

SOUTH CAROLINA LAWS

REGARDING STATUS OFFENSES

The following statutes and excerpts from statutes are current as of May 2015.
Parts of some statutes have been underlined to draw readers' attention to language pertaining directly to status offenders.

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“Status offense” is defined twice in the Children’s Code. The minor, grammatical differences between the two definitions are underlined below.

(1) “Status Offense” Definitions. § 63-1-40(6)

"Status offense" means any offense which would not be a misdemeanor or felony if committed by an adult, such as, but not limited to, incorrigibility (beyond the control of parents), truancy, running away, playing or loitering in a billiard room, playing a pinball machine or gaining admission to a theater by false identification. (Applies to Title 63, SC Children’s Code.)

(2) “Status Offense,” Definitions. § 63-19-20(9)

"Status offense" means an offense which would not be a misdemeanor or felony if committed by an adult including, but not limited to, incorrigibility or beyond the control of parents, truancy, running away, playing or loitering in a billiard room, playing a pinball machine, or gaining admission to a theater by false identification. (Applies to Chapter 19 of Title 63, Juvenile Justice Code.)

Individual status offenses identified by statute:

(3) Incorrigibility. §§ 63-1-40(6), 63-19-20(9)

Within both definitions of “status offense,” incorrigibility is defined as beyond the control of parents.

(4) Running away. No statutory definition

(5) Truancy. See Reg. 43-274, page 15.

(6) Misrepresentation of age for admission to theater. § 63-19-2410

A minor who gains admission to any theater by falsely claiming to be 18 years of age or older is guilty of a misdemeanor and, upon conviction, must be fined not more than \$50.

(7) Loitering or playing in billiard room. § 63-19-2420

It is unlawful for a person under 18 years of age to loiter in a billiard or pocket billiard room or to play billiards or pocket billiards in a billiard room unless accompanied by the person's parent or guardian or with the written consent of the person's parent or guardian. A person violating this section or Chapter 11 of Title 52 or any billiard room proprietor or manager who permits such a violation must be fined not less than 10 nor more than \$100 or be imprisoned not less than two days nor more than 30 days. In the event the keeper of a billiard room is of the opinion that a person desiring admission is under the age of 18 years the keeper shall require the person to certify the person's age in writing. It is a misdemeanor, punishable by a fine of not less than 25 nor more than \$100, for a minor to make a false certificate of age or use a forged permit from the minor's parent or guardian.

(8) Playing pinball machines. § 63-19-2430

It is unlawful for a minor under the age of 18 to play a pinball machine.

Note: regarding the two offenses listed below – While underage alcohol offenses are considered status offenses under federal law, it could be argued that these are not included under the SC definition of status offense, since they are considered a “criminal offense” if committed by an adult (who is 17, 18, 19 or 20)

(9) Beer and wine purchase, consumption, or possession. § 63-19-2440

(A) It is unlawful for a person under the age of 21 to purchase, attempt to purchase, consume, or knowingly possess beer, ale, porter, wine, or other similar malt or fermented beverage.

Possession is prima facie evidence that it was knowingly possessed. Notwithstanding another provision of law, if the law enforcement officer has probable cause to believe that a person is under age twenty-one and has consumed alcohol, the law enforcement officer or the person may request that the person submit to any available alcohol screening test using a device approved by the State Law Enforcement Division. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than \$100 nor more than \$200 or must be imprisoned for not more than 30 days, or both.

(B) A person who violates the provisions of this section also is required to successfully complete a DAODAS approved alcohol prevention education or intervention program. The program must be a minimum of eight hours and the cost to the person may not exceed \$150.

Note: (C)-(F) address exceptions including 18 or older employed to serve or remove alcohol or lawfully sell unopened containers; or engaging in student class activities.

(10) Purchase or possession of alcoholic liquors. § 63-19-2450

This statute contains the same language as § 63-19-2440, but it pertains to liquors.

Statutes directing the handling of status offenders involved in the juvenile justice system:

(11) Out-of-home placement § 63-19-820

(A) When the officer who took the child into custody determines that placement of a juvenile outside the home is necessary, the authorized representative of the Department of Juvenile Justice shall make a diligent effort to place the child in an approved home, program, or facility, other than a secure juvenile detention facility, when these alternatives are appropriate and available.

