

20211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No. 12-ALJ-15-0004-AP
Appellate Case No. 2012-213234

Thalma Barton #110881, ... Appellant,

v.

South Carolina Department of Probation, Parole, and
Pardon Services, ... Respondent.

RECORD ON APPEAL

Travis Dayhuff
E-Mail: travis.dayhuff@nelsonmullins.com
Gary Capps
E-Mail: gary.capps@nelsonmullins.com
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000
Attorneys for Appellant

Nicole Wetherton
South Carolina Department of
Probation, Parole, and Pardon
Services
2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, SC 29250
(803) 734-9220
Attorneys for Respondent

RECEIVED

FEB 26 2013

SC Court of Appeals

INDEX

1.	S.C. Administrative Law Court Order, dated October, 2012	1
2.	S.C. Administrative Law Court, Notice of Appeal, February 16, 2012	12
3.	S.C. Administrative Law Court, Brief of Appellant, March 15, 2012 ¹	18
4.	S.C. Administrative Law Court, Brief of Respondent, June 11, 2012	70
5.	S.C. Administrative Law Court, Reply Brief of Appellant, June 21, 2012	96
6.	S.C. Court of Appeals, Notice of Appeal, October 19, 2012	125
7.	Transcript of the hearing held in the S.C. Administrative Law Court on August 8, 2012	127
8.	S.C. Department of Probation, Parole, and Pardon Services Record on Appeal, pages i-76:	158
	Index	159
	Appellant's Letter dated February 16, 2012	160
	Notice of Rejection dated January 18, 2012	164
	E-mail Response	165
	Barton's Packet of Information Provided to the Parole Board prior to her hearing	166

¹ Exhibit A to the Brief of Appellant was a CD recording of the parole hearing held on January 18, 2012. A place marker is in the Record on Appeal at p. 26. A copy of the CD was filed separately pursuant to Rule 210(f) of the South Carolina Appellate Court Rules.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thalma Barton, #110881,

Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services

Respondent.

Docket No. 12-ALJ-15-0004-AP

FINAL ORDER

This matter comes before the Administrative Law Court (ALC or Court) on Appellant Thalma Barton's (Barton or Appellant) appeal from Respondent's South Carolina Department of Probation, Parole and Pardon Services' (DPPPS) final decision in which it denied Barton parole. Barton argues that the retroactive application of the current parole statute was an ex post facto violation and thus violated her due process rights under the United States and South Carolina Constitutions.¹ Barton also argues that retroactive application of the requirement for a two-thirds majority vote of the entire Parole Board (Board) could lead to an absurd result in cases where only a four member quorum of the Board meets at a parole hearing and all four members in attendance vote for parole, but the inmate is still denied parole she did not receive the minimum five votes. DPPPS contends that the statute governing the number of votes necessary for the Board to grant paroles is purely procedural and therefore does not implicate the Ex Post Facto Clauses of the United States and South Carolina Constitutions. DPPPS also contends that the absurd result scenario suggested by the Appellant could never happen because the Board never hears parole cases unless at least five members are present.

BACKGROUND

On May 11, 1982, Barton pled guilty to murder and was sentenced to life imprisonment. At the time of her conviction, South Carolina law provided that a person serving a life sentence

¹ U.S. Const. art. I, § 10; S.C. Const. art. I, § 4.

FILED

OCT 03 2012

SC ADMIN. LAW COURT

for murder would become parole eligible for parole after satisfying twenty years of his or her sentence. On July 6, 1997, Barton made her initial appearance before the Board and was rejected for parole.² Barton appeared before the Board 12 additional times, each appearance resulting in the denial of parole.

On January 18, 2012, Barton made her most recent appearance before the Board. Six of the seven Board members were present at her January 18, 2012 parole hearing. Four board members voted in favor of granting Barton parole, while two members voted against parole. Following the vote, DPPPS issued Barton a letter notifying her that the Board had rejected her request for parole after considering a number of factors, including those outlined in S.C. Code Ann. § 24-21-640 (2012). Barton thereafter appealed the Board's decision to this court.

STANDARD OF REVIEW

The ALC reviews decisions of DPPPS in an appellate capacity and is "restricted to merely reviewing the decision[s] below." Al-Shabazz v. State, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). When acting in an appellate capacity, the ALC must apply the criteria of S.C. Code Ann. 1-23-380(5) (2012), which states:

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

² Appellant had satisfied twenty years of her life sentence through the award of good time credits.

JURISDICTION

The Court has jurisdiction to hear appeals from final decisions of DPPPS and render opinions accordingly. Rules 51 and 65, SCALCR. This jurisdiction is derived from Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) and Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003). Concerning parole, the ALC has jurisdiction to review decisions regarding parole eligibility, not a denial of parole. Steele v. Benjamin, 362 S.C. 66, 72, 606 S.E.2d 499, 502 (Ct. App. 2004). But when, such as here, the decision is not a permanent denial of parole eligibility, the ALC's jurisdiction is limited to a review of whether the Board, in reaching its decision, failed to follow the proper procedure such that it implicated a "sufficient state-created liberty interest to trigger due process requirements." Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs., 377 S.C. 489, 498-99, 661 S.E.2d 106, 111 (2008).

DISCUSSION

Ex Post Facto Violation

Barton argues that DPPPS's application of S.C. Code Ann. § 24-21-645(A) (2012),³ the statutory provision that currently governs the number of votes among Board members necessary to approve parole for inmates, does not apply to her parole hearing. Section 24-21-645(A) was amended in 1986 as part of Act No. 462, the Omnibus Criminal Justice Improvement Act of 1986. The amended statute requires a two-thirds majority vote of the members of the Board in order to approve parole for violent crimes.

The board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case ninety days prior to the effective date of the parole; however, at least two-thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60.⁴

³ At oral argument, Appellant conceded that §24-21-645(A), not § 24-21-30(B), was controlling in this case.

⁴ Murder is included under the definition of "violent crime" under § 16-1-60.

At the time of Barton's conviction in 1982, the statute governing parole required merely a simple majority vote among the members of the Board to gain parole. Barton contends that had the old law been applied to her parole hearing, the four votes that she received in favor of parole constituted a majority of the Board and would have resulted in her receiving parole. Application of the current statute's two-thirds majority vote requirement to her case resulted in her being denied parole, and thus increased or extended her incarceration and constituted an ex post facto violation.

Ex post facto situations are limited to those involving "punish[ing] as a crime a[] [previous] act . . . committed . . . [that] was innocent when done"; "depriv[ing] one charged with [a] crime of any defense available according to law at the time when the act was committed"; or "mak[ing] more burdensome the punishment for a crime, after its commission." Collins v. Youngblood, 497 U.S. 37, 52 (1990). The issue in this case is whether Barton's punishment for her crime is made more burdensome by application of § 24-21-645(A) to her parole hearing. When considering this, the relevant inquiry is whether the change in law "produces a sufficient⁵ risk of increasing the measure of punishment attached to the covered crimes."⁶ Cal. Dep't of Corr. V. Morales, 514 U.S. 499, 509 (1995). There is no ex post facto violation where a change in the law produces only a "speculative and attenuated possibility" of increased punishment. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000) (quoting Morales, 514 U.S. at 509). Also, a change in the law does not violate the Ex Post Facto Clause if it merely affects a mode of procedure and does not alter substantial personal rights. State v. Huiett, 302 S.C. 169, 172, 394 S.E.2d 486, 487 (1990). "Even though a procedural change may have a detrimental impact on a defendant, a mere procedural change which does not affect substantial rights is not ex post facto." Id. at 17-72, 394 S.E.2d at 487. In Roller v. Gunn, 107 F.3d 227 (4th Cir. 1997), cert. denied, 522 U.S. 874 (1997), an inmate challenged the retroactive application of S.C. Code Ann. § 24-21-645 as unconstitutional and a violation of the Ex Post Facto Clause. In that case, the United States Court of Appeals for the Fourth Circuit looked at whether South Carolina's change from an annual to a biannual review of parole applications for violent offenders after an initial denial of parole was a violation of the Ex Post Facto Clause. The court also looked at whether

⁵ The United States Supreme Court uses the word "sufficient" in this case to modify "risk," but later uses "significant" as the modifier in Garner v. Jones, 529 U.S. 244, 251, 255 (2000).

⁶ "Punishment" includes incarceration. Cf. Garner v. Jones, supra.

the change in the standard of parole from a simple majority to a two-thirds majority vote of the parole board was a violation of the Ex Post Facto Clause. Relying on the Supreme Court's rationale in Morales, *supra*, the court held that the retroactive application of the change in the length of time for parole review was not an ex post facto violation. Then relying on the holding in Dobbert v. Florida, 432 U.S. 282 (1977), the court further held that the retroactive application of the change in the voting requirement to gain parole was not an ex post facto violation.

The Roller decision, however, was not dispositive of the ex post facto issue surrounding the retroactive application of the biannual parole review provision of S.C. Code Ann. § 24-21-645. In Jernigan, *supra*, the South Carolina Supreme Court rejected the holding in Roller as to biannual parole review. The court in Jernigan found a distinction between South Carolina's biannual review statute and the California parole statute at issue in the Morales case, which had been the basis for the Fourth Circuit's holding in Roller. Specifically, the Court noted that the South Carolina parole statute automatically extended the review period for parole eligibility to two years for all violent offenders in South Carolina, whereas the California parole statute only applied to a "very well defined" set of inmates - multiple murderers. *Id.* at 263-64, 531 S.E.2d at 510-11. The court further noted that S.C. Code Ann. § 24-21-645 gave no discretion to the parole board regarding when an inmate's parole application could be considered and mandated an automatic two year period between reviews for all violent offenders. The court distinguished this from the facts in Garner v. Jones, 529 U.S. 244 (2000), where the United States Supreme Court rejected an ex post facto challenge to a retroactive application of a Georgia parole statute that increased parole eligibility review periods for Georgia inmates from three years to upwards of eight years, but granted the parole board discretion to review the parole eligibility of inmates at an earlier date. *Id.* at 511, 531 S.E.2d at 264 n.5. In contrast, the court in Jernigan noted that the South Carolina parole statute gave no discretion to the Board to set an earlier date to reconsider an inmate's application for parole, and the two year period between reviews was automatic. Thus, the Jernigan court found that this system "create[d] a significant risk of prolonging [the inmate's] incarceration." *Id.*

The Jernigan case did not address the other issue in Roller, the one presently before this Court, which is whether the retroactive application of the provision in S.C. Code Ann. § 24-21-645(A) (2012) increasing the number of votes required for a parole board to grant parole to violent offenders, violates the Ex Post Facto Clause. Barton nevertheless urges this Court to

extend the reasoning of Jernigan to the present case. Barton points out that the dissenting opinion in Roller, upon which the court in Jernigan based its opinion, also opposed applying the two-thirds requirement retroactively, thus inferring that this court should adopt the dissent's view on the two-thirds issue. However, the fact that the South Carolina Supreme Court agreed with the dissent in Roller that the retroactive application of the automatic increase in time between parole eligibility hearings constituted an ex post facto violation is not dispositive of whether the retroactive application of S.C. Code Ann. § 24-21-645(A) two-thirds vote requirement is also a violation of the Ex Post Facto Clause. The dissenting justice's statement in Roller that "[i]f . . . the new two-thirds requirement makes parole tougher to attain, then this factor must be examined in conjunction with the amendment's decrease in the frequency of the hearings to determine whether the overall changes to the statute violate the Ex Post Facto Clause," supports a conclusion that the dissent may well have reached a different conclusion as to an Ex Post Facto Clause violation if, as in this case, there were no other procedural changes to the parole statute at issue. Roller, 107 F.3d at 240 (Hall, J., dissenting) (emphasis added).

This court finds the analysis in Jernigan instructive in this case, though distinguishable. In Jernigan, the court was concerned with the lack of discretion that the Board had in reviewing parole for inmates convicted of violent crimes to which parole had already been initially denied. There was an automatic increase in review from one year to two, regardless of the nature of the crime for which the inmate was convicted, and regardless of the sentence the inmate was serving. The court used these grounds to distinguish Jernigan from Morales and Garner. Jernigan, 340 S.C. at 264, 531 S.E.2d at 511. In the present case, however, the statutory change was in the number of votes necessary to approve parole. This change had no bearing on how often the Board members voted. Similarly, unlike in Cooper, where the parole board deviated from statutory criteria required for parole decisions, the changes in the law in this case did not have any effect on the Board members' decision-making process. In the present case, unlike in Jernigan and Cooper, the change in the statute requiring a two-thirds vote has no effect on parole hearings until after the Board's decision is made and votes are cast. The rule change had no impact on the discretion of the Board or its decision-making process. Therefore, the rule change

is purely procedural and thus does not violate the Ex Post Facto Clauses of the U.S. and S.C. Constitutions.⁷

DPPPS further argues that Barton's claim that the retroactive application of the change in the voting requirement violates the Ex Post Facto Clause fails because it requires this court to speculate what the vote of the Board would have been had the old majority voting requirement been applied. In response, Barton contends that no speculation is required because the Board's four to two vote in favor of parole was recorded and was sufficient for her to receive parole under the former majority vote requirement of the statute. The retroactive application of the two-thirds requirement, enacted after Barton's conviction, resulted in her further incarceration. Barton's response, however, overlooks DPPPS's argument. In this case, the speculation alleged by DPPPS is not whether the four favorable votes Barton received in the Board's January 18, 2012 meeting would have been sufficient under the old law, because they represented a majority of the seven member Board and would have been sufficient to gain Barton parole. Rather, the speculation in this case is whether the Board members would have voted the same way if they had known that the question of Barton's parole was being determined under the old simple majority vote rule. This court finds this argument persuasive, and is guided by the Supreme Court's rejection of speculative claims as a basis for ex post facto violations. In Dobbert, supra, a convicted murderer sentenced to death argued that the retroactive application of Florida's new death penalty statute constituted an ex post facto violation. The new statute gave the final

⁷ The United States District Court for the District of Maryland addressed this same issue in Alston v. Robinson, 791 F.Supp. 569 (D.Md. 1992). A new statute that retroactively applied had increased the number of favorable votes needed from a nine-member parole board to seven, up from a simple majority of five. The court found that "(a)lthough the seven member requirement does appear to make it more difficult for plaintiffs to achieve parole, the change that that requirement encompasses does not alter the criteria which the Board applies to determine eligibility for parole, and is very much procedural in nature." Id. at 590. The court noted a case with a contrary holding, United States ex rel. Steigler v. Board of Parole, 501 F. Supp. 1077 (D.Del. 1980), but pointed out that this case relied on Thompson v. Utah, 170 U.S. 343 (1898), which the U.S. Supreme Court overruled as to its Ex Post Facto Clause analysis in Collins v. Youngblood, supra. The Alston court further supported its position against a finding of an ex post facto violation by analogizing the increase in number of favorable votes required to grant parole with the act of a reducing the number of jurors in a trial, and pointed to a number of cases that held that a retroactive application of a law that reduced the number of jurors did not violate the Ex Post Facto Clause, including the following: United States v. Stratton, 779 F.2d 820, 833-34 (2d Cir.1985), cert. denied, 476 U.S. 1162, 106 S.Ct. 2285, 90 L.Ed.2d 726 (1986); Iseton v. State, 472 N.E.2d 643, 652-53 (Ind.App.1984); State v. Maresca, 173 Conn. 450, 377 A.2d 1330, 1333 (1977); State v. McIntosh, 23 Ariz.App. 246, 532 P.2d 188, 190 (1975). Id. at 591; see also Duvall v. United States, 676 A.2d 448 (D.C. 1996). The Alston court did cite a case that took a contrary view, McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981); but that case, like Steigler, relied on Thompson, the ex post facto analysis of which was overruled by Collins. The Alston court thus concluded that "in the wake of Collins, the statutory change requiring more favorable votes for parole to be granted was "a procedural change which d[id] not substantially alter plaintiffs' 'quantum of punishment' and thus, does not violate the ex post facto clause." 791 F.Supp. at 591.

decision on imposing the death penalty to the judge in a capital murder case, after the jury made a recommendation. Under Florida's old law, the jury had the final decision on whether to impose the death penalty. The trial judge in Dobbert overruled the jury's recommendation of life imprisonment and imposed the death penalty on the defendant. The defendant argued that the retroactive application of this new law violated the Ex Post Facto Clause because the jury's recommendation of life imprisonment would have been final under the law that existed at the time the murders were committed. The Court rejected this argument because it was speculative. As the Court pointed out, "it certainly cannot be said with assurance that, had his trial been conducted under the old statute, the jury would have returned a verdict of life." Dobbert, 432 U.S. at 294. This same rejection of speculative ex post facto arguments was voiced by the court in Roller, which drew a parallel with the United States Supreme Court's rationale in Dobbert. 107 F.3d at 236-37.

This court finds Barton's claim that she would have received the same vote and been granted parole by the Board had the former version of S.C. Code Ann. § 24-21-645(A) been employed speculative and rejects her ex post facto claim. It is entirely possible that a Board member (or several members) may not have voted in favor of parole had he or she believed that Ms. Barton would be granted parole based on a simple majority vote of the Board. There is no way for this court to know whether a Board member (or several members), sensing that less than two thirds of the Board was going to vote for parole, decided to vote in favor of parole, in order to give Barton encouragement to continue her efforts to rehabilitate, or for some other reason. See Dobbert, 432 U.S. at 294 n.7 (applying a similar speculative hypothetical). The focus is not on whether the votes at Barton's January 18, 2012 hearing were sufficient to procure parole under the old statute. Rather, the focus is on whether Barton would have received the same four votes from the Board members had they been operating under the old statute. As in Dobbert, "it certainly cannot be said with assurance that, had [Barton's January 18, 2012 parole hearing] been conducted under the old statute, the [Board] would have [granted parole]."

This court, therefore conclude that DPPPS's retroactive application of section 24-21-645(A)'s two-thirds-majority parole requirement did not violate the Ex Post Facto Clauses of the United States and South Carolina Constitutions, and Barton's due process rights were not violated.

Absurd Results and Statutory Interpretation

Barton argues in the alternative that she satisfied S.C. Code Ann. § 24-21-645(A) (2012) by receiving two-thirds of the votes of the Board members present at the hearing; which is what the statute requires. Barton further argues that if the statute was applied according to DPPPS's interpretation, requiring two-thirds of the entire seven-member Board, this application would lead to absurd results. Barton argues that if two-thirds of the "members of the board" means two-thirds of the entire Board, including those members who were absent from the hearing, then because only four members are needed for a quorum necessary to conduct business, situations could arise where four members of the Board could convene and an inmate could receive unanimous approval but would still be denied parole because two-thirds of the entire Board did not vote in favor of it. In other words, because a quorum only requires four Board members to be present in order for business to be conducted, parole hearings could be conducted in which it would be impossible for an inmate to get the two-thirds vote necessary to be granted parole.

This court rejects Barton's contention that "members of the board" means only those Board members present at a parole hearing. In general, when interpreting a statute, the sole function of the Court is to determine and give effect to the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The starting point in doing so should always be the text of the statute itself. Id. (holding that "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will"); Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003). In interpreting the text, the plain meaning rule requires that "words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand that statute's operation." State v. Leopard, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002). Finally, "[w]here the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges, 341 S.C. at 85, 533 S.E.2d at 581. "[T]he Court will reject the plain meaning of the words used in a statute [only] if it would lead to an absurd result. . . ." (Ventures S.C., LLC v. S.C. Dep't of Revenue, 378 S.C. 5, 9, 661 S.E.2d 339, 341 (2008)).

In this case, this Court finds that "members of the board" means members of the full Board. Had the General Assembly intended the term "members of the board" to mean only those members attending the hearing, or to mean members attending and voting at the hearing, it

would make that clear in the statute. Because § 24-21-10(B) defines the Board as being “composed of seven members,” then § 24-21-645(A)’s requirement of “at least two-thirds of the members of the board” means that an inmate convicted of a violent crime must get at least two-thirds of the seven members of the board. This interpretation is further supported when the first part of the relevant sentence of § 24-21-645(A) is read in conjunction with the part of the sentence requiring the two-thirds vote. The first part of the sentence permits the Board to authorize parole for non-violent offenses by a simple majority of the Board’s members or by a unanimous vote of a three member panel. When both parts of the sentence are read together, it is clear that the General Assembly meant for the term “members of the board” to mean members of the full board, and not members of the Board attending or voting at a parole hearing. Therefore, Barton did not satisfy the statute when she received two-thirds of the votes of the six members present.⁸

Second, this court is not convinced that by interpreting “members of the board” to mean members of the full Board this will lead to an absurd result. There is no evidence that the Board has ever even met with fewer than five members when considering parole of an inmate convicted of a violent crime.⁹ At oral argument, counsel for the Board stated that it is the Board’s policy to never meet with less than five members. Irrespective of this, in this case six members of the Board were present and voted at Barton’s parole hearing. Therefore, there were sufficient members present at the January 18, 2012 hearing who could have voted favorably for Barton to receive the minimum five votes necessary to gain parole.

⁸ The Court declines to discuss the constitutionality of the statute on its face, because the ALC is part of the executive branch and thus has no authority to rule on the facial validity of a statute. Drummond v. State, Dep’t of Revenue, 378 S.C. 362, 370, 662 S.E.2d 587, 591 (2008).

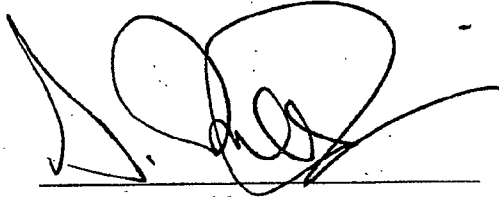
⁹ The Board could meet with only four of the seven members present. See James v. S.C. Dep’t of Prob., Parole and Pardon Servs., 377 S.C. 564, 569 660 S.E.2d 288, 291 (Ct. App. 2008) (“In the absence of any statutory or controlling provision, the common-law rule that a majority of the whole board is necessary to constitute a quorum applies”); see also James v. Warden, Ridgeland Corr. Inst., 2010 U.S. Dist. WL 3609788, at *7 (D.S.C. Aug. 4, 2010) (James II) (quoting the following from p. 12 of the S.C. Parole Board’s Operations Manual: “A majority of the members of the Board constitutes a quorum for conducting business.”). If a vote with only four members present ever took place in the case of an inmate convicted of a violent crime, the result would presumably be a denial of parole for that inmate, as the court in James points out that though a two-thirds majority of the full board is required to grant parole of a violent crime falling under section 16-1-60, there is no statutory requirement “that a certain number of board members . . . be present in order to deny parole for someone convicted of a violent crime.” 377 S.C. 568-69, 660 S.E.2d 288, 291. Emphasis added.

ORDER

Based upon the foregoing, it is hereby

ORDERED that DPPPS's decision denying the Appellant parole is **AFFIRMED**.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'S. Phillip Lenski', is written over a horizontal line.

S. Phillip Lenski,
Administrative Law Judge

October 2, 2012
Columbia, South Carolina

ADMINISTRATIVE LAW COURT

) Civil Action No. -ALJ- - -

)

)

)

)

NOTICE OF APPEAL

Appellant Thalma Barton submits the following Notice of Appeal regarding the final agency decision by Respondent South Carolina Department of Probation, Parole, and Pardon Services ("DPPPS") denying her parole.

Appellant Barton asserts the following grounds in support of this appeal:

1. On January 18, 2012, Barton appeared at a hearing before the Parole Board to request parole.
2. Thereafter, in a letter dated January 18, 2012, DPPPS provided written notice to Barton that the Parole Board had denied Barton's request for parole. Notice of Rejection (attached as Ex. A).
3. The Parole Board consists of seven members.
4. At Ms. Barton's hearing four members of the Parole Board voted in favor of Barton's request for parole, two members voted against her request for parole, and one member left the hearing before the vote on Ms. Barton's request was taken.

FEB 16 2012

SC ADMIN. LAW COURT

5. The parole statute in effect when Ms. Barton was convicted and incarcerated in 1982 provides that parole is to be granted if a *majority* of the Board members vote for parole. S.C. Code Ann. § 24-21-30(A)(prior to 1995 amendment)(attached as Ex. B).

6. As there were four votes in favor of parole, a *majority*, at the January 18 hearing, Ms. Barton should be paroled, and denying Ms. Barton parole under these circumstances would constitute an *ex post facto* violation. See *Jernigan v. State*, 340 S.C. 256, 260-66, 431 S.E.2d 507, 509-12 (2000).

7. In 1995 the parole statute was amended to provide that a person convicted of a violent offense receives parole if *two-thirds* of the Board members vote for parole. S.C. Code Ann. § 24-21-30(B). If the current version of this statute applies to Ms. Barton, there was a quorum of the Board at the January 18 hearing, and four of the six members present, *two-thirds*, voted for parole and, therefore, Ms. Barton should be paroled. See *James v. S.C. Dep't. of Probation, Parole, and Pardon Servs.*, 377 S.C. 564, 568-69, 660 S.E.2d 288, 291 (2008).

Pursuant to the grounds set forth above and any additional grounds that may be set forth in Barton's forthcoming brief in support of her appeal, Barton respectfully requests that the Administrative Law Court find that Ms. Barton should be paroled, and enter all other appropriate relief to remedy the constitutionally and statutorily deficient procedure and process by which Barton was denied parole.¹

¹ Ms. Barton filed a request with DPPPS asking that she be granted her parole for the reasons set forth herein. Ms. Barton filed this appeal contemporaneously with this request because the January 18 letter from DPPPS indicates that it is a "final" decision, and it is unclear whether Ms. Barton's request to DPPPS would stay the time in which she must file her appeal.

Respectfully submitted,



Travis Dayhuff

travis.dayhuff@nelsonmullins.com

Nelson Mullins Riley and Scarborough LLP

1320 Main Street - 17th Floor (29201)

Post Office Box 11070

Columbia, SC 29211-1070

(803) 799-2000

Attorneys for Appellant

February 16, 2012

Columbia, South Carolina

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

January 18, 2012

Ms. Thalma Barton #00110881
Graham Correctional Institution
4450 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Ms. Barton:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense

Sincerely,

A handwritten signature in cursive script that reads "Heyward A. Hinton".

Heyward A. Hinton
Director of Hearings & Parole Board Support

EXHIBIT

A

1/18/2012

acting through the Chairman, may order. The Board may preserve order at its meetings and punish any disrespect or contempt committed in its presence. The Chairman may direct the members of the Board to meet as three-member panels to hear matters relating to paroles and pardons as often as necessary to carry out the Board's responsibilities. Membership on such panels shall be periodically rotated on a random basis by the Chairman. At the meetings of the panels, any unanimous vote shall be considered the final decision of the Board, and the panel may issue an order of parole with the same force and effect of an order issued by the full Board pursuant to Section 24-21-650. Any vote that is not unanimous shall not be considered as a decision of the Board and the matter shall be referred to the full Board which shall decide it based on a vote of a majority of the membership."

Board to employ executive director

SECTION 6. Section 24-21-210 of the 1976 Code is amended to read:

"Section 24-21-210. The Board shall employ an Executive Director of the Department. The Board shall have the power at any time to remove the Executive Director for inefficiency, improper conduct or for any other just cause or reason after due notice to him of its intention, and an opportunity for the Executive Director to be heard. The Executive Director shall receive such salary as may be provided by law. The Executive Director shall also be paid traveling and other necessary expenses in the performance of his official duties and shall give full time to the work. The Executive Director shall possess academic and professional qualifications commensurate with his duties and responsibilities."

Responsibilities of executive director

SECTION 7. Section 24-21-220 of the 1976 Code is amended to read:

"Section 24-21-220. The Executive Director, together with the Board, shall be vested with the exclusive management and control of the Department and shall be responsible for the management of the Department and for the proper care, treatment, supervision and management of offenders under its control. The Board shall manage and control the Department through the Executive Director selected by it and it shall be the duty of the Executive Director to carry out the

policies of the Board. Director authority to report to the Board's control: employ within his office out his duties and responsibilities, parole supervision, management, research and planning, internal audit. The Board shall have full and complete report of the fiscal affairs of the Department relating thereto. The Executive Director shall submit reports to the Board, including statistical and other activities."

Executive director to

SECTION 8. Section 24-21-230 read:

"Section 24-21-230. Probation officers as clerical assistants as officers shall be required to pass a qualifying examination. The Executive Director shall insure that the requirements are met, no person shall exercise the authority of the Executive Director."

Board may parole

SECTION 9. Section 24-21-240 read:

"Section 24-21-240. The Board may, upon the recommendation of the judge who participated in the sentencing of a prisoner convicted of a crime, parole a prisoner in any jail or upon the expiration of his term."

- (1) Who, if sentenced to a term of years, shall be served at least one third of the term;
- (2) Who, if sentenced to a term of years, shall be served any period in excess of one year;

EXHIBIT

B

Section 24-21-12. The members of the Board shall draw no salaries, but each member of the Board shall be entitled to such per diem as may be authorized by law for boards, commissions and committees, plus actual and necessary expenses incurred pursuant to the discharge of official duties.

Section 24-21-13. It shall be the duty of the Board to oversee, manage and control the Department. The Board shall develop written policies and procedures for the following:

- (a) the supervising of offenders on probation, parole, and furlough;
- (b) the granting of paroles and pardons;
- (c) the operation of community based correctional programs.

Section 24-21-14. The Board shall appoint a Commissioner of Pardons and Paroles, who shall be responsible for scheduling meetings of the Board, assuring that appropriate cases and investigations are prepared for the Board, maintaining the official records of the Board, and such other administrative duties as assigned by the Board relating to Board activities.

The Commissioner shall have academic and professional qualifications commensurate with his duties and responsibilities including a background in the social sciences or criminal justice field. Salary for the Commissioner shall be determined by law.

The Commission shall give a thirty-day written notice of any hearing of the Board considering parole for a prisoner who has been convicted of a crime of violence to the following persons:

- (a) Any victim of the crime who suffered damage to his person as a result thereof or in the event such victim is deceased, to members of his or her immediate family to the best of its ability;
- (b) The solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted;
- (c) The law enforcement agency that was responsible for the arrest of the prisoner concerned."

Board to hold regular meetings

SECTION 5. Section 24-21-30 of the 1976 Code is amended to read:

"Section 24-21-30. The Board shall hold regular meetings, as may be necessary to carry out its duties, but at least four times each year, and as many extra meetings as the Chairman, or the Governor

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Docket No. 12-ALJ-15-0004-AP

Thalma Barton, #110881, ...

Appellant,

v.

South Carolina Department of Probation, Parole and
Pardon Services, ...

Respondent.

BRIEF OF APPELLANT

Travis Dayhuff
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Thalma Barton

FILED

MAR 15 2012

SC ADMIN. LAW COURT

STATEMENT OF THE ISSUES ON APPEAL

1. Did the Parole Board commit an *ex post facto* violation when it retroactively applied the current parole statute to deny Barton parole?
2. Did the Parole Board violate the current parole statute when it denied Barton parole?

STATEMENT OF THE CASE

This is an appeal of a final decision by the South Carolina Department of Probation, Parole, and Pardon Services ("DPPPS") denying Barton parole. In 1982 Barton pled guilty to murder and was incarcerated.

On January 6, 2012, Barton submitted written materials to the Parole Board in support of her request for parole. Rec at 7-76. On January 18, 2012, the Parole Board held a hearing to consider Barton's request for parole. At this hearing Barton's attorney, a psychiatrist, Barton's husband, and Barton made statements in support of Barton's request for parole. Audio Recording (Ex. A).

After Barton's presentation in support of her request for parole, the Parole Board deliberated and voted. The Parole Board consists of seven members. S.C. Code Ann. § 24-21-10(B). Six Parole Board members deliberated and voted on Barton's parole request. Four members voted for parole, and two members voted against parole.

Shortly after the hearing, Barton was informed that the Parole Board had denied her request for parole. Several days later, Ms. Barton received a letter dated January 18, 2012 from DPPPS providing Barton written notice that the Parole Board had denied her request for parole. Notice, Rec. at 5.

On February 16, Barton filed a Notice of Appeal asserting that the decision to deny Barton parole, when four of the six Parole Board members voted for parole, violates the *ex post facto* clause and S.C. Code Ann. § 24-21-30(B).¹

STANDARD OF REVIEW

The Administrative Law Court may reverse, modify, or remand the decision of the Parole Board if the rights of Barton have been prejudiced because the Parole Board's findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. § 1-23-380(5). The process used by the Parole Board to make parole decisions is subject to judicial review to ensure it complies with the law and does not violate the inmate's state-created liberty interest. *Cooper v. S.C. Dep't. of Probation, Parole, and Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 111-12 (2008).

ARGUMENT

I. DENYING BARTON PAROLE IS AN EX POST FACTO VIOLATION

The Constitutions of the United States and South Carolina prohibit *ex post facto* laws. U.S. Const. art. I, § 10; S.C. Const. art. I, § 4. *Ex post facto* violations occur when a change in the law retroactively increases punishment for a crime. *Jernigan v. State*, 340 S.C. 256,

¹ Because it was unclear whether the January 18 notice from DPPPS reflected the agency's final decision in this matter, Barton also filed a request with DPPPS asking that she be paroled. Request to DPPPS, Rec. at 1-5. Counsel for DPPPS has since confirmed that the January 18 letter is DPPPS's final agency decision in this matter. Email from DPPPS counsel, Rec. at 6.

261, 531 S.E.2d 507, 509 (2000). In other words, retroactive changes in the law that increase the "quantum of punishment" are unconstitutional. *Id.* at 265 & 512 (quoting *Lynce v. Mathis*, 519 U.S. 433, 444-45 (1997)).

A retroactive change in the law increases punishment if it "produces a sufficient risk of increasing the measure of punishment attached to the covered crimes." *Id.* at 261 & 509 (quoting *California Dep't of Corrections v. Morales*, 514 U.S. 499, 509 (1995)). On the other hand, there is no *ex post facto* violation when a retroactive change in the law "produces only a 'speculative and attenuated possibility' of increasing an inmate's punishment. . . ." *Id.* (quoting *Morales*, 514 U.S. at 509). The South Carolina Supreme Court has recognized that a change to the parole statute, applied retroactively, can result in an *ex post facto* violation. *Id.* at 264-65 & 512 (holding that change in parole statute that limited inmate to biannual, rather than annual, parole hearing was an *ex post facto* violation because change created the risk that the inmate's incarceration would be extended).

When Barton pled guilty to murder and was incarcerated in 1982, the parole statute provided that an inmate would receive parole if a *majority* of the Parole Board members at the hearing vote for parole. S.C. Code Ann. § 24-21-30 (Ex. B); *see also* S.C. Code Ann. §§ 24-21-645 & 650 (Ex. C). In 1995, Act 83 became law which, among other things, made changes to the parole statute. 1995 S.C. Act 83 (Ex. D). Act 83 provided that inmates convicted of a violent offense, that was not a "no parole offense," would receive parole if *two-thirds* of the Parole Board members at the hearing voted for parole. *Id.* at § 40 (codified at S.C. Code Ann. § 24-21-30(B)).

At her January 2012 hearing, four of the six Parole Board members at the hearing voted for parole. Therefore, a majority of the Parole Board members voted for parole.

Instead of paroling Barton when she received the majority vote required for parole under the old statute, the Parole Board retroactively applied the current parole statute, and its two-thirds vote requirement, to deny Barton parole. Upon information and belief, DPPPS and the Parole Board take the position that the two-thirds vote requirement in the current parole statute means an inmate must receive five votes to obtain parole, regardless of how many members are present at the hearing. Because Barton received four, not five, votes, DPPPS determined she was not entitled to be paroled under the current statute.

The retroactive application of the new parole statute, and DPPPS's five-vote interpretation, runs afoul of the *ex post facto* clause because it "produces a sufficient risk of increasing the measure of punishment" for Barton's crime. *Jernigan*, 340 S.C. at 264-65, 531 S.E.2d at 512. In fact, applying the current statute and this interpretation does much more than subject Barton to a risk of increased punishment. The retroactive application of this law undeniably produces an *actual increase* in the punishment for Barton. Therefore, applying the current parole statute to Barton is an *ex post facto* violation that should be reversed.

II. DENYING BARTON PAROLE VIOLATES S.C. CODE ANN. § 24-21-30(B)

The current parole statute, in pertinent part, provides as follows:

(B) The board may grant parole to an offender who commits a violent crime as defined in Section 16-1-60 which is not included as a "no parole offense" as defined in Section 24-13-100 on or after the effective date of this section by a two-thirds majority vote of the full board. The board may grant parole to an offender convicted of an offense which is not a violent crime as defined in Section 16-1-60 or a "no parole offense" as defined in Section 24-13-100 by a unanimous vote of a three-member panel or by a majority vote of the full board.

S.C. Code Ann. § 24-21-30(B)(emphasis added).

A. By its terms, the current parole statute does not apply to Barton

Section 30(B) of the current parole statute provides that an inmate who commits a violent crime "*on or after the effective date of this section*" needs a two-thirds majority vote to achieve parole. S.C. Code Ann. § 24-21-30(B)(emphasis added). Section 30(B), that became part of the parole statute through Act 83, became effective on January 1, 1996. 1995 S.C. Act 83 at §§ 40 & 62 (Ex. D).

Barton pled guilty to a violent crime in 1982, before the effective date of section 30(B). Therefore, pursuant to the statute's express language, section 30(B) and its two-thirds vote requirement do not apply to Barton.² As section 30(B) does not apply to Barton because her crime was committed before the effective date of the law, the previous parole statute with its majority vote requirement applies to Barton.

B. The appropriate application of the current parole statute results in Barton receiving parole

Even if the current parole statute applies to Barton, which is denied, the proper application of the current statute results in Barton receiving parole. The language of the current parole statute, set forth above, imposes two requirements on the Parole Board's consideration of parole requests for inmates who have committed a violent crime. The "full board," rather than a three-member panel, must conduct the hearing, and a two-thirds vote, rather than a majority vote, is required to grant parole. S.C. Code. Ann § 24-21-30(B).

To conduct hearings and decide upon requests for parole at least a majority of the Parole Board, four of the seven members, must be present. *James v. S.C. Dep't. of Probation, Parole, and Pardon Servs.*, 377 S.C. 564, 568-69, 660 S.E.2d 288, 291 (2008) (holding that a

² Providing further confirmation that section 30(B) does not apply to Barton, both Act 83's savings clause and time effective provision provide that this law applies *prospectively* to crimes and offenses committed after the date of Act 83. *Id.* at §§ 57 & 62.

quorum, a majority of the Parole Board membership, constitutes a Board with authority to hear and decide parole requests).

At Barton's January 18 hearing, six of the seven members of the Parole Board were present, and thus a Board with the authority to act on Barton's parole request was convened. Four of the six members voted for parole. Therefore, two-thirds of the votes cast at the hearing were in favor of parole, and even if the current statute applies to Barton, she should have been paroled, and the failure to grant her parole violates the current parole statute.

CONCLUSION

For the reasons set forth above, Barton respectfully requests that the Administrative Law Court: (1) reverse the final decision of the DPPPS; (2) require DPPPS and the Parole Board to grant Barton parole; and (3) provide any further relief that is just and proper.

Respectfully submitted,


Travis Dayhuff
Nelson Mullins Riley and Scarborough LLP
1320 Main Street - 17th Floor (29201)
Post Office Box 11070
Columbia, SC 29211-1070
(803) 799-2000

Attorneys for Appellant

March 15, 2012

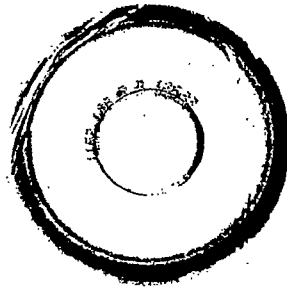
Columbia, South Carolina

EXHIBIT A

Re-order from Bushnell Company
(715) 842-9520
www.BushnellCo.com



Thalma Barton, #110881, Appellant v.
SC Department of Probation,
Parole and Pardon Services, Respondent
Case No. 12-ALJ-15-0004-AP



Parole Hearing of
Thalma Theresa Barton, #110881
1-18-2012

EXHIBIT B

1981
Cumulative Supplement
To
**CODE OF LAWS OF
SOUTH CAROLINA 1976**
Annotated

Containing Permanent General Statutes,
Administrative Regulations, and Court Rules
Enacted or Approved During the 1976 through
1981 Sessions of the General Assembly

Prepared under the supervision and
direction of the Code Commissioner and the
Legislative Council of the General Assembly
of South Carolina

VOLUME 9

NOTICE

This pocket supplement is not official. At the direction of the Legislative Council, the Acts as enacted have been edited in various particulars to conform them to the style and arrangement of the Code of 1976 and to make them more readily usable by the practitioner for ordinary work. For further details see the Foreword in the Pocket Supplement to Volume 1.



THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Rochester, New York 14694

THIS VOLUME CONTAINS

Statutes:

Full text of the general laws enacted during 1976-1981 by the General Assembly which are amendatory of or codified in Titles 21 through 25.

Annotations:

The sources of the annotations showing constructions of statutes referred to in this volume are:

Southeastern Reporter down through 281 SE2d 502.
United States Supreme Court Reports, Lawyers' Edition down through 69 L Ed 1006.
Federal Reporter down through 657 F2d 1251.
Federal Supplement down through 520 F Supp 1231.
Federal Rules Decisions down through 90 FRD 712.
American Law Reports down through 7 ALR4th.
ALR Federal down through 52 ALR Fed.

COPYRIGHT © 1978, 1979, 1980

BY

THE STATE OF SOUTH CAROLINA

COPYRIGHT © 1982

BY

THE STATE OF SOUTH CAROLINA

Library of Congress Catalog Card Number 76-40676

SC 1981 Supp.

(a) Any victim of the crime who suffered damage to his person as a result thereof or in the event such victim is deceased, or members of his or her immediate family; to the best of its ability;

(b) The solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted;

(c) The law enforcement agency that was responsible for the arrest of the prisoner concerned.

HISTORY: 1981 Act No. 100 § 4, eff June 15, 1981.

§ 24-21-30. Meetings; parole and pardon panels.

The Board shall hold regular meetings, as may be necessary to carry out its duties, but at least four times each year, and as many extra meetings as the Chairman, or the Governor acting through the Chairman, may order. The Board may preserve order at its meetings and punish any disrespect or contempt committed in its presence. The Chairman may direct the members of the Board to meet as three-member panels to hear matters relating to paroles and pardons as often as necessary to carry out the Board's responsibilities. Membership on such panels shall be periodically rotated on a random basis by the Chairman. At the meetings of the panels, any unanimous vote shall be considered the final decision of the Board, and the panel may issue an order of parole pursuant to § 24-21-650. Any vote that is not unanimous shall not be considered as a decision of the Board and the matter shall be referred to the full Board which shall decide it based on a vote of a majority of the membership.

HISTORY: 1981 Act No. 100 § 5, eff June 15, 1981.

Effect of Amendments—

The 1981 amendment substantially rewrote this section.

§ 24-21-50. Hearings, arguments, and appearances by counsel or individuals.

ALR and L Ed Annotations—

Propriety of revocation of probation for subsequent criminal conviction which is subject to appeal. 76 ALR3d 588.

§ 24-21-80. Probationers and parolees to pay fee; delinquency; exemption.

Every person granted parole by the Probation, Parole and Pardon Board (Board), and every adult placed on probation by a court of competent jurisdiction shall be required to pay one hundred twenty dollars per year toward offsetting the cost of his

superv
due
each a
period
probati
paymen
tender
is ser
parolee
probati
ment o
the ter
paymen
tioner.
reduce
the full
HISTOR

Editor's
1980
General
Probatio
addition
to take t
fiscal ya

Cross re
As to
for state
As to
As to

Research
59 Am
67A C

§ 24-21-80.

of
Each
money
shall g
ment.
shall be
HISTOR

Editor's
1980
General
Probatio
addition

EXHIBIT C

aspects of this section. The criteria shall be made available to all prisoners at the time of their incarceration and the general public. The paroled prisoner shall, as often as may be required, render a written report to the Board giving such information as may be required by the Board which shall be confirmed by the person in whose employment the prisoner may be at the time.

HISTORY: 1981 Act No. 100 § 12, eff June 15, 1981.

