 1981 (Youth Services Act) repealed by implication [Section 20-7-2170](#), Code of Laws of South Carolina, Act No. 71 (the Children's Code) in accordance with the rules of statutory construction and repeal, and therefore under present law no child under the age of seventeen shall be committed or sentenced by the Family Court to any penal or correctional institution of the State as a disposition, excepting the Department of Youth Services. However, Section 20-7-3530 of the Code of Laws provides that children between the ages of eleven and twelve may be incarcerated in jail or detention facility only upon the Order of the Family Court and only when they are taken into custody for a violation of law which would be a criminal offense under the laws of the State of committed by an adult or violate conditions of probation for such an offense.

TO: The Honorable David H. Maring
Chief Judge
Family Court of the Fifteenth Judicial Circuit

QUESTION:

1. What is the effective date of the operation of Section 20-7-3520, Code of Laws of South Carolina (1976), the provision which pertains to the prohibition against the incarceration of status offenders?

OPINION:

Section 20-7-3520, Code of Laws of South Carolina (1976) of the Youth Services Act of 1981, Act No. 124 of 1981, provides in pertinent part:

'A child who is guilty of a violation of law or other misconduct which would not be a criminal offense if committed by an adult or violates the conditions of probation for such an offense shall not be committed to the custody of a correctional institution operated by the Department of Youth Services except for an indeterminate period not to exceed forty-five days for the purpose of evaluation, in accordance with the provisions of [Section 20-7-2170](#).'

In order to properly determine the effective date of this legislation, the intent of the General Assembly must be assessed in accord with the prospective date of enactment of the entire Youth Services Act of 1981. The Act was enacted as a package, and the date of effect of each statutory provision must be reviewed in the context of the legislative intent for the effective date of operation of the entire package.

In a review of the provisions contained within the Youth Services Act of 1981, it is evident that the provisions were devised in order to be implemented under a newly created Board and Department of Youth Services. The General Assembly provided that October 1, 1981, would be the effective date of the establishment of the newly constituted Department of Youth Services, complete with all of its duties and responsibilities. (Youth Services Act of 1981, Act No. 124 of 1981).

*2 The only exceptions to the October 1 date of enactment pertain to provisions in the Act concerning the selection of the Boards of the Department of Youth Services and Parole, as well as those provisions pertaining to the selection of the Commissioner of the newly constituted Department of Youth Services. (Youth Services Act of 1981, Section 3 of Act No. 124). Under this portion of the Act, the selection process for the aforementioned personnel is effective upon the signing of the bill into law by the Governor, which was June 24, 1981.

Consequently, it is clear from the language contained within the Youth Services Act of 1981, Section 3 of Act No. 124 that the substantive statutory provisions pertaining to the duties and responsibilities of the Board and Department would not become effective until the newly reconstituted Department of Youth Services became effective, and that would be October 1, 1981. In the opinion of this office Section 20-7-3520 of Act No. 124 of 1981 will become effective on October 1, 1981.

QUESTION:

2. Does the Family Court have the authority to commit a juvenile to the county jail or a juvenile detention center for a period up to thirty (30) days?

OPINION:

Section 24-15-510, Code of Laws of South Carolina was repealed by Act No. 71 of 1981. Under this provision, the Family Court was empowered to commit or sentence juveniles between the ages of ten and under the age of seventeen to jail for a period not exceeding thirty days. This section was restated in the Children's Code as [Section 20-7-2170, Code of Laws of South Carolina](#) Act No. 71 of 1981, approved May 19, 1981.

Section 20-7-3450 of Act No. 124 of 1981 (Youth Services Act), enacted in June of 1981 provides:

‘A child after his twelfth birthday and before his seventeenth birthday, or while under the jurisdiction of the family Court for disposition of an offense that occurred prior to his seventeenth birthday, may be committed to the custody of the Board of Youth Services only by order of a circuit or family court judge under procedures and subject to the conditions set forth in this part. Children under the age of twelve years may be committed only to the custody of the Board, which shall arrange for placement in a suitable corrective environment other than the institutional confinement. No child under the age of seventeen years shall be committed or sentenced to any other penal or correctional institution of this State.’

A review of Acts No. 71 and 124 reveals that Act No. 124 amended Act No. 71 only by adding the subarticle ‘The Youth Services Act of 1981’. Although Act No. 124 was enacted subsequent to Act No. 71 (Children's Code), the Act did not contain any repealers, specific or otherwise in so far as Act No. 71 is concerned.

Consequently, the application of the rules of statutory construction are necessary in order to determine and reconcile the legislative intent expressed by the enactment of [Section 20-7-2170](#) of Act No. 71 (Children's Code) and the intent expressed by the later enactment of Section 20-7-3450 of Act No. 124 (Youth Services Act). Both the statutory provisions appear to be contrary to one another, and both pertain to the same subject matter—that of the commitment of juveniles. With the enactment of the latter provision—Act No. 124 (the Youth Services Act), the General Assembly may have intended to repeal [Section 20-7-2170](#) of Act No. 71 although a specific repeal of the statute was not provided for in the Act.