(B) A child is eligible for detention in a secure juvenile detention facility only if the child:

(1) is charged with a violent crime as defined in Section 16-1-60;

(2) is charged with a crime which, if committed by an adult, would be a felony or a misdemeanor other than a violent crime, and the child:

(a) is already detained or on probation or conditional release or is awaiting adjudication in connection with another delinquency proceeding;

(b) has a demonstrable recent record of wilful failures to appear at court proceedings;

(c) has a demonstrable recent record of violent conduct resulting in physical injury to others; or

(d) has a demonstrable recent record of adjudications for other felonies or misdemeanors; and

(i) there is reason to believe the child is a flight risk or poses a threat of serious harm to others;

or

(ii) the instant offense involved the use of a firearm;

(3) is a fugitive from another jurisdiction;

(4) requests protection in writing under circumstances that present an immediate threat of serious physical injury;

(5) had in his possession a deadly weapon;

(6) has a demonstrable recent record of wilful failure to comply with prior placement orders including, but not limited to, a house arrest order;

(7) has no suitable alternative placement and it is determined that detention is in the child's best interest or is necessary to protect the child or public, or both; or

(8) is charged with an assault and battery or an assault and battery of a high and aggravated nature on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity.

A child who meets the criteria provided in this subsection is eligible for detention. Detention is not mandatory for a child meeting the criteria if that child can be supervised adequately at home or in a less secure setting or program. If the officer does not consent to the release of the child, the parents or other responsible adult may apply to the family court within the circuit for an ex parte order of release of the child. The officer's written report must be furnished to the family court judge who may establish conditions for the release.

(C) No child may be placed in secure confinement or ordered detained by the court in secure confinement in an adult jail or other place of detention for adults for more than six hours.

However, the prohibition against the secure confinement of juveniles in adult jails does not apply to juveniles who have been waived to the court of general sessions for the purpose of standing trial as an adult. Juveniles placed in secure confinement in an adult jail during this six-hour period must be confined in an area of the jail which is separated by sight and sound from adults similarly confined.

(D) Temporary holdover facilities may hold juveniles during the period between initial custody and the initial detention hearing before a family court judge for a period up to forty-eight hours, excluding weekends and state holidays.

(E) A child who is taken into custody because of a violation of law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained in an adult detention facility. A child who is taken into custody because of a violation of the law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained more than twenty-four hours in a juvenile detention facility, unless an order previously has been issued by the court, of which the child has notice and which notifies the child that further violation of the court's order may result in the secure detention of that child in a juvenile detention facility. If a juvenile is ordered detained for violating a valid court order, the juvenile may be held in secure confinement in a juvenile detention facility for not more than seventy-two hours, excluding weekends and holidays. However, nothing in this section precludes a law enforcement officer from taking a status offender into custody.

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

(G) For purposes of this section, "adult jail" or other place of detention for adults includes a state, county, or municipal police station, law enforcement lockup, or holding cell. "Secure confinement" means an area having bars or other restraints designed to hold one person or a group of persons at a law enforcement location for any period of time and for any reason. Secure confinement in an adult jail or other place of detention does not include a room or a multipurpose area within the law enforcement center which is not secured by locks or other security devices. Rooms or areas of this type include lobbies, offices, and interrogation rooms. Juveniles held in these areas are considered to be in nonsecure custody as long as the room or area is not designed for or intended for use as a residential area, the juvenile is not handcuffed to a stationary object while in the room or area, and the juvenile is under continuous visual supervision by facility staff while in this room or area which is located within the law enforcement center. Secure confinement also does not include a room or area used by law enforcement for processing "booking" purposes, irrespective of whether it is determined to be secure or nonsecure, as long as the juvenile's confinement in the area is limited to the time necessary to fingerprint, photograph, or otherwise "book" the juvenile in accordance with state law.

(12) Commitment. § 63-19-1440

(A) A child, after the child's twelfth birthday and before the seventeenth birthday or while under the jurisdiction of the family court for disposition of an offense that occurred prior to the child's 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 may be committed only to the custody of the department which shall arrange for placement in a suitable corrective environment other than institutional confinement. No child under the age of seventeen years may be committed or sentenced to any other penal or correctional institution of this State.

(B) 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 63-3-510, 63-3-520, 63-3-580, 63-3-600, 63-3-650, and this chapter, 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, commitment must be for an indeterminate sentence, not extending beyond the twenty-first birthday of the child unless sooner released by the department, or for a determinate commitment sentence not to exceed ninety days.