Effect of Amendments—

The 1981 amendment added the second, third and fourth sentences.

ALR and L Ed Annotations—

Immunity of public officer from liability for injuries caused by negligently released individual. 5 ALR4th 773.

Governmental tort liability for injuries caused by negligently released individual. 6 ALR4th 1155.

§ 24-21-645. Order authorizing parole; provisional order

The Board may issue an order authorizing the parole which shall be signed either by a majority of its members or by all three members meeting as a parole panel on the case, ninety days prior to the effective date of the parole. A provisional parole order shall include the terms and conditions, if any, to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole. Upon satisfactory completion of the provisional period, the Executive Director or one lawfully acting for him, shall issue an order, which, if accepted by the prisoner, shall provide for his release from custody.

HISTORY: 1981 Act No. 100 § 13, eff June 15, 1981.

§ 24-21-650. Order of parole.

The Board shall issue an order authorizing the parole which shall be signed by at least a majority of its members, with terms and conditions, if any. Thereupon the supervisor of parole, or one lawfully acting for him, shall issue a parole order, which, if accepted by the prisoner, shall provide for his release from custody.

HISTORY: 1977 Act No. 110.

Effect of Amendments—

The 1977 amendment substituted the words "authorizing the parole which shall be signed by at least a majority of its members" for the words "signed by at least two thirds of its members authorizing the parole" in the first sentence of this section.

Cross references—

As to payment of fee as condition of parole, see § 24-21-80.

As to three-member panels issuing valid orders of parole upon unanimous votes, see § 24-21-30.

EXHIBIT D

Westlaw

SC LEGIS 83 (1995)
1995 South Carolina Laws Act 83 (H.B. 3096)

Page 1

1995 South Carolina Laws Act 83 (H.B. 3096)

SOUTH CAROLINA 1995 SESSION LAWS
REGULAR SESSION
0643

Additions and deletions are not identified in this document.

Act 83
H.B. No. 3096
CRIMES—SENTENCING, PROBATION AND PAROLE—GENERAL AMENDMENTS

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-13-100 SO AS TO DEFINE "NO PAROLE OFFENSE"; BY ADDING SECTION 24-13-125 SO AS TO PROVIDE THE CONDITIONS A PRISONER MUST MEET TO BECOME ELIGIBLE FOR WORK RELEASE; BY ADDING SECTION 24-13-150 SO AS TO PROVIDE THE CONDITIONS A PRISONER MUST MEET TO BECOME ELIGIBLE FOR EARLY RELEASE, DISCHARGE, OR COMMUNITY SUPERVISION; BY ADDING SECTION 24-13-175 SO AS TO PROVIDE THAT SENTENCES IMPOSED AND TIME SERVED MUST BE COMPUTED BASED UPON A THREE HUNDRED AND SIXTY-FIVE DAY YEAR; BY ADDING SECTION 24-21-560 SO AS TO PROVIDE THAT CERTAIN PRISONERS MUST COMPLETE A COMMUNITY SUPERVISION PROGRAM OPERATED BY THE DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES BEFORE THEIR RELEASE FROM THE CRIMINAL JUSTICE SYSTEM, AND TO REQUIRE CERTAIN INDIVIDUALS TO BE NOTIFIED BY THE DEPARTMENT WHEN A PRISONER IS RELEASED TO COMMUNITY SUPERVISION; TO AMEND SECTIONS 1-30-10 AND 1-30-85, AS AMENDED, RELATING TO DEPARTMENTS RESTRUCTURED WITHIN THE EXECUTIVE BRANCH OF STATE GOVERNMENT, SO AS TO SUBSTITUTE DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES FOR DEPARTMENT OF PROBATION, PARDON AND PAROLE; PAYMENT FROM THE VICTIM COMPENSATION FUND, SO AS TO SUBSTITUTE "DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES" FOR "DEPARTMENT OF PAROLE AND COMMUNITY SERVICES", TO PERMIT PAYMENT OF DEBT TO THE STATE A CONDITION OF COMMUNITY SUPERVISION, TO SUBSTITUTE "STATE OFFICE OF VICTIM ASSISTANCE" FOR "VICTIM'S COMPENSATION FUND", AND TO REVISE THE AGENCIES WHOSE VICTIM RESTITUTION PROGRAMS ARE COORDINATED BY THE STATE OFFICE OF VICTIM ASSISTANCE; TO AMEND SECTION 16-3-1530, AS AMENDED, RELATING TO THE RIGHTS OF VICTIMS AND WITNESSES, SO AS TO ALLOW THE DEPARTMENT OF CORRECTIONS AND THE DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES TO DISCLOSE BETWEEN THE TWO DEPARTMENTS INFORMATION PROVIDED TO VICTIMS AND WITNESSES; AND TO ELIMINATE RESTITUTION AS A CONDITION OF PAROLE; TO AMEND SECTION 15-3-1550, AS AMENDED, RELATING TO THE VICTIM IMPACT STATEMENT, SO AS TO REQUIRE THE SOLICITOR TO PROVIDE A COPY OF THE IMPACT STATEMENT TO THE DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES UNDER CERTAIN CIRCUMSTANCES, AND TO SUBSTITUTE "PROBATION, PAROLE, AND PARDON SERVICES BOARD" FOR "PAROLE AND COMMUNITY CORRECTIONS BOARD"; TO AMEND SECTION 16-11-311, RELATING TO BURGLARY IN THE FIRST DEGREE, SO AS TO DEFINE "LIFE" AND TO ELIMINATE PAROLE FOR THE COMMISSION OF THE CRIME; TO AMEND SECTION 17-25-45, RELATING TO A SOLICITOR'S DISCRETION TO INVOKE A LIFE SENTENCE UNDER

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

CERTAIN CIRCUMSTANCES, SO AS TO PROVIDE A PERSON MUST BE SENTENCED TO LIFE IMPRISONMENT UPON CONVICTION OF CERTAIN CRIMES OR A COMBINATION OF CERTAIN CRIMES, TO PROVIDE DEFINITIONS OF CERTAIN OFFENSES WHOSE PUNISHMENT IS LIFE IMPRISONMENT, TO DEFINE "CONVICTION", TO DENY EARLY RELEASE TO CERTAIN PRISONERS, TO PROVIDE CONDITIONS FOR PAROLE, TO PROVIDE A DEFINITION FOR "PRIOR CONVICTION", TO PROVIDE THAT CERTAIN PROVISIONS IN THIS SECTION ARE MANDATORY, AND TO REQUIRE THE SOLICITOR TO GIVE NOTICE OF HIS DECISION TO INVOKE SENTENCING UNDER THIS PROVISION BEFORE TRIAL; TO AMEND SECTION 20-7-2205, AS AMENDED, RELATING TO CERTAIN JUVENILE OFFENDERS WHO MAY NOT BE COMMITTED TO CERTAIN CORRECTIONAL INSTITUTIONS, SO AS TO PERMIT CERTAIN JUVENILES TO BE PLACED IN THESE FACILITIES UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE THAT A JUVENILE COMMITTED UNDER THIS PROVISION MAY NOT BE CONFINED WITH CERTAIN JUVENILES; TO AMEND SECTION 20-7-2170, AS AMENDED, RELATING TO COMMITMENT OF A CHILD TO THE DEPARTMENT OF JUVENILE JUSTICE AND HIS TRANSFER TO THE DEPARTMENT OF CORRECTIONS UNDER CERTAIN CIRCUMSTANCES, SO AS TO REVISE THE CIRCUMSTANCES UPON WHICH A JUVENILE MUST BE TRANSFERRED TO THE DEPARTMENT OF CORRECTIONS; TO AMEND SECTION 22-3-550, AS AMENDED, RELATING TO MAGISTRATES' JURISDICTION OVER MINOR OFFENSES, SO AS TO REVISE MAGISTRATES' AUTHORITY AND CLARIFY THEIR DUTIES; TO AMEND SECTION 22-5-910, RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS, SO AS TO REVISE THE OFFENSES TO WHICH THE SECTION DOES NOT APPLY; TO AMEND SECTION 24-3-20, AS AMENDED, RELATING TO CUSTODY, CONFINEMENT, AND PROGRAMS FOR CONVICTED PERSONS, SO AS TO REVISE OBSOLETE REFERENCES, CLARIFY A COURT'S SENTENCING AUTHORITY, AND PROVIDE FOR WORK RELEASE; TO AMEND SECTION 24-3-410, AS AMENDED, RELATING TO THE PROHIBITION ON THE SALE OF PRODUCTS PRODUCED BY INMATES, SO AS TO REVISE THE PRODUCTS EXEMPTED FROM THE SECTION; TO AMEND SECTION 24-3-530, AS AMENDED, RELATING TO CAPITAL PUNISHMENT, SO AS TO PROVIDE FOR LETHAL INJECTION; TO AMEND SECTION 24-13-210, AS AMENDED, RELATING TO CREDITS FOR GOOD BEHAVIOR, SO AS TO PROVIDE FOR CREDITS FOR PERSONS CONVICTED OF "NO PAROLE OFFENSES" AND FOR PERSONS NOT ENTITLED TO CREDITS AND REVISE PROVISIONS FOR FORFEITURE OF CREDITS; TO AMEND SECTION 24-13-220, RELATING TO TIME OFF FOR GOOD BEHAVIOR FOR COMMUTED OR SUSPENDED SENTENCES, SO AS TO PROVIDE CREDITS FOR SUSPENDED SENTENCES; TO AMEND SECTION 24-13-230, AS AMENDED, RELATING TO REDUCTION OF SENTENCES FOR PROGRAM PARTICIPATION, SO AS TO PROVIDE REDUCTIONS FOR PERSONS CONVICTED OF "NO PAROLE OFFENSES" AND PROVIDE FOR PERSONS NOT ENTITLED TO REDUCTIONS; TO AMEND SECTION 24-13-610, RELATING TO EXTENDED WORK RELEASE PROGRAMS, SO AS TO PROVIDE FOR THE SECTION NOT TO APPLY TO PERSONS CONVICTED OF "NO PAROLE OFFENSES"; TO AMEND SECTION 24-13-650, AS AMENDED, RELATING TO THE PROHIBITION AGAINST THE RELEASE OF AN OFFENDER INTO THE COMMUNITY IN WHICH HE COMMITTED THE CRIME, SO AS TO CLARIFY THE REFERENCE TO VIOLENT OFFENSES AND INCLUDE PERSONS CONVICTED OF "NO PAROLE OFFENSES"; TO AMEND SECTION 24-13-710, AS AMENDED, RELATING TO IMPLEMENTATION OF THE SUPERVISED FURLOUGH PROGRAM, SO AS TO EXCLUDE FROM THE PROGRAM INMATES WHO HAVE COMMITTED A "NO PAROLE OFFENSE" AS DEFINED IN SECTION 24-13-100; TO AMEND SECTION 24-13-720, AS AMENDED, RELATING TO INMATES WHO MAY BE PLACED WITH THE SUPERVISED FURLOUGH PROGRAM, SO AS TO ALLOW INMATES WHO HAVE NOT BEEN CONVICTED OF A "NO PAROLE OFFENSE" TO BE PLACED IN THE PROGRAM; TO AMEND SECTION 24-13-1310, AS AMENDED, RELATING TO THE SHOCK INCARCERATION PROGRAM AND DEFINITIONS, SO AS TO DELETE CERTAIN LANGUAGE AND PROVISIONS, AND PROVIDE, AMONG OTHER THINGS, THAT "SHOCK INCARCERATION PROGRAM" MEANS A PRO-

GRAM PURSUANT TO WHICH ELIGIBLE INMATES ARE ORDERED BY THE COURT TO PARTICIPATE; TO AMEND SECTION 24-13-1320, AS AMENDED, RELATING TO THE SHOCK INCARCERATION PROGRAM, REGULATIONS, SELECTION COMMITTEE, AND REPORTS, SO AS TO DELETE THE PROVISION THAT, FOR EACH RECEPTION CENTER, THE DIRECTOR SHALL APPOINT OR CAUSE TO BE APPOINTED A SHOCK INCARCERATION SELECTION COMMITTEE; TO AMEND SECTION 24-13-1330, AS AMENDED, RELATING TO THE APPLICATION OF AN INMATE TO PARTICIPATE IN THE SHOCK INCARCERATION PROGRAM, SO AS TO DELETE CERTAIN PROVISIONS, AND PROVIDE, AMONG OTHER THINGS; THAT A COURT MAY ORDER THAT AN "ELIGIBLE INMATE" BE SENTENCED TO THE PROGRAM; TO AMEND SECTION 24-13-1590, AS AMENDED, RELATING TO THE HOME DETENTION ACT AND THE INAPPLICABILITY OF THE ACT TO CERTAIN CONTROLLED SUBSTANCE OFFENDERS, SO AS TO PROVIDE THAT NOTHING IN THE ACT DIMINISHES THE REGULATION OR IMPOSITION OF CONDITIONS FOR COMMUNITY SUPERVISION; TO AMEND SECTION 24-19-160, AS AMENDED, RELATING TO THE CORRECTION AND TREATMENT OF YOUTHFUL OFFENDERS, THE POWERS OF THE COURTS, AND THE JURISDICTION OF THE DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES, SO AS TO, AMONG OTHER THINGS, REFERENCE "COMMUNITY SUPERVISION"; TO AMEND SECTION 24-21-10, AS AMENDED, RELATING TO THE STRUCTURE OF THE DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES, SO AS TO MAKE CERTAIN LANGUAGE AND STYLE CHANGES; TO AMEND SECTION 24-21-13, AS AMENDED, RELATING TO THE OVERSIGHT OF THE DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES BY THE DEPARTMENT'S DIRECTOR, SO AS TO PROVIDE, AMONG OTHER THINGS, THAT NO INMATE OR FUTURE INMATE SHALL HAVE A "LIBERTY INTEREST" OR AN "EXPECTANCY OF RELEASE" WHILE IN A COMMUNITY SUPERVISION PROGRAM ADMINISTERED BY THE DEPARTMENT; TO AMEND SECTION 24-21-30, RELATING TO MEETINGS OF THE BOARD OF PROBATION, PAROLE, AND PARDON SERVICES AND PAROLE AND PARDON PANELS, SO AS TO, AMONG OTHER THINGS, PROVIDE THAT A PERSON WHO COMMITS A "NO PAROLE OFFENSE" AS DEFINED IN SECTION 24-13-100 ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION IS NOT ELIGIBLE FOR PAROLE CONSIDERATION BUT MUST COMPLETE A COMMUNITY SUPERVISION PROGRAM AS SET FORTH IN SECTION 24-21-560 BEFORE DISCHARGE FROM THE SENTENCE IMPOSED BY THE COURT; TO AMEND SECTION 24-21-50, RELATING TO HEARINGS BEFORE THE BOARD OF PROBATION, PAROLE, AND PARDON SERVICE, SO AS NOT TO ALLOW AN INMATE THE RIGHT OF CONFRONTATION DURING THESE HEARINGS; TO AMEND SECTION 24-21-60, AS AMENDED, RELATING TO AGENCIES COOPERATING WITH THE BOARD OF PROBATION, PAROLE, AND PARDON SERVICES, SO AS TO UPDATE A REFERENCE; TO AMEND SECTION 24-21-80, AS AMENDED, RELATING TO SUPERVISION FEES, SO AS TO INCLUDE COMMUNITY SUPERVISION IN THE PROGRAMS COVERED BY SUPERVISION FEES AND REVISE THE CONDITIONS FOR AN EXEMPTION FROM SUCH FEES; TO AMEND SECTION 24-21-220, AS AMENDED, RELATING TO THE DUTIES OF THE DEPARTMENTAL DIRECTOR SO AS TO INCLUDE COMMUNITY SUPERVISION AMONG HIS DUTIES; TO AMEND SECTION 24-21-230, AS AMENDED, RELATING TO AGENTS AND ASSISTANTS, SO AS TO MAKE GRAMMATICAL CHANGES; TO AMEND SECTION 24-21-280, AS AMENDED, RELATING TO THE DUTIES OF PROBATION AGENTS, SO AS TO INCLUDE COMMUNITY SUPERVISION AMONG THEIR DUTIES; TO AMEND SECTION 24-21-300, RELATING TO VIOLATION CITATIONS OF PROBATION AGENTS, SO AS TO EXTEND CITATIONS TO COMMUNITY SUPERVISION, UPDATE REFERENCES, AND PROVIDE PROOF OF SERVICE; TO AMEND SECTION 24-21-910, RELATING TO DUTIES OF THE BOARD WITH RESPECT TO THE DEATH SENTENCE, SO AS TO MAKE GRAMMATICAL CHANGES; TO AMEND SECTION 24-21-950, RELATING TO PARDON ELIGIBILITY GUIDELINES, SO AS TO ALLOW A CRIME VICTIM OR AN OFFENDER'S FAMILY MEMBERS TO PETITION FOR A PERSON WHO HAS COMPLETED SUPERVISION OR WHO HAS BEEN DISCHARGED FROM A SEN-

TENCE AND ALLOW REQUESTS FROM A PERSON DISCHARGED FROM A SENTENCE WITHOUT SUPERVISION ANY TIME AFTER DISCHARGE; TO AMEND SECTION 24-23-20, RELATING TO THE CASE CLASSIFICATION SYSTEM, SO AS TO MAKE GRAMMATICAL CHANGES; TO AMEND SECTION 24-23-30, RELATING TO THE COMMUNITY CORRECTIONS PLAN, SO AS TO FURTHER PROVIDE FOR WHAT THE PLAN MUST INCLUDE; TO AMEND SECTION 24-23-40, AS AMENDED, RELATING TO THE COMMUNITY CORRECTIONS PLAN, SO AS TO FURTHER PROVIDE WHAT THE PLAN MUST PROVIDE FOR; TO AMEND SECTION 24-23-130, RELATING TO TERMINATING A PROBATIONER FROM SUPERVISION, SO AS TO REVISE THE CONDITIONS FOR TERMINATION AND TO WHOM THE SECTION APPLIES; TO AMEND SECTION 24-23-220, AS AMENDED, RELATING TO PAYMENTS OF ASSESSMENTS IMPOSED AS A CONDITION OF SUPERVISION UPON RELEASE FROM PRISON, SO AS TO FURTHER PROVIDE FOR THE MANNER IN WHICH SUCH PAYMENTS MUST BE DEPOSITED; TO AMEND SECTION 44-53-445, AS AMENDED, RELATING TO DISTRIBUTION OF CONTROLLED SUBSTANCES WITH PROXIMITY TO A SCHOOL, SO AS TO MAKE THIS A SEPARATE CRIMINAL OFFENSE; TO ADD SECTION 54-7-815 SO AS TO MAKE IT UNLAWFUL TO EXCAVATE OR SALVAGE CERTAIN SUNKEN WARSHIPS WHERE IT IS BELIEVED HUMAN REMAINS ARE CONTAINED AND TO PROVIDE PENALTIES FOR VIOLATION; TO AMEND SECTION 16-25-70, AS AMENDED, RELATING TO WARRANTLESS ARRESTS, SO AS TO FURTHER PROVIDE FOR THESE ARRESTS, TO PROVIDE FOR THE MANNER IN WHICH A LAW ENFORCEMENT OFFICER SHALL EVALUATE AND MAKE ARRESTS INVOLVING COMPLAINTS OF DOMESTIC OR FAMILY VIOLENCE, AND TO PROVIDE FOR CERTAIN IMMUNITY FROM LIABILITY FOR LAW ENFORCEMENT OFFICERS ACTING UNDER THIS SECTION; TO CREATE A COMMITTEE TO STUDY MANDATORY MINIMUM SENTENCES, ALTERNATIVE SENTENCES, AND ANTI-RECIDIVISM METHODS FOR CERTAIN NONVIOLENT OFFENDERS; AND TO REPEAL SECTIONS 16-3-27 RELATING TO THE EXECUTION OF PREGNANT FEMALES UNDER CERTAIN CONDITIONS, 24-1-200 RELATING TO INQUIRIES INTO SENTENCES, 24-3-10 RELATING TO THE PENITENTIARY AT COLUMBIA BEING THE GENERAL PRISON OF THE STATE, 24-13-370 RELATING TO PREMATURE RELEASE OF PRISONERS, AND 24-13-1340 RELATING TO COURT-ORDERED EVALUATIONS OF DEFENDANTS FOR CERTAIN PURPOSES.

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

No parole offenses

SECTION 1. The 1976 Code is amended by adding:

<< SC ST § 24-13-100 >>

"Section 24-13-100. For purposes of definition under South Carolina law, a 'no parole offense' means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more."

Work release

SECTION 2. The 1976 Code is amended by adding:

<< SC ST § 24-13-125 >>

"Section 24-13-125. (A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, a prisoner convicted of a 'no parole offense', as defined in Section 24-13-100, and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20, is not eligible for work release until the prisoner has

served not less than eighty percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. Nothing in this section may be construed to allow a prisoner convicted of murder or a prisoner prohibited from participating in work release by another provision of law to be eligible for work release.

(B) If a prisoner confined in a facility of the department commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections. If a prisoner confined in a local correctional facility pursuant to a designated facility agreement commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the local official having charge of the prisoner. The decision to withhold credits is solely the responsibility of officials named in this subsection."

Early release, discharge, and community supervision

SECTION 3. The 1976 Code is amended by adding:

<< SC ST § 24-13-150 >>

"Section 24-13-150. (A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, a prisoner convicted of a 'no parole offense' as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the prisoner has served at least eighty-five percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. Nothing in this section may be construed to allow a prisoner convicted of murder or a prisoner prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

(B) If a prisoner confined in a facility of the department commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections. If a prisoner confined in a local correctional facility pursuant to a designated facility agreement commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the local official having charge of the prisoner. The decision to withhold credits is solely the responsibility of officials named in this subsection."

Calculation of sentence imposed and time served

SECTION 4. The 1976 Code is amended by adding:

<< SC ST § 24-13-175 >>

"Section 24-13-175. Notwithstanding any other provision of law, sentences imposed and time served must be computed based upon a three hundred and sixty-five day year."

Community supervision

SECTION 5. The 1976 Code is amended by adding:

<< SC ST § 24-21-560 >>

"Section 24-21-560. (A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, any sentence for a 'no parole offense' as defined in Section 24-13-100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole, and Pardon Services. No prisoner who is serving a sentence for a 'no parole offense' is eligible to participate in a community supervision program until he has served the minimum period of incarceration as set forth in Section 24-13-150. Nothing in this section may be construed to allow a prisoner convicted of murder or a prisoner prohibited from early release, discharge, or work release by any other provision of law to be eligible for early release, discharge, or work release.

(B) A community supervision program operated by the Department of Probation, Parole, and Pardon Services must last no more than two continuous years. The period of time a prisoner is required to participate in a community supervision program and the individual terms and conditions of a prisoner's participation shall be at the discretion of the department based upon guidelines developed by the director. A prisoner participating in a community supervision program must be supervised by a probation agent of the department. The department must determine when a prisoner completes a community supervision program, violates a term of community supervision, fails to participate in a program satisfactorily, or whether a prisoner should appear before the court for revocation of the community supervision program.

(C) If the department determines that a prisoner has violated a term of the community supervision program and the community supervision should be revoked, a probation agent must initiate a proceeding in General Sessions Court. The proceeding must be initiated pursuant to a warrant or a citation issued by a probation agent setting forth the violations of the community supervision program. The court shall determine whether:

- (1) the terms of the community supervision program are fair and reasonable;
- (2) the prisoner has complied with the terms of the community supervision program;
- (3) the prisoner should continue in the community supervision program under the current terms;
- (4) the prisoner should continue in the community supervision program under other terms and conditions as the court considers appropriate;
- (5) the prisoner has willfully violated a term of the community supervision program.

If the court determines that a prisoner has willfully violated a term or condition of the community supervision program, the court may impose any other terms or conditions considered appropriate and may continue the prisoner on community supervision, or the court may revoke the prisoner's community supervision and impose a sentence of up to one year for violation of the community supervision program. A prisoner who is incarcerated for revocation of the community supervision program is not eligible to earn any type of credits which would reduce the sentence for violation of the community supervision program.

(D) If a prisoner's community supervision is revoked by the court and the court imposes a period of incarceration for the revocation, the prisoner also must complete a community supervision program of up to two years as determined by the department pursuant to subsection (B) when he is released from incarceration.

A prisoner who is sentenced for successive revocations of the community supervision program may be required to serve terms of incarceration for successive revocations, as provided in Section 24-21-560(C), and may be required to serve additional periods of community supervision for successive revocations, as provided in Section 24-21-560(D). The maximum aggregate amount of time the prisoner may be required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed for the original 'no parole offense'. The original term of incarceration does not include any portion of a suspended sentence.

If a prisoner's community supervision is revoked due to a conviction for another offense, the prisoner must complete a community supervision program of up to two continuous years as determined by the department after the prisoner has completed the service of the sentence for the community supervision revocation and any other term of imprisonment which may have been imposed for the criminal offense, except when the subsequent sentence is death or life imprisonment.

(E) A prisoner who successfully completes a community supervision program pursuant to this section has satisfied his sentence and must be discharged from his sentence.

(F) The Department of Corrections must notify the Department of Probation, Parole, and Pardon Services of the projected release date of any inmate serving a sentence for a 'no parole offense' one hundred eighty days in advance of his release to community supervision. For an offender sentenced to one hundred eighty days or less, the Department of Corrections immediately must notify the Department of Probation, Parole, and Pardon Services.

(G) Victims registered pursuant to Section 16-3-1530(c) and the sheriff's office in the county where a prisoner sentenced for a 'no parole offense' is to be released must be notified by the Department of Probation, Parole, and Pardon Services when the prisoner is released to a community supervision program."

Name change

SECTION 6. Section 1-30-10(A)15 of the 1976 Code, as added by Act 181 of 1993, is amended to read:

<< SC ST § 1-30-10 >>

"15. Department of Probation, Parole, and Pardon Services".

Name change

SECTION 7. Section 1-30-10(F)(2)(iii) of the 1976 Code, as added by Act 181 of 1993, is amended to read:

<< SC ST § 1-30-10 >>

"(iii) Department of Probation, Parole, and Pardon Services created pursuant to Section 1-30-85 by the director of the former Department of Probation, Pardon and Parole;"

Name change

SECTION 8. Section 1-30-85 of the 1976 Code, as added by Act 181 of 1993, is amended to read:

<< SC ST § 1-30-85 >>

"Section 1-30-85. Effective on July 1, 1993, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and must be administered as part of the Department of Probation, Parole, and Pardon Services:

Department of Probation, Pardon and Parole, formerly provided for at Section 24-21-10, et seq."

Violent crimes revised

SECTION 9. Section 16-1-60 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

<< SC ST § 16-1-60 >>

"Section 16-1-60. For purposes of definition under South Carolina law a violent crime includes the offenses of murder (Section 16-3-10); criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-3-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656); assault and battery with intent to kill (Section 16-3-620); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-3-50); armed robbery (Section 16-11-330(A)); attempted armed robbery (Section 16-11-330(B)); drug trafficking as defined in Sections 44-53-370(e) and 44-53-375(C); arson

in the first degree (Section 16-11-110(A)); burglary in the first degree (Section 16-11-311); burglary in the second degree (Section 16-11-312(B)); engaging a child for a sexual performance (Section 16-3-810); homicide by child abuse (Section 16-3-85(A)(1)); aiding and abetting homicide by child abuse (Section 16-3-85(A)(2)); accessory before the fact to commit any of the above offenses (Section 16-1-40); and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses."

Death sentence proceeding revised

SECTION 10. Section 16-3-20 of the 1976 Code, as last amended by Act 488 of 1992, is further amended to read:

<< SC ST § 16-3-20 >>

"Section 16-3-20. (A) A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, 'life imprisonment' means until death of the offender. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years required by this section. Under no circumstances may a female who is pregnant be executed so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death to life imprisonment under the provisions of Section 14 of Article IV of the Constitution of South Carolina, 1895, the commuttee is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection.

(B) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitutions of the United States or the State of South Carolina or the applicable laws of either. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed.

(C) The judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

(a) Statutory aggravating circumstances:

(1) The murder was committed while in the commission of the following crimes or acts:

(a) criminal sexual conduct in any degree;

- (b) kidnapping;
- (c) burglary in any degree;
- (d) robbery while armed with a deadly weapon;
- (e) larceny with use of a deadly weapon;
- (f) killing by poison;
- (g) drug trafficking as defined in Section 44-53-370(c), 44-53-375(B), 44-53-440, or 44-53-445;
- (h) physical torture; or
- (i) dismemberment of a person.
- (2) The murder was committed by a person with a prior conviction for murder.
- (3) The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.
- (4) The offender committed the murder for himself or another for the purpose of receiving money or a thing of monetary value.
- (5) The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.
- (6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.
- (7) The murder of a federal, state, or local law enforcement officer, peace officer or former peace officer, corrections employee or former corrections employee, or fireman or former fireman during or because of the performance of his official duties.
- (8) The murder of a family member of an official listed in subitems (5) and (7) above with the intent to impede or retaliate against the official. 'Family member' means a spouse, parent, brother, sister, child, or person to whom the official stands in the place of a parent or a person living in the official's household and related to him by blood or marriage.
- (9) Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct.
- (10) The murder of a child eleven years of age or under.
- (b) Mitigating circumstances:
 - (1) The defendant has no significant history of prior criminal conviction involving the use of violence against another person.
 - (2) The murder was committed while the defendant was under the influence of mental or emotional disturbance.
 - (3) The victim was a participant in the defendant's conduct or consented to the act.
 - (4) The defendant was an accomplice in the murder committed by another person and his participation was relatively minor.
 - (5) The defendant acted under duress or under the domination of another person.
 - (6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
 - (7) The age or mentality of the defendant at the time of the crime.
 - (8) The defendant was provoked by the victim into committing the murder.
 - (9) The defendant was below the age of eighteen at the time of the crime.
 - (10) The defendant had mental retardation at the time of the crime. 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

The statutory instructions as to statutory aggravating and mitigating circumstances must be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances which it found beyond a reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circum-

stances beyond a reasonable doubt, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. In nonjury cases the judge shall make the designation of the statutory aggravating circumstance or circumstances. Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.

Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. The trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. Where a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment as provided in subsection (A). Before dismissing the jury, the trial judge shall question the jury as to whether or not it found a statutory aggravating circumstance or circumstances beyond a reasonable doubt. If the jury does not unanimously find any statutory aggravating circumstances or circumstances beyond a reasonable doubt, it shall not make a sentencing recommendation. Where a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. No person sentenced to life imprisonment or a mandatory minimum term of imprisonment for thirty years under this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for such penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment as provided in subsection (A).

(D) Notwithstanding the provisions of Section 14-7-1020, in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense.

(E) In a criminal action in which a defendant is charged with a crime which may be punishable by death, a person may not be disqualified, excused, or excluded from service as a juror by reason of his beliefs or attitudes against capital punishment unless such beliefs or attitudes would render him unable to return a verdict according to law."

Resisting arrest, offender age revised; deadly weapon, expanded definition

SECTION 11. Section 16-3-625 of the 1976 Code is amended to read:

<< SC ST § 16-3-625 >>

"Section 16-3-625. A person resists the lawful efforts of a law enforcement officer to arrest him or another person with the use or threat of use of a deadly weapon against the officer, and the person is in possession or claims to be in possession of a deadly weapon, is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten nor less than two years. No sentence imposed hereunder for a first offense shall be suspended to less than six months nor shall the persons so sentenced be eligible for parole until after service of six months. No person sentenced under this section for a second or subsequent offense shall have the sentence suspended to less than two years nor shall the person be eligible for parole until after service of two years.

As used in this section 'deadly weapon' means any instrument which can be used to inflict deadly force.

This section does not affect or replace the common law crime of assault and battery with intent to kill nor does it apply if the sentencing judge, in his discretion, elects to sentence an eligible defendant under the provisions of the 'Youthful Offenders Act'."

Crime Victim's Fund, monetary ceiling increased

SECTION 12. Section 16-3-1180(C) of the 1976 Code is amended to read:

<< SC ST § 16-3-1180 >>

"(C) The aggregate of award to and on behalf of victims may not exceed ten thousand dollars unless the Crime Victim's Advisory Board, by two-thirds vote, and the director concur that extraordinary circumstances exist. In such case, the award may not exceed twenty-five thousand dollars."

Name change; conditions for community supervision revised; director's duties revised

SECTION 13. Section 16-3-1260 of the 1976 Code is amended to read:

<< SC ST § 16-3-1260 >>

"Section 16-3-1260. (1) A payment of benefits to, or on behalf of, a victim or intervenor, or eligible family member under this article creates a debt due and owing to the State by a person as determined by a court of competent jurisdiction of this State, who has committed the criminal act.

(2) The Circuit Court, when placing on probation a person who owes a debt to the State as a consequence of a criminal act, may set as a condition of probation the payment of the debt or a portion of the debt to the State. The court also may set the schedule or amounts of payments subject to modification based on change of circumstances.

(3) The Department of Probation, Parole, and Pardon Services shall also have the right to make payment of the debt or a portion of the debt to the State a condition of parole or community supervision.

(4) When a juvenile is adjudicated delinquent in a Family Court proceeding involving a crime upon which a claim under this article can be made, the Family Court, in its discretion, may order that the juvenile pay the debt to the State Office of Victim Assistance, as created by this article, as an adult would have to pay had an adult committed the crime. Any assessments ordered may be made a condition of probation as provided in Section 20-7-1330.

(5) Payments authorized or required under this section must be paid to the State Office of Victim Assistance. The Director of the State Office of Victim Assistance shall coordinate the development of policies and procedures for the South Carolina Department of Corrections, the Department of Juvenile Justice, the South Carolina Office of Court Administration, the Department of Probation, Parole, and Pardon Services, and the South Carolina Board of Probation, Parole, and Pardon Services to assure that victim restitution programs are administered in an effective manner to increase payments into the State Office of Victim Assistance.

(6) Restitution payments to the State Office of Victim Assistance may be made by the Department of Corrections from wages accumulated by offenders in its custody who are subject to this article, except that offenders' wages must not be used for this purpose if monthly wages are at or below minimums required to purchase basic necessities."

Information shared

SECTION 14. The first paragraph of Section 16-3-1530(C) of the 1976 Code, as last amended by Act 68 of 1991, is further amended to read:

<< SC ST § 16-3-1530 >>

"A victim or witness who wishes to receive notification and information shall provide the solicitor, the Department of Corrections, and the Department of Probation, Parole, and Pardon Services his current address and telephone number. This information, as it is contained in Department of Corrections and Department of Probation, Parole, and Pardon Services files, is privileged and must not be disclosed directly or indirectly, except between these two departments, or by order of a court of competent jurisdiction. The solicitor's office which is prosecuting the case has the responsibility of the rights in this subsection, except items (6) and (7) which are the responsibility of the Department of Probation, Parole, and Pardon Services and the Department of Corrections."

Restitution eliminated as condition for parole

SECTION 15. Section 16-3-1530(D)(3) of the 1976 Code is amended to read:

<< SC ST § 16-3-1530 >>

"(3) A victim has the right to receive restitution for expenses or property loss incurred as the result of the crime. The judge shall order restitution at every sentencing for a crime against person or property or as a condition of probation, unless the court finds a substantial and compelling reason not to order restitution. The court shall diligently, fairly, and in a timely manner enforce all orders of restitution."

Victim impact statement forwarded; name change

SECTION 16. Section 16-3-1550(B) of the 1976 Code, as last amended by Act 579 of 1988, is further amended to read:

<< SC ST § 16-3-1550 >>

"(B) It is the responsibility of the solicitor's Victim or Witness Assistance Unit in each judicial circuit or a representative designated by the solicitor or law enforcement agency handling the case to advise all victims of their right to submit to the court, orally or in writing at the victim's option, a victim impact statement to be considered by the judge at the sentencing or disposition hearing in General Sessions Court and at a parole hearing. The solicitor's office or law enforcement agency shall provide a copy of the written form to any victim who wishes to make a written report. In cases where the solicitor determines that there has been extensive or significant impact on the life of the victim, the Victim or Witness Assistance Unit shall assist the victim in completing the form. The victim shall submit this statement to the solicitor's office within appropriate time limits set by the solicitor to be filed in the court records by the solicitor's office so it may be available to the defense for a reasonable period of time before sentencing. The court shall allow the defendant to have the opportunity to rebut the victim's written statement if the court decides to review any part of the statement before sentencing. If the defendant is incarcerated, the solicitor shall forward a copy of the impact statement and copies of all completed Victim/Witness Notification Requests to the Department of Corrections, the Department of Probation, Parole, and Pardon Services, and to the Probation, Parole, and Pardon Services Board. Solicitors shall begin using these victim impact statements no later than January 1, 1985."

Definition, parole eliminated

SECTION 17. Section 16-11-311 of the 1976 Code is amended to read:

<< SC ST § 16-11-311 >>

"Section 16-11-311. (A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:

(1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:

(a) is armed with a deadly weapon or explosive; or

(b) causes physical injury to a person who is not a participant in the crime; or

(c) uses or threatens the use of a dangerous instrument; or

(d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or

(2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or

(3) the entering or remaining occurs in the nighttime.

(B) Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, 'life' means un-

til death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen years."

Convictions that result in a life sentence

SECTION 18. Section 17-25-45 of the 1976 Code is amended to read:

<< SC ST § 17-25-45 >>

"Section 17-25-45. (A) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has one or more prior convictions for:

- (1) a most serious offense;
- (2) a federal or out-of-state conviction for an offense that would be classified as a most serious offense under this section; or
- (3) any combination of the offenses listed in items (1) and (2) above.

(B) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has two or more prior convictions for:

- (1) a serious offense;
- (2) a most serious offense;
- (3) a federal or out-of-state offense that would be classified as a serious offense or most serious offense under this section; or
- (4) any combination of the offenses listed in items (1), (2), and (3) above.

(C) As used in this section:

(1)	'Most serious offense' means:
16-1-40	Accessory, for any offense enumerated in this item
16-1-80	Attempt, for any offense enumerated in this item
16-3-10	Murder
16-3-30	Killing by poison
16-3-40	Killing by stabbing or thrusting
16-3-50	Voluntary manslaughter
16-3-85(A)(1)	Homicide by child abuse
16-3-85(A)(2)	Aiding and abetting homicide by child abuse
16-3-210	Lynching, First degree
16-3-430	Killing in a duel
16-3-620	Assault and battery with intent to kill
16-3-652	Criminal sexual conduct, First degree

16-3-653	Criminal sexual conduct, Second degree
16-3-655	Criminal sexual conduct with minors, except where evi- dence is presented at the crim- inal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense res- ulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3)
16-3-656	Assault with intent to commit criminal sexual conduct, First and Second degree
16-3-910	Kidnapping
16-3-920	Conspiracy to commit kid- napping
16-11-110(A)	Arson, First degree
16-11-311	Burglary, First degree
16-11-330(A)	Armed robbery
16-11-330(B)	Attempted armed robbery
16-11-540	Damaging or destroying building, vehicle, or other property by means of explos- ive incendiary, death results
25-7-30	Giving information respect- ing national or state defense to foreign contacts during war
25-7-40	Gathering information for an enemy
55-1-30(3)	Unlawful removing or dam- aging of airport facility or equipment when death results
56-5-1030	Interference with traffic- control devices or
(B)(3)	railroad signs or signals pro- hibited when death results

58-17-4090

from violation
Obstruction of railroad, death
results.

(1) 'Most serious offense' means:

- 16-1-40 Accessory, for any offense enumerated in this item
- 16-1-80 Attempt, for any offense enumerated in this item
- 16-3-10 Murder
- 16-3-30 Killing by poison
- 16-3-40 Killing by stabbing or thrusting
- 16-3-50 Voluntary manslaughter
- 16-3-85(A)(1) Homicide by child abuse
- 16-3-85(A)(2) Aiding and abetting homicide by child abuse
- 16-3-210 Lynching, First degree
- 16-3-430 Killing in a duel
- 16-3-620 Assault and battery with intent to kill
- 16-3-652 Criminal sexual conduct, First degree
- 16-3-653 Criminal sexual conduct, Second degree
- 16-3-655 Criminal sexual conduct with minors, except where
evidence is presented at the criminal proceeding
and the court, after the conviction, makes a
specific finding on the record that the
conviction obtained for this offense resulted
from consensual sexual conduct where the victim
was younger than the actor, as contained in
Section 16-3-655(3)
- 16-3-656 Assault with intent to commit criminal sexual
conduct, First and Second degree
- 16-3-910 Kidnapping
- 16-3-920 Conspiracy to commit kidnapping
- 16-11-110(A) Arson, First degree
- 16-11-311 Burglary, First degree
- 16-11-330(A) Armed robbery
- 16-11-330(B) Attempted armed robbery
- 16-11-540 Damaging or destroying building, vehicle, or other
property by means of explosive incendiary, death
results
- 25-7-30 Giving information respecting national or state
defense to foreign contacts during war
- 25-7-40 Gathering information for an enemy
- 55-1-30(3) Unlawful removing or damaging of airport facility
or equipment when death results
- 56-5-1030 Interference with traffic-control devices or
(B)(3) railroad signs or signals prohibited when death
results from violation

58-17-4090 Obstruction of railroad, death results.

(2)

'Serious offense' means:

(a)

any offense which is punishable by a maximum term of imprisonment for thirty years or more which is not referenced in subsection (C)(1); those felonies enumerated as follows:

(b)

16-3-220	Lynching, Second degree
16-3-810	Engaging child for sexual performance
16-9-220	Acceptance of bribes by officers
16-9-290	Accepting bribes for purpose of procuring public office
16-11-312(B)	Burglary, Second degree
16-13-210(1)	Embezzlement of public funds
16-13-230	Breach of trust with fraudulent intent
(B)(3)	
16-13-240(1)	Obtaining signature or property by false pretenses
38-55-540(3)	Insurance fraud
44-53-370(e)	Trafficking in controlled substances
44-53-375(C)	Trafficking in ice, crank, or crack cocaine
44-53-445	Distribute, sell, manufacture, or possess
(B)(1)	& (2) with intent to distribute controlled substances within proximity of school
56-5-2945	Causing death by operating vehicle while under influence of drugs or alcohol; and

(c)

the offenses enumerated below:

16-1-40	Accessory before the fact for any of the offenses listed in subitems(a) and (b)
16-1-80	Attempt to commit any of the offenses listed in subitems (a) and (b).

(2) 'Serious offense' means:

- (a) any offense which is punishable by a maximum term of imprisonment for thirty years or more which is not referenced in subsection (C)(1);
- (b) those felonies enumerated as follows:
 - 16-3-220 Lynching, Second degree
 - 16-3-810 Engaging child for sexual performance
 - 16-9-220 Acceptance of bribes by officers
 - 16-9-290 Accepting bribes for purpose of procuring public office
 - 16-11-312(B) Burglary, Second degree
 - 16-13-210(1) Embezzlement of public funds
 - 16-13-230 Breach of trust with fraudulent intent (B)(3)
 - 16-13-240(1) Obtaining signature or property by false pretenses
 - 38-55-540(3) Insurance fraud
 - 44-53-370(e) Trafficking in controlled substances
 - 44-53-375(C) Trafficking in ice, crank, or crack cocaine
 - 44-53-445 Distribute, sell, manufacture, or possess (B)(1) & (2) with intent to distribute controlled substances within proximity of school
 - 56-5-2945 Causing death by operating vehicle while under influence of drugs or alcohol; and
- (c) the offenses enumerated below:
 - 16-1-40 Accessory before the fact for any of the offenses listed in subitems(a) and (b)
 - 16-1-80 Attempt to commit any of the offenses listed in subitems (a) and (b).

(3) 'Conviction' means any conviction, guilty plea, or plea of nolo contendere.

(D) Except as provided in subsection (E), no person sentenced pursuant to this section shall be eligible for early release or discharge in any form, whether by parole, work release, release to ameliorate prison overcrowding, or any other early release program, nor shall they be eligible for earned work credits, education credits, good conduct credits, or any similar program for early release.