*3 State case law provides adequate guidelines for the determination of legislative intent of the General Assembly respecting the above stated Acts. A statute may be repealed in express terms or by implication. [McLeod v. Mills](#), 256SC21, 180 S.E. 2d 638 (1979).

However, 'A repeal of a statute by implication is not favored, and it is to be resorted to only in event of irreconcilable conflict between provisions of two statutes, and if provisions of two statutes can be construed so that they both can stand, the Supreme Court will so construe them.' In [Interest of Shaw](#), 265 S.E.2d 522 (1980).

The case of [City of Spartanburg v. Blalock](#), 223, S.C. 252, 75 S.E. 2d 361 (1953) provides that:

'If there are any conflicting provisions in two statutes, the last expression of the Legislature will control; but such rule is to be resorted to only when there is clearly an irreconcilable conflict, and all the other means of interpretation have been exhausted.'

Although Act No. 124 (Youth Services Act) does not provide for the expressed repeal of any statutory language contained within Act No. 71, Section 20-7-3450 of Act No. 124 does extensively address the subject of juvenile commitment, as does [Section 20-7-2170](#) of Act No. 71 (Children's Code). In point of fact, however, Section 20-7-3450 of Act No. 124 significantly revises the procedures for juvenile commitment as encompassed within [Section 20-7-2170](#) of Act No. 71. The question is whether or not the revision is so great as to result in a repeal of [Section 20-7-2170](#) by implication.

It is submitted that Section 20-7-3450 of Act No. 124 substantially revises [Section 20-7-2170](#) of Act No. 71 to the point where both statutory provisions are irreconcilable. Under Section 20-7-3450 of Act No. 124, the Family Court is not empowered to incarcerate juveniles in jail for any period of time, which is contrary to the authority granted the Family Court in [Section 20-7-2170](#) of Act No. 71. Additionally, under Section 20-7-3450 of Act No. 124, only the Family and Circuit Courts are empowered to commit a child to the Board of Youth Services. [Section 20-7-2170](#) of Act No. 71 additionally granted such authority to the County and Probate Courts. The expressed authority given to Magistrates and Recorders under [Section 20-7-2170](#) of Act No. 71 is not acknowledged in Section 20-7-3450 of Act No. 124. It is therefore evident that the General Assembly intended Section 20-7-3450 of Act No. 124, to be the final word respecting the commitment of juveniles within the State of South Carolina.

The case of [United States v. Lovely](#), 319 Fed.2d 673 (4th Cir.), cert. denied 84 S.C. 210, 375 U.S. 913, 11 L.Ed.2d 151 (1963) provides that:

'Where a later act purports to cover a whole subject covered by an earlier act, embraces new provisions, and plainly shows that it was intended not only as a substitute for the earlier act but also to cover the whole subject involved and to prescribe the only rules with respect thereto. The later act operates as a repeal of the earlier act even though it makes no reference to it.'

*4 It is therefore submitted that Section 20-7-3450 of Act No. 124 repeals by implication [Section 20-7-2170](#) of Act No. 71 for the foregoing reasons. The General Assembly intended Act No. 124 to be its final word respecting procedures for commitment of juveniles.

There is one final statutory provision which has a bearing upon the issue of the authority of the Family Court to incarcerate juveniles. Section 20-7-3530 of the Code, as added by Act No. 124 of 1981 provides:

'Children ten years of age and younger shall not be incarcerated in any jail or detention facility for any reason. Children eleven or twelve years of age who are taken into custody for a violation of law which would be a criminal offense under the laws of this State if committed by an adult or violate conditions of probation for such an offense shall be incarcerated in a jail or detention facility only by order of the Family Court.'

A reading of Sections 20-7-3450 and 20-7-3530 of the Code together then provides that the Family Court cannot commit or sentence children below the age of seventeen to any penal or correctional institution excepting the Department of Youth

Services. The exception to the rule is that children who are eleven or twelve years of age who commit criminal offenses may be incarcerated in jail or a detention facility only upon the order of the Family Court.

It is therefore the opinion of this office that the legislative enactment of Section 20-7-3450 and 20-7-3530 of Act No. 124 of 1981 (Youth Services Act) repealed by implication [Section 20-7-2170](#), of Act No. 71 (Children's Code) in accordance with the rules of statutory construction and repeal, and therefore under present law no child under the age of seventeen shall be committed or sentenced by the Family Court to any penal or correctional institution of the State as a disposition, excepting the Department of Youth Services. However, Section 20-7-3530, [Code of Laws of South Carolina](#) (1976), Act. No. 124 of 1981 provides that children between the ages of eleven and twelve may be incarcerated in a jail or detention facility only upon the order of the Family Court and only when they are taken into custody for a violation of law which would be a criminal offense under the laws of the State if committed by an adult or violate conditions of probation for such an offense.

Sincerely yours,

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