(C) The court, before committing a child as a delinquent or as a part of a sentence including commitments for contempt, shall order a community evaluation or temporarily commit the child to the Department of Juvenile Justice for not more than forty-five days for evaluation. A community evaluation is equivalent to a residential evaluation, but it is not required to include all components of a residential evaluation. However, in either evaluation the department shall make a recommendation to the court on the appropriate disposition of the case and shall submit that recommendation to the court before final disposition. The department is authorized to allow any child adjudicated delinquent for a status offense, a misdemeanor offense, or violation of probation or contempt for any offense who is temporarily committed to the department's custody for a residential evaluation, to reside in that child's home or in his home community while undergoing a community evaluation, unless the committing judge finds and concludes in the order for evaluation, that a community evaluation of the child must not be conducted because the child presents an unreasonable flight or public safety risk to his home community. The court may waive in writing the evaluation of the child and proceed to issue final disposition in the case if the child:

(1) has previously received a residential evaluation or a community evaluation and the evaluation is available to the court;

(2) has been within the past year temporarily or finally discharged or conditionally released for parole from a correctional institution of the department, and the child's previous evaluation or other equivalent information is available to the court; or

(3) receives a determinate commitment sentence not to exceed ninety days.

(D) When a juvenile is adjudicated delinquent or 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 juvenile may be committed for an indeterminate period until the juvenile has reached age twenty-one or until sooner released by the releasing entity or released by order of a judge of the Supreme Court or the circuit court of this State, rendered at chambers or otherwise, in a proceeding in the nature of an application for a writ of habeas corpus. A juvenile who has not been paroled or otherwise released from the custody of the department by the juvenile's nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. If not sooner released by the releasing entity, the juvenile must be released by age twenty-one according to the provisions of the juvenile's commitment; however, notwithstanding the above provision, any juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(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 Board of Juvenile Parole, a juvenile transferred pursuant to this subsection 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 must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(F) Notwithstanding subsections (A) and (E), a child may be committed to the custody of the Department of Juvenile Justice or to a secure evaluation center operated by the department for a determinate period not to exceed ninety days when:

(1) the child has been adjudicated delinquent by a family court judge for a status offense, as defined in Section 63-19-20, excluding truancy, and the order acknowledges that the child has been afforded all due process rights guaranteed to a child offender;

(2) the child is in contempt of court for violation of a court order to attend school or an order issued as a result of the child's adjudication of delinquency for a status offense, as defined in Section 63-19-20; or

(3) the child is determined by the court to have violated the conditions of probation set forth by the court in an order issued as a result of the child's adjudication of delinquency for a status offense, as defined in Section 63-19-20 including truancy.

Orders issued pursuant to this subsection must acknowledge:

(a) that the child has been advised of all due process rights afforded to a child offender; and
(b) that the court has received information from the appropriate state or local agency or public entity that has reviewed the facts and circumstances causing the child to be before the court.

(G) A child committed under this section may not be confined with a child who has been determined by the department to be violent.

(H) After having served at least two-thirds of the time ordered by a court, a child committed to the Department of Juvenile Justice for a determinate period pursuant to this section may be released by the department prior to the expiration of the determinate period for "good behavior" as determined by the department. The court, in its discretion, may state in the order that the child is not to be released prior to the expiration of the determinate period ordered by the court.

(I) Juveniles detained in any temporary holding facility or juvenile detention center or who are temporarily committed for evaluation to a Department of Juvenile Justice evaluation center for the offense for which they were subsequently committed by the family court to the custody of the Department of Juvenile Justice shall receive credit toward their parole guidelines, if indeterminately sentenced, or credit toward their date of release, if determinately sentenced, for each day they are detained in or temporarily committed to any secure pre-dispositional facility, center, or program.

(13) Driver's License Suspension. § 63-19-1420

(A) If a child is adjudicated delinquent for a status offense or is found in violation of a court order relating to a status offense, the court may suspend or restrict the child's driver's license until the child's seventeenth birthday.

(B) If a child is adjudicated delinquent for violation of a criminal offense or is found in violation of a court order relating to a criminal offense or is found in violation of a term or condition of probation, the court may suspend or restrict the child's driver's license until the child's eighteenth birthday.

(C) If the court suspends the child's driver's license, the child must submit the license to the court, and the court shall forward the license to the Department of Motor Vehicles for license suspension. However, convictions not related to the operation of a motor vehicle shall not result in increased insurance premiums.

(D) If the court restricts the child's driver's license, the court may restrict the child's driving privileges to driving only to and from school or to and from work or as the court considers

appropriate. Upon the court restricting a child's driver's license, the child must submit the license to the court and the court shall forward the license to the Department of Motor Vehicles for reissuance of the license with the restriction clearly noted.

(E) Notwithstanding the definition of a "child" as provided for in Section 63-19-20, the court may suspend or restrict the driver's license of a child under the age of seventeen until the child's eighteenth birthday if subsection (B) applies.

(F) Upon suspending or restricting a child's driver's license under this section, the family court judge shall complete a form provided by and which must be remitted to the Department of Motor Vehicles.

(14) Interstate Compact for Juveniles. § 63-19-2220

The State of South Carolina hereby contracts to enter into the "Interstate Compact for Juveniles" according to the terms and in the form substantially as follows:

Subarticle I / Purpose

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

(A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(C) return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return;...