(E) For the purpose of this section only, a person sentenced pursuant to this section may be paroled if:

- (1) the Department of Corrections requests the Department of Probation, Parole, and Pardon Services to consider the person for parole; and
- (2) the Department of Probation, Parole, and Pardon Services determines that due to the person's health or age he is no longer a threat to society; and
- (a) the person has served at least thirty years of the sentence imposed pursuant to this section and has reached at least sixty-five years of age; or
- (b) the person has served at least twenty years of the sentence imposed pursuant to this section and has reached at least seventy years of age; or
- (c) the person is afflicted with a terminal illness where life expectancy is one year or less; or
- (d) the person can produce evidence comprising the most extraordinary circumstances.
- (F) For the purpose of determining a prior conviction under this section only, a prior conviction shall mean the defendant has been convicted of a most serious or serious offense, as may be applicable, on a separate occasion, prior to the instant adjudication.
- (G) The decision to invoke sentencing under Section 17-25-45(B) is in the discretion of the solicitor. The provisions of Section 17-25-45(A) shall be mandatory.
- (H) Where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant's counsel not less than ten days before trial."

Juvenile commitment

SECTION 19. Section 20-7-2205 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

<< SC ST § 20-7-2205 >>

"Section 20-7-2205. Notwithstanding Section 20-7-2170, 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, a child who has been found in contempt of court for violation of a court order related to a violation of law or other misconduct which would not be a criminal offense if committed by an adult, or a child who violates the conditions of probation for a violation of law or other misconduct which would not be a criminal offense if committed by an adult may be committed to the custody of a correctional institution operated by the Department of Juvenile Justice or to secure evaluation centers operated by the department for a determinate period not to exceed ninety days; however, a child committed under this section may not be confined with a child who has been determined by the department to be violent."

Transfer of juveniles to the Department of Corrections; circumstances revised

SECTION 20. Section 20-7-2170 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 20-7-2170 >>

"Section 20-7-2170. (A) 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 before his seventeenth birthday, may be committed to the custody of the Department of Juvenile Justice, which shall arrange for placement in a suitable corrective environment. Children under the age of twelve years must be committed only to the custody of the department, which shall arrange for placement in a suitable corrective environment other than institutional confinement. A child under the age of seventeen years must not be committed or sentenced to another penal or correctional institution of this State.

(B) When a child is adjudicated delinquent, convicted of a crime, or has entered a plea of guilty or nolo contendere in a court authorized to commit to the custody of the Department of Juvenile Justice, the child may be committed for an indeterminate period until he has reached his twenty-first birthday or until sooner released by the Board of Juvenile Parole

under its discretionary powers.

(C) A sentence which includes commitment to the custody of the Department of Juvenile Justice for a crime which, when committed by an adult, would carry a maximum sentence of thirty years or more, shall include a further provision that the Board of Juvenile Parole may transfer the child to the Department of Juvenile Justice, which then may transfer the child to the Department of Corrections for confinement for a period, including time served in its custody, not to exceed thirty years. The transfer must be within the discretion of the Department of Juvenile Justice or the Board of Juvenile Parole as appropriate.

(D) The court, before committing a child as a delinquent or as a part of a sentence including commitments for contempt, first shall commit temporarily the child to the Department of Juvenile Justice for a period not to exceed forty-five days for evaluation, and the department shall make a recommendation to the court before final commitment. The committing judge may waive in writing temporary commitment in cases where the child concerned either, within the past year, has been evaluated by a center and the evaluation is available to the court or has been temporarily or finally discharged or conditionally released or paroled from a correctional institution of the Department of Juvenile Justice, and the child's previous evaluation or other equivalent information is available to the court. All commitments to the custody of the Department of Juvenile Justice for delinquency as opposed to the conviction of a specific crime may be made only for the reasons and in the manner prescribed in Sections 20-7-400, 20-7-410, 20-7-430, 20-7-460, 20-7-600, 20-7-620, 20-7-740, 20-7-750, 20-7-760, 20-7-770, 20-7-780, 20-7-1330, 20-7-1340, and 20-7-1520, with evaluations made and proceedings conducted only by the judges authorized to order commitments in this section. When a child is committed to the custody of the department under the proceedings, commitment must be for an indeterminate sentence, not extending beyond the twenty-first birthday of the child unless sooner released by the department.

(E) A juvenile committed to the Department of Juvenile Justice following an adjudication for a violent offense contained in Section 16-1-60 or for the offense of assault and battery of a high and aggravated nature, who has not been paroled or released from the custody of the department by his seventeenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. A juvenile who has not been paroled or released from the custody of the department by his nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections at age nineteen. If not released sooner by the Department of Corrections, a transferred juvenile must be released by his twenty-first birthday according to the provisions of his commitment. Notwithstanding the above provision, a juvenile committed as an adult offender by order of the Court of General Sessions shall be considered for parole or other release according to the laws pertaining to release of adult offenders."

Authority revised; duties clarified

SECTION 21. Section 22-3-550 of the 1976 Code, as last amended by Section 28, Part II, Act 497 of 1994, is further amended to read:

<< SC ST § 22-3-550 >>

"Section 22-3-550. Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both. In addition, a magistrate may order restitution he considers appropriate.

However, a magistrate shall not have the power to sentence any person to consecutive terms of imprisonment totaling more than ninety days except for convictions resulting from violations of Chapter 11 of Title 34, pertaining to fraudulent checks or violations of Section 16-13-110, relating to shoplifting. Further a magistrate must specify an amount of restitution in damages at the time of sentencing as an alternative to any imprisonment of more than ninety days which is lawfully imposed. The provisions of this paragraph do not affect the transfer of criminal matters from the General Sessions Court made pursuant to Section 22-3-545."

SC LEGIS 83 (1995)
1995 South Carolina Laws Act 83 (H.B. 3096)

Page 20

Offenses excluded from application of section revised

SECTION 22. Section 22-5-910 of the 1976 Code, as added by Act 395 of 1992, is amended to read:

<< SC ST § 22-5-910 >>

"Section 22-5-910. Following a first offense conviction in a magistrate's court or a municipal court, the defendant after one year from the date of the conviction may apply, or cause someone acting on his behalf to apply, to the Circuit Court for an order expunging the records of the arrest and conviction. However, this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, or to an offense contained in Chapter 25 of Title 16. If the defendant has had no other conviction during the one-year period following the first offense conviction in a magistrate's court or a municipal court, the Circuit Court shall issue an order expunging the records. No person may have his records expunged under this section more than once.

After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release under Section 34-11-95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

As used in this section, 'conviction' includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail."

References revised; court's sentencing authority clarified; work release provided for

SECTION 23. Section 24-3-20 of the 1976 Code, as last amended by Act 181 of 1993 and Act 500 of 1994, is further amended to read:

<< SC ST § 24-3-20 >>

"Section 24-3-20. (A) A person convicted of an offense against the State of South Carolina and committed to a state correctional facility must be in the custody of the South Carolina Department of Corrections, and the director shall designate the place of confinement where the sentence must be served. Nothing in this section prevents a court from ordering a sentence to run concurrently with a sentence being served in another state or an active federal sentence. The director may designate as a place of confinement any available, suitable, and appropriate institution or facility, including a county jail or prison camp, whether maintained by the department or otherwise. If the facility is not maintained by the department, the consent of the sheriff of the county where the facility is located must first be obtained.

(B) When the director determines that the character and attitude of a prisoner reasonably indicates that he may be trusted, he may extend the limits of the place of confinement of the prisoner by authorizing him to work at paid employment or participate in a training program in the community on a voluntary basis while continuing as a prisoner, provided that the director determines that:

- (1) the paid employment will not result in the displacement of employed workers, nor be applied in skills, crafts, or trades in which there is surplus of available gainful labor in the locality, nor impair existing contracts for services; and
- (2) the rates of pay and other conditions of employment will not be less than those paid and provided for work of similar nature in the locality in which the work is to be performed.

The department shall notify victims registered pursuant to Section 16-3-1530(c) and the trial judge, solicitor, and sheriff of the county or the law enforcement agency of the jurisdiction where the offense occurred before releasing inmates on work release. The department shall have the authority to deny release based upon opinions received from these persons, if any, as to the suitability of the release.

No prisoner's place of confinement may be extended as permitted by this subsection who is currently serving a sentence

for or has a prior conviction of criminal sexual conduct in the first, second, or third degree; attempted criminal sexual conduct; assault with intent to commit criminal sexual conduct; criminal sexual conduct when the victim is his legal spouse; criminal sexual conduct with a minor; committing or attempting to commit a lewd act on a child; engaging a child for sexual performance; or spousal sexual battery. No prisoner who is serving a sentence for a 'no parole offense' as defined in Section 24-13-100 and who is otherwise eligible for work release shall have his place of confinement extended until he has served the minimum period of incarceration as set forth in Section 24-13-125.

(C) Notwithstanding any other provision of law, the department shall make available for use in litter control and removal any or all prison inmates not engaged in programs determined by the department to be more beneficial in terms of rehabilitation and cost effectiveness. The department shall not make available for litter control those inmates who, in the judgment of the director, pose a significant threat to the community or who are not physically, mentally, or emotionally able to perform work required in litter control. No inmate must be assigned to a county prison facility except upon written acceptance of the inmate by the chief county administrative officer or his designee, and no prisoner may be assigned to litter control in a county which maintains a facility unless he is assigned to the county prison facility. The department shall include in its annual report to the Budget and Control Board an analysis of the job and program assignments of inmates. This plan shall include such programs as litter removal, prison industries, work release, education, and counseling. The department shall make every effort to minimize not only inmate idleness but also occupation in marginally productive pursuits. The Budget and Control Board and the Governor's Office shall comment in writing to the department concerning any necessary alterations in this plan.

(D) Notwithstanding Section 24-13-125, the department may establish a restitution program for the purpose of allowing persons convicted of nonviolent offenses who are sentenced to the department to reimburse the victim for the value of the property stolen or damages caused by the offense. If no victim is involved, the person convicted shall contribute to the administration of the program. The department is authorized to promulgate regulations necessary to administer the program.

(E) If a person is sentenced to not more than seven years and for not more than a second offense for the following offenses: larceny, grand larceny, forgery and counterfeiting, embezzlement, stolen property, damage to property, receiving stolen goods, shoplifting, housebreaking, fraud, vandalism, breach of trust with fraudulent intent, and storebreaking, the judge shall establish at the time of sentencing a maximum amount of property loss which may be used by the department in the administration of the restitution program."

Articles produced by persons on community supervision exempted

SECTION 24. Section 24-3-410(B)(1) of the 1976 Code, as last amended by Act 19 of 1991, is further amended to read:

<< SC ST § 24-3-410 >>

"(1) articles manufactured or produced by persons on parole, probation, or community supervision;"

Lethal injection authorized

SECTION 25. Section 24-3-530 of the 1976 Code, as last amended by Section 420, Act 181 of 1993, is further amended to read:

<< SC ST § 24-3-530 >>

"Section 24-3-530. (A) A person convicted of a capital crime and having imposed upon him the sentence of death shall suffer the penalty by electrocution or, at the election of the person, lethal injection under the direction of the Director of the Department of Corrections. The election must be made in writing fourteen days before the execution date or it is waived. If the person waives the right of election, then the penalty must be administered by lethal injection.

(B) If execution by lethal injection under this section is held to be unconstitutional by an appellate court of competent jurisdiction, then the manner of inflicting a death sentence must be by electrocution."

Credits for persons convicted of "no parole offenses"; persons not entitled to credits; forfeiture of credit

SECTION 26. Section 24-13-210 of the 1976 Code, as last amended by Section 437, Act 181 of 1993, is further amended to read:

<< SC ST § 24-13-210 >>

"Section 24-13-210. (A) A prisoner convicted of an offense against this State, except a 'no parole offense' as defined in Section 24-13-100, and sentenced to the custody of the Department of Corrections including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-30, whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of twenty days for each month served. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which the good conduct credit is computed.

(B) A prisoner convicted of a 'no parole offense' against this State as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-30, whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of three days for each month served. However, no prisoner serving a sentence for life imprisonment or a mandatory minimum term of imprisonment for thirty years pursuant to Section 16-3-20 is entitled to credits under this provision. No prisoner convicted of a 'no parole offense' is entitled to a reduction below the minimum term of incarceration provided in Section 24-13-125 or 24-13-150. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which the good conduct credit is computed.

(C) A prisoner convicted of an offense against this State and sentenced to a local correctional facility, or upon the public works of any county in this State, whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined, and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of one day for every two days served. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which good conduct credits must be computed.

(D) If a prisoner confined in a facility of the department commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the good conduct credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections. If a prisoner confined in a local correctional facility pursuant to a designated facility agreement commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the good conduct credit he has earned may be forfeited in the discretion of the local official having charge of the prisoner. The decision to withhold forfeited good conduct time is solely the responsibility of officials named in this subsection.

(E) Any person who has served the term of imprisonment for which he has been sentenced less deductions allowed therefrom for good conduct is considered upon release to have served the entire term for which he was sentenced unless the person is required to complete a community supervision program pursuant to Section 24-21-560. If the person is required to complete a community supervision program, he must complete his sentence as provided in Section 24-21-560 prior to discharge from the criminal justice system.

(F) No credits earned pursuant to this section may be applied in a manner which would prevent full participation in the

Department of Probation, Parole, and Pardon Services' prerelease or community supervision program as provided in Section 24-21-560."

Credits for suspended sentences

SECTION 27. Section 24-13-220 of the 1976 Code is amended to read:

<< SC ST § 24-13-220 >>

"Section 24-13-220. The provisions of Section 24-13-210 shall also apply when a portion of a sentence which has been imposed is suspended. Credits earned for good conduct shall be deducted from and computed on the time the person is actually required to serve, and the suspended sentence shall begin on the date of his release from servitude as herein provided."

Reductions for persons convicted of "no parole offenses"; persons not entitled to reductions

SECTION 28. Section 24-13-230 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 24-13-230 >>

"Section 24-13-230. (A) The Director of the Department of Corrections may allow any prisoner in the custody of the department, except a prisoner convicted of a 'no parole offense' as defined in Section 24-13-100, who is assigned to a productive duty assignment or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of zero to one day for every two days he is employed or enrolled. A maximum annual credit for both work credit and education credit is limited to one hundred eighty days.

(B) The Director of the Department of Corrections may allow a prisoner in the custody of the department serving a sentence for a 'no parole offense' as defined in Section 24-13-100, who is assigned to a productive duty assignment or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of six days for every month he is employed or enrolled. However, no prisoner serving a sentence for life imprisonment or a mandatory minimum term of imprisonment for thirty years pursuant to Section 16-3-20 is entitled to credits under this provision. No prisoner convicted of a 'no parole offense' is entitled to a reduction below the minimum term of incarceration provided in Section 24-13-125 or 24-13-150. A maximum annual credit for both work credit and education credit is limited to seventy-two days.

(C) No credits earned pursuant to this section may be applied in a manner which would prevent full participation in the Department of Probation, Parole, and Pardon Services' prerelease or community supervision program as provided in Section 24-21-560.

(D) The amount of credit to be earned for each duty classification or enrollment must be determined by the director and published by him in a conspicuous place available to inmates at each correctional institution. If a prisoner commits an offense or violates one of the rules of the institution during his term of imprisonment all or part of the work credit or education credit he has earned may be forfeited in the discretion of the official having charge of the prisoner.

(E) The official in charge of a local detention or correctional facility to which persons convicted of offenses against the State are sentenced shall allow any inmate serving such a sentence in the custody of the facility who is assigned to a mandatory productive duty assignment a reduction from the term of his sentence of zero to one day for every two days so employed. The amount of credit to be earned for each duty classification must be determined by the official in charge of the local detention or correctional facility and published by him in a conspicuous place available to inmates.

(F)(1) An individual is only eligible for the educational credits provided for in this section, upon successful participation in an academic, technical, or vocational training program.

(2) The educational credit provided for in this section, is not available to any individual convicted of a violent crime as

SC LEGIS 83 (1995)
1995 South Carolina Laws Act 83 (H.B. 3096)

Page 24

defined in Section 16-1-60.

(G) The South Carolina Department of Corrections may not pay any tuition for college courses."

Persons convicted of "no parole offenses" excepted

SECTION 29. Section 24-13-610 of the 1976 Code is amended to read:

<< SC ST § 24-13-610 >>

"Section 24-13-610. The Department of Corrections (department) may establish an extended work release program. The program may allow the exceptional regular work release resident, male or female, convicted of a first and not more than a second offense, the opportunity of extended work release placement in the community with the privilege of residing with an approved community sponsor and continuing employment in the community; provided, that no person convicted of murder, criminal sexual conduct in the first or second degree, a 'no parole offense' as defined in Section 24-13-100 which was committed on or after the effective date of this section, or any other offense which is prohibited by another provision of law may participate in this extended work release program."

Violent offenses clarified; persons convicted of "no parole offenses" included

SECTION 30. Section 24-13-650 of the 1976 Code, as amended by Act 471 of 1992, is further amended to read:

<< SC ST § 24-13-650 >>

"Section 24-13-650. No offender committed to incarceration for a violent offense as defined in Section 16-1-60 or a 'no parole offense' as defined in Section 24-13-100 may be released back into the community in which the offender committed the offense under the work release program, except in those cases wherein, where applicable, the victim of the crime for which the offender is charged or the relatives of the victim who have applied for notification under Section 16-3-1530 if the victim has died, the law enforcement agency which employed the arresting officer at the time of the arrest, and the circuit solicitor all agree to recommend that the offender be allowed to participate in the work release program in the community where the offense was committed. The victim or the victim's nearest living relative, the law enforcement agency, and the solicitor, as referenced above, must affirm in writing that the offender be allowed to return to the community in which the offense was committed to participate in the work release program."

"No parole offense" added; etc.

SECTION 31. Section 24-13-710 of the 1976 Code, as last amended by Section 441 of Act 181 of 1993, is further amended to read:

<< SC ST § 24-13-710 >>

"Section 24-13-710. The Department of Corrections and the Department of Probation, Parole, and Pardon Services shall jointly develop the policies, procedures, guidelines, and cooperative agreement for the implementation of a supervised furlough program which permits carefully screened and selected inmates who have served the mandatory minimum sentence as required by law or have not committed a violent crime as defined in Section 16-1-60, a 'no parole offense' as defined in Section 24-13-100, the crime of criminal sexual conduct in the third degree as defined in Section 16-3-654, or the crime of committing or attempting a lewd act upon a child under the age of fourteen as defined in Section 16-15-140 to be released on furlough prior to parole eligibility and under the supervision of state probation and parole agents with the privilege of residing in an approved residence and continuing treatment, training, or employment in the community until parole eligibility or expiration of sentence, whichever is earlier. The department and the Department of Probation, Parole, and Pardon Services shall assess a fee sufficient to cover the cost of the participant's supervision and

any other financial obligations incurred because of his participation in the supervised furlough program as provided by this article. The two departments shall jointly develop and approve written guidelines for the program to include, but not be limited to, the selection criteria and process, requirements for supervision, conditions for participation, and removal. The cooperative agreement between the two departments shall specify the responsibilities and authority for implementing and operating the program. Inmates approved and placed on the program must be under the supervision of agents of the Department of Probation, Parole, and Pardon Services who are responsible for ensuring the inmate's compliance with the rules, regulations, and conditions of the program as well as monitoring the inmate's employment and participation in any of the prescribed and authorized community-based correctional programs such as vocational rehabilitation, technical education, and alcohol/drug treatment. Eligibility criteria for the program include, but are not limited to, all of the following requirements:

- (1) maintain a clear disciplinary record for at least six months prior to consideration for placement on the program;
 - (2) demonstrate to Department of Corrections' officials a general desire to become a law-abiding member of society;
 - (3) satisfy any other reasonable requirements imposed upon him by the Department of Corrections;
 - (4) have an identifiable need for and willingness to participate in authorized community-based programs and rehabilitative services;
 - (5) have been committed to the State Department of Corrections with a total sentence of five years or less as the first or second adult commitment for a criminal offense for which the inmate received a sentence of one year or more. The Department of Corrections shall notify victims pursuant to Section 16-3-1530(c) as well as the sheriff's office of the place to be released before releasing inmates through any supervised furlough program.
- These requirements do not apply to the crimes referred to in this section."

"No parole offense" added

SECTION 32. Section 24-13-720 of the 1976 Code, as last amended by Act 154 of 1993, is further amended to read:

<< SC ST § 24-13-720 >>

"Section 24-13-720. Unless sentenced to life imprisonment, an inmate under the jurisdiction or control of the Department of Corrections who has not been convicted of a violent crime under the provisions of Section 16-1-60 or a 'no parole offense' as defined in Section 24-13-100 may, within six months of the expiration of his sentence, be placed with the program provided for in Section 24-13-710 and is subject to every rule, regulation, and condition of the program. No inmate otherwise eligible under the provisions of this section for placement with the program may be so placed unless he has qualified under the selection criteria and process authorized by the provisions of Section 24-13-710. He must also have maintained a clear disciplinary record for at least six months prior to eligibility for placement with the program."

"No parole offense" added; provisions deleted; etc.

SECTION 33. Section 24-13-1310 of the 1976 Code, as added by Act 608 of 1990 and last amended by Section 443 of Act 181 of 1993, is further amended to read:

<< SC ST § 24-13-1310 >>

"Section 24-13-1310. As used in this article:

- (1) 'Eligible inmate' means a person committed to the South Carolina Department of Corrections:
 - (a) who has not reached the age of thirty years at the time of admission to the department;
 - (b) who is eligible for release on parole in two years or less;
 - (c) who has not been convicted of a violent crime as defined in Section 16-1-60 or a 'no parole offense' as defined in Section 24-13-100;

- (d) who has not been incarcerated previously in a state correctional facility or has not served a sentence previously in a shock incarceration program;
- (e) who physically is able to participate in the program.
- (2) 'Shock incarceration program' means a program pursuant to which eligible inmates are ordered by the court to participate in the program and serve ninety days in an incarceration facility, which provides rigorous physical activity, intensive regimentation, and discipline and rehabilitation therapy and programming.
- (3) 'Director' means the Director of the Department of Corrections."

Shock incarceration selection committee deleted

SECTION 34. Section 24-13-1320 of the 1976 Code, as added by Act 608 of 1990 and last amended by Section 444 of Act 181 of 1993, is further amended to read:

<< SC ST § 24-13-1320 >>

"Section 24-13-1320. (A) The director of the department, guided by consideration for the safety of the community and the welfare of the inmate, shall promulgate regulations, according to procedures set forth in the Administrative Procedures Act, for the shock incarceration program. The regulations must reflect the purpose of the program and include, but are not limited to, selection criteria, inmate discipline, programming and supervision, and program structure and administration.

(B) A program may be established only at an institution classified by the director as a shock incarceration facility.

(C) The department shall undertake studies and prepare reports periodically on the impact of a program and on whether the programmatic objectives are met."

Provisions deleted; "eligible inmates"; etc.

SECTION 35. Section 24-13-1330 of the 1976 Code, as added by Act 608 of 1990 and last amended by Section 445 of Act 181 of 1993, is further amended to read:

<< SC ST § 24-13-1330 >>

"Section 24-13-1330. (A) A court may order that an 'eligible inmate' be sentenced to the 'Shock Incarceration Program'. If an 'eligible inmate' is sentenced to the 'Shock Incarceration Program' he must be transferred to the custody of the department for evaluation.

(B) The department must evaluate the inmate to determine whether the inmate is physically, psychologically, and emotionally able to participate in this program.

(C) The director shall notify the court within fifteen working days if the inmate is physically, psychologically, or emotionally unsuitable for participation in the 'Shock Incarceration Program'. An unsuitable inmate must be returned to court for sentencing to another term as provided by law.

(D) An applicant may not participate in a program unless he agrees to be bound by all of its terms and conditions and indicates this agreement by signing the following:

"I accept the foregoing program and agree to be bound by its terms and conditions. I understand that my participation in the program is a privilege that may be revoked at the sole discretion of the director. I understand that I shall complete the entire program successfully to obtain a certificate of earned eligibility upon the completion of the program, and if I do not complete the program successfully, for any reason, I will be transferred to a nonshock incarceration correctional facility to continue service of my sentence".

(E) An inmate who has completed a shock incarceration program successfully is eligible to receive a certificate of earned eligibility and must be granted parole release.

(F) Participation in a shock incarceration program is a privilege. Nothing contained in this article confers upon an inmate the right to participate or continue to participate in a program."

Community supervision referenced

SECTION 36. Section 24-13-1590(2) of the 1976 Code, as last amended by Section 448 of Act 181 of 1993, is further amended to read:

<< SC ST § 24-13-1590 >>

"(2) diminishes the lawful authority of the courts of this State, the Department of Juvenile Justice, or the Department of Probation, Parole, and Pardon Services to regulate or impose conditions for probation, parole, or community supervision."

Department referenced; etc.

SECTION 37. Section 24-19-160 of the 1976 Code, as last amended by Section 458 of Act 181 of 1993, is further amended to read:

<< SC ST § 24-19-160 >>

"Section 24-19-160. Nothing in this chapter limits or affects the power of a court to suspend the imposition or execution of a sentence and place a youthful offender on probation.

Nothing in this chapter may be construed to amend, repeal, or affect the jurisdiction of the Department of Probation, Parole, and Pardon Services or the Probation, Parole, and Pardon Services Board. For purposes of community supervision or parole, a sentence pursuant to Section 24-19-50(e) shall be considered a sentence for six years."

Language style changes made

SECTION 38. Section 24-21-10 of the 1976 Code, as last amended by Part I, Section 38 of Act 7 of 1995, is further amended to read:

<< SC ST § 24-21-10 >>

"Section 24-21-10. (A) The Department of Probation, Parole, and Pardon Services, hereafter referred to as the 'department', is governed by the director of the department. The director must be appointed by the Governor with the advice and consent of the Senate.

(B) The Board of Probation, Parole, and Pardon Services is composed of seven members. The terms of office of the members are for six years. Six of the seven members must be appointed from each of the congressional districts and one member must be appointed at large. Vacancies must be filled by gubernatorial appointment with the advice and consent of the Senate for the unexpired term. If a vacancy occurs during a recess of the Senate, the Governor may fill the vacancy by appointment for the unexpired term pending the consent of the Senate, provided the appointment is received for confirmation on the first day of the Senate's next meeting following the vacancy. A chairman must be elected annually by a majority of the membership of the board. The chairman may serve consecutive terms.

(C) The Governor shall deliver an appointment within sixty days of the expiration of a term, if an individual is being reappointed, or within ninety days of the expiration of a term, if an individual is an initial appointee. If a board member who is being reappointed is not confirmed within sixty days of receipt of the appointment by the Senate, the appointment is considered rejected. For an initial appointee, if confirmation is not made within ninety days of receipt of the appointment by the Senate, the appointment is deemed rejected. The Senate may by resolution extend the period after which an appointment is considered rejected. If the failure of the Senate to confirm an appointee would result in the lack of a quorum,

um of board membership, the seat for which confirmation is denied or rejected shall not be considered when determining if a quorum of board membership exists.”

“Community supervision” referenced; etc.

SECTION 39. Section 24-21-13 of the 1976 Code, as last amended by Section 462 of Act 181 of 1993, is further amended to read:

<< SC ST § 24-21-13 >>

“Section 24-21-13. (A) It is the duty of the director to oversee, manage, and control the department. The director shall develop written policies and procedures for the following:

(1) the supervising of offenders on probation, parole, community supervision, and other offenders released from incarceration prior to the expiration of their sentence;

(2) the consideration of paroles and pardons and the supervision of offenders in the community supervision program, and other offenders released from incarceration prior to the expiration of their sentence. The requirements for an offender's participation in the community supervision program and an offender's progress toward completing the program are to be decided administratively by the Department of Probation, Parole, and Pardon Services. No inmate or future inmate shall have a ‘liberty interest’ or an ‘expectancy of release’ while in a community supervision program administered by the department;

(3) the operation of community-based correctional programs; and

(4) the operation of public work sentence programs for offenders as provided in item (1) of this subsection. This program also may be utilized as an alternative to technical revocations. The director shall establish priority programs for litter control along state and county highways. This must be included in the ‘public service work’ program.

(B) It is the duty of the board to consider cases for parole, pardon, and any other form of clemency provided for under law.”

Certain ineligibility for parole consideration; etc.

SECTION 40. Section 24-21-30 of the 1976 Code is amended to read:

<< SC ST § 24-21-30 >>

“Section 24-21-30. (A) A person who commits a ‘no parole offense’ as defined in Section 24-13-100 on or after the effective date of this section is not eligible for parole consideration, but must complete a community supervision program as set forth in Section 24-21-560 prior to discharge from the sentence imposed by the court. For all offenders who are eligible for parole, the board shall hold regular meetings, as may be necessary to carry out its duties, but at least four times each year, and as many extra meetings as the chairman, or the Governor acting through the chairman, may order. The board may preserve order at its meetings and punish any disrespect or contempt committed in its presence. The chairman may direct the members of the board to meet as three-member panels to hear matters relating to paroles and pardons as often as necessary to carry out the board's responsibilities. Membership on these panels shall be periodically rotated on a random basis by the chairman. At the meetings of the panels, any unanimous vote shall be considered the final decision of the board, and the panel may issue an order of parole with the same force and effect of an order issued by the full board pursuant to Section 24-21-650. Any vote that is not unanimous shall not be considered as a decision of the board, and the matter shall be referred to the full board which shall decide it based on a vote of a majority of the membership.

(B) The board may grant parole to an offender who commits a violent crime as defined in Section 16-1-60 which is not included as a ‘no parole offense’ as defined in Section 24-13-100 on or after the effective date of this section by a two-

SC LEGIS 83 (1995)
1995 South Carolina Laws Act 83 (H.B. 3096)

Page 29

thirds majority vote of the full board. The board may grant parole to an offender convicted of an offense which is not a violent crime as defined in Section 16-1-60 or a 'no parole offense' as defined in Section 24-13-100 by a unanimous vote of a three-member panel or by a majority vote of the full board.

Nothing in this subsection may be construed to allow any person who commits a 'no parole offense' as defined in Section 24-13-100 on or after the effective date of this section to be eligible for parole."

No right of confrontation

SECTION 41. Section 24-21-50 of the 1976 Code is amended to read:

<< SC ST § 24-21-50 >>

"Section 24-21-50. The board shall grant hearings and permit arguments and appearances by counsel or any individual before it at any such hearing while considering a case for parole, pardon, or any other form of clemency provided for under law. No inmate has a right of confrontation at the hearing."

Reference updated

SECTION 42. Section 24-21-60 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 24-21-60 >>

"Section 24-21-60. Each city, county, or state official or department shall assist and cooperate to further the objectives of this chapter. The board, the director of the department, and the probation agents may seek the cooperation of officials and departments and especially of the sheriffs, jailers, magistrates, police officials, and institutional officers. The director may conduct surveys of state correctional facilities, county jails, and camps and obtain information to enable the board to pass intelligently upon all applications for parole. The Director of the Department of Corrections and the wardens, jailers, sheriffs, supervisors, or other officers in whose control a prisoner may be committed must aid and assist the director and the probation agents in the surveys."

Fees

SECTION 43. Section 24-21-80 of the 1976 Code, as last amended by Section 26A, Part II, Act 164 of 1993, is further amended to read:

<< SC ST § 24-21-80 >>

"Section 24-21-80. An adult placed on probation, parole, or community supervision shall pay a regular supervision fee toward offsetting the cost of his supervision for so long as he remains under supervision. The regular supervision fee must be determined by the Department of Probation, Parole, and Pardon Services based upon the ability of the person to pay. The fee must be not less than twenty dollars nor more than one hundred dollars per month. The fee is due on the date of sentencing or as soon as determined by the department and each subsequent anniversary for the duration of the supervision period. The department shall remit from the fees collected an amount not to exceed the regular supervision fees collected during fiscal year 1992-93 for credit to the State General Fund. All regular supervision fees collected in excess of the fiscal year 1992-93 amount must be retained by the department, carried forward, and applied to the department's operation. The payment of the fee must be a condition of probation, parole, or community supervision, and a delinquency of two months or more in making payments may operate as a revocation.

If a probationer is placed under intensive supervision by a court of competent jurisdiction, or if the board places a parolee under intensive supervision, or if an inmate who is participating in the Supervised Furlough Program is placed under intensive supervision, or if a person participating in a community supervision program is placed under intensive supervi-

sion, the probationer, parolee, inmate, or community supervisee is required to pay not less than ten dollars nor more than thirty dollars each week for the duration of intensive supervision in lieu of the regular supervision fee. The intensive supervision fee must be determined by the department based upon the ability of the person to pay. Fees derived from persons under intensive supervision must be retained by the department, carried forward, and applied to the department's operation. The department may exempt any individual supervised by the department on any community supervision program from the payment of a part or all of the yearly or weekly fee during any part or all of the supervision period only if the department determines that exceptional circumstances exist such that these payments work a severe hardship on the individual. Delinquencies of two months or more in payment of a reduced fee operates in the same manner as delinquencies for the full amount. The department may substitute public service employment for supervision fees when it considers the same to be in the best interest of the State and the individual."

Community supervision

SECTION 44. Section 24-21-220 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 24-21-220 >>

"Section 24-21-220. The director is vested with the exclusive management and control of the department and is responsible for the management of the department and for the proper care, treatment, supervision, and management of offenders under its control. The director shall manage and control the department and it is the duty of the director to carry out the policies of the department. The director is responsible for scheduling board meetings, assuring that the proper cases and investigations are prepared for the board, maintaining the board's official records, and performing other administrative duties relating to the board's activities. The director must employ within his office such personnel as may be necessary to carry out his duties and responsibilities including the functions of probation, parole, and community supervision, community-based programs, financial management, research and planning, staff development and training, and internal audit. The director shall make annual written reports to the board, the Governor, and the General Assembly providing statistical and other information pertinent to the department's activities."

Reference deleted

SECTION 45. Section 24-21-230 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 24-21-230 >>

"Section 24-21-230. The director must employ probation agents required for service in the State and clerical assistants as necessary. The probation agents must take and pass psychological and qualifying examinations as directed by the director. The director must ensure that each probation agent receives adequate training. Until the initial employment requirements are met, no person may take the oath of a probation agent nor exercise the authority granted to them."

Agent duties

SECTION 46. Section 24-21-280 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 24-21-280 >>

"Section 24-21-280. A probation agent must investigate all cases referred to him for investigation by the judges or director and report in writing. He must furnish to each person released on probation, parole, or community supervision under his supervision a written statement of the conditions of probation, parole, or community supervision and must instruct him regarding them. He must keep informed concerning the conduct and condition of each person on probation, parole, or community supervision under his supervision by visiting, requiring reports, and in other ways, and must report

in writing as often as the court or director may require. He must use practicable and suitable methods to aid and encourage persons on probation, parole, or community supervision to bring about improvement in their conduct and condition. A probation agent must keep detailed records of his work, make reports in writing, and perform other duties as the director may require. A probation agent must have, in the execution of his duties, the power to issue an arrest warrant or a citation charging a violation of conditions of supervision, the powers of arrest, and to the extent necessary the same right to execute process given by law to sheriffs. In the performance of his duties of probation, parole, community supervision, and investigation, he is regarded as the official representative of the court, the department, and the board."

Reference changed; service

SECTION 47. Section 24-21-300 of the 1976 Code is amended to read:

<< SC ST § 24-21-300 >>

"Section 24-21-300. At any time during a period of supervision, a probation agent, instead of issuing a warrant, may issue a written citation and affidavit setting forth that the probationer, parolee, or community supervision releasee, or a person released or furloughed under the Offender Management Systems Act in the agent's judgment violates the conditions of his release or suspended sentence. The citation must be directed to the probationer, the parolee, the community supervision releasee, or the person released or furloughed, and must require him to appear at a specified time, date, and court or other place, and must state the charges. The citation must set forth the person's rights and contain a statement that a hearing will be held in his absence if he fails to appear and that he may be imprisoned as a result of his absence. The citation may be served by a law enforcement officer upon the request of a probation agent. A certificate of service is sufficient proof of service. The issuance of a citation or warrant during the period of supervision gives jurisdiction to the court and the board at any hearing on the violation."

Grammatical changes

SECTION 48. Section 24-21-910 of the 1976 Code is amended to read:

<< SC ST § 24-21-910 >>

"Section 24-21-910. The Probation, Parole, and Pardon Services Board shall consider all petitions for reprieves or the commutation of a sentence of death to life imprisonment which may be referred to it by the Governor and shall make its recommendations to the Governor regarding the petitions. The Governor may or may not adopt the recommendations but in case he does not he shall submit his reasons for not doing so to the General Assembly. The Governor may act on any petition without reference to the board."

Pardon consideration

SECTION 49. Section 24-21-950 of the 1976 Code is amended to read:

<< SC ST § 24-21-950 >>

"Section 24-21-950. (A) The following guidelines must be utilized by the board when determining when an individual is eligible for pardon consideration.

- (1) Probationers must be considered upon the request of the individual anytime after discharge from supervision.
- (2) Persons discharged from a sentence without benefit of parole must be considered upon the request of the individual anytime after the date of discharge.
- (3) Parolees must be considered for a pardon upon the request of the individual anytime after the successful completion of five years under supervision. Parolees successfully completing the maximum parole period, if less than five years,

must be considered for pardon upon the request of the individual anytime after the date of discharge.

(4) An inmate must be considered for pardon before a parole eligibility date only when he can produce evidence comprising the most extraordinary circumstances.

(5) The victim of a crime or a member of a convicted person's family living within this State may petition for a pardon for a person who has completed supervision or has been discharged from a sentence.

(B) Persons discharged from a sentence without benefit of supervision must be considered upon the request of the individual anytime after the date of discharge."

Case classification

SECTION 50. Section 24-23-20 of the 1976 Code is amended to read:

<< SC ST § 24-23-20 >>

"Section 24-23-20. The case classification plan must provide for case classification system consisting of the following:

- (1) supervisory control requirements which include, but are not limited to, restrictions on the probationer/parolee's movement in the community, living arrangements, social associations, and reporting requirements;
- (2) rehabilitation needs of probationer/parolee including, but not limited to, employment, education, training, alcohol and drug treatment, counseling and guidance with regard to alcohol and drug abuse, psychological or emotional problems, or handicaps;
- (3) categorization of the offender as to the extent and type of staff time needed, possible assignment to specialized case-load or treatment programs, and specifics as to the degree of perceived risk posed by the probationer/parolee;
- (4) identification of strategies and resources to meet the identified needs, and specific objectives for the probationer/parolee to strive to meet such as obtaining employment, participating in a counseling program, and securing better living arrangements;
- (5) periodic and systematic review of cases to assess the adequacy of supervisory controls, participation in rehabilitation programs, and need for recategorization based upon the behavior and progress of the probationer/parolee; and
- (6) regular statewide monitoring and evaluation of the case classification by appropriate supervisory, classification, and program development and evaluation staff in the central administrative office."

Contents of plan

SECTION 51. Section 24-23-30 of the 1976 Code is amended to read:

<< SC ST § 24-23-30 >>

"Section 24-23-30. The community corrections plan must include, but is not limited to, describing the following community-based program needs:

- (1) an intensive supervision program for probationers, and parolees, and supervised prisoners who require more than average supervision;
- (2) a supervised inmate furlough or community supervision program whereby inmates under the jurisdiction of the Department of Corrections can be administratively transferred to the supervision of state probation agents for the purposes of prerelease preparation, securing employment and living arrangements, or obtaining rehabilitation services;
- (3) a contract rehabilitation services program whereby private and public agencies, such as the Department of Vocational Rehabilitation, the Department of Mental Health, and the various county commissions on alcohol and drug abuse, provide diagnostic and rehabilitative services to offenders who are under the board's jurisdiction;
- (4) community-based residential programs whereby public and private agencies as well as the board establish and operate halfway houses for those offenders who cannot perform satisfactorily on probation, parole, or community supervision;

- (5) expanded use of presentence investigations and their role and potential for increasing the use of community-based programs, restitution, and victim assistance; and
- (6) identification of programs for youthful and first offenders.”

What plan must provide

SECTION 52. Section 24-23-40 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 24-23-40 >>

“Section 24-23-40. The community corrections plan shall provide for the department's:

- (1) development, implementation, monitoring, and evaluation of statewide policies, procedures, and agreements with state agencies, such as the Department of Vocational Rehabilitation, the Department of Mental Health, and the Department of Alcohol and Other Drug Abuse Services, for purposes of coordination and referral of probationers, parolees, and community supervision releasees for rehabilitation services;
- (2) development of specific guidelines for the vigorous monitoring of restitution orders and fines to increase the efficiency of collection and development of a systematic reporting system so as to notify the judiciary of restitution and fine payment failures on a regular basis;
- (3) development of a program development and evaluation capability so that the department can monitor and evaluate the effectiveness of the above programs as well as to conduct research and special studies on such issues as probation, parole, and community supervision outcomes, revocations, and recidivism;
- (4) development of adequate training and staff development for its employees.”

Conditions for termination; applicability of section

SECTION 53. Section 24-23-130 of the 1976 Code, as last amended by Act 134 of 1991, is further amended to read:

<< SC ST § 24-23-130 >>

“Section 24-23-130. Upon the satisfactory fulfillment of the conditions of probation, the court, with the recommendation of the agent in charge of the responsible county probation office, may terminate the probationer or supervised prisoner from supervision.”

Deposit of payments

SECTION 54. The second paragraph of Section 24-23-220 of the 1976 Code, as last amended by Act 181 of 1993, is further amended to read:

<< SC ST § 24-23-220 >>

“Assessments imposed as a condition of supervision upon release from prison as specified in Section 24-23-210 must be collected by the supervising agent who shall transmit those funds to the Department of Probation, Parole, and Pardon Services where it must be deposited to the State Treasurer. The county treasurer, after duly noting and recording the receipt of the payments, shall transfer those funds to the State Treasurer who shall deposit them in the state's general fund. Assessments collected by municipal courts must be paid monthly to the municipal financial officer who, after duly noting and recording the receipt of the payments, shall transfer those funds to the State Treasurer as provided in this section. From these funds, an amount equal to one-half of the amount deposited in fiscal year 1986-87 must be appropriated to the department for the purpose of developing and operating community corrections programs. The remainder of the funds must be deposited in the State Office of Victim Assistance. The director shall monitor the collection and reporting of these assessments imposed as a condition of supervision and assure that they are transferred properly to the State Treas-

SC LEGIS 83 (1995)
1995 South Carolina Laws Act 83 (H.B. 3096)

Page 34

urer.”

Separate criminal offense

SECTION 55. Section 44-53-445(A) of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

<< SC ST § 44-53-445 >>

“(A) It is a separate criminal offense for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute, a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.”

Salvage of certain sunken warships unlawful

SECTION 56. Chapter 7, Title 54 of the 1976 Code is amended by adding:

<< SC ST § 54-7-815 >>

“Section 54-7-815. Notwithstanding any other provision of law, no person may excavate or salvage any sunken warship submerged in the waters of the Atlantic ocean within three miles of the South Carolina coast where there are, or it is believed that there are, human remains without the approval of the State Budget and Control Board. A person violating this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or sentenced to a term of imprisonment not to exceed five years, or both.”

Sections repealed

<< Repealed: SC ST §§ 16-3-27, 24-1-200, 24-3-10, 24-13-270, 24-13-1340 >>

SECTION 57. Sections 16-3-27, 24-1-200, 24-3-10, 24-13-270, and 24-13-1340 of the 1976 Code are repealed.

Savings clause

<< Note: SC ST § 24-13-100 >>

SECTION 58. All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this act takes effect are saved. Except as otherwise provided, the provisions of this act apply prospectively to crimes and offenses committed on or after the effective date of this act.

Study committee created

SECTION 59. A study committee shall be appointed to study mandatory minimum sentences and alternative sentences for nonviolent offenders and examine anti-recidivism methods for first time nonviolent offenders and report back to the General Assembly no later than the first day of session, 1996. The committee shall be composed of the following: The Attorney General of South Carolina or his designee, three appointees of the Speaker of the House of Representatives, and three appointees of the President Pro Tempore of the Senate. The committee shall be staffed by the Sentencing Guidelines Commission and the staffs of the House and Senate Judiciary Committees.

Applicability

<< Note: SC ST § 16-25-90 >>

SECTION 60. Section 16-25-90 of the 1976 Code, as added by Act 7 of 1995, shall be both retroactive and prospective in application.

Arrests, family or domestic violence complaints, liability for acts

SECTION 61. Section 16-25-70 of the 1976 Code, as last amended by Act 519 of 1994, is further amended to read:

<< SC ST § 16-25-70 >>

"Section 16-25-70. (A) A law enforcement officer may arrest, with or without a warrant, a person at the person's place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16-25-20, 16-25-50, or 16-25-65 even if the act did not take place in the presence of the officer. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate police department.

(B) A law enforcement officer must arrest, with or without a warrant, a person at the person's place of residence or elsewhere if physical manifestations of injury to the alleged victim are present and the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16-25-20, 16-25-50, or 16-25-65 even if the act did not take place in the presence of the officer. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate police department.

(C) In effecting a warrantless arrest under this section, a law enforcement officer may enter the residence of the person to be arrested in order to effect the arrest where the officer has probable cause to believe that the action is reasonably necessary to prevent physical harm or danger to a family or household member.

(D) If a law enforcement officer receives complaints of domestic or family violence from two or more household members involving an incident of domestic or family violence, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic or family violence. In determining whether a person is the primary aggressor, the officer shall consider:

- (1) prior complaints of domestic or family violence;
- (2) the relative severity of the injuries inflicted on each person;
- (3) the likelihood of future injury to each person; and
- (4) whether one of the persons acted in self-defense.

(E) A law enforcement officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by a party.

(F) A law enforcement officer who arrests two or more persons for a crime involving domestic or family violence must include the grounds for arresting both parties in the written incident report.

(G) No evidence other than evidence of violations of this article found as a result of a warrantless search is admissible in a court of law.

(H) In addition to the protections granted to the law enforcement officer and law enforcement agency under the South Carolina Tort Claims Act, a law enforcement officer is not liable for an act, omission, or exercise of discretion under this section unless the act, omission, or exercise of discretion constitutes gross negligence, recklessness, wilfulness, or wantonness."

Time effective

<< Note: SC ST §§ 16-1-60, 24-3-530, 16-25-70 >>

SC LEGIS 83 (1995)
1995 South Carolina Laws Act 83 (H.B. 3096)

Page 36

<< Note: SC ST §§ 24-13-100, 16-25-90 >>

<< Note: SC ST § 54-7-815 >>

SECTION 62. This act takes effect January 1, 1996, and applies prospectively to all crimes committed on or after that date except as follows:

(1) Section 9 takes effect upon approval of the Governor and applies to crimes committed on or after the effective date of that section.

(2) Section 25 takes effect upon approval of the Governor and applies to all executions administered on and after the effective date of this section, regardless of the date the sentence was imposed.

(3) Sections 56, 59, 60, and 61 take effect upon approval of the Governor.

Approved the 7th day of June, 1995.

SC LEGIS 83 (1995)

SC LEGIS 83 (1995)

END OF DOCUMENT

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 12-ALJ-15-0004-AP

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

THALMA BARTON, #110881 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, ... RESPONDENT

BRIEF OF RESPONDENT

J. Benjamin Aplin
General Counsel

Tommy Evans, Jr.
Legal Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

ATTORNEYS FOR THE RESPONDENT

TABLE OF CONTENTS

Table of Contents.	i
Table of Authorities.	ii
Respondent's Statement of Issues on Appeal.	1
Respondent's Statement of the Case.	2
Jurisdictional Statement	3
Arguments:	
I. The Department and the Parole Board complied with the <i>ex post facto</i> clauses of the Constitutions of the United States and South Carolina when following Section 24-21-645 of the South Carolina Code of Laws and requiring that Appellant receive a two-thirds vote of the members of the Parole Board rather than the simple majority required by the predecessor statute, because the two-thirds majority requirement was simply a procedural change in South Carolina's parole system.	4
II. The Department complied with the specific and unambiguous terms of Section 24-21-645 of the South Carolina Code of Laws in concluding the Parole Board was not authorized to grant Appellant parole where she failed to receive a favorable parole vote by "at least two-thirds of the members of the board."	6
Conclusion.	8

TABLE OF AUTHORITIES

CASES:

<u>California Dept. of Corrections v. Morales</u> , 514 U.S. 499, 115 S.Ct. 1597 (1995).	6
<u>Dobbert v. Florida</u> , 432 U.S. 282, 97 S.Ct. 2290 (1977).	6
<u>Roller v. Gunn</u> , 107 F.3d 227 (4 th Cir. 1997).	6
<u>Al-Shabbaz v. State</u> , 338 S.C. 354, 527 S.E.2d 724 (2000)	3
<u>Cooper v. S.C. Dep't of Probation, Parole and Pardon Services</u> , 377 S.C. 489, 661 S.E.2d 106 (2008)	4
<u>Furtick v. S.C. Dep't of Probation, Parole and Pardon Services</u> , 352 S.C. 594, 576 S.E.2d 146 (2002).	3
<u>James v. S.C. Dep't of Probation, Parole and Pardon Services.</u> , 377 S.C. 564, 660 S.E.2d 288 (2008)	7

STATUTES AND ACTS:

S.C. Code Ann. § 16-1-60 (2007).	7
S.C. Code Ann. §§ 24-13-100 to -150 (2007).	4, 7
S.C. Code Ann. § 24-21-10(B) (2007 & Supp. 2011)	5
S.C. Code Ann. § 24-21-30(B) (2007 & Supp. 2011).	4, 5, 7
S.C. Code Ann. § 24-21-645 (2007 & Supp. 2011)	4, 5, 6, 7
1986 Act No. 462 - The Omnibus Criminal Justice Improvements Act of 1986.	5

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the Department and the Parole Board complied with the *ex post facto* clauses of the Constitutions of the United States and South Carolina when following Section 24-21-645 of the South Carolina Code of Laws and requiring that Appellant receive a two-thirds vote of the members of the Parole Board rather than the simple majority required by the predecessor statute, where the two-thirds majority requirement was simply a procedural change in South Carolina's parole system?
2. Whether the Department complied with the specific and unambiguous terms of Section 24-21-645 of the South Carolina Code of Laws in concluding the Board was not authorized to grant Appellant parole where she failed to receive a favorable parole vote by "at least two-thirds of the members of the board."?

RESPONDENT'S STATEMENT OF THE CASE

Appellant was charged in Dorchester County with the murder of her next door neighbor's son, two year old Desray Starks. On May 11, 1982, she pled guilty as charged and was sentenced by the Honorable Francis B. Nicholson to life imprisonment. (Respondent's Exhibit #1). At the time of her conviction, South Carolina law provided that a person serving a life sentence for murder would become parole eligible after satisfying twenty (20) years of their sentence. On July 6, 1997, the Appellant made her initial appearance before the Parole Board and was rejected for parole.¹ Since this initial denial of parole the Appellant has appeared before the Parole Board an additional twelve (12) times, each appearance resulting in a denial of parole.

Appellant's most recent appearance occurred on January 18, 2012, pursuant to which parole was rejected based on: (1) nature and seriousness of the current offense; and (2) an indication of violence in this or a previous offense. In a letter issued that day, Respondent notified Appellant that the Parole Board had rejected her for parole after a careful consideration of a number of factors, including those outlined in Section 24-21-640 of the South Carolina Code. (R.p.5). On February 16, 2012, Appellant timely served and filed a notice of appeal from the parole rejection with the Administrative Law Court (ALC). On the same date she also submitted a letter addressed to Heyward Hinton, Director of Hearings and Parole Board Support, asking that the rejection be changed to a grant of parole because four members of the board had voted in favor of her request. (R.p.1-p.2). In an email dated February 24, 2012, the Department responded to Appellant's letter. (R.p.6). On March 15, 2012, Appellant filed a "Brief of

¹ Appellant had satisfied twenty (20) years of her life sentence through the award of good time credits.

Appellant” and a “Supplement to Record on Appeal.” This Brief of Respondent follows.

JURISDICTIONAL STATEMENT

The ALC’s jurisdiction to hear a final decision of the Department is derived from the decisions of the South Carolina Supreme Court in Al-Shabbaz v. State, 338 S.C. 354, 527 S.E.2d 724 (2000), and Furtick v. S.C. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002). In Al-Shabbaz, the Supreme Court created a new avenue by which inmates could seek review of some final decisions of a state agency in “non-collateral” matters related to a conviction or sentence. The Court held that inmate could appeal those final agency decisions to the ALC and ultimately to the Court of Appeals pursuant to the Appellate Court Rules. In Al-Shabbaz, the Court recognized that “these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits or custody status.” Id., at 369.

The Court noted that the appealable final decision in Furtick arises in the latter manner, where an inmate alleges that the Department erroneously determined that he was not eligible for parole. The Court held that, in order to determine whether an inmate’s claim against the Department is entitled to review by the ALC under the procedures set forth in Al-Shabbaz, it is first necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. Furtick, at 149. The Court determined that the “*permanent* denial of parole *eligibility*” by the Department, “implicates a liberty sufficient to require at least minimal due process.” Id. (emphasis in original). In a subsequent case, the Court held that the procedure

employed by the Parole Board to decide whether to grant or deny parole implicated a state created liberty interest and thus triggers due process requirements, including entitlement to review by the Administrative Law Court. Cooper v. S.C. Dept. of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008). Here, since Appellant challenges the procedure used by the Board in denying parole, this court has jurisdiction over his appeal.

ARGUMENT

- I. **The Department and the Parole Board complied with the *ex post facto* clauses of the Constitutions of the United States and South Carolina when following Section 24-21-645 of the South Carolina Code of Laws and requiring that Appellant receive a two-thirds vote of the members of the Parole Board rather than the simple majority required by the predecessor statute, because the two-thirds majority requirement was simply a procedural change in South Carolina's parole system.**

Appellant contends that in denying parole based on her failure to receive favorable votes from two-thirds of the members of the Parole Board, the Board and the Department violated the *ex post facto* clauses of the United States and South Carolina Constitutions. She argues the Board and the Department unconstitutionally relied on a statutory voting requirement that was not in effect when she committed the murder of her two year old neighbor. Respondent disagrees.

Initially, Respondent submits Appellant's brief is based on a reference to the wrong statute. Throughout her brief Appellant refers to Section 24-21-30(B) of the South Carolina Code as the relevant provision requiring a two-thirds majority vote of the Board; however, the language she references is simply part of a series of statutory amendments made in 1996 when the Legislature created "no parole" crimes. See S.C. Code Ann. §§ 24-13-100 to -150 (2007).

Section 24-21-30 was amended to account for the new category of “no parole” offenses, while still reflecting the parole eligibility rules for those offenses which would remain parole eligible, including the two-thirds majority rule that had existed in Section 24-24-645 of the Code since 1986. See 1986 Act No. 462 - The Omnibus Criminal Justice Improvements Act of 1986 (Respondent’s Exhibit #2). Because Appellant committed the murder in 1982, it pre-dates both the 1986 and the 1996 amendments; therefore, Appellant’s mistake does not affect the thrust of her ex post facto claim. Nevertheless, Respondent submits the claim itself is without merit.

The Parole Board is composed of seven (7) members. S.C. Code Ann. § 24-21-10(B) (2007 & Supp. 2011), six (6) of whom were present for Appellant’s January 18, 2012, parole consideration hearing. There is no dispute that on the date of Appellant’s offense the Board could issue an order authorizing parole [for an inmate who had reached parole eligibility] if it was signed by a majority of its members, See Appellant’s Exhibit C. Likewise, there is no dispute that this voting rule was subsequently amended to allow parole for a “violent” offense only upon a two-thirds majority vote. S.C. Code Ann. § 24-21-645. The parties agree that Appellant received four (4) votes in favor of parole at her parole consideration hearing; however, they disagree on the appropriate outcome for such a vote. Respondent made the final determination that the Board properly denied Appellant’s parole based on current South Carolina law. It provides in part:

The board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a panel on the case ninety days prior to the effective dated of the parole; however, at least two-thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 24-21-645 (2007 & Supp. 2011).

In her brief, Appellant argues Respondent's application of the voting requirements of the amended statute violates the ex post facto clause. Respondent submits Appellant's argument is foreclosed by the United States Supreme Court's decisions in Dobbert v. Florida, 432 U.S. 282, 97 S.Ct. 2290 (1977) and California Dept. of Corrections v. Morales, 514 U.S. 499, 115 S.Ct. 1597 (1995). See Roller v. Gunn, 107 F.3d 227 (4th Cir. 1997) (examining Dobbert and Morales and upholding the retrospective application of the two-thirds vote requirement in Section 24-21-645 of the South Carolina Code under an ex post facto challenge). As noted in Roller v. Gunn, Appellant's argument is speculative. There is no way of knowing whether a particular board member's vote would be the same under the new two-thirds majority rule as it would have been under the old rule. Indeed, "the two-thirds majority requirement is simply a procedural change in South Carolina's parole system, and 'even though it may work to the disadvantage of a defendant, a procedural change is not ex post facto.'" Roller at 237 (citation omitted). For these reasons, Respondent submits the decision not to disturb the Parole Board's vote to reject parole under the terms of Section 24-21-645 should be affirmed.

II. The Department complied with the specific and unambiguous terms of Section 24-21-645 of the South Carolina Code of Laws in concluding the Board was not authorized to grant Appellant parole where she failed to receive a favorable parole vote by "at least two-thirds of the members of the board."

Appellant contends that even when applying the voting requirements of the current parole statute she was entitled to release on parole after receiving favorable votes from four (4) of the six (6) Board members who were present. Respondent disagrees and submits the Department

and the Board complied with the specific and unambiguous terms of the controlling statute in concluding the Board could not grant parole based on a favorable vote from four (4) members of the Board. Respondent further submits Appellant appears to be relying upon a peripheral statute rather than the controlling law, and has misinterpreted the statute upon which she does rely.

As noted above, Appellant's reliance on Section 24-21-30(B) of the Code is misplaced. The actual two-thirds majority voting requirement is set forth in Section 24-21-645, and it does not include the language Appellant attempts to use to argue the requirement should not apply retroactively. In addition, Respondent submits the language of Section 24-21-30(B) does not support her claim. Appellant argues this provision provides that an inmate who commits a violent crime "on or after the date of this section" needs a two-thirds majority vote to achieve parole. However, the quoted language modifies the phrase "a 'no parole offense' as defined in Section 24-13-100" rather than the phrase "a violent crime as defined in Section 16-1-60." Thus, Respondent submits Section 24-21-30(B) simply does not support the claim that the two-thirds majority voting requirement applies prospectively only.

Next, Appellant argues that she should have been granted parole under the two-thirds majority voting requirement because she received two-thirds of the votes of the six (6) Board members present. Respondent again disagrees. The Code specifically provides that: at least two-thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60." S.C. Code Ann. § 24-21-645 (2007 & Supp. 2011) (emphasis added). Even though a mere quorum of the seven (7) member Board is all that is required to conduct business, James v. S.C. Dep't of Probation, Parole and Pardon Servs., 377 S.C. 564, 660 S.E.2d 288 (2008), the Code clearly requires a vote of at least two-

thirds of the "members of the board" to grant parole. Four (4) votes out of seven (7) members does not constitute "two-thirds of the members of the board." Thus, Respondent submits the Board and the Department properly denied Appellant's request for parole.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that the final decision of the South Carolina Department of Probation, Parole and Pardon Services be affirmed.

Respectfully submitted,

J. Benjamin Aplin
General Counsel

Tommy Evans, Jr.
Legal Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

BY: 

J. Benjamin Aplin
General Counsel

Columbia, South Carolina
June 11, 2012

Witnesses

Eddie Clark

G. T. Ferguson

A. L. Giles

Verdict

Foreman

The State of South Carolina

County of ABBEVILLE

82CS01-133

COURT OF GENERAL SESSIONS

MAY

Term, 1982

THE STATE

VS.

THALMA THERESA BARTON

araigned 5-10-82

INDICTMENT FOR

MURDER

William T. James Solicitor

True Bill

Wanda W. Stephens

Foreman of Grand Jury

5/10/82

MCRAW PRINTERS, 2610 DEVINE ST., COLUMBIA, S. C. 29205

I Hereby Appear In My Own Proper Person, ~~Waive Grand Jury Action~~ and Plead Guilty To The Within Indictment.

Thalma Theresa Barton B7 19

The State of South CarolinaCounty of Abbeville**INDICTMENT FOR MURDER**At a Court of General Sessions, convened on the 10th day of May,1982, the Grand Jurors of Abbeville County present upon their oath:That THALMA THERESA BARTONdid with malice aforethought in Abbeville County on or about the 13th dayof March, 1982, kill one Dessray Starksby means of beating, choking, strangling and drowning

Witnesses

Eddie Clark

G. T. Ferguson

A. L. Giles

Verdict

Foreman

The State of South Carolina

County of ABBEVILLE

82GS01-133

COURT OF GENERAL SESSIONS

MAY Term, 1982

THE STATE

vs.

THALMA THERESA BARTON

arrested 5-10-82

INDICTMENT FOR

MURDER

William T. James Solicitor

True Bill
Wanda W. Stephens
Foreman of Grand Jury

5/10/82

HOWARD PRINTERS, 2010 DEVINE ST., COLUMBIA, S. C. 29205

11 : 5:

I Hereby Appear In My Own Proper Person, ~~Waive Grand Jury Action~~ and Plead Guilty To The Within Indictment.

Thalma Theresa Barton 37 19

SOLICITOR

MAY 11 1982

SENTENCE
The Defendant *Thalma Theresa Barton* is committed to the custody of the S.C. Board of Corrections for the balance of her natural life term, with 1 - 1

Exhibit #1

The State of South Carolina

INDICTMENT FOR MURDER

County of AbbevilleAt a Court of General Sessions, convened on the 10th day of May,1982, the Grand Jurors of Abbeville County present upon their oath:That THALMA THERESA BARTON

did with malice aforethought in Abbeville County on or about the 13th day
 of March, 1982, kill one Dessray Starks
 by means of beating, choking, strangling and drowning

and that the said Dessray Starks

did die in Abbeville County as a proximate result thereof on or about the 13th
day of March, 1982

[No. 461

--1986

9-11-50 of the
1985, is amended

the United States
employer covered by
by a contributing
prior service
an employee of
paying into the
determined by the
not be less than
ation, or the
ative fiscal
time of payment,
year of service
an one year. A
reditable service
ablish a portion
e basis. This
total creditable
ervice, which he
n service until
requirements for
allowance. In
ayable under the
paid under any
same period of

ke effect upon

No. 462]

OF SOUTH CAROLINA

2955

General and Permanent Laws--1986

No. 462

(R513, S459)

AN ACT TO ENACT "THE OMNIBUS CRIMINAL JUSTICE IMPROVEMENTS ACT OF 1986" WHICH INCLUDES PROVISIONS TO AMEND CHAPTER 25 OF TITLE 17, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO JUDGMENT AND EXECUTION, BY ADDING ARTICLE 2 SO AS TO CREATE A COMMUNITY PENALTIES PROGRAM IN EACH JUDICIAL CIRCUIT OF THIS STATE; TO AMEND THE 1976 CODE BY ADDING SECTION 24-21-475 SO AS TO PROVIDE FOR A SHOCK PROBATION PROGRAM FOR DEFENDANTS CONVICTED OF CERTAIN OFFENSES; TO AMEND THE 1976 CODE BY ADDING SECTIONS 24-21-480 AND 24-21-485 SO AS TO AUTHORIZE THE ESTABLISHMENT OF THE RESTITUTION CENTER PROGRAM WHERE CERTAIN OFFENDERS MAY BE PLACED AS A CONDITION OF PROBATION; TO AMEND SECTION 24-21-430, RELATING TO CONDITIONS OF PROBATION, SO AS TO AUTHORIZE FURTHER CONDITIONS OF PROBATION; TO AMEND CHAPTER 13 OF TITLE 24, RELATING TO PRISONERS, BY ADDING ARTICLE 11 SO AS TO ESTABLISH PROGRAMS FOR WORK/PUNISHMENT OF INMATES CONFINED TO LOCAL CORRECTIONAL FACILITIES; TO AMEND ARTICLE 3, CHAPTER 1 OF TITLE 42, RELATING TO WORKERS' COMPENSATION, BY ADDING SECTION 42-1-505 SO AS TO PROVIDE THAT THE DEPARTMENT OF PAROLE AND COMMUNITY CORRECTIONS MAY ELECT TO COVER PERSONS IN ITS CUSTODY UNDER WORKERS' COMPENSATION; TO AMEND SECTION 24-3-40, AS AMENDED, RELATING TO PRISONERS, SO AS TO PROVIDE FOR CERTAIN WITHHOLDING FROM THE WAGES OF PRISONERS WORKING AT PAID EMPLOYMENT IN THE COMMUNITY FOR THE PURPOSE OF SUPPORTING CERTAIN VICTIM ASSISTANCE PROGRAMS; TO AMEND SECTION 24-21-13, RELATING TO PROBATION, PAROLE AND PARDON, SO AS TO AUTHORIZE THE PAROLE AND COMMUNITY CORRECTIONS BOARD TO DEVELOP POLICIES FOR PUBLIC SERVICE WORK PROGRAMS AND LITTER CONTROL PROGRAMS FOR CERTAIN OFFENDERS; TO AMEND ARTICLE 2, CHAPTER 23 OF

Exhibit #2

TITLE 24, RELATING TO SENTENCING AND PROBATION PROCEDURES BY ADDING SECTION 24-23-115 SO AS TO AUTHORIZE THE COURT OF GENERAL SESSIONS TO REQUIRE DEFENDANTS CONVICTED OF A CRIMINAL OFFENSE TO PERFORM PUBLIC SERVICE WORK FOR SPECIFIED GOVERNMENTAL AGENCIES OR NONPROFIT ORGANIZATIONS; TO AMEND SECTION 20-7-1350, RELATING TO FAMILY COURTS, SO AS TO PROVIDE THAT FAMILY COURT JUDGES ARE EMPOWERED TO UTILIZE CERTAIN PUBLIC SERVICE WORK AS A PUNISHMENT FOR CONTEMPT OF COURT; TO AMEND SECTION 24-13-210, AS AMENDED, RELATING TO CREDIT GIVEN CONVICTS FOR GOOD BEHAVIOR, SO AS TO PROVIDE FOR GOOD BEHAVIOR CREDIT TO BE GIVEN TO PRISONERS INCARCERATED IN A LOCAL CORRECTIONAL FACILITY; TO AMEND SECTION 24-13-230, AS AMENDED, RELATING TO PRISONERS, SO AS TO PROVIDE THAT CERTAIN INMATES IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS MAY EARN CREDITS AGAINST THEIR SENTENCES FOR PARTICIPATING IN CERTAIN EDUCATIONAL OR VOCATIONAL PROGRAMS AND TO PROVIDE THAT INMATES SERVING SENTENCES IN LOCAL FACILITIES MAY EARN CREDITS AGAINST SENTENCE FOR PRODUCTIVE DUTY ASSIGNMENTS; TO AMEND SECTION 17-25-70, RELATING TO CERTAIN MALE CONVICTS WORKING ON CHAIN GANGS, SO AS TO AUTHORIZE THE OFFICIAL IN CHARGE OF A LOCAL CORRECTIONAL FACILITY TO REQUIRE ABLE-BODIED INMATES IN THE FACILITY TO PERFORM LABOR ON THE PUBLIC WORKS OR WAYS; TO REPEAL SECTION 17-25-90, RELATING TO THE REQUIRED PLACE TO SERVE CERTAIN SENTENCES; TO AMEND SECTION 24-3-1120, RELATING TO THE PRISON OVERCROWDING POWERS ACT, SO AS TO REVISE THE DEFINITION OF PRISONERS WHO QUALIFY FOR EARLY RELEASE UNDER THIS ACT; TO AMEND SECTION 24-3-1130, RELATING TO THE REQUIREMENTS FOR THE DECLARATION OF EMERGENCIES UNDER THE PRISON OVERCROWDING POWERS ACT, SO AS TO DELETE CERTAIN OF THESE REQUIREMENTS IN REGARD TO UTILIZATION OF TEMPORARY STRUCTURES AND UNUSED BUILDINGS; TO AMEND SECTION 24-3-1140, RELATING TO THE BOARD OF CORRECTIONS' DETERMINATION OF THE

[No. 462

No. 462]

OF SOUTH CAROLINA

2957

-1986

General and Permanent Laws--1986

AND PROBATION
23-115 SO AS TO
AL SESSIONS TO
OF A CRIMINAL
SERVICE WORK FOR
OR NONPROFIT
ION 20-7-1350,
TO PROVIDE THAT
ERED TO UTILIZE
A PUNISHMENT FOR
ECTION 24-13-210,
GIVEN CONVICTS
PROVIDE FOR GOOD
TO PRISONERS
VAL FACILITY;
ENDED, RELATING
DE THAT CERTAIN
E DEPARTMENT OF
AGAINST THEIR
IN CERTAIN
ROGRAMS AND TO
ENTENCES IN LOCAL
INST SENTENCE FOR
TO AMEND SECTION
N MALE CONVICTS
TO AUTHORIZE THE
LOCAL CORRECTIONAL
INMATES IN THE
E PUBLIC WORKS OR
-90, RELATING TO
CERTAIN SENTENCES;
RELATING TO THE
SO AS TO REVISE
WHO QUALIFY FOR
TO AMEND SECTION
IREMENTS FOR THE
ER THE PRISON
D DELETE CERTAIN
D TO UTILIZATION
BUILDINGS; TO
TO THE BOARD
TION OF THE

APPROPRIATENESS OF ACTIONS TO REDUCE THE PRISON
POPULATION AND A REPORT TO THE GOVERNOR THEREON,
SO AS TO FURTHER PROVIDE FOR THE CONTENTS OF
THIS REPORT; TO AMEND SECTION 24-3-1160,
RELATING TO THE POWERS OF THE GOVERNOR TO REDUCE
THE PRISON POPULATION, SO AS TO FURTHER PROVIDE
FOR THESE POWERS; TO AMEND SECTION 24-3-1170,
RELATING TO THE ADVANCEMENT OF PRISONERS'
RELEASE DATES, SO AS TO REQUIRE THAT A SPECIFIED
NUMBER OF QUALIFIED PRISONERS MUST BE
CONDITIONALLY RELEASED OR SPECIFIED FOR RELEASE;
TO AMEND SECTION 24-3-1190, RELATING TO FURTHER
ADVANCEMENT OF PRISONERS' RELEASE DATES, SO AS
TO PROVIDE THAT DURING THE STATE OF EMERGENCY
THE BOARD OF PAROLE AND COMMUNITY CORRECTIONS
SHALL CONTINUE TO RELEASE PRISONERS MONTHLY
UNTIL THE SPECIFIED NUMBER IS MET BUT THAT NO
MORE THAN TWO HUNDRED INMATES MAY BE RELEASED IN
ANY THIRTY-DAY PERIOD; TO AMEND SECTION
24-3-2020, RELATING TO REVOCATION OF CONDITIONAL
ADVANCEMENT OF RELEASE DATES, SO AS TO FURTHER
PROVIDE FOR THIS REVOCATION; TO AMEND SECTION
24-3-2030, RELATING TO THE PRESCRIBING OF THE
CONDITIONS OF SUPERVISION UPON THE ADVANCEMENT
OF RELEASE DATES, SO AS TO PROVIDE THAT THE
BOARD OF PAROLE AND COMMUNITY CORRECTIONS SHALL
RATE THE RISK OF INMATES TO THE COMMUNITY TO
DETERMINE WHICH QUALIFIED PRISONERS ARE TO BE
RELEASED, TO PROVIDE THAT THE DEPARTMENT OF
PAROLE AND COMMUNITY CORRECTIONS SHALL NOTIFY
THE VICTIM BEFORE RELEASING AN INMATE AND THE
VICTIM IS ENTITLED TO SUBMIT A STATEMENT
REGARDING THE RELEASE, AND TO FURTHER PROVIDE
FOR THESE CONDITIONS OF SUPERVISION; TO REPEAL
SECTION 24-3-2000, RELATING TO CERTAIN POWERS OF
THE GOVERNOR UNDER THE PRISON OVERCROWDING
POWERS ACT AND SECTION 24-3-2040, RELATING TO
ADVANCEMENT OF RELEASE DATES TO BE INDEPENDENT
OF ALL OTHER ADJUSTMENTS OF RELEASE DATES; TO
AMEND SECTION 16-3-26, RELATING TO THE
PUNISHMENT FOR MURDER AND THE SEEKING OF THE
DEATH PENALTY, SO AS TO FURTHER PROVIDE FOR THE

PAYMENT OF ATTORNEY'S FEES AND COSTS BY THE STATE FOR THE DEFENSE OF INDIGENTS IN THESE CASES; TO AMEND SECTION 16-3-20, AS AMENDED, RELATING TO THE PUNISHMENT FOR MURDER, SO AS TO PROVIDE THAT WHERE AN AGGRAVATING CIRCUMSTANCE IS FOUND AND A RECOMMENDATION OF THE DEATH PENALTY IS NOT MADE, THE COURT MUST IMPOSE A SENTENCE OF LIFE IMPRISONMENT WITHOUT ELIGIBILITY FOR PAROLE UNTIL THE SERVICE OF THIRTY YEARS, TO FURTHER PROVIDE FOR THESE AGGRAVATING CIRCUMSTANCES, TO PROVIDE THAT IF THE JURY FINDS AN AGGRAVATING CIRCUMSTANCE AND DOES NOT RECOMMEND THE DEATH PENALTY, ALL MEMBERS OF THE JURY SHALL IN WRITING DESIGNATE THE AGGRAVATING CIRCUMSTANCE FOUND, AND TO FURTHER PROVIDE FOR THE QUESTIONING OF THE JURY AND THE CERTIFICATION BY THE JURY IN WRITING OF THE FINDING OF AN AGGRAVATING CIRCUMSTANCE; TO AMEND SECTION 16-23-490, RELATING TO THE ADDITIONAL PENALTY FOR THE POSSESSION OF A FIREARM DURING THE COMMISSION OF CERTAIN CRIMES, SO AS TO PROVIDE THAT A PERSON CONVICTED OF COMMITTING OR ATTEMPTING TO COMMIT A VIOLENT CRIME WHILE IN THE POSSESSION OF A FIREARM OR WHO VISIBLY DISPLAYS A FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME SHALL, IN ADDITION TO PUNISHMENT FOR THE CRIME, RECEIVE AN ADDITIONAL FIVE-YEAR TERM OF IMPRISONMENT AND TO PROVIDE CERTAIN EXCEPTIONS TO AND CONDITIONS OF THIS ADDITIONAL SENTENCE; TO DESIGNATE SECTION 1 OF ACT 185 OF 1977 AS SECTION 24-13-610 OF THE 1976 CODE WHICH RELATES TO THE AUTHORIZATION OF EXTENDED WORK RELEASE PROGRAMS AND TO AMEND SECTION 24-23-610 SO AS TO PROVIDE THAT NO PERSON CONVICTED OF MURDER OR CRIMINAL SEXUAL CONDUCT IN THE FIRST OR SECOND DEGREE MAY PARTICIPATE IN THIS EXTENDED WORK RELEASE PROGRAM; TO AMEND SECTION 24-21-640, AS AMENDED, RELATING TO THE CIRCUMSTANCES WARRANTING PAROLE, SO AS TO PROVIDE THAT PAROLE IS NOT AUTHORIZED TO ANY PRISONER SERVING A SENTENCE FOR A SECOND SUBSEQUENT CONVICTION FOR A VIOLENT CRIME; TO

[No. 462]

No. 462]

OF SOUTH CAROLINA

2959

General and Permanent Laws--1986

1986

COSTS BY THE
GENTS IN THESE
D, AS AMENDED,
RDER, SO AS TO
G CIRCUMSTANCE
OF THE DEATH
MUST IMPOSE A
MENT WITHOUT
THE SERVICE OF
IDE FOR THESE
ROVIDE THAT IF
CIRCUMSTANCE AND
PENALTY, ALL
BITING DESIGNATE
D, AND TO
ING OF THE JURY
Y IN WRITING OF
CIRCUMSTANCE; TO
ATING TO THE
OSSESSION OF A
CERTAIN CRIMES,
ON CONVICTED OF
MIT A VIOLENT
OF A FIREARM OR
OR KNIFE DURING
CRIME SHALL, IN
RIME, RECEIVE AN
RISONMENT AND TO
D CONDITIONS OF
IGNATE SECTION 1
24-13-610 OF THE
AUTHORIZATION OF
AND TO AMEND
PROVIDE THAT NO
CRIMINAL SEXUAL
OND DEGREE MAY
WORK RELEASE
640, AS AMENDED,
RRANTING PAROLE,
ST AUTHORIZED
FOR A SECOND
OLENT CRIME; TO



AMEND SECTION 24-21-645, RELATING TO
PROVISIONAL PAROLE ORDERS, AND SECTION
24-21-650, AS AMENDED, RELATING TO PAROLE
ORDERS, SO AS TO PROVIDE AT LEAST TWO-THIRDS OF
THE MEMBERS OF THE BOARD OF PAROLE AND COMMUNITY
CORRECTIONS MUST SIGN THESE ORDERS AUTHORIZING
PAROLE FOR PERSONS CONVICTED OF A VIOLENT CRIME,
AND TO PROVIDE UPON A NEGATIVE DETERMINATION OF
THE PAROLE, PRISONERS IN CONFINEMENT FOR A
VIOLENT CRIME MUST HAVE THEIR CASES REVIEWED
EVERY TWO YEARS FOR THE PURPOSE OF A
DETERMINATION OF PAROLE; TO AMEND THE 1976 CODE
BY ADDING SECTION 16-1-60 SO AS TO PROVIDE FOR
THE DEFINITION OF A VIOLENT CRIME; TO AMEND THE
1976 CODE BY ADDING SECTION 16-1-70 SO AS TO
PROVIDE FOR THE DEFINITION OF A NONVIOLENT
CRIME; TO AMEND SECTION 24-21-610, AS AMENDED,
RELATING TO PART OF A SENTENCE REQUIRED TO BE
SERVED BY A PRISONER AS A PREREQUISITE TO
PAROLE, SO AS TO REVISE THE MINIMUM SENTENCES
REQUIRED TO BE SERVED BY CERTAIN PRISONERS AS A
PREREQUISITE TO PAROLE; TO AMEND SECTION
24-13-710, AS AMENDED, RELATING TO THE
SUPERVISED FURLOUGH PROGRAM, SO AS TO REVISE THE
TYPE OF INMATES WHO ARE NOT ELIGIBLE FOR THIS
PROGRAM; TO AMEND SECTION 17-25-45, RELATING TO
LIFE SENTENCES FOR PERSONS CONVICTED THREE TIMES
OF CERTAIN CRIMES, SO AS TO REVISE THESE CRIMES
AND TO PROVIDE THAT THIS SENTENCE MUST BE LIFE
IMPRISONMENT WITHOUT PAROLE; TO PROVIDE THAT ANY
STATE OR LOCAL PRISONER WHO IS NOT IN THE
HIGHEST TRUSTY GRADE AND WHO IS ASSIGNED TO A
WORK DETAIL OUTSIDE THE CONFINES OF ANY
CORRECTIONAL FACILITY SHALL WEAR A STATEWIDE
UNIFORM; TO PROVIDE THAT NO PERSON CONVICTED OF
A VIOLENT CRIME CAN BE RELEASED BACK INTO THE
COMMUNITY IN WHICH HE COMMITTED THE OFFENSE
UNDER THE WORK RELEASE PROGRAM; TO AMEND
SECTIONS 14-1-210, 14-1-220, AND 14-1-230,
RELATING TO THE ESTABLISHMENT OF CERTAIN COST OF
COURT FEES TO FUND LOCAL CORRECTIONAL
FACILITIES, SO AS TO PROVIDE THAT NO COST OF
COURT FEES MAY BE ASSESSED WHERE A TERM OF

IMPRISONMENT ONLY IS IMPOSED AS THE PUNISHMENT AND TO REVISE THE PURPOSES FOR WHICH THESE FUNDS MAY BE USED; TO PROVIDE THAT ANY NEW PROGRAM ESTABLISHED UNDER THIS ACT OR ANY CHANGE IN ANY EXISTING PROGRAM MAY ONLY BE IMPLEMENTED TO THE EXTENT THAT APPROPRIATIONS FOR SUCH PROGRAMS HAVE BEEN AUTHORIZED BY THE GENERAL ASSEMBLY; TO PROVIDE FOR CERTAIN FACTORS WHICH MAY BE CONSIDERED WHEN DETERMINING THE LOCATION OF NEW CORRECTIONAL FACILITIES TO BE CONSTRUCTED BY THE STATE; AND TO AMEND SECTION 16-3-28, RELATING TO THE RIGHT OF THE DEFENDANT TO MAKE THE LAST ARGUMENT IN ANY CRIMINAL TRIAL WHERE THE MAXIMUM PENALTY THAT MAY BE IMPOSED IS DEATH, SO AS TO PROVIDE THAT THE DEFENDANT AND HIS COUNSEL SHALL HAVE THE RIGHT TO MAKE THE LAST ARGUMENT.

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

Act may be cited

SECTION 1. This act may be cited as "The Omnibus Criminal Justice Improvements Act of 1986".

Implementing funds

SECTION 2. The funds for implementing the provisions of the Community Penalties Program established in Section 3 of this act must be provided by the General Assembly in the annual general appropriations act from funds available pursuant to Section 14-1-210 of the 1976 Code.

Community Penalties Program

SECTION 3. Chapter 25 of Title 17 of the 1976 Code is amended by adding:

son who is
ing to commit
tion 16-1-60,
a firearm or
a firearm or
e commission
ition to the
be punished
five years;
nce does not
ty or a life
ed for the
s five-year
er mandatory
ed by law
may impose
e to run
e person so
not eligible
parole, work
Such five
person may
ent in less
e credits or
may earn

means any
ver, pistol,
igned to, or
projectile;
l consisting
not fastened
ing used to

be imposed
a separate
ession of a
eared to be
during the
conviction
ent. The
may not be

imposed unless the person convicted was at the same time indicted and convicted of a violent crime as defined in Section 16-1-60."

Extended work release program

SECTION 29. (A) Section 1 of Act 185 of 1977, as amended by Act 100 of 1981, is officially designated as Section 24-13-610 of the 1976 Code.

(B) Section 24-13-610 of the 1976 Code is amended to read:

"Section 24-13-610. The Department of Corrections (department) may establish an extended work release program. The program may allow the exceptional regular work release resident, male or female, convicted of a first and not more than a second offense, the opportunity of extended work release placement in the community with the privilege of residing with an approved community sponsor and continuing employment in the community; provided, that no person convicted of murder or criminal sexual conduct in the first or second degree may participate in this extended work release program."

Prisoner may be paroled

SECTION 30. Section 24-21-640 of the 1976 Code, as last amended by Act 100 of 1981, is further amended to read:

"Section 24-21-640. The Board shall carefully consider the record of the prisoner before and after imprisonment, and no such prisoner may be paroled until it shall appear to the satisfaction of the Board: that the prisoner has shown a disposition to reform; that, in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment;

that the interests of society will not be impaired thereby; and, that suitable employment has been secured for him. The Board shall establish written, specific criteria for the granting of parole and provisional parole. This criteria shall reflect all of the aspects of this section. The criteria must be made available to all prisoners at the time of their incarceration and the general public. The paroled prisoner shall, as often as may be required, render a written report to the Board giving that information as may be required by the Board which must be confirmed by the person in whose employment the prisoner may be at the time. The Board shall not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60. Provided that where more than one included offense shall be committed within a one-day period or pursuant to one continuous course of conduct, such multiple offenses shall be treated for purposes of this section as one offense."

Order authorizing parole

★
SECTION 31. Section 24-21-645 of the 1976 Code, added by Act 100 of 1981, is amended to read:

["Section 24-21-645. The Board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case, ninety days prior to the effective date of the parole; provided that at least two-thirds of the members of the Board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. A provisional parole order shall include the terms and conditions, if any,]

[No. 462]

No. 462]

OF SOUTH CAROLINA

2991

General and Permanent Laws--1986

shall not be
employment
board shall
for the
role. This
aspects of
be made
of their
ic. The
as may be
the Board
required by
the person
be at the
ole nor is
giving a
conviction,
a prior
defined in
more than
d within a
continuous
ases shall
ion as one

1976 Code,
read:

issue an
must be
ers or by
panel on
effective
at least
board must
parole for
as defined
order
if any,

to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole. Upon satisfactory completion of the provisional period, the Executive Director or one lawfully acting for him, shall issue an order, which, if accepted by the prisoner, shall provide for his release from custody.

Provided, that upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole."

Further

SECTION 32. Section 24-21-650 of the 1976 Code, as last amended by Act 110 of 1977, is further amended to read:

"Section 24-21-650. The Board shall issue an order authorizing the parole which must be signed by at least a majority of its members, with terms and conditions, if any; provided, that at least two-thirds of the members of the Board must sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. Thereupon the supervisor of parole, or one lawfully acting for him, shall issue a parole order, which, if accepted by the prisoner, shall provide for his release from custody.

Provided, that upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole."

Location of new correctional facilities

SECTION 42. Consideration for the location of new correctional facilities constructed by the State may be given to counties with high unemployment rates, as determined by the Research and Statistical Services Division of the State Budget and Control Board, provided that such location does not impede the ability of the correctional facility to (1) have access to gainful employment for any inmates who may qualify under requirements for restitution or other correctional programs, and (2) acquire necessary goods and services, including adequate water, sewer, electrical, and telephone or other communication systems. The provisions of this section apply only if the governing body of the county requests that a facility be constructed in its county. Provided, that the provisions of this section shall not affect any sites selected by the State Board of Corrections prior to the effective date of this section.

Right to make last argument

SECTION 43. Section 16-3-28 of the 1976 Code is amended to read:

"Section 16-3-28. Notwithstanding any other provision of law, in any criminal trial where the maximum penalty is death or in a separate sentencing proceeding following such trial, the defendant and his counsel shall have the right to make the last argument."

Time effective

SECTION 44. This act shall take effect upon approval by the Governor; provided, however,

RE
PI
H.
PI
C.
PI
V
F
I
D
S
T
R
C
A
I
T
E
S
E
F

No. 463]

OF SOUTH CAROLINA

3001

General and Permanent Laws--1986

that Sections 17 through 25 shall take effect
January 1, 1987.

★ Approved the 3rd day of June, 1986. ✓

No. 463

(R514, H2266)

AN ACT TO AMEND TITLE 15, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 78 SO AS TO ENACT THE SOUTH CAROLINA TORT CLAIMS ACT; TO AMEND SECTION 59-67-710, AS AMENDED, RELATING TO INSURANCE ON STATE-OWNED SCHOOL BUSES AND THE LIMITS OF LIABILITY INVOLVING SCHOOL BUS ACCIDENTS, SO AS TO REVISE THESE LIMITS AND THE AMOUNTS AND TYPES OF DAMAGES RECOVERABLE IN THESE ACCIDENTS; TO AMEND SECTION 59-67-790, AS AMENDED, RELATING TO THE MAJOR MEDICAL BENEFITS FUND TO PROVIDE BENEFITS FOR BODILY INJURIES TO SCHOOL BUS PASSENGERS UNDER CERTAIN CONDITIONS, SO AS TO REVISE THE LIMITS OF AND AMOUNT OF BENEFITS PAYABLE FROM THIS FUND, AND DESIGNATE THE NAME OF THE FUND AS THE PUPIL INJURY INSURANCE FUND, TO PROVIDE THAT IF THE AMOUNT OF A VERDICT OR JUDGMENT IS NOT SATISFIED BY REASON OF THE MONETARY LIMITATIONS OF CHAPTER 78 UPON RECOVERY FROM THE STATE OR POLITICAL SUBDIVISION THEREOF, THE PLAINTIFF'S INSURANCE COMPANY, SUBJECT TO THE UNDERINSURED AND UNINSURED DEFENDANT PROVISIONS OF THE PLAINTIFF'S INSURANCE POLICY, SHALL COMPENSATE THE PLAINTIFF FOR THE DIFFERENCE BETWEEN THE AMOUNT OF THE VERDICT OR JUDGMENT AND THE PAYMENT BY THE POLITICAL SUBDIVISION, AND TO PROVIDE THAT IF A CAUSE OF ACTION IS BARRED UNDER CHAPTER 78, THE PLAINTIFF'S INSURANCE COMPANY MUST COMPENSATE HIM FOR HIS LOSSES SUBJECT TO THE AFOREMENTIONED PROVISIONS OF HIS INSURANCE POLICY; AND TO REPEAL ARTICLE 3, CHAPTER 77 OF TITLE 15;

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Docket No. 12-ALJ-15-0004-AP

Thalma Barton, #110881, ...