Subarticle II / Definitions

As used in this compact, unless the context clearly requires a different construction:...

H. "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) accused delinquent--a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) adjudicated delinquent--a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) accused status offender--a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) adjudicated status offender--a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) nonoffender--a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(15) Petition for record destruction. § 63-19-2050

(A) A person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a status or a nonviolent offense may petition the court for an order destroying all official records relating to: (1) being taken into custody; (2) the charges filed against the child; (3) the adjudication; and (4) disposition.

The granting of the order is in the court's discretion. However, a person may not petition the court if he has a prior adjudication for an offense that would carry a maximum term of

imprisonment of five years or more if committed by an adult. In addition, the court must not grant the order unless it finds that the person who is seeking to have the records destroyed is at least eighteen years of age, has successfully completed any dispositional sentence imposed, and has not been subsequently charged with any criminal offense.

(B) An adjudication for a violent crime, as defined in Section 16-1-60, must not be expunged.

(C) If the expungement order is granted by the court, no evidence of the records may be retained by any law enforcement agency or by any municipal, county, state agency, or department. The effect of the order is to restore the person in the contemplation of the law to the status the person occupied before being taken into custody. No person to whom the order has been entered may be held thereafter under any provision of any law to be guilty of perjury or otherwise giving false statement by reason of failing to recite or acknowledge the charge or adjudication in response to an inquiry made of the person for any purpose.

(D) For purposes of this section, an adjudication is considered a previous adjudication only if it occurred prior to the date the subsequent offense was committed.

The following "policy" language indicates an understanding of the need to respond to children in a caring and compassionate way, as children in need of services, guidance, support...

(16) Short title. § 63-1-10

This title may be cited as the "South Carolina Children's Code".

(17) Policy. § 63-1-20

(A) A children's policy is hereby established for this State.

(B) This policy shall be interpreted in conjunction with all relevant laws and regulations and shall apply to all children who have need of services including, but not limited to, those mentally, socially, emotionally, physically, developmentally, culturally, educationally or economically disadvantaged or handicapped, those dependent, neglected, abused or exploited and those who by their circumstance or action violate the laws of this State and are found to be in need of treatment or rehabilitation.

(C) It shall be the policy of this State to concentrate on the prevention of children's problems as the most important strategy which can be planned and implemented on behalf of children and their families. The State shall encourage community involvement in the provision of children's services including, as an integral part, local government, public and private voluntary groups, public and private nonprofit groups and private-for-profit groups in order to encourage and provide innovative strategies for children's services. To maximize resources in providing services to children in need, all agencies providing services to children shall develop methods to coordinate their services and resources. For children with multiple needs, the furtherance of this policy requires all children's services agencies to recognize that their jurisdiction in meeting these children's needs is not mutually exclusive.

(D) When children or their families request help, state and local government resources shall be utilized to compliment community efforts to help meet the needs of children by aiding in the prevention and resolution of their problems. The State shall direct its efforts first to strengthen and encourage family life as the most appropriate environment for the care and nurturing of children. To this end, the State shall assist and encourage families to utilize all available resources. For children in need of services, care and guidance the State shall secure those services as are needed to serve the emotional, mental and physical welfare of children and the best interests of the community, preferably in their homes or the least restrictive environment possible...

(E) The children's policy provided for in this chapter shall be implemented through the cooperative efforts of state, county and municipal legislative, judicial and executive branches, as well as other public and private resources. Where resources are limited, services shall be targeted to those children in greatest need.

(F) In order to carry out this policy each agency, department, institution, committee, and commission which is concerned or responsible for children shall submit as a part of its annual budget request a listing of programs and services for children, the priority order of these programs and services in relation to other services, if any, that are provided by the agency, department, institution, committee, or commission, and a summary of the expenses incurred for the administration of its children's services and programs. In addition, each agency, department, institution, committee, and commission which must submit pursuant to law an annual report to the General Assembly shall include as part of the report a comprehensive statement of how its children's services and programs contributed to the implementation of this policy. Copies of all these budget requests and annual reports must be provided to the Office of the Governor by the agency, department, institution, committee, or commission.

(18) Construction of title. § 63-1-30

This title shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted and protected, and restored if possible as secure units of law-abiding members; and that each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance and control that will conduce to his welfare and the best interests of the State. and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him.

(19) Allocation of deposits per §§14-1-206(C)(6), -207(C)(5) and -208(C)(5). § 14-1-218

\$3,200,000 shall be allocated to the following agencies for support of the programs specified:

- (1) \$500,000 to DJJ for the Juvenile Arbitration Program;
- (2) \$450,000 to DJJ for the Marine Institutes;
- (3) \$500,000 to DJJ for the regional status offender programs; and
- (4) \$1,750,000 to the Office of Indigent Defense.