Appellant,

v.

South Carolina Department of Probation, Parole and
Pardon Services, ...

Respondent.

REPLY BRIEF OF APPELLANT

Travis Dayhuff
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Thalma Barton

FILED

JUN 21 2012

SC ADMIN. LAW COURT

ARGUMENT

When Barton was sentenced in 1982, the law provided that inmates would receive parole if a majority of the Parole Board voted for parole. S.C. Code Ann. §§ 24-21-30 & 645 (Ex. A). In 1986, the General Assembly amended the law to provide that inmates who committed a "violent crime" would not receive parole unless two-thirds of the Parole Board voted for parole. 1986 Act No. 462 (Ex. B). The two-thirds vote requirement for inmates convicted of violent crimes appears in the current law. S.C. Code Ann. §§ 24-21-30(B) & 645 (Ex. C).¹

DPPPS claims that retroactively applying the current law's two-thirds vote requirement to deny Barton parole is not an *ex post facto* violation because Barton's claim is speculative. As set forth below, this claim rests upon a misunderstanding of Supreme Court precedent, and it ignores South Carolina Supreme Court precedent.

I. DENYING BARTON PAROLE IS AN *EX POST FACTO* VIOLATION BECAUSE RETROACTIVELY APPLYING THE TWO-THIRDS VOTE REQUIREMENT INCREASED HER PUNISHMENT

In determining whether an *ex post facto* violation has occurred, "the question is whether the amended... [rule] ...creates a significant risk of prolonging [] incarceration." *Garner v. Jones*, 529 U.S. 244, 251 (2000); accord *Jernigan v. State*, 340 S.C. 256, 261, 531 S.E.2d 507, 509 (2000). "When the rule does not by its own terms show a significant risk, the [inmate] must demonstrate, by evidence drawn from the rule's practical implementation by the agency charged with exercising discretion, that its retroactive application will result in a longer

¹ Respondent Department of Probation, Parole, and Pardon Services ("DPPPS") states that the operative two-thirds vote requirement is found in section 645, not section 30(B), but this "mistake does not affect the thrust of [Barton's] *ex post facto* claim." Resp. Br. at 5. Barton agrees. It is the retroactive application of a two-thirds vote requirement to Barton, regardless of where it appears in the current statute, which creates an *ex post facto* violation.

period of incarceration than under the earlier rule." *Garner*, at 255; accord *Jernigan*, at 261 & 509 (noting that courts must analyze "the effect of the statute on the 'quantum of punishment' imposed) (quoting *Lynce v. Mathis*, 519 U.S. 433, 444-45 (1997)).

The 1986 amendment to the parole statute that created the "violent crime" classification and changed the vote required to obtain parole from a simple majority to a two-thirds majority was part of a nationwide effort in the 1980s to "get tough on crime." As this change was intended to make it more difficult to obtain parole, and as the two-thirds requirement is a term that, standing alone, results in a "significant risk" of increased incarceration, the Court need go no further to find an *ex post facto* violation. *Garner*, at 251. Continuing the analysis, however, makes the *ex post facto* violation abundantly clear. The "practical implementation" of this change to two-thirds undeniably resulted in Barton experiencing "a longer period of incarceration than under the earlier rule" because, absent this change, the four votes Barton received, a majority, would have resulted in her receiving parole. *Id.* at 255.

The law that an *ex post facto* claim fails if it raises only a "speculative and attenuated possibility" of increased punishment arises from *California Dep't of Corrections v. Morales*, 514 U.S. 499, 509 (1977). In *Morales*, the Supreme Court held that the inmate's *ex post facto* challenge to a statute that decreased the frequency of parole hearings failed as speculative because the statute applied "only to a class of prisoners for whom the likelihood of release on parole is quite remote," and the decrease in the frequency was imposed only after the parole board made the affirmative determination that it was unreasonable to expect the inmate in question would receive parole at the next hearing. *Id.* at 510-11.

In sharp contrast to *Morales*, Barton is not speculating that the new requirement *may increase* her incarceration. Barton has established that the new requirement *already has*

increased her incarceration. Barton received four favorable votes at her parole hearing -- a majority of the six members present and voting and a majority of the seven members of the entire Parole Board. That vote would have resulted in her release under the parole statute in effect when she committed the offense in 1982, and thus her claim is not speculative. DPPPS's suggestion that *Morales* forecloses Barton's claim is, therefore, incorrect.

DPPPS's suggestion that *Dobbert v. Florida*, 432 U.S. 282 (1977), forecloses Barton's claim is also incorrect. In *Dobbert*, an inmate challenged the retroactive application of a change to Florida's death penalty statute that allowed a trial judge to overrule a jury's decision regarding whether to impose the death penalty. *Id.* at 294. The Supreme Court found no *ex post facto* violation because this change was part of a broader set of amendments which afforded defendants "significantly more safeguards," and thus the overall effect of the changes was "ameliorative" and did not result in a more onerous burden on *Dobbert*. *Id.* at 295. Importantly, the amendments to both sections 24-21-645 and 24-21-30(B) did not provide additional safeguards for inmates. Rather, these amendments were intended to, and did, make it more difficult to obtain parole and thus they increased the punishment for those who were convicted of a "violent crime."

Finally, DPPPS cites to *Roller v. Gunn*, 107 F.3d 227 (4th Cir. 1997), for the proposition that Barton's claim is speculative. The majority opinion in *Roller* held that retroactive application of the two-thirds requirement and a shift from annual to biannual parole review did not violate the *ex post facto* clause because the changes were procedural and the inmate's claim of increased punishment was speculative. *Id.* at 237. DPPPS neglects to mention that the *ex post facto* analysis in the *Roller* majority opinion has been rejected by the South Carolina Supreme Court. *Jernigan*, at 263-64 & 510-11. In fact, the South Carolina

Supreme Court relied heavily on the analysis of the *Roller* dissent in reaching its holding that the change from annual to biannual parole review was an *ex post facto* violation. *Id.* at 263 & 511 ("We find the analysis of the dissent in *Roller II* more compelling than that of the *Roller II* majority. ").

While *Jernigan* only addressed the change from annual to biannual parole review, applying *Jernigan's ex post facto* analysis to Barton's case results in an *ex post facto* violation. This is so because *Jernigan's ex post facto* analysis is more expansive than *Roller's*, and it is based upon the dissent in *Roller* that expressly found the retroactive application of the two-thirds requirement was an *ex post facto* violation. *Roller*, at 240.

Finally, it should also be noted that *Roller* was decided before *Garner* emphasized that an inmate has the opportunity to "demonstrate, by evidence drawn from the rule's practical implementation . . . that [the new law's] retroactive application *will result* in a longer period of incarceration than under the earlier rule." *Garner*, at 255 (emphasis added). Barton indisputably has such evidence, and every day she remains in prison she has more such evidence.

Because the effect of the retroactive application of the two-thirds requirement to Barton is known with certainty, her claim is not speculative. Her punishment has been increased. Therefore, DPPPS's application of the current law to Barton violates the *ex post facto* clause of the U.S. Constitution.²

² Even if *Garner*, *Morales*, and *Dobbert* could fairly be read to foreclose Barton's *ex post facto* claim under the U.S. Constitution, which they cannot, Barton would still have a valid *ex post facto* claim under the S.C. Constitution. *Jernigan*, at 263 & 511 at n.5.

II. BARTON RECEIVED TWO-THIRDS OF THE VOTES

The Court should reject an interpretation of a statute "which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010).

DPPPS contends that Barton did not receive the two-thirds vote necessary to obtain parole. DPPPS reaches this conclusion by interpreting section 24-21-645 to require favorable votes from two-thirds of the seven-member Parole Board, five votes, regardless of how many members are present at the hearing. Resp. Br. at 7-8. As noted above, six members were present and voting at Barton's hearing, and she received four favorable votes.

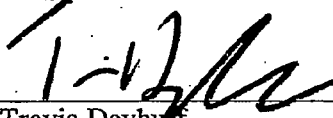
DPPPS acknowledges that the Parole Board may conduct hearings as long as a quorum, a simple majority of at least four members is present. Resp. Br. at 7 (citing *James v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 377 S.C. 564, 660 S.E.2d 288 (Ct. App. 2008)). DPPPS's interpretation, therefore, produces the absurd result that the Parole Board could conduct a hearing with four members, yet at that hearing an inmate convicted of a "violent crime" could not receive parole even with a unanimous vote of the members present. This is an absurd result and therefore DPPPS's interpretation should be rejected by the Court.

CONCLUSION

For the reasons set forth above and in Barton's previous brief, Barton respectfully requests that the Administrative Law Court: (1) reverse the final decision of the Respondent; (2) require Respondent and/or the Parole Board to grant Barton parole; and (3) provide any further relief that is just and proper.

[Signature is located on the next page]

Respectfully submitted,



Travis Dayhuff

Nelson Mullins Riley & Scarborough LLP
1320 Main Street - 17th Floor (29201)
Post Office Box 11070
Columbia, SC 29211-1070
(803) 799-2000

Attorneys for Appellant

June 21, 2012

Columbia, South Carolina

EXHIBIT A

1981
Cumulative Supplement
To
CODE OF LAWS OF
SOUTH CAROLINA 1976
Annotated

Containing Permanent General Statutes,
Administrative Regulations, and Court Rules
Enacted or Approved During the 1976 through
1981 Sessions of the General Assembly

Prepared under the supervision and
direction of the Code Commissioner and the
Legislative Council of the General Assembly
of South Carolina

VOLUME 9

NOTICE

This pocket supplement is not official. At the direction of the Legislative Council, the Acts as enacted have been edited in various particulars to conform them to the style and arrangement of the Code of 1976 and to make them more readily usable by the practitioner for ordinary work. For further details see the Foreword in the Pocket Supplement to Volume 1.



THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Rochester, New York 14694

THIS VOLUME CONTAINS

Statutes:

Full text of the general laws enacted during 1976-1981 by the General Assembly which are amendatory of or codified in Titles 21 through 25.

Annotations:

The sources of the annotations showing constructions of statutes referred to in this volume are:

Southeastern Reporter down through 281 SE2d 502.
United States Supreme Court Reports, Lawyers' Edition down through 69 L Ed 1006.
Federal Reporter down through 657 F2d 1251.
Federal Supplement down through 520 F Supp 1231.
Federal Rules Decisions down through 90 FRD 712.
American Law Reports down through 7 ALR4th.
ALR Federal down through 52 ALR Fed.

COPYRIGHT © 1978, 1979, 1980

BY

THE STATE OF SOUTH CAROLINA

COPYRIGHT © 1982

BY

THE STATE OF SOUTH CAROLINA

Library of Congress Catalog Card Number 76-40676

SC 1981 Supp.

(a) Any victim of the crime who suffered damage to his person as a result thereof or in the event such victim is deceased, or members of his or her immediate family; to the best of its ability;

(b) The solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted;

(c) The law enforcement agency that was responsible for the arrest of the prisoner concerned.

HISTORY: 1981 Act No. 100 § 4, eff June 15, 1981.

§ 24-21-30. Meetings; parole and pardon panels.

The Board shall hold regular meetings, as may be necessary to carry out its duties, but at least four times each year, and as many extra meetings as the Chairman, or the Governor acting through the Chairman, may order. The Board may preserve order at its meetings and punish any disrespect or contempt committed in its presence. The Chairman may direct the members of the Board to meet as three-member panels to hear matters relating to paroles and pardons as often as necessary to carry out the Board's responsibilities. Membership on such panels shall be periodically rotated on a random basis by the Chairman. At the meetings of the panels, any unanimous vote shall be considered the final decision of the Board, and the panel may issue an order of parole with the same force and effect of an order issued by the full Board pursuant to § 24-21-650. Any vote that is not unanimous shall not be considered as a decision of the Board and the matter shall be referred to the full Board which shall decide it based on a vote of a majority of the membership.

HISTORY: 1981 Act No. 100 § 5, eff June 15, 1981.

Effect of Amendments—

The 1981 amendment substantially rewrote this section.

§ 24-21-50. Hearings, arguments, and appearances by counsel or individuals.

ALR and L Ed Annotations—

Propriety of revocation of probation for subsequent criminal conviction which is subject to appeal. 76 ALR3d 588.

§ 24-21-80. Probationers and parolees to pay fee; delinquency; exemption.

Every person granted parole by the Probation, Parole and Pardon Board (Board), and every adult placed on probation by a court of competent jurisdiction shall be required to pay one hundred twenty dollars per year toward offsetting the cost of his

superv
due
each a
period
probati
paymen
tender
is ser
parolee
probati
ment o
the ter
paymen
tioner.
reduce
the full

HISTORY

Editor's
1980
General
Probation
addition
to take t
fiscal year

Cross re
As to
for state
As to
As to

Research
59 Am
67A C

§ 24-21

of
Each
money
shall g
ment.
shall be

HISTORY

Editor's
1980
General
Probation
addition

aspects of this section. The criteria shall be made available to all prisoners at the time of their incarceration and the general public. The paroled prisoner shall, as often as may be required, render a written report to the Board giving such information as may be required by the Board which shall be confirmed by the person in whose employment the prisoner may be at the time.

HISTORY: 1981 Act No. 100 § 12, eff June 15, 1981.

Effect of Amendments—

The 1981 amendment added the second, third and fourth sentences.

ALR and L Ed Annotations—

Immunity of public officer from liability for injuries caused by negligently released individual. 5 ALR4th 773.

Governmental tort liability for injuries caused by negligently released individual. 6 ALR4th 1155.

§ 24-21-645. Order authorizing parole; provisional order

The Board may issue an order authorizing the parole which shall be signed either by a majority of its members or by all three members meeting as a parole panel on the case, ninety days prior to the effective date of the parole. A provisional parole order shall include the terms and conditions, if any, to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole. Upon satisfactory completion of the provisional period, the Executive Director or one lawfully acting for him, shall issue an order, which, if accepted by the prisoner, shall provide for his release from custody.

HISTORY: 1981 Act No. 100 § 13, eff June 15, 1981.

§ 24-21-650. Order of parole.

The Board shall issue an order authorizing the parole which shall be signed by at least a majority of its members, with terms and conditions, if any. Thereupon the supervisor of parole, or one lawfully acting for him, shall issue a parole order, which, if accepted by the prisoner, shall provide for his release from custody.

HISTORY: 1977 Act No. 110.

Effect of Amendments—

The 1977 amendment substituted the words "authorizing the parole which shall be signed by at least a majority of its members" for the words "signed by at least two thirds of its members authorizing the parole" in the first sentence of this section.

Cross references—

As to payment of fee as condition of parole, see § 24-21-80.

As to three-member panels issuing valid orders of parole upon unanimous votes, see § 24-21-30.

EXHIBIT B

[No. 461

--1986

9-11-50 of the
1985, is amended

the United States
employer covered by
by a contributing
prior service
an employee of
paying into the
determined by the
not be less than
ation, or the
ative fiscal
time of payment,
year of service
an one year. A
reditable service
ablish a portion
basis. This
total creditable
service, which he
service until
requirements for
allowance. In
yable under the
paid under any
same period of

effect upon

No. 462]

OF SOUTH CAROLINA

2955

General and Permanent Laws--1986

No. 462

(R513, S459)

AN ACT TO ENACT "THE OMNIBUS CRIMINAL JUSTICE
IMPROVEMENTS ACT OF 1986" WHICH INCLUDES
PROVISIONS TO AMEND CHAPTER 25 OF TITLE 17, CODE
OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO
JUDGMENT AND EXECUTION, BY ADDING ARTICLE 2 SO
AS TO CREATE A COMMUNITY PENALTIES PROGRAM IN
EACH JUDICIAL CIRCUIT OF THIS STATE; TO AMEND
THE 1976 CODE BY ADDING SECTION 24-21-475 SO AS
TO PROVIDE FOR A SHOCK PROBATION PROGRAM FOR
DEFENDANTS CONVICTED OF CERTAIN OFFENSES; TO
AMEND THE 1976 CODE BY ADDING SECTIONS 24-21-480
AND 24-21-485 SO AS TO AUTHORIZE THE
ESTABLISHMENT OF THE RESTITUTION CENTER PROGRAM
WHERE CERTAIN OFFENDERS MAY BE PLACED AS A
CONDITION OF PROBATION; TO AMEND SECTION
24-21-430, RELATING TO CONDITIONS OF PROBATION,
SO AS TO AUTHORIZE FURTHER CONDITIONS OF
PROBATION; TO AMEND CHAPTER 13 OF TITLE 24,
RELATING TO PRISONERS, BY ADDING ARTICLE 11 SO
AS TO ESTABLISH PROGRAMS FOR WORK/PUNISHMENT OF
INMATES CONFINED TO LOCAL CORRECTIONAL
FACILITIES; TO AMEND ARTICLE 3, CHAPTER 1 OF
TITLE 42, RELATING TO WORKERS' COMPENSATION, BY
ADDING SECTION 42-1-505 SO AS TO PROVIDE THAT
THE DEPARTMENT OF PAROLE AND COMMUNITY
CORRECTIONS MAY ELECT TO COVER PERSONS IN ITS
CUSTODY UNDER WORKERS' COMPENSATION; TO AMEND
SECTION 24-3-40, AS AMENDED, RELATING TO
PRISONERS, SO AS TO PROVIDE FOR CERTAIN
WITHHOLDING FROM THE WAGES OF PRISONERS WORKING
AT PAID EMPLOYMENT IN THE COMMUNITY FOR THE
PURPOSE OF SUPPORTING CERTAIN VICTIM ASSISTANCE
PROGRAMS; TO AMEND SECTION 24-21-13, RELATING TO
PROBATION, PAROLE AND PARDON, SO AS TO AUTHORIZE
THE PAROLE AND COMMUNITY CORRECTIONS BOARD TO
DEVELOP POLICIES FOR PUBLIC SERVICE WORK
PROGRAMS AND LITTER CONTROL PROGRAMS FOR CERTAIN
OFFENDERS; TO AMEND ARTICLE 2, CHAPTER 23 OF

Exhibit #2

TITLE 24, RELATING TO SENTENCING AND PROBATION PROCEDURES BY ADDING SECTION 24-23-115 SO AS TO AUTHORIZE THE COURT OF GENERAL SESSIONS TO REQUIRE DEFENDANTS CONVICTED OF A CRIMINAL OFFENSE TO PERFORM PUBLIC SERVICE WORK FOR SPECIFIED GOVERNMENTAL AGENCIES OR NONPROFIT ORGANIZATIONS; TO AMEND SECTION 20-7-1350, RELATING TO FAMILY COURTS, SO AS TO PROVIDE THAT FAMILY COURT JUDGES ARE EMPOWERED TO UTILIZE CERTAIN PUBLIC SERVICE WORK AS A PUNISHMENT FOR CONTEMPT OF COURT; TO AMEND SECTION 24-13-210, AS AMENDED, RELATING TO CREDIT GIVEN CONVICTS FOR GOOD BEHAVIOR; SO AS TO PROVIDE FOR GOOD BEHAVIOR CREDIT TO BE GIVEN TO PRISONERS INCARCERATED IN A LOCAL CORRECTIONAL FACILITY; TO AMEND SECTION 24-13-230, AS AMENDED, RELATING TO PRISONERS, SO AS TO PROVIDE THAT CERTAIN INMATES IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS MAY EARN CREDITS AGAINST THEIR SENTENCES FOR PARTICIPATING IN CERTAIN EDUCATIONAL OR VOCATIONAL PROGRAMS AND TO PROVIDE THAT INMATES SERVING SENTENCES IN LOCAL FACILITIES MAY EARN CREDITS AGAINST SENTENCE FOR PRODUCTIVE DUTY ASSIGNMENTS; TO AMEND SECTION 17-25-70, RELATING TO CERTAIN MALE CONVICTS WORKING ON CHAIN GANGS, SO AS TO AUTHORIZE THE OFFICIAL IN CHARGE OF A LOCAL CORRECTIONAL FACILITY TO REQUIRE ABLE-BODIED INMATES IN THE FACILITY TO PERFORM LABOR ON THE PUBLIC WORKS OR WAYS; TO REPEAL SECTION 17-25-90, RELATING TO THE REQUIRED PLACE TO SERVE CERTAIN SENTENCES; TO AMEND SECTION 24-3-1120, RELATING TO THE PRISON OVERCROWDING POWERS ACT, SO AS TO REVISE THE DEFINITION OF PRISONERS WHO QUALIFY FOR EARLY RELEASE UNDER THIS ACT; TO AMEND SECTION 24-3-1130, RELATING TO THE REQUIREMENTS FOR THE DECLARATION OF EMERGENCIES UNDER THE PRISON OVERCROWDING POWERS ACT, SO AS TO DELETE CERTAIN OF THESE REQUIREMENTS IN REGARD TO UTILIZATION OF TEMPORARY STRUCTURES AND UNUSED BUILDINGS; TO AMEND SECTION 24-3-1140, RELATING TO THE BOARD OF CORRECTIONS' DETERMINATION OF THE

[No. 462

-1986

3 AND PROBATION
23-115 SO AS TO
AL SESSIONS TO
OF A CRIMINAL
VICE WORK FOR
OR NONPROFIT
ION 20-7-1350,
TO PROVIDE THAT
ERED TO UTILIZE
A PUNISHMENT FOR
CTION 24-13-210,
GIVEN CONVICTS
ROVIDE FOR GOOD
TO PRISONERS
NAL FACILITY;
ENDED; RELATING
DE THAT CERTAIN
E DEPARTMENT OF
AGAINST THEIR
IN CERTAIN
OGRAMS AND TO
TENCES IN LOCAL
NST SENTENCE FOR
D AMEND SECTION
MALE CONVICTS
TO AUTHORIZE THE
AL CORRECTIONAL
INMATES IN THE
PUBLIC WORKS OR
90, RELATING TO
RTAIN SENTENCES;
RELATING TO THE
SO AS TO REVISE
HO QUALIFY FOR
O AMEND SECTION
REMENTS FOR THE
DER THE PRISON
D DELETE CERTAIN
TO UTILIZATION
BUILDINGS; TO
TO THE BOARD
ON OF THE

No. 462]

OF SOUTH CAROLINA

2957

General and Permanent Laws--1986

APPROPRIATENESS OF ACTIONS TO REDUCE THE PRISON
POPULATION AND A REPORT TO THE GOVERNOR THEREON,
SO AS TO FURTHER PROVIDE FOR THE CONTENTS OF
THIS REPORT; TO AMEND SECTION 24-3-1160,
RELATING TO THE POWERS OF THE GOVERNOR TO REDUCE
THE PRISON POPULATION, SO AS TO FURTHER PROVIDE
FOR THESE POWERS; TO AMEND SECTION 24-3-1170,
RELATING TO THE ADVANCEMENT OF PRISONERS'
RELEASE DATES, SO AS TO REQUIRE THAT A SPECIFIED
NUMBER OF QUALIFIED PRISONERS MUST BE
CONDITIONALLY RELEASED OR SPECIFIED FOR RELEASE;
TO AMEND SECTION 24-3-1190, RELATING TO FURTHER
ADVANCEMENT OF PRISONERS' RELEASE DATES, SO AS
TO PROVIDE THAT DURING THE STATE OF EMERGENCY
THE BOARD OF PAROLE AND COMMUNITY CORRECTIONS
SHALL CONTINUE TO RELEASE PRISONERS MONTHLY
UNTIL THE SPECIFIED NUMBER IS MET BUT THAT NO
MORE THAN TWO HUNDRED INMATES MAY BE RELEASED IN
ANY THIRTY-DAY PERIOD; TO AMEND SECTION
24-3-2020, RELATING TO REVOCATION OF CONDITIONAL
ADVANCEMENT OF RELEASE DATES, SO AS TO FURTHER
PROVIDE FOR THIS REVOCATION; TO AMEND SECTION
24-3-2030, RELATING TO THE PRESCRIBING OF THE
CONDITIONS OF SUPERVISION UPON THE ADVANCEMENT
OF RELEASE DATES, SO AS TO PROVIDE THAT THE
BOARD OF PAROLE AND COMMUNITY CORRECTIONS SHALL
RATE THE RISK OF INMATES TO THE COMMUNITY TO
DETERMINE WHICH QUALIFIED PRISONERS ARE TO BE
RELEASED, TO PROVIDE THAT THE DEPARTMENT OF
PAROLE AND COMMUNITY CORRECTIONS SHALL NOTIFY
THE VICTIM BEFORE RELEASING AN INMATE AND THE
VICTIM IS ENTITLED TO SUBMIT A STATEMENT
REGARDING THE RELEASE, AND TO FURTHER PROVIDE
FOR THESE CONDITIONS OF SUPERVISION; TO REPEAL
SECTION 24-3-2000, RELATING TO CERTAIN POWERS OF
THE GOVERNOR UNDER THE PRISON OVERCROWDING
POWERS ACT AND SECTION 24-3-2040, RELATING TO
ADVANCEMENT OF RELEASE DATES TO BE INDEPENDENT
OF ALL OTHER ADJUSTMENTS OF RELEASE DATES; TO
AMEND SECTION 16-3-26, RELATING TO THE
PUNISHMENT FOR MURDER AND THE SEEKING OF THE
DEATH PENALTY, SO AS TO FURTHER PROVIDE FOR THE

PAYMENT OF ATTORNEY'S FEES AND COSTS BY THE STATE FOR THE DEFENSE OF INDIGENTS IN THESE CASES; TO AMEND SECTION 16-3-20, AS AMENDED, RELATING TO THE PUNISHMENT FOR MURDER, SO AS TO PROVIDE THAT WHERE AN AGGRAVATING CIRCUMSTANCE IS FOUND AND A RECOMMENDATION OF THE DEATH PENALTY IS NOT MADE, THE COURT MUST IMPOSE A SENTENCE OF LIFE IMPRISONMENT WITHOUT ELIGIBILITY FOR PAROLE UNTIL THE SERVICE OF THIRTY YEARS, TO FURTHER PROVIDE FOR THESE AGGRAVATING CIRCUMSTANCES, TO PROVIDE THAT IF THE JURY FINDS AN AGGRAVATING CIRCUMSTANCE AND DOES NOT RECOMMEND THE DEATH PENALTY, ALL MEMBERS OF THE JURY SHALL IN WRITING DESIGNATE THE AGGRAVATING CIRCUMSTANCE FOUND, AND TO FURTHER PROVIDE FOR THE QUESTIONING OF THE JURY AND THE CERTIFICATION BY THE JURY IN WRITING OF THE FINDING OF AN AGGRAVATING CIRCUMSTANCE; TO AMEND SECTION 16-23-490, RELATING TO THE ADDITIONAL PENALTY FOR THE POSSESSION OF A FIREARM DURING THE COMMISSION OF CERTAIN CRIMES, SO AS TO PROVIDE THAT A PERSON CONVICTED OF COMMITTING OR ATTEMPTING TO COMMIT A VIOLENT CRIME WHILE IN THE POSSESSION OF A FIREARM OR WHO VISIBLY DISPLAYS A FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME SHALL, IN ADDITION TO PUNISHMENT FOR THE CRIME, RECEIVE AN ADDITIONAL FIVE-YEAR TERM OF IMPRISONMENT AND TO PROVIDE CERTAIN EXCEPTIONS TO AND CONDITIONS OF THIS ADDITIONAL SENTENCE; TO DESIGNATE SECTION 1 OF ACT 185 OF 1977 AS SECTION 24-13-610 OF THE 1976 CODE WHICH RELATES TO THE AUTHORIZATION OF EXTENDED WORK RELEASE PROGRAMS AND TO AMEND SECTION 24-23-610 SO AS TO PROVIDE THAT NO PERSON CONVICTED OF MURDER OR CRIMINAL SEXUAL CONDUCT IN THE FIRST OR SECOND DEGREE MAY PARTICIPATE IN THIS EXTENDED WORK RELEASE PROGRAM; TO AMEND SECTION 24-21-640, AS AMENDED, RELATING TO THE CIRCUMSTANCES WARRANTING PAROLE, SO AS TO PROVIDE THAT PAROLE IS NOT AUTHORIZED TO ANY PRISONER SERVING A SENTENCE FOR A SECOND SUBSEQUENT CONVICTION FOR A VIOLENT CRIME; TO

COSTS BY THE
MENTS IN THESE
D, AS AMENDED,
ORDER, SO AS TO
G CIRCUMSTANCE
OF THE DEATH
MUST IMPOSE A
MENT WITHOUT
THE SERVICE OF
IDE FOR THESE
ROVIDE THAT IF
CIRCUMSTANCE AND
PENALTY, ALL
ITING DESIGNATE
D, AND TO
NG OF THE JURY
IN WRITING OF
CIRCUMSTANCE; TO
ATING TO THE
SSSESSION OF A
CERTAIN CRIMES,
N CONVICTED OF
MIT A VIOLENT
F A FIREARM OR
OR KNIFE DURING
RIME SHALL, IN
IME, RECEIVE AN
ISONMENT AND TO
D CONDITIONS OF
GNATE SECTION 1
4-13-610 OF THE
UTHORIZATION OF
AND TO AMEND
ROVIDE THAT NO
CRIMINAL SEXUAL
ND DEGREE MAY
WORK RELEASE
40, AS AMENDED,
RRANTING PAROLE,
OT AUTHORIZED
FOR A SECOND
LENT CRIME; TO

★ AMEND SECTION 24-21-645, RELATING TO
PROVISIONAL PAROLE ORDERS, AND SECTION
24-21-650, AS AMENDED, RELATING TO PAROLE
ORDERS, SO AS TO PROVIDE AT LEAST TWO-THIRDS OF
THE MEMBERS OF THE BOARD OF PAROLE AND COMMUNITY
CORRECTIONS MUST SIGN THESE ORDERS AUTHORIZING
PAROLE FOR PERSONS CONVICTED OF A VIOLENT CRIME,
AND TO PROVIDE UPON A NEGATIVE DETERMINATION OF
THE PAROLE, PRISONERS IN CONFINEMENT FOR A
VIOLENT CRIME MUST HAVE THEIR CASES REVIEWED
EVERY TWO YEARS FOR THE PURPOSE OF A
DETERMINATION OF PAROLE; TO AMEND THE 1976 CODE
BY ADDING SECTION 16-1-60 SO AS TO PROVIDE FOR
THE DEFINITION OF A VIOLENT CRIME; TO AMEND THE
1976 CODE BY ADDING SECTION 16-1-70 SO AS TO
PROVIDE FOR THE DEFINITION OF A NONVIOLENT
CRIME; TO AMEND SECTION 24-21-610, AS AMENDED,
RELATING TO PART OF A SENTENCE REQUIRED TO BE
SERVED BY A PRISONER AS A PREREQUISITE TO
PAROLE, SO AS TO REVISE THE MINIMUM SENTENCES
REQUIRED TO BE SERVED BY CERTAIN PRISONERS AS A
PREREQUISITE TO PAROLE; TO AMEND SECTION
24-13-710, AS AMENDED, RELATING TO THE
SUPERVISED FURLOUGH PROGRAM, SO AS TO REVISE THE
TYPE OF INMATES WHO ARE NOT ELIGIBLE FOR THIS
PROGRAM; TO AMEND SECTION 17-25-45, RELATING TO
LIFE SENTENCES FOR PERSONS CONVICTED THREE TIMES
OF CERTAIN CRIMES, SO AS TO REVISE THESE CRIMES
AND TO PROVIDE THAT THIS SENTENCE MUST BE LIFE
IMPRISONMENT WITHOUT PAROLE; TO PROVIDE THAT ANY
STATE OR LOCAL PRISONER WHO IS NOT IN THE
HIGHEST TRUSTY GRADE AND WHO IS ASSIGNED TO A
WORK DETAIL OUTSIDE THE CONFINES OF ANY
CORRECTIONAL FACILITY SHALL WEAR A STATEWIDE
UNIFORM; TO PROVIDE THAT NO PERSON CONVICTED OF
A VIOLENT CRIME CAN BE RELEASED BACK INTO THE
COMMUNITY IN WHICH HE COMMITTED THE OFFENSE
UNDER THE WORK RELEASE PROGRAM; TO AMEND
SECTIONS 14-1-210, 14-1-220, AND 14-1-230,
RELATING TO THE ESTABLISHMENT OF CERTAIN COST OF
COURT FEES TO FUND LOCAL CORRECTIONAL
FACILITIES, SO AS TO PROVIDE THAT NO COST OF
COURT FEES MAY BE ASSESSED WHERE A TERM OF

IMPRISONMENT ONLY IS IMPOSED AS THE PUNISHMENT AND TO REVISE THE PURPOSES FOR WHICH THESE FUNDS MAY BE USED; TO PROVIDE THAT ANY NEW PROGRAM ESTABLISHED UNDER THIS ACT OR ANY CHANGE IN ANY EXISTING PROGRAM MAY ONLY BE IMPLEMENTED TO THE EXTENT THAT APPROPRIATIONS FOR SUCH PROGRAMS HAVE BEEN AUTHORIZED BY THE GENERAL ASSEMBLY; TO PROVIDE FOR CERTAIN FACTORS WHICH MAY BE CONSIDERED WHEN DETERMINING THE LOCATION OF NEW CORRECTIONAL FACILITIES TO BE CONSTRUCTED BY THE STATE; AND TO AMEND SECTION 16-3-28, RELATING TO THE RIGHT OF THE DEFENDANT TO MAKE THE LAST ARGUMENT IN ANY CRIMINAL TRIAL WHERE THE MAXIMUM PENALTY THAT MAY BE IMPOSED IS DEATH, SO AS TO PROVIDE THAT THE DEFENDANT AND HIS COUNSEL SHALL HAVE THE RIGHT TO MAKE THE LAST ARGUMENT.

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

Act may be cited

SECTION 1. This act may be cited as "The Omnibus Criminal Justice Improvements Act of 1986".

Implementing funds

SECTION 2. The funds for implementing the provisions of the Community Penalties Program established in Section 3 of this act must be provided by the General Assembly in the annual general appropriations act from funds available pursuant to Section 14-1-210 of the 1976 Code.

Community Penalties Program

SECTION 3. Chapter 25 of Title 17 of the 1976 Code is amended by adding:

[No. 462

No. 462]

OF SOUTH CAROLINA

2989

General and Permanent Laws--1986

son who is
g to commit
ion 16-1-60,
a firearm or
a firearm or
e commission
ition to the
be punished
five years;
ce does not
y or a life
ed for the
s five-year
an mandatory
ed by law
may impose
e to run
person so
ot eligible
arole, work
Such five
person may
nt in less
credits or
may earn

means any
er, pistol,
gned to, or
projectile;
consisting
ot fastened
ng used to

be imposed
a separate
sion of a
ared to be
during the
onviction
ent. The
may not be

imposed unless the person convicted was at the same time indicted and convicted of a violent crime as defined in Section 16-1-60."

Extended work release program

SECTION 29. (A) Section 1. of Act 185 of 1977, as amended by Act 100 of 1981, is officially designated as Section 24-13-610 of the 1976 Code.

(B) Section 24-13-610 of the 1976 Code is amended to read:

"Section 24-13-610. The Department of Corrections (department) may establish an extended work release program. The program may allow the exceptional regular work release resident, male or female, convicted of a first and not more than a second offense, the opportunity of extended work release placement in the community with the privilege of residing with an approved community sponsor and continuing employment in the community; provided, that no person convicted of murder or criminal sexual conduct in the first or second degree may participate in this extended work release program."

Prisoner may be paroled

SECTION 30. Section 24-21-640 of the 1976 Code, as last amended by Act 100 of 1981, is further amended to read:

"Section 24-21-640. The Board shall carefully consider the record of the prisoner before and after imprisonment, and no such prisoner may be paroled until it shall appear to the satisfaction of the Board: that the prisoner has shown a disposition to reform; that, in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment;

that the interests of society will not be impaired thereby; and, that suitable employment has been secured for him. The Board shall establish written, specific criteria for the granting of parole and provisional parole. This criteria shall reflect all of the aspects of this section. The criteria must be made available to all prisoners at the time of their incarceration and the general public. The paroled prisoner shall, as often as may be required, render a written report to the Board giving that information as may be required by the Board which must be confirmed by the person in whose employment the prisoner may be at the time. The Board shall not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60. Provided that where more than one included offense shall be committed within a one-day period or pursuant to one continuous course of conduct, such multiple offenses shall be treated for purposes of this section as one offense."

Order authorizing parole

★
SECTION 31. Section 24-21-645 of the 1976 Code, added by Act 100 of 1981, is amended to read:

["Section 24-21-645. The Board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case, ninety days prior to the effective date of the parole; provided that at least two-thirds of the members of the Board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. A provisional parole order shall include the terms and conditions, if any,]

[No. 462]

No. 462]

OF SOUTH CAROLINA

2991

General and Permanent Laws--1986

to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole. Upon satisfactory completion of the provisional period, the Executive Director or one lawfully acting for him, shall issue an order, which, if accepted by the prisoner, shall provide for his release from custody.

Provided, that upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole."

Further

SECTION 32. Section 24-21-650 of the 1976 Code, as last amended by Act 110 of 1977, is further amended to read:

"Section 24-21-650. The Board shall issue an order authorizing the parole which must be signed by at least a majority of its members, with terms and conditions, if any; provided, that at least two-thirds of the members of the Board must sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. Thereupon the supervisor of parole, or one lawfully acting for him, shall issue a parole order, which, if accepted by the prisoner, shall provide for his release from custody.

Provided, that upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole."

1
(
1
1
:
1
1
1
7
1
E
E
E
7
J
A
C
E
I
S.
D
I
F
V
P
C
P
H
P?
RI

1
(
1
1
:
1
1
1
7
1
E
E
E
7
J
A
C
E
I
S.
D
I
F
V
P
C
P
H
P?
RI

1
(
1
1
:
1
1
1
7
1
E
E
E
7
J
A
C
E
I
S.
D
I
F
V
P
C
P
H
P?
RI

1
(
1
1
:
1
1
1
7
1
E
E
E
7
J
A
C
E
I
S.
D
I
F
V
P
C
P
H
P?
RI

1
(
1
1
:
1
1
1
7
1
E
E
E
7
J
A
C
E
I
S.
D
I
F
V
P
C
P
H
P?
RI

1
(
1
1
:
1
1
1
7
1
E
E
E
7
J
A
C
E
I
S.
D
I
F
V
P
C
P
H
P?
RI

1
(
1
1
:
1
1
1
7
1
E
E
E
7
J
A
C
E
I
S.
D
I
F
V
P
C
P
H
P?
RI

No. 463]

OF SOUTH CAROLINA

3001

General and Permanent Laws--1986

that Sections 17 through 25 shall take effect
January 1, 1987.

★ Approved the 3rd day of June, 1986. ✓

No. 463

(R514, H2266)

AN ACT TO AMEND TITLE 15, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 78 SO AS TO ENACT THE SOUTH CAROLINA TORT CLAIMS ACT; TO AMEND SECTION 59-67-710, AS AMENDED, RELATING TO INSURANCE ON STATE-OWNED SCHOOL BUSES AND THE LIMITS OF LIABILITY INVOLVING SCHOOL BUS ACCIDENTS, SO AS TO REVISE THESE LIMITS AND THE AMOUNTS AND TYPES OF DAMAGES RECOVERABLE IN THESE ACCIDENTS; TO AMEND SECTION 59-67-790, AS AMENDED, RELATING TO THE MAJOR MEDICAL BENEFITS FUND TO PROVIDE BENEFITS FOR BODILY INJURIES TO SCHOOL BUS PASSENGERS UNDER CERTAIN CONDITIONS, SO AS TO REVISE THE LIMITS OF AND AMOUNT OF BENEFITS PAYABLE FROM THIS FUND, AND DESIGNATE THE NAME OF THE FUND AS THE PUPIL INJURY INSURANCE FUND, TO PROVIDE THAT IF THE AMOUNT OF A VERDICT OR JUDGMENT IS NOT SATISFIED BY REASON OF THE MONETARY LIMITATIONS OF CHAPTER 78 UPON RECOVERY FROM THE STATE OR POLITICAL SUBDIVISION THEREOF, THE PLAINTIFF'S INSURANCE COMPANY, SUBJECT TO THE UNDERINSURED AND UNINSURED DEFENDANT PROVISIONS OF THE PLAINTIFF'S INSURANCE POLICY, SHALL COMPENSATE THE PLAINTIFF FOR THE DIFFERENCE BETWEEN THE AMOUNT OF THE VERDICT OR JUDGMENT AND THE PAYMENT BY THE POLITICAL SUBDIVISION, AND TO PROVIDE THAT IF A CAUSE OF ACTION IS BARRED UNDER CHAPTER 78, THE PLAINTIFF'S INSURANCE COMPANY MUST COMPENSATE HIM FOR HIS LOSSES SUBJECT TO THE AFOREMENTIONED PROVISIONS OF HIS INSURANCE POLICY; AND TO REPEAL ARTICLE 3, CHAPTER 77 OF TITLE 15;

EXHIBIT C

Westlaw

Code 1976 § 24-21-30

Page 1



Code of Laws of South Carolina 1976 Annotated Currentness
 Title 24. Corrections, Jails, Probations, Paroles and Pardons
 Chapter 21. Probation, Parole and Pardon
 Article 1. Board of Probation, Parole, and Pardon Services
 → § 24-21-30. Meetings; parole and pardon panels.

(A) A person who commits a "no parole offense" as defined in Section 24-13-100 on or after the effective date of this section is not eligible for parole consideration, but must complete a community supervision program as set forth in Section 24-21-560 prior to discharge from the sentence imposed by the court. For all offenders who are eligible for parole, the board shall hold regular meetings, as may be necessary to carry out its duties, but at least four times each year, and as many extra meetings as the chairman, or the Governor acting through the chairman, may order. The board may preserve order at its meetings and punish any disrespect or contempt committed in its presence. The chairman may direct the members of the board to meet as three-member panels to hear matters relating to paroles and pardons as often as necessary to carry out the board's responsibilities. Membership on these panels shall be periodically rotated on a random basis by the chairman. At the meetings of the panels, any unanimous vote shall be considered the final decision of the board, and the panel may issue an order of parole with the same force and effect of an order issued by the full board pursuant to Section 24-21-650. Any vote that is not unanimous shall not be considered as a decision of the board, and the matter shall be referred to the full board which shall decide it based on a vote of a majority of the membership.

(B) The board may grant parole to an offender who commits a violent crime as defined in Section 16-1-60 which is not included as a "no parole offense" as defined in Section 24-13-100 on or after the effective date of this section by a two-thirds majority vote of the full board. The board may grant parole to an offender convicted of an offense which is not a violent crime as defined in Section 16-1-60 or a "no parole offense" as defined in Section 24-13-100 by a unanimous vote of a three-member panel or by a majority vote of the full board.

Nothing in this subsection may be construed to allow any person who commits a "no parole offense" as defined in Section 24-13-100 on or after the effective date of this section to be eligible for parole.

(C) The board shall conduct all parole hearings in cases that relate to a single victim on the same day.

(D) Upon the request of a victim, the board may allow the victim and an offender to appear simultaneously before the board for the purpose of providing testimony.

CREDIT(S)

HISTORY: 1962 Code § 55-553; 1952 Code § 55-553; 1942 Code §§ 3437, 3439; 1932 Code §§ 3437, 3439;

Code 1976 § 24-21-30

Page 2

Civ. C. '22 §§ 979, 981; Civ. C. '12 §§ 890, 892; 1906 (25) 14; 1981 Act No. 100 § 5; 1995 Act No. 83, § 40;
2004 Act No. 263, § 13.

Current through End of 2011 Reg. Sess.

COPYRIGHT (C) 2012 BY THE STATE OF SOUTH CAROLINA

END OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.



Code of Laws of South Carolina 1976 Annotated Currentness

Title 24. Corrections, Jails, Probations, Paroles and Pardons

Chapter 21. Probation, Parole and Pardon

Article 7. Parole; Release for Good Conduct

→ § 24-21-645. Parole and provisional parole orders; search and seizure; review schedule following parole denial of prisoners confined for violent crimes.

(A) The board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case ninety days prior to the effective date of the parole; however, at least two-thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. A provisional parole order shall include the terms and conditions, if any, to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole.

(B) The conditions of parole must include the requirement that the parolee must permit the search or seizure, without a search warrant, with or without cause, of the parolee's person, any vehicle the parolee owns or is driving, and any of the parolee's possessions by:

- (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or
- (2) any other law enforcement officer.

However, the conditions of parole for a parolee who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the parolee agree to be subject to search or seizure, without a search warrant, with or without cause, of the parolee's person, any vehicle the parolee owns or is driving, or any of the parolee's possessions.

(C) By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Depart-

Code 1976 § 24-21-645

Page 2

ment of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this section, he is subject to discipline pursuant to the employing agency's policies and procedures.

(D) Upon satisfactory completion of the provisional period, the director or one lawfully acting for him must issue an order which, if accepted by the prisoner, shall provide for his release from custody. However, upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole, except that prisoners who are eligible for parole pursuant to Section 16-25-90, and who are subsequently denied parole must have their cases reviewed every twelve months for the purpose of a determination of parole. This subsection applies retroactively to a prisoner who has had a parole hearing pursuant to Section 16-25-90 prior to the effective date of this act.

CREDIT(S)

HISTORY: 1981 Act No. 100, § 13; 1986 Act No. 462, § 31; 1991 Act No. 134, § 19; 1993 Act No. 181, § 474; 1997 Act No. 120, § 4; 2010 Act No. 151, § 13, eff April 28, 2010; 2010 Act No. 273, § 58, eff January 1, 2011.

Current through End of 2011 Reg. Sess.

COPYRIGHT (C) 2012 BY THE STATE OF SOUTH CAROLINA

END OF DOCUMENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
OCT 19 2012
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No. 12-ALJ-15-0004-AP

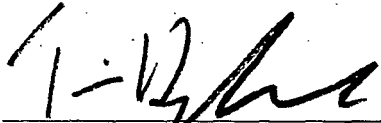
Thalma Barton #110881, ... Appellant,

v.

South Carolina Department of Probation, Parole, and
Pardon Services, ... Respondent.

NOTICE OF APPEAL

Thalma Barton appeals the Final Order of the Honorable S. Phillip Lenski dated October 2, 2012, that is attached hereto as Exhibit A. Barton received a copy of this order on October 4, 2012.



Travis Dayhuff
Gary L. Capps
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Thalma Barton

Columbia, South Carolina

October 19, 2012

Other Counsel of Record:

J. Benjamin Aplin
Tommy Evans
South Carolina Department of Probation, Parole, and Pardon Services
2221 Devine Street, Ste. 600
P.O. Box 50666
Columbia, SC 29250

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 12-ALJ-15-0004-AP

Thalma Barton, #110881,

Petitioner,

vs.

South Carolina Department of
Probation, Parole and Pardon
Services,

Respondent.

(COPY)

ADMINISTRATIVE HEARING

Wednesday, August 8, 2012
11:04 a.m. - 11:32 a.m.

The hearing before the Honorable Phillip Lenski,
taken at the Edgar A. Brown Building, 1205 Pendleton
Street, Suite 224, Columbia, South Carolina, on the
8th day of August, 2012 before Jaime D. Newton, Court
Reporter and Notary Public in and for the State of
South Carolina.

CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES:**Travis Dayhuff, Esquire**

Nelson Mullins Riley & Scarborough, LLP
 Meridian, 17th Floor
 1320 Main Street
 Columbia, South Carolina 29201
 Attorney for the Petitioner

J. Benjamin Aplin, Esquire

Department of Probation, Parole and Pardon Services
 2221 Devine Street, Suite 600
 Columbia, South Carolina 29205
 Attorney for the Respondent

INDEX**PAGE:**

Certificate 31

EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

1 **THE COURT:** Good morning everyone. I'm Phil Lenski.
2 I'm the administrative law judge who's been
3 assigned to this matter. And this is the
4 matter of Thalma Barton vs. The South Carolina
5 Department of Probation, Parole and Pardon
6 Services. Docket number 12-ALJ-15-0004-AP.
7 This is an appeal. Representing the
8 Petitioner, Mr. Dayhuff. Good morning, sir.
9 How are you doing?

10 **MR. DAYHUFF:** I'm doing well, Your Honor.

11 **THE COURT:** Good. And representing the Respondent,
12 Mr. Aplin. How are you doing?

13 **MR. APLIN:** Good.

14 **THE COURT:** Good. All right. Do we have any
15 preliminary matters we need to take up before
16 we get started?

17 **MR. DAYHUFF:** Your Honor, I should probably apologize.
18 I don't know, but it was probably my
19 responsibility to get a court reporter today,
20 and I apologize for the delay that it's caused
21 Mr. Aplin and you this morning.

22 **THE COURT:** Understandable. And I'm glad we were
23 able to make that arrangement. We're going to
24 put a little notice in our notice of oral
25 argument to make it clear in the future that if

1 you want to have the matter recorded, that
2 arrangements need to be made, but no.
3 Completely understand and I'm just glad we were
4 able to make this happen relatively quickly,
5 and thank you for your patience Mr. Aplin in
6 this matter as well. So if the parties are
7 ready to go? Mr. Dayhuff.

8 **MR. DAYHUFF:** Ready, Your Honor. By way of
9 background, my firm and I have been
10 representing Ms. Barton for a little over a
11 year. Ms. Barton has served approximately 30
12 years in the Department of Corrections, and my
13 active representation of her began with a
14 parole hearing in January of 2012. I should
15 mention that myself and my firm are working on
16 this matter on a pro bono basis for Ms. Barton.
17 At the January hearing, we made a presentation
18 to the parole board. That presentation
19 included a psychiatrist, Dr. Martin, who
20 testified that Ms. Barton would not be a risk
21 to society and would be likely to succeed. We
22 heard from Ms. Barton, who expressed among
23 other things, her remorse for the crime. We
24 heard from her husband, Mr. Jeffrey Gunter,
25 who's here today about the support network that

1 would be available for her were she to receive
2 parole, and I spoke in favor of paroling Ms.
3 Barton, focusing on her prospects for jobs,
4 that she had two. And her experience at the
5 Department of Corrections, her great experience
6 there. GED and excelling in all respects in
7 the Department of Corrections. After our
8 presentation, six members of the parole board
9 were present. They deliberated and they voted.
10 There were four votes in favor of parole and
11 two votes against parole. We believed then and
12 we believe now, that's four votes is all that
13 Ms. Barton needed to receive parole because
14 four is both two-thirds of six if we're
15 applying the current statute and it is a
16 majority of six of those who were present
17 voting. We are here today because the
18 Department contested five votes are needed for
19 Ms. Barton to receive parole. I would
20 respectfully submit that the Department's
21 mistaken for two reasons. The first is that
22 applying the current parole statute, that
23 requires a two-thirds vote to Ms. Barton would
24 violate the ex post facto clause. Secondly, if
25 you assume that the current statute applies and

1 we don't believe it does, requiring five votes
2 for parole, regardless of how many people are
3 present and deliberating would violate the
4 plain meaning of the current statute. Now,
5 while I am pointing mistakes, I should note my
6 own. In my first brief that I submitted to
7 this Court, I argued that 24-21-30 was
8 applicable in this case. Mr. Aplin noted that
9 that wasn't correct, and I agree with him. I
10 think the statute that you need to focus on
11 today, Your Honor, is 24-21-645 --

12 **THE COURT:** Okay. That was going to be my question
13 to you was whether there was a disagreement
14 about that?

15 **MR. DAYHUFF:** Mr. Aplin is right and that's where we
16 need to focus our attention.

17 **THE COURT:** So we're looking at 24-21 -- okay. Thank
18 you.

19 **MR. DAYHUFF:** Sure.

20 **THE COURT:** That clarifies that.

21 **MR. DAYHUFF:** Now, I'm going to start with reason
22 one. The first reason I think the Department
23 is mistaken. Ex post facto violations as the
24 Court knows, occurs when you have a change in
25 the law that is applied retroactively and that

1 change increases punishment for the crime.
2 We've cited a variety of cases to Your Honor in
3 our briefs. I think the key cases Garner v.
4 Jones, a Supreme Court case -- U.S. Supreme
5 Court case in 2000 and Jernigan v. State, the
6 South Carolina Supreme Court case that deals
7 with a very similar issue to what we have
8 today. I think Garner teaches two things. The
9 first, and it teaches how you establish an ex
10 post facto violation. The first way you can
11 establish it, is if you review the terms of the
12 statute at issue, you can look at it on its on
13 face and decide whether that statute
14 significantly risks prolonging an inmates
15 incarceration. That's the first way you can
16 establish an ex post facto violation. A facial
17 invalidity, if you will. If you do not, If you
18 cannot tell from the face of the statute,
19 Garner says, well, look at how it would be
20 applied to this inmate and decide if as
21 applied, you would have a significant risk of
22 prolonging incarceration. So that's your basic
23 test. Importantly, under either of those
24 prongs, Your Honor, you don't have to establish
25 actual prolonged incarceration. It's

1 significant risk under the case law. Jernigan
2 v. State is the other case I mentioned at the
3 beginning. In Jernigan v. State, our South
4 Carolina Supreme Court applied U.S. Supreme
5 Court precedent, including Garner, including
6 Morales, California v. Morales, and held that
7 the decrease in frequency of parole hearings
8 from once every year to once every two years
9 violated the ex post facto clause. The Supreme
10 Court found that that change produced a
11 sufficient risk -- they didn't use the term
12 significant risk, they used sufficient risk, of
13 increasing punishment. Now, what I think's
14 important about that -- that's not addressing
15 the specific issue we have today, which is the
16 change of vote. But I think it's important
17 because of the way that Jernigan approached the
18 issue. The Court did not engage in any
19 particularly tortured analysis of whether this
20 was a speculative claim or not, the Court
21 looked at it very logically and said the
22 decrease from two years to one year, will
23 increase the length of incarceration. It's a
24 sufficient risk. Really what the Court did was
25 look at it facially if you're looking at Garner

1 and if they were applying Garner, and they
2 discuss Garner in the footnote a great deal.
3 So I think that's a facial invalidity of that
4 portion of the South Carolina parole statute.
5 Now, Jernigan's also important because it
6 addresses Roller. Roller is a case that's been
7 mentioned by the Department as one that you
8 should consider. Roller held that the decrease
9 in frequency and the change in vote wasn't ex
10 post facto. This is Roller v. Gunn. Jernigan
11 embraced the dissent in Roller and I wanted to
12 read just a short portion of the dissent in
13 Roller v. Gunn. And of course Roller addresses
14 both the decrease in frequency of the hearings
15 and the change in the vote. In the Roller
16 case, in the dissent, Judge Hall said, the
17 majority's view that the two-thirds requirement
18 might actually inure to the inmates advantage
19 flows from neither Dobbert nor common sense.
20 It goes on to say, no one would argue that
21 inmates affected by the South Carolina
22 amendments are now in a better position than
23 they were before statutory changes. Of course,
24 Hall finds an ex post facto violation.
25 Jernigan embraces the dissent in Roller. Now,

1 I think those are the two key cases. And
2 obviously it's the Court's role to decide
3 this case -- law to our case. Ms. Barton was
4 convicted and incarcerated in 1982. At that
5 time, our parole statute 645, held that you
6 receive parole upon a majority vote. In 1986
7 that statute was changed as part of an Omnibus
8 Criminal Law Act. The parole statute was
9 changed for those committed -- who have
10 committed violent offenses now must receive
11 two-thirds vote to receive parole. So if we're
12 applying Garner, you look at the facial
13 analysis. You needed a majority before you
14 need two-thirds now. That makes it harder.
15 The intent of the legislature and the general
16 assembly was to get tough on crime. I don't
17 know of any situation in which it's easier to
18 receive two-thirds vote than it is a majority
19 vote. And when we pass a piece of legislation
20 in the general assembly, it's a lot easier to
21 get that majority vote, than it is to override
22 a veto in the two-thirds vote. I think under
23 Garner and under Jernigan, which I think was
24 also a case in which facial invalidity was
25 found, you need to go no further. That on it's

1 face, makes it more difficult for an inmate to
2 receive -- makes it more difficult and results
3 in a significant risk of increased
4 incarceration. If you want to go further, if
5 you want to go the "as applied" route, Ms.
6 Barton can show a change, that this change
7 caused a significant risk of increased
8 punishment. Not only that, and this what makes
9 her case really unique, she can show that she
10 can establish an actual increase in punishment.
11 And I really think that makes her case unique.
12 Most of the cases -- most the tough calls on ex
13 post facto are, well is this speculative or
14 not. Are we going to step in or not. We don't
15 want to micro-manage the State and how they
16 handle parole, but is this inmate's beef real?
17 Was this person really going to get out or not?
18 Well, Ms. Barton would have gotten out. She
19 can show actual harm because she got four
20 votes. And if the new statute doesn't apply to
21 her, she is out on a majority vote. I
22 mentioned one other case to you, the Morales
23 case. In Morales, California Department of
24 Corrections v. Morales, 1995 case. It
25 introduced this notion that ex post facto

1 claims can't be established if the claim is
2 speculative and I just mentioned that. And I
3 want to read one section from that case. This
4 is on page 509. Of course the Court found no
5 ex post facto violation here, but they talk a
6 lot about whether a claim is speculative or
7 not. In evaluating the constitutionality of the
8 1981 amendment, we must determine whether it
9 produces a sufficient risk when increasing the
10 measure of punishment attached to the current
11 crimes. There's no formula, I'm paraphrasing
12 here. The amendment in this case creates only
13 the most speculative and attenuated possibility
14 of producing the prohibitive effect of
15 increasing the measurement of punishment to
16 cover the crimes. And such conjectural effects
17 are insufficient under any threshold we might
18 establish in an ex post facto clause. Unlike
19 the inmate in California v. Morales, Ms. Barton
20 is unique and she's not engaging in
21 speculation. We're not talking about
22 attenuated possibilities. We're not talking
23 about conjecture. She actually received the
24 votes that shows she suffered actual increase
25 in confinement. And that's why she has an ex

1 post facto violation. Now, I want to talk
2 about reason two. Reason two is Ms. Barton
3 wins on the math. Four votes out of six is
4 both the majority and two-thirds majority. The
5 Department says you always need five to get
6 two-thirds under our statute. I don't think
7 that comports with the meaning in the statute.
8 The general assembly could have said in the
9 statute, henceforth and forever more after
10 1986, an inmate must receive five votes if they
11 are convicted of a violent crime to receive
12 parole. And if we were thinking about the
13 majority statute for non-violent offenders,
14 they could have said, you have to get four to
15 be paroled. The general assembly chose
16 different terms. With respect to non-violent
17 crimes they chose the term majority with
18 respect to violent and they chose two-thirds.
19 Those terms require us to do the math. And I
20 think they require us to do the math because
21 the general assembly intended these statutes to
22 work when less than the entire board is
23 present. And that's a very reasonable thing to
24 have put into this statute. If they wanted it
25 to be five, regardless of who shows up, they

1 could have said that then. They could have
2 very easily said that.

3 **THE COURT:** But they could have also the members of
4 the board present and voting or the voting
5 members of the board and they didn't say that
6 either.

7 **MR. DAYHUFF:** Very true. Very true. The statute
8 says two-thirds of the members of the board.

9 **THE COURT:** Of the members of the board.

10 **MR. DAYHUFF:** That's certainly the Department's
11 interpretation is that the members are all
12 members. I do think though, we have case law
13 that has expressly said, and I think it's the
14 James case out of the Court of Appeals. It
15 says you can operate if you have at least a
16 quorum. At least four of the folks are
17 present. If the parole board is able to do
18 it's business with only four present, it seems
19 to me that we would run into some rather absurd
20 results if that would be the case. And I think
21 we went through a couple of those -- if four
22 show up, if only four are present, the James
23 case says the board can operate. Let's say all
24 four say parole, parole this inmate. Well,
25 under the Department's interpretation, the full

1 board is required, if five are still required,
2 that inmate's not paroled on a unanimous vote.
3 If five are present, of course they can
4 operate, they have a quorum. But in the
5 Department's position, an inmate will be
6 required to get a unanimous vote, not two-
7 thirds. The general assembly did not say that
8 in that statute. So I think for two reasons,
9 that interpretation is wrong. One, they could
10 have said fine when they didn't. And two, the
11 absurd results that would be generated. So
12 that's reasons one and two and I know are
13 argument is limited to around 15 minutes, so to
14 at this time I'll sit down and reserve any time
15 I have left for the reply.

16 **THE COURT:** Thank you, sir.

17 **MR. APLIN:** Thank you, Your Honor, may it please the
18 Court. I'm Ben Aplin and I'm general counsel
19 for the Department of Probation, Parole and
20 Pardon Services and I'm here on behalf of the
21 Department in this administrative appeal that
22 Ms. Barton has filed from the denial of her
23 parole. There really, as you are aware, two
24 grounds that she is alleging that the
25 Department has, I guess, the Department or the

1 board has made a mistake in it's final decision
2 that she was rejected for parole. The first
3 being a claim that it's an ex post facto
4 violation to apply 24-21-645 of the code to her
5 hearing and to require a two-thirds vote of the
6 board in order to make parole. Mr. Dayhuff
7 referred to Roller v. Gunn and that really is
8 I guess the crux of the Department's argument
9 is that Roller v. Gunn controls an analysis at
10 the every least under the federal constitution
11 and the ex post facto clause of this issue of
12 whether the law could be changed and applied
13 retroactively to increase the voting
14 requirement. Roller v. Gunn is the only
15 published opinion out there that addresses this
16 statute and this voting requirement. It
17 addressed two issues. One was the voting
18 requirement, the other was the frequency of the
19 parole hearings. And Jernigan which came from
20 our Supreme Court later, which disagreed with
21 the analysis in Roller v. Gunn only addresses
22 the frequency of the hearings. Roller v. Gunn
23 was appealed to the United States Supreme Court
24 and cert was denied in 1997. Our position is
25 that, at least under the federal constitution

1 it is binding a precedent. It is controlling
2 over that that issue and that there are no
3 other published opinions any where that would
4 go against that decision. And that decision
5 was based on an analysis of Dobbert v. Florida
6 and Department of Corrections California v.
7 Morales, in the finding that the change from
8 votes from a simple majority to a two-thirds
9 majority, is in fact the speculative change,
10 procedural change in the statute. Now, Mr.
11 Dayhuff is arguing there's no conceivable way
12 that, and I think he quoted the dissent in the
13 Roller opinion that changing from a majority to
14 a two-thirds could somehow be to the benefit of
15 the inmate. But I think the analysis in that
16 goes something to the effect of, if the sitting
17 parole board members are operating under the
18 assumption that an inmate needs two-thirds of
19 the votes to be paroled, each individual board
20 member may be more inclined to vote for parole
21 knowing that there has to be more than a simple
22 majority. Yes, certainly that's a little bit
23 of a stretch to say that helps the inmate, but
24 that's the whole point. It's speculative.
25 There is absolutely no way to know what each

1 board member would have voted if they had
2 applied a different standard. And the standard
3 that was applied, the standard that's in the
4 parole board manual, the standard that Ms.
5 Barton appeared in front of the board for the
6 past 12 hearings, was that she was going to be
7 required to get five votes in order to make
8 parole. So I don't think anybody went into
9 this with the belief that if they got four
10 votes they would be paroled on this case. And
11 I don't think that argument was raised until
12 after this -- I think it was the thirteenth
13 hearing for parole. So that does raise a
14 little bit of concern, but the bottom line is
15 that the Roller v. Gunn case controls the U.S.
16 Constitutional analysis. Now, Jernigan, the
17 Supreme Court in analyzing the frequency issues
18 decided they were going to apply the state
19 constitution more broadly, the ex post facto
20 clause of the state constitution, and strike
21 down the change of the frequency of hearings
22 from one year to two years. And I think it's
23 interesting to focus a little bit on the
24 Jernigan opinion and I know Mr. Dayhuff
25 referred to their analysis in the footnote of

1 Garner v. Jones which is another U.S. Supreme
2 Court case from Georgia. And in the case from
3 Georgia, I believe they extended the frequency
4 of parole hearings from three years to eight
5 years. But they left the parole board in
6 Georgia with some discretion about whether they
7 were going to actually push it out for the full
8 eight years or something in between. And in
9 the analysis in the footnote, our State Supreme
10 Court in Jernigan talks about Garner and says,
11 unlike Garner we find South Carolina system
12 does indeed create "a significant risk" of
13 prolonging Respondent's incarceration by one
14 year without -- and they emphasize the word,
15 any chance for review in the interim. In
16 Jernigan the Court seemed to be focused on the
17 fact that your extending the number of parole
18 hearings, it's every two years instead of one
19 year and there's no chance of review in the
20 interim. By contrast, if you look at the
21 change in the voting, the numbers of votes
22 required, there's still the same number of
23 parole hearings. There's not that there's no
24 chance of being paroled. Certainly Ms. Barton
25 had the chance of being paroled at the hearing

1 that she had this past hearing, if she had
2 received the five votes. Five of the six
3 members who were present. So I think there is
4 certainly a distinction between changing the
5 frequency of the hearings and changing the
6 number of votes required for parole.

7 **THE COURT:** Yes, Mr. Aplin, but isn't it also the
8 case that specifically in this situation, had
9 the old law been applied in this situation, she
10 would have been paroled versus the new law
11 which, with the change, which required the two-
12 thirds majority, that precluded her from
13 getting parole. So the change in the law
14 actually did affect her and lengthen her
15 sentence.

16 **MR. APLIN:** I think if you look at it black and
17 white, yes. But again, that's where you got to
18 go to the speculative nature of the argument
19 is, the parole board members, all four of them
20 who voted, understood and were operating under
21 the assumption that the new law applies and
22 have been told that the new law applies and
23 that there would have to be five votes in favor
24 of parole. If they were told were the old law,
25 why they may very well, all four of them voted

1 not to parole. There's no way to know that.
2 That's the whole point of it being speculative
3 is you can't go back and then say, oh well, you
4 applied the old rules under the old statute, if
5 the board didn't know that that was what they
6 were applying. I guess that's the only way I
7 know how to put it is that it still is a
8 speculative result. I think it's dis-ingenuine
9 to say, oh well, she got four votes, those four
10 votes, that's the way the board always would
11 have voted, circumstances never change. They
12 heard the information and those four people
13 were going to vote to parole. You have to take
14 into consideration what the standard they were
15 applying was and the standard was a two-thirds
16 votes of the full board would have been
17 required. So for those reasons Roller v. Gunn,
18 the fact that Jernigan does not specifically
19 apply to this situation. I think this means
20 that unless this Court is going to apply the
21 State Constitution to this particular issue,
22 like the Supreme Court did in Jernigan, that
23 the issue is foreclosed, at least under the
24 federal constitution. Moving on to the second
25 argument, if I can, is the claim that because

1 four of the six members who were present voted
2 in favor of parole that under the current
3 statute, which is 24-21-645, that it should
4 have been granted. The Department's position
5 on that issue is simply to follow the straight
6 clear language of the statute. And the statute
7 says now that at least two-thirds of the
8 members of the board have to vote in favor of
9 parole for a violent offense. Members of the
10 board are defined by statute. There are seven
11 members, one from each congressional district.
12 One at-large member and clearly there's no such
13 things as two-thirds of seven, you'd have to
14 have four and two-thirds members vote, so five
15 would be the number that would have to be made
16 to make the two-thirds votes of the full board.
17 The old statute, used similar language. It
18 said that, again using the majority standards,
19 that a majority of the members had to vote for
20 parole. So our argument would be that either
21 under the old or new statute, the definition of
22 members has stayed the same. Same thing would
23 apply there. If you had to have the majority
24 of the members, if you had five people present,
25 three voting in favor of parole under the old

1 rule would not be sufficient. You have to have
2 four. Four of the seven.

3 **THE COURT:** Well, what about the appellant's argument
4 that that -- and I agree, it doesn't say the
5 voting members or members present and voting or
6 any of the language that sometimes you see in
7 other statutes, but it also -- what about that
8 argument from the appellant that strict
9 application of you saying a majority of the
10 members, then you could have four, a quorum of
11 your board meet, all four unanimous vote for
12 parole and yet that would be insufficient for
13 the individual to receive parole because they
14 didn't have a two-thirds vote of the entire
15 board?

16 **MR. APLIN:** And I understand that claim and all I can
17 do to respond to that is to let you know from
18 a practical standpoint the board does not hear
19 cases unless at least five members are present.
20 So I know he gave two scenarios, Mr. Dayhuff
21 argued. There have been cases where there have
22 been only five board members present and they
23 hear cases for parole. And unless it's a
24 violent and unless the person gets all five of
25 those votes, they do not make parole. Now, in

1 theory, yes, the James case says four board
2 members can conduct business of the board
3 because that's a quorum, but the reality is the
4 board doesn't actually sit and hear cases. If
5 we only have four people, we don't have cases
6 heard. So that result can't happen. But I do
7 understand his point. The argument is it gets
8 more difficult when you have fewer board
9 members, when you get down to six or you get
10 down to five and you're still requiring five
11 votes and -- I understand the claim, you know,
12 maybe that other person's there, and they may
13 have voted for parole, but of course, they may
14 not have voted for parole. You fall back into
15 the whole speculation issue again, is what
16 would have happened. I think that the way the
17 statute reads, the Department is applying it in
18 good faith the way it seems to require that it
19 be applied and has been doing so since 1986.
20 There have been many, many, many cases heard
21 with fewer than seven board members where they
22 have been rejected for parole. So I know that
23 that doesn't impact Ms. Barton directly, but I
24 think that does speak to the fact that this
25 wasn't something that was new or misunderstood

1 or -- it was something that was brand new to
2 Ms. Barton or Mr. Dayhuff when they went into
3 make their parole presentation at the time it
4 happened. In theory, there could have been
5 some argument or objection made. Don't want to
6 hear the case until we have all seven members.
7 Let's postpone it to the next hearing date or
8 something like that. I know that wasn't argued
9 in the brief so I'm not necessarily throwing
10 that out here, but those are really the two
11 aspects of the State's position is: one, it's
12 not ex post facto violation and two, once you
13 apply this statute, there simply had to be five
14 votes in order to parole and those weren't made
15 in this case. Thank you, Your Honor.

16 **THE COURT:** Thank you, sir.

17 **MR. DAYHUFF:** Your Honor, I'm going to start at the
18 point that the -- one of the last points
19 raised. The idea that perhaps there could be
20 some sort of a waiver argument because only six
21 were present. When we made the presentation to
22 the board, seven were present. Then we leave
23 the room. We only learn later that one of the
24 members left before the deliberation of the
25 evidence. There was no chance for a

1 contemporaneous objection. I certainly don't
2 know how the board operates generally. Mr.
3 Aplin has given us some detail on that they
4 don't operate with four. There's nothing under
5 their interpretation of this statute that would
6 prevent them from operating with four. You
7 know, whether that's their practice or not,
8 I'm not sure that matters. Operating with five
9 members present and, you just heard, and
10 requiring unanimity, I don't think that's what
11 this statute says. The statute says two-
12 thirds. So I don't think that's right. And I
13 think even Mr. Aplin at least seemed to concede
14 that that makes it more difficult when you have
15 to get five votes. A unanimous group of folks
16 to grant that parole. I don't think that's
17 right and I don't think that's the way the
18 statute was written. And Mr. Aplin mentioned
19 in that discussion this idea that, well then
20 there's some speculation because who knows how
21 the others would have voted, the other two.
22 Well, you know how they voted? Under that
23 interpretation? They voted no. Right? They
24 voted no. They're counting that vote as no
25 when they're not there. It's not speculative

1 on how that played out. They're counting it as
2 no. So I think that all weighs in favor of an
3 interpretation that has you do the math each
4 time if we sit down and have those board
5 members there. And this comports not just with
6 James case, but the way boards operate
7 generally in this State and in incorporations
8 and everything else. You only do your work if
9 you have a quorum and then once you have that
10 quorum, you apply the rules to the quorum and
11 you go forward. Now, let me jump back to ex
12 post facto a little bit. I do not believe that
13 Roller v. Gunn binds this Court. I think the
14 only cases that bind this Court are the cases
15 of the South Carolina Supreme Court and the
16 U.S. Supreme Court. I think that's the law.
17 Now, I think Roller v. Gunn is persuasive
18 perhaps. Just standing alone. If it hadn't
19 been rejected by the Supreme Court it may be
20 persuasive. But I do not think under the law,
21 that South Carolina Court is bound by a Circuit
22 Court -- a Fourth Circuit Court opinion. I
23 think in practice they tend to be viewed as
24 persuasive. So I think you've got to look at
25 South Carolina Supreme Court, you got to look

1 at the U.S. Supreme Court. I think the
2 persuasiveness of the Roller opinion
3 evaporates. When you look at how Jernigan
4 analyzes the case in the South Carolina Supreme
5 Court. They find that the change in the
6 decrease in frequency is facially an ex post
7 facto violation. And in doing that, they
8 embrace that dissent. In that dissent,
9 admittedly, Jernigan doesn't deal with our
10 specific issue. But that dissent lays out the
11 analysis of when you have an ex post facto
12 violation and that was embraced by the Supreme
13 Court. The whole idea of whether or not this
14 is speculative. I read to you a little bit of
15 the Morales case where that concept comes from.
16 The concept makes sense. It's attenuated, it's
17 conjecture. I don't think we have that issue
18 in this case. I think we have a unique case
19 because we have a certainty in this case. So
20 it takes it out of the California v. Morales
21 speculative ball park and it puts it squarely
22 in -- we have a lady who can prove that this
23 new -- when this change was applied to her, she
24 suffered increased incarceration. Every day
25 that goes by she's suffering that increased

1 incarceration. So I think you have a clear ex
2 post facto violation here and you don't even
3 need to go to analyzing whether it's
4 speculative or not. We know that Garner v.
5 Jones, a Justice Thomas opinion, not generally
6 viewed as particularly favorable to inmates as
7 one of the ways you can win an ex post facto
8 case is say, is show us, inmate, and it's very
9 hard for inmates to do, that this creates a
10 significant risk to you. Inmates rarely can do
11 that because they don't have the votes. That's
12 easy to say. We have the votes here. So I
13 think that takes it out of the realm of
14 speculation. Let's see if there were any other
15 points I wanted to make. On Jernigan -- oh,
16 one other point. One other point I'll make.
17 To the extent you think that finding an ex post
18 facto violation violates federal law, we do
19 know that Jernigan says we're going to view ex
20 post facto a little more broadly in South
21 Carolina. I don't think Jernigan thought they
22 were varying from federal law, I think they
23 thought, you know, this comports with federal
24 law, this comports with Garner, this comports
25 with Morales, but you know, if you think it

1 does, we're allowed as Supreme Court of our
2 State to provide a little more coverage. So I
3 think that's what they were trying to say with
4 that case and you would have that option. I
5 don't think you need to go there, because I
6 think what they said in Jernigan does comport
7 with federal law. It doesn't comport with
8 Roller v. Gunn, particularly. So I think
9 that's all unless you have questions for me,
10 Your Honor.

11 **THE COURT:** Thank you very much. Mr. Dayhuff, Mr.
12 Aplin, thank you very much. Well briefed and
13 I got what I need. The Court's going to
14 consider everything. Thank you for your
15 arguments and I'll render a decision just as
16 quickly as possible.

17 **MR. DAYHUFF:** Thank you, Your Honor.

18 **THE COURT:** Thank you. We are adjourned.

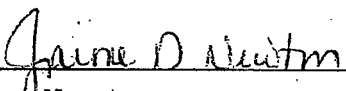
19 (There being nothing further, the hearing concluded
20 at 11:32 a.m.)
21
22
23
24
25

CERTIFICATE

This is to certify that the Administrative Hearing, consisting of Thirty (30) pages, is a true and correct transcript of the testimony given; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 24, 2012.



Jaime D. Newton
Court Reporter

Notary Public for South Carolina
My Commission Expires: 5/14/2017

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 12-ALJ-15-0004

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

THALMA BARTON, #110881 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, ... RESPONDENT

RECORD ON APPEAL

**Tommy Evans, Jr.
Legal Counsel**

**South Carolina Department of Probation,
Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220**

ATTORNEY FOR RESPONDENT

INDEX

	Page
Appellant's letter Dated February 16, 2012	1
Notice of Rejection Dated January 18, 2012	5
E-mail Response	6

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5506
www.nelsonmullins.com

Travis Dayhuff
Tel: 803.255.9525
Fax: 803.255.5506
travis.dayhuff@nelsonmullins.com

February 16, 2012

Via Hand-Delivery and U.S. Mail

Heyward Hinton
South Carolina Department of
Probation, Parole & Pardon Services
2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, SC 29250

RE: Thalma Barton, #110881
January 18, 2012 Parole Hearing
Our File No. 33999/00523

Dear Mr. Hinton:

I represent Thalma Theresa Barton.

On January 18, 2012, I represented Ms. Barton at a hearing before the Parole Board. Thereafter, Ms. Barton received written notice that her request for parole was denied. Notice of Rejection (enclosed as Ex. A).

At this hearing four members of the Parole Board voted in favor of Barton's request for parole and two members voted against her request for parole.

I am writing to respectfully request that the Department of Probation, Parole, and Pardon Services grant Ms. Barton parole for the reasons set forth below:

1. The parole statute in effect when Ms. Barton was convicted and incarcerated in 1982 provides that parole is to be granted if a *majority* of the Board members vote for parole. S.C. Code Ann. § 24-21-30(A)(prior to 1995 amendment)(attached as Ex. B). As there were four votes in favor of parole, a *majority*, at the January 18 hearing, Ms. Barton should be paroled, and denying Ms. Barton parole under these circumstances would constitute an *ex post facto* violation. See *Jernigan v. State*, 340 S.C. 256, 260-66, 431 S.E.2d 507, 509-12 (2000).

With twelve office locations in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, and West Virginia

February 16, 2012

Page 2

2. In 1995 the parole statute was amended to provide that a person convicted of a violent offense receives parole if *two-thirds* of the Board members vote for parole. S.C. Code Ann. § 24-21-30(B). If the current version of this statute applies to Ms. Barton, there was a quorum of the Board at the January 18 hearing, and four of the six members present, *two-thirds*, voted for parole and, therefore, Ms. Barton should be paroled. See *James v. S.C. Dep't. of Probation, Parole, and Pardon Servs.*, 377 S.C. 564, 568-69, 660 S.E.2d 288, 291 (2008).

Thank you for your consideration in this matter.

Very truly yours,



Travis Dayhuff

TD:jmh

Enclosures

cc: Benjamin Aplin, Esquire

acting through the Chairman, may order. The Board may preserve order at its meetings and punish any disrespect or contempt committed in its presence. The Chairman may direct the members of the Board to meet as three-member panels to hear matters relating to paroles and pardons as often as necessary to carry out the Board's responsibilities. Membership on such panels shall be periodically rotated on a random basis by the Chairman. At the meetings of the panels, any unanimous vote shall be considered the final decision of the Board, and the panel may issue an order of parole with the same force and effect of an order issued by the full Board pursuant to Section 24-21-650. Any vote that is not unanimous shall not be considered as a decision of the Board and the matter shall be referred to the full Board which shall decide it based on a vote of a majority of the membership."

Board to employ executive director

SECTION 6. Section 24-21-210 of the 1976 Code is amended to read:

"Section 24-21-210. The Board shall employ an Executive Director of the Department. The Board shall have the power at any time to remove the Executive Director for inefficiency, improper conduct or for any other just cause or reason after due notice to him of its intention, and an opportunity for the Executive Director to be heard. The Executive Director shall receive such salary as may be provided by law. The Executive Director shall also be paid traveling and other necessary expenses in the performance of his official duties and shall give full time to the work. The Executive Director shall possess academic and professional qualifications commensurate with his duties and responsibilities."

Responsibilities of executive director

SECTION 7. Section 24-21-220 of the 1976 Code is amended to read:

"Section 24-21-220. The Executive Director, together with the Board, shall be vested with the exclusive management and control of the Department and shall be responsible for the management of the Department and for the proper care, treatment, supervision and management of offenders under its control. The Board shall manage and control the Department through the Executive Director selected by it and it shall be the duty of the Executive Director to carry out the

policies of the Board. Director authority to report to the Board's control employ within his office out his duties and responsibilities and parole supervision, management, research and planning internal audit. The Board full and complete report of the fiscal affairs of relating thereto. The Director reports to the Board, including statistical and other activities."

Executive director to

SECTION 8. Section read:

"Section 24-21-230. probation officers as clerical assistants as officers shall be required qualifying examination. Director shall insure that ing as required by the ments are met, no person nor exercise the authority

Board may parole

SECTION 9. Section read:

"Section 24-21-610 the Board may, upon judge who participated prisoner convicted of in any jail or upon the

(1) Who, if sentenced served at least one the

(2) Who, if sentenced any period in excess years;

EXHIBIT

B

Section 24-21-12. The members of the Board shall draw no salaries, but each member of the Board shall be entitled to such per diem as may be authorized by law for boards, commissions and committees, plus actual and necessary expenses incurred pursuant to the discharge of official duties.

Section 24-21-13. It shall be the duty of the Board to oversee, manage and control the Department. The Board shall develop written policies and procedures for the following:

- (a) the supervising of offenders on probation, parole, and furlough;
- (b) the granting of paroles and pardons;
- (c) the operation of community based correctional programs.

Section 24-21-14. The Board shall appoint a Commissioner of Pardons and Paroles, who shall be responsible for scheduling meetings of the Board, assuring that appropriate cases and investigations are prepared for the Board, maintaining the official records of the Board, and such other administrative duties as assigned by the Board relating to Board activities.

The Commissioner shall have academic and professional qualifications commensurate with his duties and responsibilities including a background in the social sciences or criminal justice field. Salary for the Commissioner shall be determined by law.

The Commission shall give a thirty-day written notice of any hearing of the Board considering parole for a prisoner who has been convicted of a crime of violence to the following persons:

- (a) Any victim of the crime who suffered damage to his person as a result thereof or in the event such victim is deceased, to members of his or her immediate family to the best of its ability;
- (b) The solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted;
- (c) The law enforcement agency that was responsible for the arrest of the prisoner concerned."

Board to hold regular meetings

SECTION 5. Section 24-21-30 of the 1976 Code is amended to read:

"Section 24-21-30. The Board shall hold regular meetings, as may be necessary to carry out its duties, but at least four times each year, and as many extra meetings as the Chairman, or the Governor

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

January 18, 2012

Ms. Thalma Barton #00110881
Graham Correctional Institution
4450 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Ms. Barton:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense

Sincerely,

Heyward A. Hinton
Director of Hearings & Parole Board Support



1/18/2012

Ben Aplin - Re: Barton request to DPPP & appeal

From: Ben Aplin
To: Travis Dayhuff
Date: 2/24/2012 1:58 PM
Subject: Re: Barton request to DPPP & appeal
CC: Paula Magargle

Good afternoon Travis,

Sorry for the delay - I've been trying to get a lot of different things in order before I head out of town next week and was a little backed up with projects.

I have reviewed your February 16, 2012, letter and the circumstances surrounding Ms. Barton's January 18, 2012, parole consideration hearing. I understand your position as well as the two aspects of your argument, and while I appreciate the logic of those arguments, I don't think they are persuasive. It seems that the relevant statutes and case law support the Board's decision to reject parole based on the 4 to 2 vote. Of course I could be wrong, but I think we will have to let the Administrative Law Court make that call. As we discussed on the phone, I'm also not certain the Department would have the authority to affect the Board's decision to reject parole once it became final and was communicated to Ms. Barton, even if I agreed with your position. I know many aspect of the parole consideration process are managed by the Department, but the Board ultimately has the final say in parole decisions.

Thank you for bringing these issues to our attention. We will go ahead and start putting the Record together for the ALC and will await your Brief. Let me know if you think we need to talk about this any further. Have a good weekend.

Ben Aplin, Assistant Chief Legal Counsel
S.C. Department of Probation, Parole, and Pardon Services
Post Office Box 50666
Columbia, South Carolina 29250
803-734-9012 (phone)
803-734-9324 (fax)

CONFIDENTIALITY NOTICE: This email and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure under State or Federal law. They are intended solely for the use of the individual or entity to whom this email is addressed. If you are not one of the named recipients or responsible for delivering it to the named recipients, or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this email or the information contained in it is strictly prohibited.

>>> "Travis Dayhuff" <travis.dayhuff@nelsonmullins.com> 2/24/2012 10:33 AM >>>
Ben,

Any news from your agency on my request?

Thanks, TD

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Docket No. 12-ALJ-15-0004-AP

Thalma Barton, #110881, ...

Appellant,

v.

South Carolina Department of Probation, Parole and
Pardon Services, ...

Respondent.

SUPPLEMENT TO RECORD ON APPEAL

Travis Dayhuff
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Thalma Barton

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5506
www.nelsonmullins.com

Travis Dayhuff
Tel: 803.255.9525
Fax: 803.255.5506
travis.dayhuff@nelsonmullins.com

January 6, 2012

South Carolina Board of Pardons and Paroles
2221 Devine St., Suite 600
P.O. Box 50666
Columbia, SC 29250

RE: Thalma Theresa Barton, SCDC No. 110881
Parole Hearing 1/18/12

Dear Parole Board Members:

Some Board Members may be familiar with my client, Theresa Barton. In 2006, the Board found that Ms. Barton merited the issuance of a conditional parole. The Board conditioned parole upon Ms. Barton receiving a favorable psychological evaluation. Thereafter, Ms. Barton was evaluated, her evaluation was considered to be unfavorable, and her conditional parole was rescinded.

It is my understanding that the 2006 evaluation has been a material factor in the Board's consideration of Ms. Barton's parole requests in the years that have followed. Because of this understanding, and because I appreciate the Board's desire to consider the opinion of a mental health professional before granting parole, I asked Dr. Thomas V. Martin, a psychiatrist from Columbia, to evaluate Ms. Barton.

Dr. Martin's evaluation can be found at Tab 2 of the notebook that accompanies this letter. Dr. Martin's evaluation contains several conclusions and findings regarding Ms. Barton and the 2006 evaluation that may be helpful to you.

Dr. Martin finds that Ms. Barton exhibits the appropriate insight and accepts responsibility for her crime. He also finds no evidence that Ms. Barton suffers from "any level of severe emotional disorder."

Dr. Martin reviewed the use of the Violence Risk Appraisal Guide (VRAG) in the 2006 evaluation. Dr. Martin notes that Ms. Barton narrowly missed being categorized as "Low Risk" in 2006. More importantly, however, Dr. Martin finds that when Ms. Barton is given the appropriate amount of credit under the VRAG for her long term relationship, she falls squarely into the "Low Category of Risk."

With twelve office locations in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, and West Virginia

South Carolina Board of Pardons and Paroles
January 6, 2012
Page 2

Finally, and most importantly, Dr. Martin offers the following professional opinion about Ms. Barton:

Due to her character growth, motivation for a healthy lifestyle, and detailed release plan, I believe that Ms. Barton is a low risk to reoffend and has a high probability of becoming a contributing member of society.

Dr. Martin will appear at Ms. Barton's hearing and will be glad to answer any questions you may have for him.

Favorable opinions of Ms. Barton do not come from Dr. Martin alone. Ms. Barton's notebook contains expressions of love and support from her husband, family, church, and future employer. Of note, Ms. Barton's husband has been employed at Fort Jackson for four years.