(20) Fees; waiver; distribution of fee proceeds. § 17-22-350

(A) A person shall pay a nonrefundable one hundred forty-dollar fee to apply for a traffic education program that cannot be reduced or suspended. Additionally, a person shall pay a nonrefundable fee, not to exceed one hundred forty dollars, to participate in a traffic education program. Participation in a traffic education program may not be denied due to a person's inability to pay. If a person is deemed unable to pay, both the application fee and the participation fee must be waived.

(B) For offenses that would have been otherwise tried in magistrates court, the governmental agency administering the program shall retain the participation fee to support the traffic education program. The application fees must be remitted to the county treasurer. The county treasurer shall remit 9.17 percent of the revenue from the application fees to the county to be used for the purposes set forth in Section 14-1-207(D) and remit the balance of the revenue from the application fees to the Office of the State Treasurer on a monthly basis, by the fifteenth day of each month, and make reports on a form and in a manner prescribed by the State Treasurer. Fees paid in installments must be remitted as received. The State Treasurer shall deposit the amounts received as follows:

- (1) 23.62% to the Department of Probation, Parole and Pardon Services;
- (2) 15.12% to the SC Criminal Justice Academy;
- (3) .44% to the DPS's SC Law Enforcement Officers Hall of Fame;
- (4) 13.73% to the State Office of Victim Assistance;
- (5) 6.01% to the General Fund;
- (6) 10.97% to the Commission on Indigent Defense;
- (7) 1.34% to the Attorney General's Office;
- (8) .90% to the DJJ Arbitration Program;
- (9) .81% to the DJJ Marine Institutes;
- (10) .90% to the DJJ Regional Status Offender Program;
- (11) 3.95% to the DJJ Coastal Evaluation Center;
- (12) 6.74% to the Circuit Solicitors;
- (13) 2.68% to SLED;
- (14) 2.68% to the Department of Corrections;
- (15) .67% to the Judicial Department;
- (16) .28% to DNR; and
- (17) .02% to the Forestry Commission.

(C) For offenses that would have been otherwise tried in municipal court...The State Treasurer must deposit the amounts received as follows:

- (1) 10.25% to the Department of Probation, Parole and Pardon Services;
- (2) 10.1% to the SC Criminal Justice Academy;
- (3) .26% to the DPS's SC Law Enforcement Officer's Hall of Fame;
- (4) 7.57% to the State Office of Victim Assistance;
- (5) 2.77% to the General Fund;
- (6) 11.02% to the Commission on Indigent Defense;
- (7) 1.07% to the Attorney General's Office;
- (8) .6% to the Department of Mental Health;
- (9) 7.64% for the programs established pursuant to Section 56-5-2953(E);
- (10) 9.93% to the Governor's Task Force on Litter;
- (11) 9.93% to the DJJ;
- (12) .90% to the DJJ Arbitration Program;
- (13) .81% to the DJJ Marine Institutes;
- (14) .9% to the DJJ Regional Status Offender Program;
- (15) 3.95% to the DJJ Coastal Evaluation Center;
- (16) 6.74% to the Circuit Solicitors;
- (17) 2.68% to the SLED;
- (18) 2.68% to the Department of Corrections;
- (19) .67% to the Judicial Department;
- (20) .28% to the DNR; and
- (21) .02% to the Forestry Commission.

Truancy issues are governed by § 59-65-10 through -280 and R. 43-274

COMPULSORY ATTENDANCE LAWS

- (21) **Responsibility of parent or guardian; transportation for kindergarten pupils.** § 59-65-10
(A) A parent or guardian shall require his child to attend regularly a public or private school or kindergarten of this State which has been approved by the State Board of Education, a member school of the South Carolina Independent Schools' Association, a member school of the South Carolina Association of Christian Schools, or some similar organization, or a parochial, denominational, or church-related school, or other programs which have been approved by the State Board of Education from the school year in which the child is five years of age before September first until the child attains his seventeenth birthday or graduates from high school. A parent or guardian whose child is not six years of age on or before the first day of September of a particular school year may elect for their child or ward not to attend kindergarten. For this purpose, the parent or guardian shall sign a written document making the election with the governing body of the school district in which the parent or guardian resides. The form of this written document must be prescribed by regulation of the Department of Education. Upon the written election being executed, that child is not required to attend kindergarten.
(B) Each school district shall provide transportation to and from public school for all pupils enrolled in public kindergarten classes who request the transportation. Regulations of the State Board of Education governing the operation of school buses shall apply.
- (22) **Penalty for failure to enroll or cause child to attend school.** §59-65-20
Any parent or guardian who neglects to enroll his child or ward or refuses to make such child or ward attend school shall, upon conviction, be fined not more than fifty dollars or be imprisoned not more than thirty days; each day's absence shall constitute a separate offense; provided, the court may in its discretion suspend the sentence of anyone convicted of the provisions of this article.
- (23) **Exceptions.** § 59-65-30
The provisions of this article do not apply to:
(a) A child who has graduated from high school or has received the equivalent of a high school education from a school approved by the State Board of Education, member school of South Carolina Independent Schools' Association, a private school in existence at the time of the