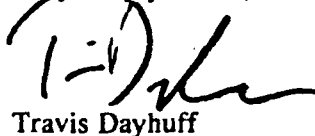
Those within the prison system also hold Ms. Barton in high regard. A former counselor at SCDC states that Ms. Barton "has demonstrated the fact that some incarcerated inmates can be rehabilitated if they [like Ms. Barton] have the will, desire and support."

Finally, Ms. Barton has an exemplary prison record. Her Disciplinary Summary (Tab 5) reveals that she has not received a major disciplinary infraction in more than 25 years. Moreover, while in prison Ms. Barton completed numerous classes and programs (Tab 6), compiled an impressive work history (Tab 7), and received numerous awards (Tab 8).

Ms. Barton has spent nearly 30 years in prison. Based upon her exemplary prison record and established support system, she nearly obtained parole in 2006. As Dr. Martin's evaluation has now established that she is not a threat to society and she is very likely to succeed outside of prison, I respectfully ask that the Board allow Ms. Barton the opportunity to become a productive member of society.

I look forward to appearing before you on January 18th on behalf of Ms. Barton, and I thank you in advance for your time and your consideration of my client's request for parole.

Very truly yours,



Travis Dayhuff

TD:jmh
Enclosures

**INDEX TO PAROLE NOTEBOOK FOR
THALMA THERESA BARTON #110881
JANUARY 18, 2012**

Tab	Description
1	Letter from Thalma Theresa Barton to Parole Board members (12/30/11)
2	Letter from Thomas V. Martin, M.D. regarding psychiatric evaluation
3	Verification of employment offer from Martha Archie
4	Letters of support/photos • Jeffrey Gunter (Husband) 12/16/2011 • Stephanie Gordon, MSW 09/16/2011 • Lillie Miller (Jumpstart Ministries) 06/16/2011 • Rev. Raymond Enwright (Uncle) 07/07/2011 • Mencie Barton Brooks (Mother) 07/04/2011 • Betty Jean Guner (Mother-in law) 07/10/2011 • Theresa Lynn Payton-Myrick (Sister) 06/21/2011 • Cleo Gaines (Sister-in law) 08/07/2011
5	Disciplinary Record while incarcerated
6	Programs completed while incarcerated • Pre-release program (09/29/2011) • J.U.M.P.S.T.A.R.T Re-entry program (2008 thru 2011) • How to Improve your Life (2007) • Basic Institutional Substance Abuse Program (2006) • The Impact of Crime Class (2000) • Addictive Behavior Group (1993) • Addictive Behavior Group (1992) • Problem-Solving (1989)
7	Work history while incarcerated (resume also included)
8	Awards while incarcerated • The Doorkeeper Award (12/02/2011) • The Clean Up Crew Award (12/02/2011) • Let's Talk About It Award (12/02/2011) • The Positive Attitude Award (12/02/2011) • Participation in "Stepping in the Midst of Our Storms" (11/12/2011) • Participation on the Sound Technician Team (08/18/2011) • Participation on the IRC Visitation Game Team (2009-2010) • Most Outstanding Inmate at State Park Correctional Center (12/08/1993)
9	Athene Quotient Summary (test conducted by JUMPSTART) for Theresa Barton (5/13/10)

EXHIBIT 1

December 30, 2011

Dear Parole Board Members:

I, Thalma Theresa Barton #110881,
write this letter on my behalf
asking to be granted parole Jan. 18, 2012.

In 1982, I was sentenced to life
in prison for the murder of an innocent
child. I make no excuses for the life
I've taken, I take responsibility for
my actions. I am very sorry for
what I've done. I am truly remorseful
for my crime. There is nothing that
I can ever do that will compensate
for the life I've taken.

The seriousness and nature of my
offense will never change, though I
have. Throughout my incarceration I
have set and have accomplished
many positive goals. I have involved
myself in a variety of workshops,
programs, organizations and activities
that have been most helpful in
my transformation from a human
doing to a human being. My
incarceration has been a valued
learning experience.

My return to society includes family
support, church support, mentors
and employment. I can assure
you that I will be a law abiding
citizen.

EXHIBIT 2

MARTIN PSYCHIATRIC SERVICES, PC
THOMAS V. MARTIN, M.D.

1330 Richland Street
Columbia, SC 29201
(803) 771-7521/Fax (803) 771-7525

P.O. Box 290789
Columbia, SC 29229-0789

December 22, 2011

Travis Dayhuff
Dan Westbrook
Tamie Pope
Nelson Mullins Riley & Scarborough LLP
1330 Main Street Suite 1700
Columbia, SC 29201

Re: Thalma Theresa Barton # 110881
Parole Hearing

Dear Mr. Dayhuff, Mr. Westbrook, & Ms. Pope:

I conducted an interview with Ms. Barton on December 6, 2011 to supplement Dr. Ritz 2006 evaluation of Ms. Barton and to assess her ability to adjust back into the community after her incarceration on a life sentence for murder.

Ms. Barton actively participated in the interview and was highly inquisitive. Her mood was stable and her insight and behavior control were appropriate. She does not demonstrate any incapacitating mood symptoms or self destructive ideations. There was no evidence of any level of severe emotional disorder.

There are a few areas where my evaluation of Ms. Barton differs from the 2006 psychological evaluation.

- In the 2006 evaluation, there are several references to Ms. Barton lacking insight into her crime. My evaluation of Ms. Barton is that her insight to the crime is consistent with an individual recalling traumatic events from twenty-nine ago, who at the time of the crime was under the influence of mind-altering substances. She accepts responsibility for the trauma inflicted on the two and a half year old child.
- In the 2006 evaluation, the Violence Risk Appraisal Guide (VRAG) was calculated with Ms. Barton's score, at that time, a -6 placing her at the far end of the Medium Category of Risk, only 2 points away from the Low Risk Category.

BARTON, Thalma

SENSITIVE MEDICAL MATERIAL

Ms. Barton's states in her evaluation that she had a "*Long term relationship with the father of her son and daughter.*" I interpret this relationship to be one that meets the threshold defined in the VRAG, as a common law relationship lasting at least 6 months, thus Ms. Barton's score has had a -3 point swing placing her in the Low Category of Risk.

In my interview with Ms. Barton and the review of all available documentation I see several areas of strength and a few areas of concern.

Strength

- Ms. Barton has a wide variety of programs that she has successfully completed while incarcerated including:
 - a GED degree program
 - a variety of secretarial science programs.
 - and she has been involved with the literacy program as a tutor,
- Ms. Barton has held several positions while incarcerated
 - a classification clerk
 - and the education department clerk,
- Ms. Barton holds several distinctions:
 - She is the first female canteen operator at State Park Correctional Center and she received a certificate for "Outstanding Service."
 - She was awarded Work Release in June 1992 and successfully worked as a secretary
 - In 1993, she was awarded the Inmate of the Year. The award notes that "*Theresa consistently demonstrates her maturity, willingness to learn, and appears determined to play a productive and constructive role while incarcerated and exhibits a sincere desire to be a respected member of society when released.*"
 - She was married while incarcerated; her husband has been supportive and consistently visits.
- Ms. Barton has not had a major disciplinary action since 1986

Concerns

- Ms. Barton's husband is a former inmate. Although this may be an initial concern, his successful adjustment to life after incarceration and his support of his wife can also be seen as an area of strength
- As suggested by the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) Ms. Barton may have characteristics of antisocial personality. In contrast to this, her Hare Psychopathy Checklist-Revised (PCL-R) did not indicate the presence of psychopathic personality.
- Ms. Barton has a history of substance abuse although she has been clean and sober for the past 29 years.

Dayhuff, Westbrook, & Pope

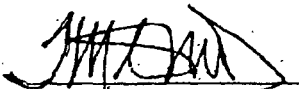
December 22, 2011

Page 3

Referral for outpatient mental health services is recommended for Ms. Barton. These services should include substance abuse counseling to support her sobriety, counseling to address any residual antisocial personality characteristics and for adjustment issues as she reintegrates into the community following her 29 years of incarceration.

Due to her character growth, motivation for a healthy lifestyle, and detailed release plan I believe that Ms. Barton is a low risk to reoffend and has a high possibility of becoming a contributing member of society.

Sincerely,



Thomas V. Martin, M.D.

Psychiatrist

Diplomate, Psychiatry, American Board of Psychiatry and Neurology

Diplomate, Forensic Psychiatry, American Board of Psychiatry and Neurology

EXHIBIT 3

Martha Archie
Area Coach
Taco Bell Restaurant
7526 Garners Ferry Road
Columbia, SC 29209

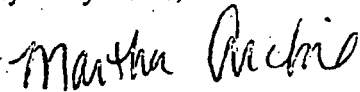
South Carolina Department of Probation,
Parole and Pardon Services
2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, SC 29250

Dear Parole Board Members:

My name is Martha Archie and I am Area Coach for Midlands Restaurant Ventures, a Midlands Area Taco Bell Franchisee. I will hire Theresa Barton at the Taco Bell restaurant located at 7526 Garners Ferry Road in Columbia if she is granted parole at her hearing on January 18, 2012.

If you have any questions or need verification of her employment plans, please call me at the restaurant (803-783-4977) or on my cell phone (803-237-5700).

Very Truly Yours,

A handwritten signature in cursive script that reads "Martha Archie".

Martha Archie



MRV SPIRIT

Serving Others by Giving Back



Mexican Restaurant Ventures • A Midlands Area Taco Bell Franchisee

Mexican Restaurant Ventures (MRV), has donated to the following organizations:

- Taco Bell Track Classic
- Spring Valley Education Foundation
- The South Carolina Chamber of Commerce Scholarship Program
- The Spring Valley Viking Soccer Cup and Scholarship
- The Nurse Family Partnership Program
- Teen Pregnancy Prevention
- Reconnecting Communities and Schools
- Spring Valley Rotary Club
- Richland County Sheriff's Department Foundation
- Local Youth Group and Church Organization Fundraisers thru We Support Our Youth Coupon Program
- Donation of Meals to Various Organizations and Fundraisers
- Spring Valley Rotary Club
- Sistercare
- Red Cross
- Free Medical Clinic
- Jubilee Academy
- Loving and Continuing Employee Benevolent Support

Supporting Midlands' Youth

In April of 2008 Mexican Restaurant Ventures, a local Midlands Taco Bell Franchisee, started a fundraising program to help local youth organizations—"Support Our Youth." The program was designed to be an easy program for local youth to sell single sheets of coupons to raise funds. The Taco Bell coupon sheets sell for a dollar and are valued at over \$5.00 and can be used at any participating Midlands Taco Bell. The sheets are given to the qualifying youth organizations at no charge. All proceeds from the sale of the coupon sheets go directly to the youth organization. Support Our Youth first started with a youth organization at Bible Way Church in Columbia. As of January 2011 Taco Bell has distributed 160,750 coupon sheets to over 125 different Midlands youth organizations.

Some of the youth organizations who have benefited from the program include many local youth church organizations, high school and local college organizations, and local sports programs.

Fred Kotoske, the Midlands Taco Bell Franchisee, has been involved with many organizations that benefit local youth including the Taco Bell Track Classic held at Spring Valley High School, the Spring Valley Education Foundation, The South Carolina Chamber of Commerce Scholarship Program, The Spring



Valley Viking Soccer Cup and Scholarship, The Nurse Family Partnership Program, Teen Pregnancy Prevention, and Reconnecting Communities and Schools just to name a few. Fred Kotoske says "our youth are our future and we must do everything we can to support wonderful organizations that encourage, educate and help keep our youth on a path for success".

Mexican Restaurant Ventures • A Midlands Area Taco Bell Franchisee

OUR MISSION: To glorify God as we deliver hospitality, quality products, quick-service and clean restaurants to each and every guest.

OUR VISION: To be servant-leaders who lead by serving others and each other.

COLUMBIA:

2632 Decker Blvd.
739 Knox Abbott Dr.
1928 Broad River Rd.

3983 Platt Springs Rd.
7526 Garners Ferry Rd.
9802 Two Notch Rd.

LEXINGTON:

1000 West Main St.
4328 Sunset Blvd.

SUMTER:

1112 Broad St.
25 West Lafayette Dr.

IRMO:

1192 Lake Murray Blvd.

Local Taco Bell franchisee thanks blood donors for helping with urgent need for blood.

The American Red Cross South Carolina Blood Services Region issued an urgent call for blood donors last August 2010, and Fred Kotoske, the local Taco Bell franchisee answered the call.

Kotoske offered a \$10 Lunch or Dinner for Two Taco Bell food coupon to anyone who presented to donate blood Thursday, Aug. 26 through Saturday, Aug. 28, 2010 at the Columbia Red Cross Donation Center, 2751 Bull St. The campaign was a success, nearly doubling the amount of donations from the previous Thursday through Saturday and

helped to ease the dangerously low supply, which continues across the nation.

The Red Cross and Mr. Kotoske thank all of those who gave blood and to all of the local media who helped to get the word out to the public. "There was a huge need for blood and this effort helped meet urgent needs. There is, however, still an ongoing need for donations," said Kotoske.

Midlands Taco Bell franchisee donates to Jubilee Academy an inner city school.



In February 2010, Fred Kotoske, Midlands Taco Bell franchisee and his management team donate \$12,500 to Jubilee Academy.

Each of his restaurants in the Columbia and Sumter markets contributed funds totaling \$12,500. Jubilee Academy, an accredited K4-12 grade year round school, is an inner city school working to turn hearts to Christ and lives to Academic Excellence. It is accredited by the South Carolina Independent School Association and a 501(c) 3. Families are required to pay at least a tiny percentage of the yearly tuition but are funded primarily by the generosity of individual donors, churches and caring civic groups. The economic times of the past year has found their donations have all but dried up. Jubilee

Academy is in need of immediate funding to keep the school running.

Fred Kotoske says "that the school offers a valuable asset to the inner city children of our community. Their mission statement of envisioning educated, productive citizens who have exchanged the bondage of welfare and poverty for freedom in Christ and who will be the firm foundation for the next generation, according to God's Word is a goal for our children that I feel is absolutely necessary to their well being. We are honored to be able to help such a wonderful organization."



Taco Bell Track and Field Classic hosted by Spring Valley High is the largest annual high school athletic event in South Carolina.

Athletes from over 100 schools in 10 states will compete in the 19th Annual Taco Bell Track and Field Classic April 8-9, 2011.

Over 2000 competitors from 250 teams will try to break national track and field records in one of only 10 National Scholastic Sports Foundation "Select Meets" in the country. Local schools competing include: Irmo, Dutch Fork, Ridgeview, Camden, Richland Northeast, Blythewood and Spring Valley. Over 5000 fans are expected to see some of the best teams in the country.

18th Annual Tacos for Sistercare raises \$20,058.

Currently, SC has the second highest rate in the nation for women murdered by men.

During the annual campaign Fred Kotoske, a Midlands Taco Bell Franchisee, donated ten cents to Sistercare for every taco sold in his restaurants. Over the last eighteen years, "Tacos for Sistercare" has raised over \$284,100.00 making it one of Sistercare's largest annual fund raising events.

Over the past eleven years South Carolina has ranked among the seven states with the highest rate of women killed by men.



EXHIBIT 4

Jeffrey Gunter
2416 Laurel Street, Apt. B
Columbia, SC 29201
Phone: (803) 260-5309

South Carolina Department of Probation, Parole and Pardon Services
2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, SC 29250

Dear Parole Board Members:

I am the husband of Thalma Theresa Barton. We have been married for 20 years. I have been out of SCDC on parole for 8 years and have been gainfully employed during that time. I currently work at the Fort Jackson Commissary and have been there for approximately four years.

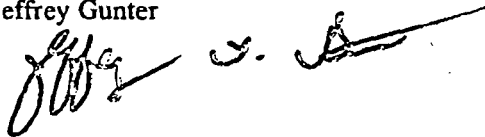
If Theresa is paroled, she will live with me in my apartment in Columbia. I will provide emotional and financial support for Theresa, and she will also be employed at Taco Bell. Because I have gone through the adjustment of re-entry after being in prison, I will be able to provide support for Theresa as she adjusts to her new life outside of SCDC if you grant her parole.

Theresa will also be involved in church just as she has been while incarcerated. She also has hopes of volunteering at the Oliver Gospel Mission in order to give back and make up for some of the contributions she has not been able to make during her incarceration. I hope you will grant her parole.

Please feel free to contact me at (803) 260-5309 if you have any questions. Thank you for your consideration of Theresa's request for parole.

Very Truly Yours,

Jeffrey Gunter

A handwritten signature in black ink, appearing to read 'Jeffrey Gunter', followed by a long horizontal flourish.



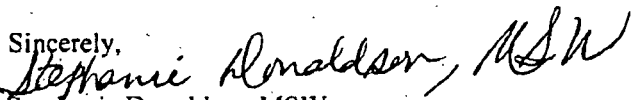
September 16, 2011

TO WHOM IT MAY CONCERN:

I have known and worked with Inmate Theresa Barton for approximately 6 years. I was a Mental Health counselor for 12 years with the Department and recently reassigned to pursue other career opportunities. I first had the pleasure of working with Inmate Barton when she participated in my group on Positive Thinking. At that time she appeared to be very sincere and genuine about changing her life as well as her approach to life. She participated well and asked questions that were relevant to one starting the process of thinking differently than what was familiar. She seem to be very sincere about life and from what I have observed, she always appeared to be a positive role model to other female inmates.

During my tenure at SCDC, I did not observe or witness Inmate Barton being involved in anything that wasn't positive or seem to cause confusion. I do know that the past few years have been challenging for her and during those times she generally turned to Mental Health for guidance as a means to have someone she could speak with about her feelings. Inmate Barton has demonstrated the fact that some incarcerated inmates can be rehabilitated if they have the will, desire and support. Inmate Barton certainly has those important support systems in her life.

Sincerely,


Stephanie Donaldson, MSW

SD:lm

Ms. Tammie M. Pope
1320 Main Street / 17th floor
Columbia, SC 29201

June 16, 2011

To: Parole Board, on the behalf of Thalma Theresa Barton (Gunter)#110881

I am one of the ministers / teachers of the Purpose Driven Class, sponsored by JUMPSTART Faith Based Prison Rehabilitation Ministries.

It has been my experience to see the psychological growth and development of Thalma, since February 2008, when I first joined the JUMPSTART Team. Although I hold no degree in psychology, I am a retired 6-8th grade public school teacher, and also a part-time basics teacher, in the Adult Basic Education Program of Aiken County, SC. for the last 8-yrs. And in my seventy-plus years of life, I have learned much about people and the way their behavior projects their thinking. Even though this knowledge is not 100% accurate, I usually come pretty close in my judgment of people's sincerity and maturity.

When I first came into contact with Thalma, in the class of 07-08, she gave a pretty-good testimony of her Christian experience in words. But as time went on, I observed some inconsistencies in her attitude and behavior that didn't line up with her speech. It even came to a point to where she dropped out of one of the classes, due to disillusionment stemming from her concept of Christianity at the time. But upon her return to the class of 09-10, I observed a marked difference in her expectations of others and of herself.

First of all, she returned to the class with an open confession of her former discouragement, and with a profession of commitment to stay with it. Through ups and downs, she finished in good standing with a satisfactory attendance rate, to the extent that she was chosen to be one of the coaches for our last class.

It was in this last class that I observed her psychological change take place. It was in the way she handled what she considered problems- the way she thought things should go, and the way they actually went. She still showed a lot of disillusionment, but she didn't quit. She became more forgiving and tolerant of others than I had observed her to be before. She became less blaming, and was more able to withstand the criticisms and misunderstandings of herself by others than she appeared to be before. The task of trying to function in the (A new development in our program) role of Group Coach, was very trying for the selected ones, as well as it was for us as leaders. For as things go in real life, what we had planned to happen, did not happen in the way it was planned. The Coaches that were selected by JUMPSTART, were not all the ones that were assigned as coaches. There was even one coach given to us that had not been in the class before, and we had to deal with that. There were several institutional changes, as well as changes in our teaching team. Due to those changes, the guidelines given in training of the coaches became vague and difficult to apply to their reality. They became very insecure in what they were supposed to do and felt that their ineptness made them look bad. They were

tempted to complain to us and about us, and we all had to cope. But praise be to God, we came through to graduation day, on June 3, with new hope, and with new faith for our next class, which, if not paroled, Thalma, will continue to be a coach.

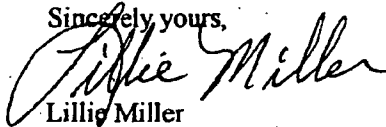
As I alluded to in the description of the changes in our 2010-11 class, these changes were a recipe for psychological impact. I'm confident to say that my observance of its impact upon Thalma, appeared to be a positive and hopefully lasting one.

Another psychological impact I have observed upon Thalma, is the family support of her husband and in-laws.

Upon her request and concern for the health and well being of her mother-in-law, whom she asked me to visit in an acute-care health facility in my county of Aiken, SC. I have come into the acquaintance of this family. Her husband and his five-siblings seem to be very caring toward their mother and toward one-another. If the behavior they have displayed of care and concern that I have observed in my several encounters with them at the health-care facility is genuine, I would venture to say, that upon Thalma's parole, she can look forward to a very supportive community to rehabilitate in.

Having met this family, I am sure that my future interaction with them, and with Thalma as her mentor, will be the makings of a very rehabilitative and productive relationship.

Sincerely yours,



Lillie Miller
(803-663-4925)

7-7-11

Dear Parole Board:

In behalf of Thalma Theresa Barton-Gunter
I Marion R. Enwright is the Uncle of Theresa, have
been in her life all my life. She made some bad
decision in life at a early stage, which we all
make... I believe in the Lord Jesus, and know
for a fact that He forgives and forget our sins.
All through the Bible, Jesus forgives and say
Go and sin no more... Theresa, has served her
time and paid her debt to society... It is time that
you the Parole Board Give her a chance to prove
that she has learned her lesson by the mistakes
she made in Abbeville over 25 years ago. She is
a sweet person, need to be loved and forgiven
Just put yourselves in her place, would you
want to be set free? I will always be there for
her & his band, He is very nice too. She has a son
a girl and a grandchild too. I am a pastor, I pray
that you set her free. I will take care of her &
help her re adjust back into society. She is a very
smart and talent young lady... We are a very big
family and love with a passion... I know Jesus has
set her free, so please pray and ask the Lord if this
is the time to set her free. I love you all and will
always pray that Jesus will be the center of all our lives.
Call me any time - 864-861-2070 or 864-992-7062

B. O. Enwright

Love you before and after you are
God bless!
D.C. S.O.D.

7/4/11

The people Board.

on behalf of Thelma Theresa Barton
Hunter. I am her Mother. Mervin Barton Beale.
And I stand with her all the way until
death do us part. Thelma is my oldest baby.
She was only nineteen when she left us. She
have been in lock up more than with us.
her family. Thelma is a strong person. She
is smart. And I know she is ready for
society. And she will be ok in any work place.
(Theresa) That's what we call her. have a very
strong. And loving husband. He is helping all
of us to keep strong. (He) Jeffery, have made a
home for him and Theresa. Theresa can work
almost any job. She made so many good chan-
ges in her life. It is going to be a blessing for
me to see her as a good wife, mother sister
daughter (Digs) she have two great, sweet grand
children to love also. I have already miss so
much time away from her. please, please.
don't take anymore away from us. Theresa
will sing at church. Because she love to sing.
She is a great house keeper. She always have
been that. I can see her now, and her
over

family that love her so much having fun
together once more. I will be in Columbia
more than here in Abbeville. (3) I miss my
oldest baby so much. I know God answers when
we pray, in his own time, but he always answers.
And I pray all the time. I am sure. I do
I have a God God. And he is going to make a
way. I pray your hearts will do the right
thing, and let my oldest baby come home to
us. Be bless all of you. And Thank you for
reading my letter.

Mencie Barton Brooks.

Ms. Betty Jean Gunter
@ Uni-Health Post Acute Care, RM. #11
1200 Talisman Dr.
N. Augusta, S.C. 29841

S.C. Department of Probation, Parole and Pardon Services
2221 Devine st. suit 600
Post Office Box 50666
Columbia S.C. 29250

July 10, 2011

Dear Parole Board Members,

On behalf of my daughter-in-law, Thalma Theresa Barton (Gunter), I write this letter to you.

Unfortunately, I am no longer physically able to come with Theresa before the parole board; however, I offer my support through this letter.

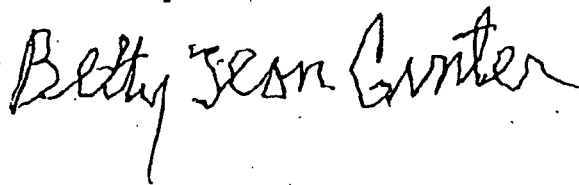
Please know that Theresa is remorseful for her crime and Theresa will be a productive law abiding citizen.

It is my sincere hope and prayer that you will find it in your hearts to grant Theresa parole.

God bless and be with you.

Sincerely,

Betty Jean Gunter

A handwritten signature in cursive script that reads "Betty Jean Gunter". The signature is written in dark ink and is positioned below the typed name.

June 21, 2011

Theresa Lynn Payton-Myrick
8047 N. 47th Street
Brown Deer, WI 53223

Nelson Mullins Riley & Scarborough, LLP
Attn: Tammy M. Pope
Meridian/ 17th Floor
1320 Main Street
Columbia, SC 29201

Dear Parole Board:

(On behalf of, Thalma Theresa Barton Gunter)

Mrs. Thalma Theresa Barton Gunter was introduced to me by our cousins Stephanie and Robin Strong while attending Chute Middle School in Evanston, IL, and I was in the 7th grade. After meeting Theresa, I wanted to know more about her and her family, so I attended a family reunion held in Abbeville, SC during my summer vacation break. After meeting her mother and other family members during my stay, I had no doubt that Theresa was indeed my sister. Theresa and I became close visiting each other every weekend, having sleepovers and seeing each other some days during the school week.

Theresa lived with her grandfather, and attended a different school than me, but after the passing of her grandfather, Theresa moved away, and we lost contact with each other. I was in my last year of high school, about to graduate when I heard by word of mouth she was living in South Carolina, and I began searching for her, but was unsuccessful. However, after asking other family members on our father's side, I was told she was incarcerated for murder; I could not believe it, not the Theresa I knew.

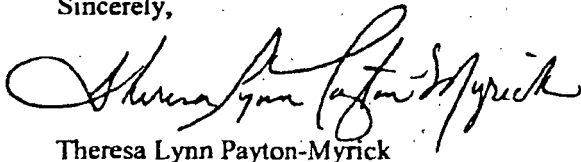
I have high regards for my sister Theresa, and admire her many gifts & talents that God has bestowed upon her. We would sit for hours reading her poems and short stories she had written, and looking through the artwork she had completed while sharing girly stories; dreaming of the future and what it might hold for us. Theresa is an outstanding reader, writer and great in math, which never came easy for me, nevertheless, she gave me the confidence to keep going; never looking down on me. Moreover, during our time

together, I found Theresa to be a loving, kind and caring person, and I know she felt that for me; even though we met at such a late time in our lives, a special bond was created between us.

In 2006, I received a phone call from Delreatha Jane Fields from Ashville, NC another sister I knew nothing about until this phone call. At that time I revealed to Jane that not only did she find me, but she also has another sister named Thalma Theresa Barton that's in Columbia, SC prison for murder, serving a life sentence with parole. At that moment we felt that Theresa needed to be reunited with me, as well as, meet her other sister she knew nothing about and try to provide any assistance we could for her. I began hours of research, making calls to newspapers, police stations, and finally got in contact with Theresa's mother. My sister Jane and I had our first visit with Theresa in 2006, and have kept in consistent contact with Theresa since, and will continue to help upon her release.

During our many conversations and letter writing, Theresa has informed me of her work in the society while incarcerated; however, this privilege was taken from her because of other inmates' misconduct. I feel that Theresa has served her time, and proven she's remorseful of the crime she committed over 28 years ago. My sister Theresa possesses a wealth of knowledge and would be an asset to today's society. I believe her mission is to help others from traveling the road she once traveled. During my sisters incarceration she has studied law, worked in many prison area positions, joined an outreach group with the church, attends bible study, and also helps with the arts & crafts department. Theresa is a well spoken and lovable person I/we truly believe Theresa has overcome her issues which lead her down this path, and we are here as a support system for her.

Sincerely,



Theresa Lynn Payton-Myrick

8/7/11

S.C. Dept. Of Probation, Parole And Pardon
2221 Devine St. Suite 600
P.O. Box 50666
Columbia, S.C. 29250

To Whom It May Concern;

I am writing this letter on behalf of Theresa Barton (Hunter). I am one of her sister's-in-law who has known Theresa for many years. I have seen her grow into a very loving and spiritual person. She has shown me many acts of kindness over the years. I truly believe that Theresa is ready to return to the community and lead a productive life. I hope that you will find it in your hearts to give her a chance to return to society.

Sincerely,
Cleo Hunter

EXHIBIT 5

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 11/21/11

C0239

BARTON, THALMA THERESA FBI # 344212W9 SID# SC00360462 SCDC # 110881

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... GRAHAM CORR INST

SECURITY/CUST.: 2 MINIMUM IN

CURR INCARC SENT...: 999 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...: 250218038

JORM.....: JNA0226A

RACE....: B SEX...: F

PROJ MAXOUT DATE: 99/99/9999

PROJ PAROLE DATE: 11/10/2011

EUC JOB...: MACHINE OPERATOR TRA

EDUC PGM.: NO CURR EDUC PROGRAM

EUC LEVEL: 3F5 REC LEVEL:

ASSIGNMENT...: APPAREL PLANT

CURRENT PROGRAM...: DOING OUR TIME

AGE...: 49 DATE OF BIRTH...: 6/11/62

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES

MURDER

SENTENCE
YRS MOS DYS COUNTY

999 99 999 ABBEVILLE

SENTENCE

START V/NO CATEGORY
3/12/1982 U 5

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

DETAINEES (HOLD, WANTED, NOTIFY):

NO DETAINEES

NO DETAINEES

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

3/11/99 REFUSING OR FAILING OBEY CONVICTED

MINOR

3/11/99 CREATING UNNECESSARY NOI CONVICTED

MINOR

9/21/86 STEALING CONVICTED

MAJOR

4/29/84 USE OBSCENE, VULGAR, PROFA CONVICTED

MINOR

3/25/84 SAFETY REGULATIONS CONVICTED

MAJOR

3/ 7/84 DAMAGE, DESTRUCTION, PROP. VALU CONVICTED

MAJOR

HISTORY OF MOVEMENTS:

11/10/10 GRAHAM CORR INS INCARCERATED

ADMINISTRATIVE

11/10/10 BROAD RIVER INCARCERATED

COURT/PAROLE HEARING VIA

4/29/10 GRAHAM CORR INS INCARCERATED

ADMINISTRATIVE

4/29/10 RICHLAND CO AUTH ABSENCE (AUL)

MEDICAL

10/28/ 9 GRAHAM CORR INS INCARCERATED

ADMINISTRATIVE

10/28/ 9 BROAD RIVER INCARCERATED

COURT/PAROLE HEARING VIA

8/27/ 8 GRAHAM CORR INS INCARCERATED

ADMINISTRATIVE

8/27/ 8 BROAD RIVER INCARCERATED

COURT/PAROLE HEARING VIA

1/29/ 8 GRAHAM CORR INS INCARCERATED

ADMINISTRATIVE

1/29/ 8 KIRKLAND INCARCERATED

MEDICAL

10/30/ 7 GRAHAM CORR INS INCARCERATED

ADMINISTRATIVE

10/30/ 7 RICHLAND CO AUTH ABSENCE (AUL)

MEDICAL

8/15/ 7 GRAHAM CORR INS INCARCERATED

ADMINISTRATIVE

8/15/ 7 BROAD RIVER INCARCERATED

COURT/PAROLE HEARING VIA

8/ 9/ 6 GRAHAM CORR INS INCARCERATED

ADMINISTRATIVE

8/ 9/ 6 BROAD RIVER INCARCERATED

COURT/PAROLE HEARING VIA

8/10/ 5 GRAHAM CORR INS INCARCERATED

ADMINISTRATIVE

8/10/ 5 BROAD RIVER INCARCERATED

COURT/PAROLE HEARING VIA

8/24/ 4 GRAHAM CORR INS INCARCERATED

RETURN FROM COURT

8/24/ 4 BROAD RIVER INCARCERATED

COURT/PAROLE HEARING VIA

7/29/ 4 GRAHAM CORR INS INCARCERATED

ADMINISTRATIVE

10/14/ 3 LEATH INCARCERATED

ADMINISTRATIVE

BARTON, THAI MA THERESA FBI # 344212U9 SID# SC00360462 SCDC # 110881 (CONTINU

10/14/ 3	RICHLAND CO	AUTH ABSENCE (AUL)	MEDICAL
8/19/ 3	LEATH	INCARCERATED	ADMINISTRATIVE
8/19/ 3	PERRY	INCARCERATED	COURT/PAROLE HEARING VIA
10/ 1/ 3	LEATH	INCARCERATED	ADMINISTRATIVE
9/28/ 2	GRAHAM CORR INS	INCARCERATED	MEDICAL
9/25/ 2	PALMETTO RCHLAN	AUTH ABSENCE (AUL)	MEDICAL
6/29/ 1	LEATH	INCARCERATED	ADMINISTRATIVE
6/29/ 1	ANDERSON CO	AUTH ABSENCE (AUL)	MEDICAL
12/13/ 0	LEATH	INCARCERATED	ADMINISTRATIVE
12/13/ 0	PALMETTO RCHLAN	AUTH ABSENCE (AUL)	MEDICAL
11/22/ 0	LEATH	INCARCERATED	ADMINISTRATIVE
11/22/ 0	PALMETTO RCHLAN	AUTH ABSENCE (AUL)	MEDICAL
9/25/97	LEATH	INCARCERATED	ADMINISTRATIVE
10/15/96	GRADY HIPP DE	INCARCERATED	ADMINISTRATIVE
3/ 1/96	STATE PARK	INCARCERATED	ADMINISTRATIVE
1/16/96	STATE PARK	INCARCERATED	LABOR CREW
7/ 8/92	STATE PARK	INCARCERATED	ADMINISTRATIVE
1/21/91	STATE PARK	INCARCERATED	ADMINISTRATIVE
8/27/90	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
4/23/90	GRAHAM CORR INS	INCARCERATED	RETURN FROM COURT
4/17/90	ARBEVILLE CO	AUTH ABSENCE (AUL)	TO COURT
10/18/89	GRAHAM CORR INS	INCARCERATED	RETURN FROM COURT
10/12/89	ARBEVILLE CO	AUTH ABSENCE (AUL)	TO COURT
6/11/84	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
3/14/84	GRAHAM CORR INS	INCARCERATED	LOCKUP-ADJUSTMENT COMM.
3/ 4/84	GRAHAM CORR INS	INCARCERATED	LOCKUP-PROTECTIVE CUST.
1/ 3/84	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
12/21/83	GRAHAM CORR INS	INCARCERATED	LOCKUP-PROTECTIVE CUST.
11/30/83	GRAHAM CORR INS	INCARCERATED	LOCKUP-INVESTIGATION
5/13/82	GRAHAM CORR INS	INCARCERATED	ADMINISTRATIVE
5/13/82	PERRY RAE	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
MACHINE OPERATOR TRA	01/13/11	0/ 0/ 0		3F5
WARDKEEPER	10/23/08	1/12/11	INMATE REQUEST	3F5
CANTEEN OPERATOR	06/05/08	10/22/ 8	INMATE REQUEST	3F5
WARDKEEPER	04/29/08	6/ 4/ 8	INMATE REQUEST	3F5
RECREATION ASSISTANT	01/11/05	4/28/ 8	INMATE REQUEST	3F5
MACHINE OPERATOR TRA	08/03/04	1/10/ 5	INMATE REQUEST	3F5
INVENTORY CLERK	06/12/03	7/29/ 4	INSTIT TRANSFER	3F5
FOOD SERVICE AIDE	05/28/02	6/ 8/ 3	PLACED IN ST/SP CUSTODY	3F5
SHIPP & RECEIVING CL	04/04/02	5/27/ 2	INMATE REQUEST	3F5
MACHINE OPERATOR	02/24/00	4/ 3/ 2	REDUCTION IN FORCE	3F5
SENIOR TEACHER ASST.	06/18/99	2/23/ 0	INMATE REQUEST	3F5
LANDSCAPE LABORER	03/16/99	6/17/99	INMATE REQUEST	3F5
SENIOR TEACHER ASST.	08/13/98	3/11/99	PLACED IN ST/SP CUSTODY	3F5
SR TRAY LINE OPERATO	09/26/97	8/12/98	INMATE REQUEST	3F5
DESIGNATED FACILITY	10/16/96	9/25/97	INSTIT TRANSFER	2F7
SCDC INM AD CONI REP	03/02/96	10/15/96	INSTIT TRANSFER	2F6
LABOR CREW/WORK PROG	01/17/96	3/ 1/96	INSTIT TRANSFER	2F6
LABOR CREW/WORK PROG	07/10/95	1/16/96	INSTIT TRANSFER	2F6
SCDC INM AD CONI REP	06/08/95	7/ 9/95	LATERAL TRANSFER	2F6
SCDC INM AD CONI REP	05/04/95	6/ 7/95	LATERAL TRANSFER	2F6
SCDC INM AD CONI REP	09/15/94	5/ 3/95	LATERAL TRANSFER	2F6
INMATE GRIEVANCE CLF	09/10/93	9/14/94	LATERAL TRANSFER	2F6
SENIOR WARDKEEPER	01/26/93	9/ 9/93	LATERAL TRANSFER	2F6
SENIOR CUSTODIAN	07/09/92	1/25/93	PROMOTION	3F6
SENIOR CANTEEN OPERA	12/20/91	7/ 8/92	INSTIT TRANSFER	2F7
TND. GROUP/SECTION L	03/13/91	12/19/91	PROMOTION	2F5

BARTON, THALMA THERESA FBI # 344212W9 SID# SC00360462 SCDC # 110881 (CONTINU

GENERAL WORKER	01/21/91	3/12/91	INMATE REQUEST	7F5
PROFESSIONAL PERSONN	12/01/88	1/18/91	INSTIT TRANSFER	2F5
SWITCHBOARD OPERATO	09/27/88	11/30/88	PROMOTION	3F5
SENIOR TEACHER ASST.	07/12/88	9/26/88	INMATE REQUEST	2F5
CHIEF CLERK	03/29/88	7/11/88	PROMOTION	3F5
CHIEF CLERK	02/25/87	3/28/88	DISCIPLINARY/LOCK-UP	3F5
CHIEF CLERK	10/08/85	2/24/87	DISCIPLINARY/LOCK-UP	3F5
TEACHER AIDE	03/19/85	10/ 7/85	PROMOTION	5F5
MACHINE OPERATOR	01/15/85	3/18/85	INMATE REQUEST	3F5
COOK	08/09/84	1/14/85	LATERAL TRANSFER	3F7
FOOD SERVICE AIDE	06/12/84	8/ 8/84	PROMOTION	5F7
SR DINING ROOM OPERA	02/20/84	3/ 9/84	DISCIPLINARY/LOCK-UP	3F7
FOOD SERVICE AIDE	01/04/84	2/19/84	PROMOTION	5F7
CANTEEN OPERATOR	10/24/83	11/30/83	DISCIPLINARY/LOCK-UP	3F6
MACHINE OPERATOR	10/04/83	10/23/83	LATERAL TRANSFER	3F5
MACHINE OPERATOR	08/23/83	10/ 3/83	LATERAL TRANSFER	3P5
MACHINE OPERATOR	03/08/83	8/22/83	INMATE REQUEST	3F5
MACHINE OPERATOR TRA	02/22/83	3/ 7/83	PROMOTION	7F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 4-7 HRS/WK	04/26/99	3/14/ 0	INMATE REQUEST
BONUS 4-7 HRS/WK	01/15/99	3/11/99	PLACED IN ST/SP CUSTODY
BONUS 15 OR MORE	05/01/98	8/13/98	INMATE REQUEST
BONUS 4-7 HRS/WK	03/12/98	4/28/98	PROMOTION
BONUS 8-11 HRS/WK	05/06/91	9/26/91	INMATE REQUEST

***** END OF REPORT *****

EXHIBIT 6

Certificate of Achievement

This certifies that

Thalma Barton

has successfully completed the 30 day

Pre-Release Program

given at Camille Griffin Graham Correctional Institution.

this 29th day of September in the year 2011

Jerlean Nelson

Ms. Jerlean Nelson

Pre-Release Program Coordinator

Judy C. Anderson

Ms. Judy C. Anderson

Warden



J.U.M.P. S.T.A.R.T.
Re-entry
Program
Leadership Folder

Signature/Director

6/2/2011

Signature/Chaplain

6/2/2011

Certificate of
Appreciation

This certificate is awarded to

Theresa Barton

For her outstanding *leadership* of the
Jump Start Re-entry Program

S.T.A.R.T.



Signature/Director

[Signature]

Date

4/16/2010

Signature/Instructor

Bonnie B. Moore

Date

4/16/2010

Signature/Chaplain

K. Campbell

Date

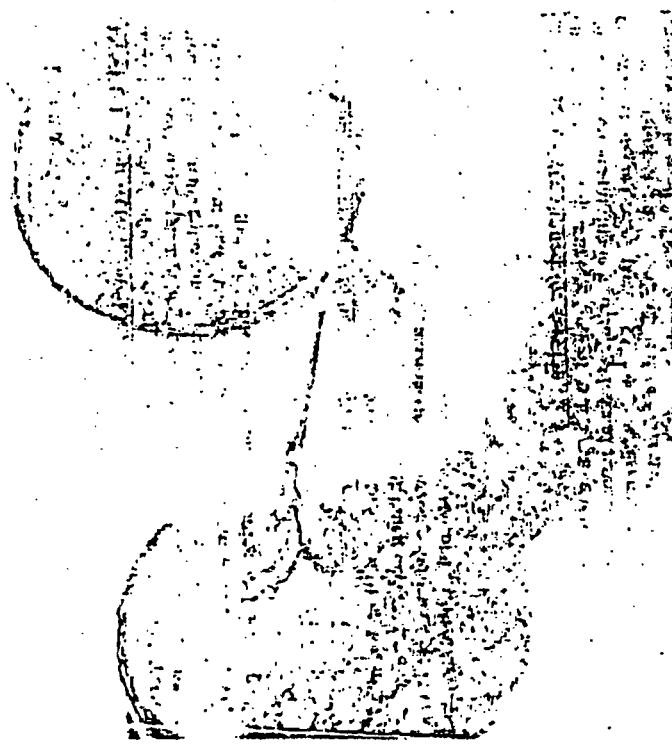
4/16/2010

Certificate of Graduation

This certificate is awarded to

Theresa Barton

For her *successful* completion of the START
Re-entry Program (PDL)



S.T.A.R.T.



Signature/Director

Date

12/14/08

Signature/Instructor

Date

12/12/08

Signature/Chaplain

Date

12-12-08

Certificate of Graduation

This certificate is awarded to

Theresa Barton

For her *successful* completion of the START
Re-entry Program (PDL)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Mental Health Services

STATEMENT
OF
PARTICIPATION

THIS IS TO ACKNOWLEDGE THAT Thalma Barton
HAS PARTICIPATED IN 6 out of 6 Sessions
OF How to Improve Your Life Group

LEVEL OF PARTICIPATION

POOR _____ AVERAGE _____ GOOD _____ EXCELLENT X

THIS IS NOT TO BE INTERPRETED AS A STATEMENT OF PROGRESS. PROGRESS
REPORTS ARE AVAILABLE UPON REQUEST BY APPROPRIATE OFFICIALS.