passage of this article, or a member school of the South Carolina Association of Christian Schools;

(b) A child who obtains a certificate from a psychologist certified by the State Department of Education or from a licensed physician stating that he is unable to attend school because of a physical or mental disability, provided there are no suitable special classes available for such child in the school district where he resides;

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

(d) [Reserved]

(e) A student who has a child and who is granted a temporary waiver from attendance by the district's attendance supervisor or his designee. The district attendance supervisor may grant a temporary waiver only if he determines that suitable day care is unavailable. The student must consult with the district supervisor or his designee in a timely manner to consider all available day care options or the district shall consider the student to be in violation of this chapter.

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

The following statutes were omitted: Home schooling programs. § 59-65-40, Alternative home schooling requirements. § 59-65-45, Home schooling of foster child. § 59-65-46, Associations for home schools; requirements. §59-65-47.

(24) Nonattendance reported to court having jurisdiction of juveniles. § 59-65-50

If the board of trustees of a school district or its designee is unable to obtain the school attendance of a child in the age group specified in Section 59-65-10, the board or its designee shall report such nonattendance in writing to the juvenile court or such other court in the county as may have jurisdiction of juveniles but exclusive of magistrate's courts notwithstanding the provisions of Section 22-3-540; provided, that no one except the board of trustees or its designee shall have the authority to institute the proceedings herein.

(25) Procedure upon receipt by court of report of nonattendance. § 59-65-60

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

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

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

(26) Court empowered to declare child delinquent. § 59-65-70

If the court determines that the reported absence occurred without the knowledge, consent or connivance of the responsible parent or guardian or that a bona fide attempt has been made to

control and keep the child in school, the court may declare such child to be a delinquent and subject to the provisions of law in such cases.

- (27) **Enrollment or attendance of expelled or suspended child not authorized.** §59-65-80
Nothing herein shall be construed as granting authority to require enrollment or attendance of a child who has been or may be expelled or suspended by the board of trustees of the district or any other person acting with authority from the board of trustees.
- (28) **Rules and regulations.** § 59-65-90.
The State Board of Education shall establish regulations defining lawful and unlawful absences beyond those specifically named in this article and additional regulations as are necessary for the orderly enrollment of pupils so as to provide for uniform dates of entrance. These regulations shall require: (1) that school officials shall immediately intervene to encourage the student's future attendance when the student has three consecutive unlawful absences or a total of five unlawful absences and (2) that the district board of trustees or its designee shall promptly approve or disapprove any student absence in excess of ten days. As used in this section, "intervene" means to identify the reasons for the child's continued absence and to develop a plan in conjunction with the student and his parent or guardian to improve his future attendance.
Provided, However, That nothing within this section shall interfere with the Board's authority to at any time refer a child to a truancy prevention program or to the court pursuant to § 59-65-50.

ATTENDANCE SUPERVISORS

- (29) **State appropriation for attendance supervisor program.** § 59-65-210
For each county which has indicated a desire for the service of an attendance supervisor or supervisors there shall be appropriated annually for the ensuing fiscal year a sum sufficient to pay the salaries and expenses of an attendance supervisor or supervisors for each county, one such supervisor for each ten thousand children, or fraction thereof, enrolled in each county as of the closing date of the school year immediately preceding the commencing of each such fiscal year. This sum shall be the State's portion of the attendance supervisor program. Nothing in this article shall limit the number of attendance supervisors that a county or a school district may employ at its own expense.
- (30) **Election of attendance supervisors.** § 59-65-220
In each county desiring the services of an attendance supervisor, such supervisor shall, if his salary and expenses are to be paid by the State, be elected on or before July first of each year, or as soon thereafter as practicable, by the members of the county board of education whose terms of office run concurrently with or extend beyond the period of employment of such supervisor.
- (31) **Certification of attendance supervisors by State Board of Education.** § 59-65-230
Attendance supervisors shall be certified by the State Board of Education. Qualifications for the certification of attendance supervisors shall be determined by the State Board of Education in the same manner as the Board now determines qualifications for all other teachers, provided, that such certification requirements shall not adversely affect attendance supervisors who were employed prior to the passage of this article.
- (32) **Census of children not enrolled in public schools; list submitted to attendance supervisor.** § 59-65-240
Within thirty days after the opening date of each school year of each public school district in the State in which a public school is being operated, the trustees or other governing board thereof shall make or cause to be made a complete census of all children of school age therein, that is,

between the years of seven and sixteen years, inclusive, who have not enrolled in such school district or in some other district during the thirty-day enrollment period. The names, ages, places of residence and names of the parents or guardians of such children of school age not enrolled shall be forthwith filed with the county superintendent of education, who shall thereupon consolidate all of such names of children in alphabetical order into one list and certify the list to the attendance supervisor of the county.

(33) Cooperation between attendance supervisors & county and district agencies. § 59-65-250

The county attendance supervisor whose salary shall be paid from State funds and such other attendance supervisors as may be employed by the county or school districts therein shall cooperate with the social and civic organizations and agencies of the county or district, as well as with the trustees of the several school districts in the county.

(34) Duties of attendance supervisor relating to nonattending children. § 59-65-260.

The attendance supervisor shall, upon receiving the list of nonattending children from the county superintendent of education, contact as rapidly as possible the parents or guardians of such nonattending children with the object in mind of interesting nonattending children in school work, and influencing them by means of persuasion to attend school regularly. All principals shall report to such attendance supervisor on continuous absences which appear to be unwarranted, and the attendance supervisor shall make an earnest effort to have enrolled and keep enrolled all children of school age in the county.

(35) Procurement of books, clothing and shoes for nonattending children. § 59-65-270

In the event that any nonattending children reported to the attendance supervisor shall be unable to procure books, that fact shall be reported to the trustees and county superintendent of education, and steps shall be taken immediately to provide the necessary books and working material. In the event that such nonattending children shall not have suitable clothing or shoes, and the parents or guardians of such children are financially unable to provide the same, such condition shall be reported by the attendance supervisor to the social and civic organizations of such county for such action in the premises as to such social and civic organizations shall seem meet and proper.

(36) Acceptance of cash, clothing, shoes, books and similar articles from organizations and county or community agencies. § 59-65-280

The attendance supervisor shall accept and receive from the social or civic organizations and agencies of the county or community all cash, clothes, shoes, books, materials and similar articles as may be provided, and shall supply them to the nonattending school children of the county who are unable or whose parents or guardians are unable financially to provide such articles.

EDUCATIONAL NEGLECT

(37) Educational Neglect. § 63-7-20 (4)

"Child abuse or neglect", or "harm" occurs when the parent, guardian, or other person responsible for the child's welfare: (c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law;

South Carolina Code of Regulations

Reg. 43-274

Title of Regulation: Regulation No.: R 43-274
STUDENT ATTENDANCE Effective Date: 11/28/03
State Board Regulation: 43-274. Student Attendance

I. Lawful and Unlawful Absences

School districts must adopt policies to define and list lawful and unlawful absences.

- A. Lawful absences include but are not limited to
 - 1. absences caused by a student's own illness and whose attendance in school would endanger his or her health or the health of others,
 - 2. absences due to an illness or death in the student's immediate family,
 - 3. absences due to a recognized religious holiday of the student's faith, and
 - 4. absences due to activities that are approved in advance by the principal.
- B. Unlawful absences include but are not limited to
 - 1. absences of a student without the knowledge of his or her parents, or
 - 2. absences of a student without acceptable cause with the knowledge of his or her parents.
- C. Suspension is not to be counted as an unlawful absence for truancy purposes.

II. Truancy

The State Board of Education recognizes that truancy is primarily an educational issue and that all reasonable, educationally sound, corrective actions should be undertaken by the school district prior to resorting to the juvenile justice system.

A. Truant

A child ages 6 to 17 years meets the definition of a truant when the child has three consecutive unlawful absences or a total of five unlawful absences.

B. Habitual Truant

A "habitual" truant is a child, ages 12 to 17 years, who fails to comply with the intervention plan developed by the school, the child, and the parent(s) or guardian(s) and who accumulates two or more additional unlawful absences. This child may need court intervention and an initial truancy petition may be filed. The written intervention plan, and documentation of non-compliance, must be attached to the truancy petition asking for court intervention.

C. Chronic Truant

A "chronic" truant is a child ages 12 to 17 years who has been through the school intervention process, has reached the level of a "habitual" truant, has been referred to Family Court and placed on an order to attend school, and continues to accumulate unlawful absences. Should other community alternatives and referrals fail to remedy the attendance problem, the "chronic" truant may be referred to the Family Court for violation of a previous court order. All school intervention plans existing to this point for this child and family must accompany the Contempt of Court petition as well as a written recommendation from the school to the court on action the court should take.