DATE: March 5, 2007

Clyde Holliday, MSc

00001

INSTITUTION

filed
2/14/07
P.D.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

CAMILLE GRIFFIN GRAHAM CORRECTIONAL INSTITUTION

THIS IS TO CERTIFY THAT

THALMA BARTON



SUCCESSFULLY COMPLETED THE

BASIC INSTITUTIONAL SUBSTANCE ABUSE PROGRAM

ON

NOVEMBER 30, 2006

Barbara A. Brown

Barbara A. Brown, Facilitator

Judy C. Anderson

Judy C. Anderson, Warden

South Carolina Department of Corrections
Certificate of Participation
Presented to

THERESA BARTON - 110881

In Recognition of Your Performance
in
The Impact of Crime Class

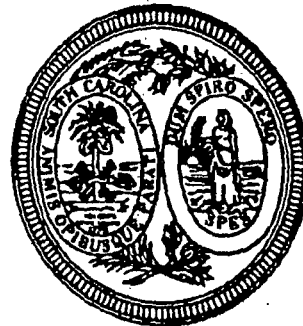
Presented this 23RD *Day of* May, 2000

Kathleen M. Boyer
Teacher

James C. C.M. E.D.
Principal

Richard [Signature]
Warden

South Carolina Department of Corrections



FILED

WORK PROGRAM
State Park Correctional Center

Certificate of Completion

Presented to

Theresa Barton, SCDC # 110881

Upon Successful Completion of

Addictive Behaviors Group

October 19, 1993 / November 30, 1993

[5 Sessions]

On this 7

Day of

December

In the Year of

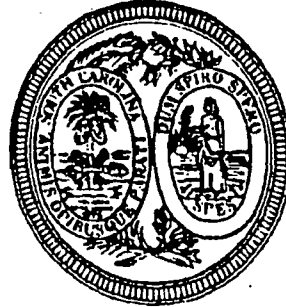
1993

A.D.

Alma J. Mills, LMSW

Alma J. Mills, LMSW
WWU Social Worker

South Carolina Department of Corrections



Certificate of Completion

Presented to

THERESA BARTON #110881

Upon Successful Completion of

ADDICTIVE BEHAVIOR THERAPY GROUP FOR WOMEN
STATE PARK CORRECTIONAL CENTER

On this 11TH Day of NOVEMBER In the Year of 1992 A.D.

Dr. Catherine Ross, NCSW, LSW

DR. ROSS

FILED

NOV 12 1992

WORK PROGRAM
State Park Correctional Center

CERTIFICATE of PARTICIPATION

THIS CERTIFICATE IS AWARDED TO

THERESA BARTON

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION

OF THE PROBLEM-SOLVING PROGRAM

CONSISTING OF 6 HOURS OF PARTICIPATION

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at W.C.C., this 15th day of December A. D., 1989

Ronald McKie
Deputy Warden for Program Services

Instructor

Ann Hughes M.Ed
Instructor

EXHIBIT 7

Thalma Theresa Barton #110881
Work History

Women's Correctional Center
1982-1991

- Apparel Plant (Machine Operator Trainee) 2/22/83 - 3/7/83
- Apparel Plant (Machine Operator) 3/8/83 - 11/30/83
- Canteen Worker 10/24/83 - 11/30/83
- Food Service Aide 1/4/84 - 2/19/84
- Food Service (Sr. Dinning Room) 2/20/84 - 3/9/84
- Food Service Aide 6/12/84 - 8/8/84
- Food Service Cook 8/8/84 - 1/14/85
- Machine Operator 1/15/85 - 3/18/85
- Teacher's Aide 3/19/85 - 10/7/85
- Classification (Chief Clerk) 10/8/85 - 7/11/88
- Senior Teacher Asst. 7/12/88 - 9/26/88
- Telemarketing (Switch Board Operator) 9/27/88 - 11/30/88
- Telemarketing Personnel Clerk 12/1/88 - 1/18/91
- Criminal Justice Academy Clerk 4/3/90 - 1/17/91

**State Park Correctional Institution
1991-1996**

- General Worker 1/21/91 - 3/12/91
- Section Leader 3/13/91 - 12/19/91
- Senior Canteen Operator 12/20/91 - 7/8/92

***Women's Work Program (Staff Worker)**

- Senior Custodian 7/9/92 - 1/25/93
- Senior Ward Keeper 1/26/93 - 9/9/93
- Inmate Grievance Clerk 9/10/93 - 9/14/94
- SCDC Inmate Advisory Council Rep. 9/15/94 - 7/9/95
- Labor Crew/Work Program 7/10/95 - 3/1/96
- SCDC Inmate Advisory Council Rep. 3/2/96 - 10/15/96

**Grady Hipp Retirement Center
(Designated Facility)
10/16/96-9/25/97**

- Food Service (Tray Room Operator)
- Food Service (Chief Cook)

**Leath Correctional Institution
1997-2004**

- Food Service(Tray Room Operator) 9/26/97 - 8/12/98
- Sr. Teacher Assistant 8/13/98 - 3/11/99
- Landscape Laborer 3/16/99 - 6/17/99
- Education Clerk 6/18/99 - 2/23/00
- Travel Agent 2/24/00 - 4/03/02
- Shipping/Receiving-Commissary 4/4/02 - 5/27/02
- Food Service Aide 5/28/02 - 6/08/03
- Inventory Clerk 6/12/03 - 7/29/04

**Camille Griffin Graham Correctional Institution
2004-Present**

- Apparel Plant (Machine Operator Trainee) 8/03/04 - 1/10/05
- Recreation Assistant 1/11/05 - 4/28/08
- Ward Keeper 4/29/08 - 6/4/08
- Canteen Worker 6/5/08 - 10/22/08
- Ward Keeper 10/23/08 - 1/13/11
- Apparel Plant (Machine Operator) 1/13/11 - Present

Theresa B. Gunter

2416 Laurel St. - Apt. - B

Columbia, SC 29204

803-256-6374

OBJECTIVE

To secure a responsible position utilizing my knowledge, skills and abilities to the benefit of me and my employer.

SKILLS

- Teaching - Guiding - Preparing - Assisting
- Materials Inventory Control - Accounting - Verifying - Recording
- Travel Agent - Arranging - Compiling - Customer Service
- Organized - Dependable - Conscientious
- Able to Work Independently or as a Team Member
- Capable of Following Detailed Oral and Written Instructions
- Manufacturing - Production - Processing - Quality Control

WORK HISTORY

1993 - 2011

State of South Carolina, Department of Corrections, Columbia, SC

Education - Clerk / Teaching Assistant

- Assisting the teacher in the implementation of the daily program and in planning and preparing the learning environment
- Set up interest centers and preparing needed materials and supplies
- Assisting youthful offenders in the areas of academics and life skills

Administration - Travel Agent

- Assist travelers by make the best possible travel arrangements
- Offer advice on destinations and make arrangements for transportation, hotel accommodations, car rentals, and tours for their clients

Commissary Associate - Inventory Control

- Unload products and supplies and check them against order forms
- Pick, pull and place products in bins and on racks or proper location
- Initiate, verify, record and file purchase orders, bills of lading

Industries Associate - Apparel Plant

- Operate various machines including, sewing, elastic and surge machines in the production of clothing for residents
- Assemble parts according to instructions and specifications.
- Perform quality control checks to ensure accuracy.

Facilities Maintenance - Custodian

- Responsible for the upkeep and maintenance of common areas
- Sweep, vacuum, and clean high traffic areas in institutions
- Apply chemicals to clean and disinfect floors and other surfaces
- Ensure that areas are free of trash and other debris

EDUCATION

2002

SC Vocational Education, Columbia, SC - Certified Travel Agent

1999

Palmetto Unified School District, Columbia, SC - Computer Courses

1992

Limestone College, Columbia, SC - Business Course Major

1985

Palmetto Unified School District, Columbia, SC - GED

EXHIBIT 8

The DoorKeeper

This certificate is awarded to

Theresa Barton

in recognition of valuable contributions to

Camille Graham Apparel Plant

Kathy Bell
Signature

Dec 2, 2011
Date

B. Sumner
Signature

Dec 2, 2011
Date

Thompson
Signature

Dec 2, 2011
Date

The Clean Up Crew Award

This certificate is awarded to

Theresa Barton

in recognition of valuable contributions to

Camille Graham Apparel Plant

Kathy Bell
Signature

Dec 2 2011
Date

B. Sumner
Signature

Dec 2 2011
Date

Thompson
Signature

Dec 2 2011
Date

Let's Talk About It Award

This certificate is awarded to

Theresa Barton

in recognition of valuable contributions to

Camille Graham Apparel Plant

Kathy Ban
Signature

Dec. 2011
Date

B. Smith
Signature

Dec 2, 2011
Date

Thompson
Signature

Dec 2, 2011
Date

The Positive Attitude Award

This certificate is awarded to

Theresa Barton

in recognition of valuable contributions to

Camille Graham Apparel Plant

Kathy Bell
Signature

Dec 2 2011
Date

B. Sumner
Signature

Dec 2, 2011
Date

Thompson
Signature

Dec 2 2011
Date

The Mighty Soul Steppers

4th Annual Celebration

Saturday, November 12, 2011
5:00 pm

"Stepping In the Midst of Our Storms"

"I would hasten my escape from the windy storm and tempest."

Psalms 55:8

The Mighty Soul Steppers of Camille Griffin Graham was formed in 2006 under the leadership of Coach Cain and Sgt. Foust. We decided to start the "Step Team" as a therapeutic measure for the ladies here at Camille Graham. What is Stepping? It is a form of step dance which is a dance style where the footwork is the most important part of the dance. Stepping also incorporates cheer leading, military and drill team moves.

Welcome

R. Cain & C. Foust

Scripture

Thelma Barton

Prayer

Gail Pitts

Poem

LuRene Kelso

Song

"Coach Cain Choir"

Step Routines:

Audience Please Remain Seated

YOA's (Skit / March / Step)

Right Direction Youth Group

HONOREES:

Paris Avery

Tiffany Jeffcoat

Tiffany Sanders

Ashley Bowen

Holli McEachern

Katherine Smith

Kandy Gilliard

Asia Prioleu

Crystal Young

Introduction of Speaker

Crystal Mathis

Speaker

Pastor Carrie Simmons

Special Presentation

R. Cain & C. Foust

Dance

Coach Cain Dancers

Closing Remarks

"Certificate of Recognition"

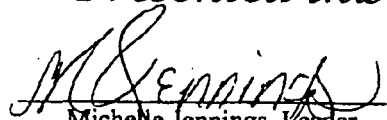
Presented to:

THERESA BARTON

*For her dedication and commitment to the
Camille Griffin Graham Correctional Institution's*

"SOUND TECHNICIAN TEAM"

Presented this 18th day of August 2011


Michelle Jennings, Leader


K. Campbell, Chaplain

"Certificate of Appreciation"

awarded to:

Theresa Barton

for being on the
"Inmate Representative Committee"
"Visitation Game Team"
for 2009 thru 2010 at the
Camille Graham Correctional Institution

Debbie Boyce 8/25/10
Ms Debbie Boyce, IRC Project Sponsor / Date



south carolina department of corrections

P.O. BOX 21787/4444 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29221-1787
TELEPHONE (803) 896-6555
PARKER EVATT, Commissioner

December 8, 1993

Ms. Theresa Barton, SCDC #110881
State Park Correctional Center
Post Office Box 98
State Park, South Carolina 29147

Dear Ms. Barton:

I want to take this opportunity to commend you for your recent selection as the most outstanding inmate at your institution. Your selection from among all of your peers is a distinct honor. You have every right to be extremely proud of this accomplishment.

Mr. Kenneth D. McKellar told me you made an excellent impression when you appeared before the Midlands Correctional Region selection committee on December 6, 1993. As you know, only one person could be selected to represent the Midlands Correctional Region before the departmental selection committee. Mr. Randy Lemon from the Campbell Work Center was selected. I know you will join me in congratulating him.

Again, I want to offer my personal congratulations on this achievement, and let you know this letter will be placed in your record. I wish you the best of luck in all your future endeavors.

Sincerely,

James L. Harvey
Regional Administrator
Midlands Correctional Region

JLH:dmg

cc: Warden Terry Candee
Offender Records Branch
Warden's File
MCR File

C.C. Workfile
C1

FILED

JAN 3 1994

RECEIVED

JAN 3 1994

WORK PROGRAM
State Park Correctional Center

State Park Correctional Center
Women's Work Release Unit

INMATE OF THE YEAR

NARRATIVE AND BIOGRAPHICAL INFORMATION

THERESA BARTON

HOME

202 Cherry Street
Abbeville, S.C. 29620

INSTITUTION

State Park Correctional Center
P.O. Box 98
State Park, S.C. 29147

Inmate Barton was born in Abbeville, S.C. and raised in Evanston, Illinois. Theresa is the oldest of five children. She is serving a 20 year life sentence for murder. She was sentenced in Abbeville, S.C. on March 12, 1982, and was admitted to the South Carolina Department of Corrections on May 13, 1982. She was assigned to Women's Correctional Center.

Theresa has accomplished many positive goals that she has set for herself during her incarceration and has obtained many productive skills.

During her incarceration, she has received her GED, completed several courses in secretarial science, been involved in the Literacy Program as a tutor, has been a member of the Inmate Council, a Jaycee member (received a plaque for "Outstanding Cook," and has held several key positions; classification clerk, education department clerk, telemarketing operator, and group leader.

In January of 1991, Theresa transferred to the State Park Correctional Center. From February 1991 to June 1991, Theresa was a member of the Resident Advisory Council. From December 1991 to July 1992, she worked in the canteen and was the first female canteen operator assigned at State Park where she received a certificate for "Outstanding Service."

Theresa made staff Work Release in June 1992. She is presently on the Women's Work Unit as a worker, a member of the Resident Advisory Council since December 1992 and secretary for that organization and SPCC Grievance Clerk since April 1993.

Theresa strongly believes, "You can't change yesterday, but you can control tomorrow."

Theresa has maintained an exemplary conduct and performance record. She gets along with other residents as well as having an excellent rapport with staff. She is a hard worker and seems dedicated to whatever assignment she is given.

Theresa consistently demonstrates her maturity, willingness to learn, and appears determined to play a productive and constructive role while incarcerated and exhibits a sincere desire to be a respected member of society when released.

As the Department's Inmate of the Year, Theresa will be a credit to herself, this center, and the South Carolina Department of Corrections.

REVIEWED/APPROVED FOR RELEASE
TO THE MEDIA

S/ Theresa Barton
Theresa Barton, SCDC #1108812

NOV 8 1993

WORK PROGRAM
State Park Correctional Center

Certificate of Award

This Certifies That

THERESA BARTON

In Recognition of Outstanding Service for

Operation of State Park Correctional Center's Canteen

has been duly selected by the Committee on
Awards to receive this certificate.

Given at State Park Correctional Center

this 24th day of May in the year 19 93

J. Bryant Dull
Signature

[Signature]
Signature

FILED

JUN 23 1993

WORK PROGRAM
State Park Correctional Center



south carolina department of corrections

P.O. BOX 21787/6444 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29211-1787
TELEPHONE (803) 737-8558
PARKER EVATT, Commissioner

State Park Correctional Center
Post Office Box 98
State Park, South Carolina 29147

December 16, 1992

Teresa Barton, SCDC #110881
State Park Correctional Center
Mary E. White Building
Post Office Box 98
State Park, South Carolina 29147

Dear Resident Barton:

I want to thank you for your part in making our re-accreditation audit such a success; without a doubt, this is the most thorough audit we have ever experienced!

The work done by the grounds crew makes or breaks a persons first impression of our facility. Obviously, you and your co-workers had been busy - and your work resulted in a positive first impression by the auditors.

Again, I appreciate your efforts. It is always gratifying when we can see what our collective work can accomplish. I am always proud of State Park - and this audit just re-enforces that!

Sincerely,

Judy C. Anderson
Judy C. Anderson
Warden

JCA:jj

cc: Offender Records
Warden's Jacket
Deputy Warden Howell
Work File
File

FILED

DEC 31 1992

WORK PROGRAM
State Park Correctional Center



south carolina department of corrections

P.O. BOX 21787/4444 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29221-1787
TELEPHONE (803) 737 8535
PARKER EVATT, Commissioner

STATE PARK CORRECTIONAL CENTER
Post Office Box 98
State Park, South Carolina 29147

February 6, 1991

Resident Theresa Barton, SCDC #110881
STATE PARK CORRECTIONAL CENTER
Palmetto Unit
Post Office Box 98
State Park, South Carolina 29147

Dear Resident Barton:

I am pleased to inform you that you have been selected as Resident Council Representative for the Palmetto Unit. Your term of office will begin now and will run through June, 1991.

You should be very proud of the trust that your fellow residents are placing in you. I look forward to working with you in your new capacity.

Sincerely,

Judy C. Anderson, Warden

JCA:la

cc: Offender Records
Warden's Record
Resident P. Balentine
File (2)

FILED

FEB. 7 1991

CLASSIFICATION
STATE PARK CORRECTIONAL CENTER

THE
SOUTH
CAROLINA
JAYCEES

Theresa Pantom
A LEADERSHIP TRAINING ORGANIZATION

October 30, 1989

Commissioner Parker Evatt
4444 Broad River Road
Columbia, South Carolina 29210

Dear Commissioner Evatt:

I, along with the South Carolina Jaycees, wish to commend members of the Jaycee Alliance for Institutional Liberties (J.A.I.L.). Special recognition goes to the Women's Correctional Center Jaycees, the Broad River Correctional Institute Jaycees, the Dutchman Correctional Institute Jaycees and the Kirkland Correctional Institute Jaycees. These chapters have met the criterion set forth by the United States Jaycees and have become chartered United States Jaycee chapters. Best wishes, also, to those chapters working toward that goal at this time.

These Jaycees have had a positive affect on many in South Carolina, within their own correctional facilities and on the outside communities. Most recent has been their swift and generous response to the Hurricane Hugo Relief effort.

The South Carolina Jaycees appreciate the hard work and the committment to the Jaycee ideals these members have shown. Whether it is a beautification project or helping with the child care program at their own facility, planning a Christmas party for abused and battered children, selling hamburgers or peanuts and donating the profits to Camp Hope or MDA, presenting officer training sessions or holding Speak-Up competition, it is all very positive for the people involved and for the South Carolina Department of Corrections, the United States Jaycees and the South Carolina Jaycees.

Congratulations and continued best wishes to these individuals as they are certainly taking positive action in their Jaycee activities.

In Jaycee Spirit,

Milton Dickson

Milton Dickson
Fifty-Fifth State President

Lec Darlene Sinclair, WCC



south carolina
department of corrections

P.O. BOX 21787/4444 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29221-1787
TELEPHONE (803) 737-8555
PARKER EVATT, Commissioner

RECEIVED

MAY 8

Women's Correc
Center

May 5, 1989

Ms. Theresa Barton
SCDC #110881
Women's Correctional Center

Dear Ms. Barton:

I would like to take this opportunity to thank you for your help in the 1989 Easter Seal Society's "BAC" Campaign sponsored by the Inmate Advisory Councils. >

You should be particularly proud of your significant contribution to this year's campaign. Your efforts, on behalf of the crippled children and adults of South Carolina, merit the appreciation and commendation of your fellow inmates, agency personnel and the general public. Positive achievements like this help build trust, understanding and acceptance between the inmate population and the public.

Again, thank you very much for your part in this worthwhile campaign.

Sincerely,

Parker Evatt

PE:bbb

cc: Mr. Harvey
Warden's Record
Offender Record

THE EASTER SEAL SOCIETY
OF SOUTH CAROLINA, INC.

Certificate of Appreciation

FOR YOUR GENEROUS SUPPORT
OF THE
ANNUAL "B.A.C.-COFFEE DAY
FOR HANDICAPPED CHILDREN"

BY RAISING \$ 25.00
or more through the
Inmate Advisory Council

Theresa Barton

*Easter
Seals*

Harold I. Corley
CHAIRMAN, SC RESTAURANT ASSOCIATION

James K. Wilson
CHAIRMAN, SCLEOA

W. H. Hender
CHAIRMAN, EASTER SEAL SOCIETY OF SC

a merit certificate

awarded to Teresa Barton

for excellence in keeping Night School Attendance

, congratulations!

Oct. 13, 1987
date

Dr. Kathleen
Teacher

Certificate of Merit

Teresa Barton

is awarded this certificate in recognition of

excellent secretarial service for school

Presented at Sara A. Babb
this 19th day of October, 1987.

S. Kadden

Outstanding Services

to

Teresa Barton

for

excellent secretarial services for school

on Sept. 30, 1987

Sister Kathleen
teacher

merit certificate

congratulations

to

Terna Barton

for

helpful assistance in record keeping

Sept to Nov. 1987

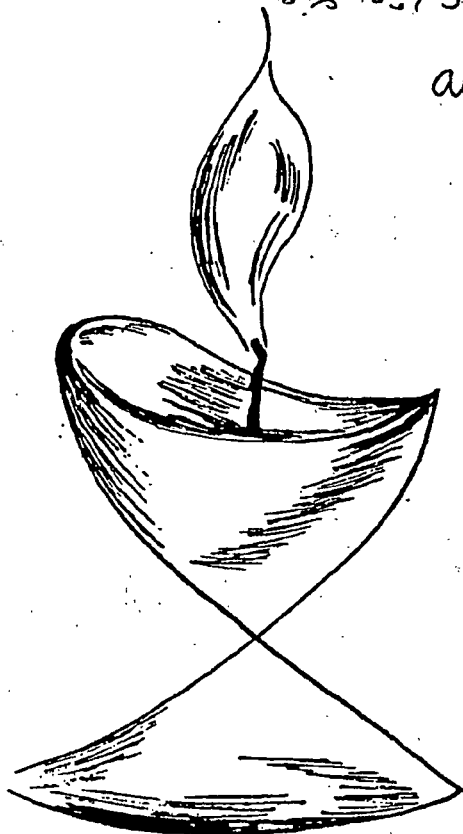
DATE

Dr. Kathleen

TEACHER

a tutorial certificate for
helping to light the lamp of learning
awarded to Teresa Barton

for outstanding secretarial services



from Aug. 1, 1987 to Aug. 31, 1987
dates

Sister Kathleen
Teacher

Modestine F. Greacher

LAUBACH LITERACY ACTION TUTOR CERTIFICATE

This is to certify that Theresa Barton has satisfactorily
completed a 10 hour workshop with emphasis on tutoring Reading
(Literacy or ESL)
conducted in accordance with approved Laubach Literacy Action standards.

Sister Kathleen Halligan

Sister Margaret Hodge

Certified Trainer

Joe A. Wate

Executive Director, LLA

Robert J. Caswell

President - C.E.O., Laubach Literacy International

Columbia, D.C. 5-14-'87

City/State

Date

Greater Columbia

Sponsoring Group

LLA

Laubach Literacy Action
A Division of Laubach Literacy International
Box 131, 1320 Jamesville Avenue
Syracuse, New York 13210



south carolina department of corrections

P.O. BOX 21787/4444 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29221-1787
TELEPHONE (803) 756-6444
WILLIAM D. LEEKE, Commissioner

Rev. J. Michael Brown
Women's Correctional Center
4450 Broad River Road
Columbia, S. C. 29210

January 20, 1987

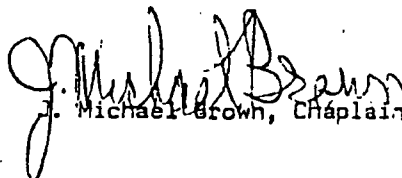
Dear Theresa Barton:

I understand you have helped respond to a need identified at the Seamen's Center in Charleston. You have crocheted some Watch Caps for these international sailors. This is a very special ministry.

Let me express appreciation for your reaching out to the unknown stranger in this fashion. You have helped our nation be hospitable to those passing through the Charleston port. I hope your contribution warmed your heart even as the hats warm the sailors.

Thank you for caring and for doing something about it.

Sincerely,


J. Michael Brown, Chaplain

JMB/pc

CC: Inmate Record

EXHIBIT 9



**Building
Foundations**
LEE RESOURCES
INTERNATIONAL, INC.

Helping you rebuild
the foundations of
life and **business.**

Athene Quotient (AQ) Summary

Your customized summary of the assessment results

Teresa Barton

Jump Start

May 13, 2010

Lee Resources International, Inc.
104 Maxwell Avenue, Suite 349
Greenwood, SC 29646
(800) 277-7888
support@leeresources.com

© 2010 Lee Resources International, Inc.
Other copyrighted and trademarked elements are property of their respective owners. All rights reserved.

Lee Resources International
Executive Summary of the
Athene Quotient (AQ) Assessment

Prepared Exclusively for

Teresa Barton

These Scores represent your judgment capacities as of the day the AQ was taken. However, judgment capacities evolve and grow throughout our entire life. As we engage in the evaluation or judging process, we develop a Personal Value Structure (PVS). Our PVS is dynamic. It grows as we grow, by education, training, and our own uniqueness and experiences, which may change the way we see others and how we relate to them. Problems and challenges may force us to grow in ways we can't always foresee. We can develop and improve our judgmental abilities. Nonetheless, at any given time we have a PVS that is operating and significantly determines how we process the world and how we react. This report reviews your PVS as it stands at the time the AQ was taken.

Note: The AQ report should not be weighed more than 30% of the selection or promotion decision.

Part 1 Scores - Work Side

We begin with the Part 1 of the assessment which relates primarily to what some people call "world" or "work" judgment. This is a person's "external" judgment, the judgment we use from the skin out in the evaluations and decisions we make to function in the world, and especially in the workplace.

The Personal Interpretation Scales, or Global Scores, give a broad, global assessment of a person's Intrinsic, Extrinsic, and Systemic judgment capabilities where the Intrinsic scores measure people skills/relational judgment, Extrinsic scores measure process and task oriented judgment and Systemic scores measure big picture judgment and the implications and consequences of decisions.

Teresa's Global Scores are I = 10 E = 15 S = 14

An Intrinsic Score of 10 indicates that Teresa has strong capability with regards to people skills and relational judgment.

An Extrinsic Score of 15 indicates that Teresa has strong capability with regards to Process and task oriented judgment.

An Systemic Score of 14 indicates that Teresa has strong capability with regards to big picture judgment and the implications and consequences of decisions.

QUICK FORM - ATHENE QUOTIENT®

NAME: Teresa Barton
COMPANY: Jumpstart

DATE: 5/13/2010 9:51:27 AM

PART 1 SCORES — (WORK SIDE)

PERSONAL INTERPRETATION SCALES (GLOBAL SCORES): 0-80+ I(ntrinsic)= 10 E(xtrinsic)= 15 S(ystemic)= 14

STAGE TYPE: 5 = Diplomacy/Mediating/Facilitating

FRINGE TYPE: = Communicating/Articulating

COMPOSITE: 1 > 5 > E

JUDGMENT CAPACITY

MEASURING CAPACITY FOR:		SCORE	RANGE	Very Well	Above Average	Average	Below Average	Weak	Very Weak
1	Ability to notice, insight, sensitivity	DIFF	34	0-80+	✓				
2	General tolerance and acceptance	DIM-I	9	0-42+	✓				
3	Trainability; ability to understand work	DIM-E	13	0-42+	✓				
4	Understanding "big picture" implications	DIM-S	12	0-42+	✓				
5	Problem-solving style, work-side	DIM	5	0-24+	✓				
6	Realism versus Idealism orientation	DIM%	15	0-60+	Real				
7	Compassion, empathy, actions of care	INT-I	1	0-33+	✓				
8	Dependability, reliability, work ethic	INT-E	2	0-33+	✓				
9	Using "big picture" considerations	INT-S	2	0-33+	✓				
10	Problem-solving ability	INT	5	0-42+	✓				
11	Dealing with difficult situations, energy	INT%	15	0-60+	✓				
12	Focus and concentration	DI	1	0-23+	✓				
13	Directions followed with accuracy	DIS	2	0-8+	✓				
14	Effects of work-side stress	AI%	56	50-71+	✓				
15	Overall Part 1 validity	RHO	0.920	1-0	✓				

PART 2 SCORES — (SELF SIDE)

PERSONAL INTERPRETATION SCALES (GLOBAL SCORES): 0-80+ I(ntrinsic)= 17 E(xtrinsic)= 17 S(ystemic)= 16

JUDGMENT CAPACITY

MEASURING CAPACITY FOR:		SCORE	RANGE	Very Well	Above Average	Average	Below Average	Weak	Very Weak
1	Self regard/self care	DIFF	38	0-80+	✓				
2	Meaningfulness of work experience	DIM-I	13	0-42+	✓				
3	Morale; the value of work	DIM-E	13	0-42+	✓				
4	Basic organizational ability	DIM-S	12	0-42+	✓				
5	Problem-solving style, self-side	DIM	1	0-24+	✓				
6	Acceptance of change/role identity	DIM%	3	0-60+	✓				
7	Solving personal problems for self	INT-I	4	0-33+	✓				
8	Solving practical problems for self	INT-E	4	0-33+	✓				
9	Environmental conscientiousness	INT-S	4	0-33+	✓				
10	Understanding what is "important"	INT	12	0-42+	✓				
11	Self accepting or self-criticizing	INT%	32	0-60+	✓				
12	Assertive or conflict avoidant	DI	0	0-23+	✓				
13	Understanding "right" from "wrong"	DIS	0	0-8+	✓				
14	Effects of self-side stress	AI%	50	50-71+	✓				
15	Overall Part 2 validity	RHO	0.876	1-0	✓				

BALANCE OF JUDGMENT

PART 1	PEOPLE/RELATIONS (WORK - I) = -3	WORK/TASKS (WORK - E) = -5	IDEAS (WORK - S) = 4
PART 2	SELF ESTEEM (SELF - I) = -11	SELF CONCEPT (SELF - E) = 7	SELF IMAGE (SELF - S) = 4

Self-Work Balance = 0.89

SUMMARY SCORES — QUANTITATIVE / QUALITATIVE

WORK SIDE	QUANTITATIVE: 46 - Excellent	VO1	SELF SIDE	QUANTITATIVE: 51 - Excellent	SO1	0 - 130+
	QUALITATIVE: 12 - Very Good	VO2		QUALITATIVE: 13 - Very Good	SO2	0 - 42+



ATHENE INCORPORATED

Quick Form
© Copyright 2009 - All Rights Reserved

Global Composite = I>S>E

Stage Type = Diplomacy / Facilitating

Stage type: People of this stage type get along with almost anyone and will have some friends that others will wonder why they have these friends. Few people in the category. They love to study people and find a niche to build relationships upon. They make good team builders, peacemakers, and facilitators and are better than most at dealing with difficult people. Frustrations: When there is a lack of cooperation or when people fail to get along.

1. Differentiation Part 1 (DIF 1): Ability to notice; insight, sensitivity Measures how well a person notices that which is not obvious; the ability to be sensitive to that which is beneath the surface, to understand subtlety, and to recognize the depth involved in situations; i.e. a noticing scale.

A score of 34 indicates someone who will be more aware of nuance and subtle elements; such strong scores indicates an ability to notice more in a circumstance; This person will typically have well developed instincts and intuition.

2. Dimension Intrinsic Part 1 (DIM-I 1): General tolerance and acceptance of others. Measures a person's capability to show tolerance and openness to new ideas in their decision making.

A score of 9 indicates a person who will be tolerant of people who are not like us in some significant way. This may relate to differences in age, gender, ethnic orientation, or differences in belief, politics, lifestyle choices, or even differences in pace or speed of work. Strong scores indicate a tendency toward valuing respect, and away from caricature, stereotype, bigotry, and prejudice. Strong scores reflect openness to others, even those who maybe very different.

3. Dimension Extrinsic Part 1 (DIM-E 1): Trainability; the ability to understand work Measures a person's basic understanding of what takes place in the general dynamics of a work environment.

A score of 13 indicates those who will be more easily trained, able to learn new processes more quickly, and capable of finding their way around a workplace without constant supervision.

4. Dimension Systemic Part 1 (DIM-S 1) Understanding big picture implications Measures an appreciation for the need to consider the larger picture as well as consequences and implication of decisions; to conceptualize and evaluate globally.

A score of 12 indicates a positive tendency to evaluate theoretically and abstractly, and also the capability for planning, visioning, and brainstorming.

5. Dimension Part 1 (DIM 1) Problem Solving Style, work-side A primary measure of a person's problem-solving style, the dominant manner of how we go about solving problems.

A score of 5 indicates a more reactive or responsive style but usually with good understanding that will result in more effective decisions. Individuals scoring in this range will be seen as decisive people.

6. Dimension Percentage Part 1 (DIM%1) Realism-Idealism Orientation Measures the tendency to be realistic or idealistic, both perspectives being positive depending on the specific circumstances.

A score of 15 indicates a more realistic approach to life—seeing the world as it is.

7. Integration Intrinsic Part 1 (INT-I 1) Compassion, empathy, actions of care Measures the capability to help others solve personal problems in the workplace. Acts of care, compassion, and empathy are indicated with INT-I 1.

A score of 1 indicates individuals who will often attract others to them, inspire confidence, trust, convey concern, care, sympathy, and good advice. These individuals highly value relationships. • Strong scores indicate a "people person", someone with people skills and capable social skills. A strong INT-I 1 score does not indicate a pronounced extroversion, rather confidence in social settings.

8. Integration Extrinsic Part 1 (INT-E 1) Dependability, reliability, work ethic A primary measure of a person's dependability. Here, being dependable is not seen as a concept or an idea but as concrete, real actions. A score of 2 indicates people who are particularly helpful in situations where task completion is important, as it indicates responsibility and dependability. In a more complex interpretation these people will be regarded as those who will do what they say they will do.

9. Integration Systemic Part 1 (INT-S 1) Using Big Picture Considerations A primary measure of a person's ability to use the appreciation of implications and consequences in the decision-making process. A score of 2 indicates a person who will stop and give consideration to implications and consequences. Strong scores indicate the ability to do long range, strategic planning, and brainstorming, and in addition to being able to evaluate, the ability to solve global, theoretical problems.

10. Integration Part 1 (INT 1) Problem solving ability Measures the capability to see that which is relevant in complex situations; to observe, integrate information, and make decisions, solve problems, and find solutions. A score of 5 indicates the ability to receive information from a variety of sources, process and synthesize that information, determine an appropriate solution, decide on a course of action, and ultimately complete the task. Good decisions can be made even while working under stress. Strong scores indicate an ability to effectively use both rational and emotional information. Individuals with strong scores are characterized as careful decision-makers and competent problem-solvers. Persons with single-digit score should be particularly careful about how they handle frustration. Frustration is a major derailer of good judgment. For a person with single-digit scores to deal with persons of average score ranges is not easy, as the person with the single-digit scores will move faster, "get" things more quickly, and move to resolve problems in a much more deliberative manner. Average scores will slow these people down and can become a source of substantial frustration.

11. Integration Percentage Part 1 (INT% 1) Dealing with difficult situations, energy Measures the capability to deal effectively with difficult situations and circumstances, to retain control of situations involving difficult people; degree of patience, problem-solving energy. A score of 15 indicates those who are well suited for demanding environments that involve intense, difficult, stressful people. These people have the ability, judgment, and energy to recognize, organize, and mobilize resources at their disposal to deal with difficult situations; it indicates a high level of problem solving energy and patience.

12. Dimensional Integration Part 1 (DI 1) Focus and concentration Measures the capability to maintain and hold concentration on problems at work and in the external world in the midst of distractions, clutter, and confusion; without disruption or breaks in concentration; i.e., a focusing scale. A score of 1 indicates the capability to remain focused on tasks even in the presence of clutter and distractions; an ability to block out outside influences and concentrate.

13. Dissimilarity Part 1 (DIS 1) Directions followed with accuracy Measures the ability to follow directions; to understand directions, and the ability to carry them out with accuracy. The same will be true for rules and regulations as well. A score of 2 indicates one who will follow directions but who will not be so judgmental.

14. Attitude Index Part 1 (AI% 1) Effects of work-side stress A complex measure of the obvious stressors that exist on the work side of a person's life, and the person's ability to cope with those stressors.

A score of 56 indicates a strong, positive attitude, allowing a person to enter work with a dynamic, positive, and upbeat attitude.

15. RHO 1 or Correlation Index Overall Strength of Work Side Judgment Measures the statistical overview of the general strength of the entire Part 1 of the assessment instrument's interpretation. A score of 0.92 in general, for example, a score on the Part 1 RHO of .875 and above (toward 1.000) would be seen as a predictably strong person in terms of work performance and positive engagement in the external world.

Part 2 Scores - Self Side

1. Differentiation Part 2 (DIF 2) Self-regard / self-care Measures a person's capacity for self-regard which is important to personal wellness and self-care. If weak scores are not attended to it will take away from all aspects of your life; work, personal, spiritual, etc. Taking care of self is extremely important to overall personal happiness, well being and overall effectiveness. A score of 38 indicates a person who may not be taking care of their personal needs? It could mean that you should take a look at your daily routine?

2. Dimension Intrinsic Part 2 (DIM-I 2) Meaningfulness of work, self-identity This indicator focuses attention on whether an individual feels that his work is meaningful and purposeful, and not what someone else feels about the work. For many, work is a significant, if not the most significant component in their life. Work may be a powerful positive or negative in terms of self-identity. A score of 13 indicates an individual who enjoys and finds meaning in their work most of the time

3. Dimension Extrinsic Part 2 (DIM-S 2) Morale: the value of work Measures the degree to which one's work contributes, matters, and makes a difference in the lives of others. A score of 13 will tend to convey that a person feels that they get to work, that their work does contribute and matter and these individuals will project good morale in the work place.

4. Dimension Systemic Part 2 (DIM-S 2) Basic Organizational ability Measures a person's capacity to use organization and strategic planning to accomplish ambitions, goals, responsibilities, and even dreams. A score of 12 indicates a sense of duty, or a sense of who I ought to be. These individuals will use their capacity to successfully plan strategies, tactics and action items to help them achieve their goals. 0-1 may indicate obsessive/compulsive behavior, whereas strong scores 1-7 may indicate over-organization.

5. Dimension Part 2 (DIM 2) Problem solving style, self-side Measures a person's problem solving style; how an individual solves problems at home, with family, and in personal settings

A score of 1 indicates a more reactive or responsive style but they have understanding that will result in more effective decisions.

6. Dimension Percentage Part 2 (DIM% 2) Acceptance of change / role identity Measures the intensity of a person's role identity, and the ability to deal well with change. A score of 3 have less role identity; people see themselves as unique, not first defined by a job; they do not resist change and may even be drawn to change.

7. Integration Intrinsic Part 2 (INT-I 2) Solving personal problems for self Measure of a person's capacity for internal dialogue, trust of one's own reasoning, and the ability to be one's own best counselor. A score of 4 indicates someone who is very good at solving personal problems for self. They are very good self counselors. However, they have reluctance to ever seek help.

8. Integration Extrinsic Part 2 (INT-E 2) Solving practical problems for self Measures a person's capacity for making good practical decisions for themselves. A score of 4 indicates the ability to make good, practical decisions for yourself without advice and counsel. This scores differs from INT-I 2 in that it involves processes or things

9. Integration Systematic Part 2 (INT-S 2) Environmental conscientiousness Measures a person's capacity for bringing structure and discipline to strategic plans, visions, and goals. A score of 4 indicates those who take care of surroundings and make sure that personal environments are cleaner, less cluttered, and better arranged in a way that allows for goals to be pursued without unnecessary obstacles.

10. Integration Part 2 (INT 2) Understanding what is important Measures the capacity to discern what is important, or what needs to be done within the framework of personal matters and situations; a sense of priority.

A score of 12 indicates someone with a powerful sense of what should and/or needs to be done and a sense of what is personally important, a strong ability to prioritize. Persons with really strong scores (0—12) are often more prone to "burn out." The reason for this is their high need for activities that are rewarding, meaningful, and satisfying. It is very important for people in these score ranges to be doing at least some things that they really "like" to do. This strategy will generally prevent "burn out" and decisions about moving to other arenas of work and life activity that are not deliberately considered and carefully chosen.

11. Integration Percentage Part 2 (INT% 2) Self-accepting or self-criticizing Measures self-induced stress, the tendency of people to be harder on themselves and more self-critical than would ever be necessary.

A score of 32 indicates someone who is more critical than they should be of self and others they care about

12. Dimensional Integration Part 2 (DI 2) Assertive or conflict avoidant Measure the level of assertiveness or conflict avoidance in a person's life and a measure of the capacity to concentrate on problems which become personally difficult.

A score of 0 indicates a tendency to be open, appropriately assertive, and straightforwardly honest. • 0 to 1 are extremely strong scores which may indicate a possible tendency to be pushy with opinions or to be more intimidating to others than might be realized.

13. Distortion Part 2 (DIS 2) Understanding "right" from "wrong" Measures the development of a person's sense of moral right and wrong; the development of moral conscience.

A score of 0 indicates someone who will do the "right" thing and will be judgmental of those who do not.

14. Attitude Index Part 2 (AI% 2) Effects of self-side stress Measures a person's attitude toward their personal, internal self; an ability to cope with adversity in personal matters and to handle self-side stress.

A score of 50 indicates good, positive self-esteem, with strong personal anchors. A person with strong scores in the midst of adversity means they have strong coping skills on personal matters, and a healthy amount of self-esteem.

15. RHO 2 or Correlation Index Overall Strength of Self Side Judgment Measures the statistical overview of the general strength of the entire self side of the assessment instrument's interpretation.

A score of 0.876 Correspondingly, a score on the Part 2 RHO of .825—fully .50 less—would still be a fundamentally strong score. Again, large numbers of people need to be working on the improvement of their self side as compared to their work

Balance of Judgment

People / Relations (Work - I) = -3

Work / Tasks (Work - E) = -5

Ideas (Work - S) = 4

Self Esteem (Self - I) = -11

Self Concept (Self - E) = 7

Self Image (Self - S) = 4

A score of -3 indicates that a person is balanced as to their value of people.

A score of -5 indicates that a person who is balanced as to their value of task.

A score of 4 indicates that a person who is balanced as to their value of ideas, implications and consequences.

A score of -11 indicates a lack of self-esteem and a corresponding lack of self-confidence. Self-confidence suffers if people see themselves as inadequate or incompetent.

A score of 7 indicates that a person who is balanced in their self-concepts.

A score of 4 indicates a healthy Self-Image which contributes to meaningful personal growth and development. Scores in this range are often seen among highly motivated people.

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

Docket No. 12-ALJ-15-0004-AP

Thalma Barton, #110881, ...

Appellant,

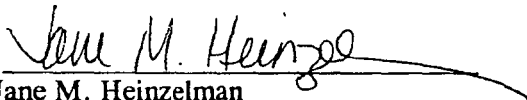
v.

South Carolina Department of Probation, Parole and
Pardon Services, ...

Respondent.

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have had served via hand delivery the Brief of Appellant and Supplement to Record on Appeal to the Heyward Hinton, John Benjamin Aplin, and Tommy Evans, Jr., South Carolina Department of Probation, Parole, & Pardon Services, 2221 Devine Street, Suite 600, Post Office Box 50666, Columbia, SC 29250, attorney of record,


Jane M. Heinzelman
Administrative Assistant

March 15, 2012

FILED

MAR 15 2012

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No. 12-ALJ-15-0004-AP
Appellate Case No. 2012-213234

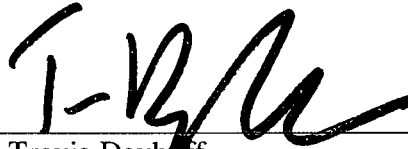
Thalma Barton #110881, ... Appellant,

v.

South Carolina Department of Probation, Parole, and
Pardon Services, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Travis Dayhoff

Gary L. Capps

NELSON MULLINS RILEY & SCARBOROUGH LLP

1320 Main Street, 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Thalma Barton

Columbia, South Carolina

February 15, 2013

RECEIVED

FEB 26 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No. 12-ALJ-15-0004-AP
Appellate Case No. 2012-213234

RECEIVED
FEB 19 2013
SC Court of Appeals

Thalma Barton #110881, ... Appellant,

v.

South Carolina Department of Probation, Parole, and
Pardon Services, ... Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the **RECORD ON APPEAL** via U.S. Mail on February 15, 2013, addressed to its attorney of record, Nicole Wetherton, Esq., South Carolina Department of Probation, Parole, and Pardon Services, 2221 Devine Street, Ste. 600, P.O. Box 50666, Columbia, SC 29250.



Travis Dayhuff

Gary L. Capps

NELSON MULLINS RILEY & SCARBOROUGH LLP

1320 Main Street, 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Thalma Barton

Columbia, South Carolina

February 15, 2013