III. Intervention Plans

- A. Each district must develop a policy relating to requirements for intervention. The district plan for improving students' attendance must be in accordance with any applicable statutes.

- B. Once a child is determined to be truant as defined in Section B(1), school officials must make every reasonable effort to meet with the parent(s) or guardian(s) to identify the reasons for the student's continued absence. These efforts should include telephone calls and home visits, both during and after normal business hours, as well as written messages and e-mails. School officials must develop a written "intervention plan" to address the student's continued absence in conjunction with the student and parent(s) or guardian(s).
- C. The intervention plan must include but is not limited to
 1. Designation of a person to lead the intervention team. The team leader may be someone from another agency.
 2. Reasons for the unlawful absences.
 3. Actions to be taken by the parent(s) or guardian(s) and student to resolve the causes of the unlawful absences.
 4. Documentation of referrals to appropriate service providers and, if available, alternative school and community-based programs.
 5. Actions to be taken by intervention team members.
 6. Actions to be taken in the event unlawful absences continue.
 7. Signature of the parent(s) or guardian(s) or evidence that attempts were made to involve the parents(s) or guardian(s).
 8. Documentation of involvement of team members.
 9. Guidelines for making revisions to the plan.
- D. School officials may utilize a team intervention approach. Team members may include representatives from social services, community mental health, substance abuse and prevention, and other persons the district deems appropriate to formulate the written intervention plans.

IV. Referrals and Judicial Intervention

At no time should a child ages 6 to 17 years be referred to the Family Court to be placed on an order to attend school prior to the written intervention planning being completed with the parent(s) or guardian(s) by the school. A consent order must not be used as an intervention plan from any local school or school district. Should the parent(s) or guardian(s) refuse to cooperate with the intervention planning to remedy the attendance problem, the school district has the authority to refer the student to Family Court in accordance with S.C. Code Ann. § 59-65-50 (1990), and a report shall be filed against the parent(s) or guardian(s) with the Department of Social Services in compliance with S.C. Code Ann. § 63-7-20(4)(c) (2010).

A. Petition for a School Attendance Order

If the intervention plan is not successful and further inquiry by school officials fails to cause the truant student and/or parent(s) or guardian(s) to comply with the written intervention plan or if the student and/or parent(s) or guardian(s) refuses to participate in intervention and the student accumulates two or more additional unlawful absences, the student is considered an "habitual" truant. Each referral must include a copy of the plan and specify any corrective action regarding the student and/or the parent(s) or guardian(s) that the district recommends that the court adopt as well as any other available programs or alternatives identified by the school district. The intervention plan must be attached to the petition to the Family Court and served on the student and the parent(s) or guardian(s).

B. Petition for Contempt of Court

Once a school attendance order has been issued by the Family Court and the student continues to accumulate unlawful absences, the student is considered to be a "chronic" truant and school officials may refer the case back to Family Court. The school and district must

exhaust all reasonable alternatives prior to petitioning the Family Court to hold the student and/or the parent(s) or guardian(s) in contempt of court. Any petition for contempt of court must include a written report indicating the corrective actions that were attempted by the school district and what graduated sanctions or alternatives to incarceration are available to the court in the community. The school district must include in the written report its recommendation to the court should the student and/or parent(s) or guardian(s) be found in contempt of court.

V. Coordination with the South Carolina Department of Juvenile Justice

Each school district should coordinate with the local office of the South Carolina Department of Juvenile Justice to establish a system of graduated sanctions and alternatives to incarceration in truancy cases.

VI. Transfer of Plans

If a student transfers to another public school in South Carolina, intervention plans shall be forwarded to the receiving school. School officials will contact the parent(s) or guardian(s) and local team members to review the plan and revise as appropriate. Court ordered plans may be amended through application to the court.

VII. Approval of Absences in Excess of Ten Days and Approval of Credit

A. Approval or Disapproval of Absences

The district board of trustees, or its designee, shall approve or disapprove any student's absence in excess of ten days, whether lawful, unlawful, or a combination thereof, for students in grades K–12.

For the purpose of awarding credit for the year, school districts must approve or disapprove absences in excess of ten days regardless as to whether those absences are lawful, unlawful, or a combination of the two.

B. High School Credit (omitted)

VIII. Reporting Requirements

The State Department of Education will develop and implement a standard reporting system for the adequate collection and reporting of truancy rates on a school-by-school basis.

IX. Guidelines

Additional information relating to the implementation of this regulation will be contained in State Department of Education Guidelines. The State Department of Education will review and update these guidelines as needed.