

# KID'S LAW COMPANION

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A Tool for Teaching Kid's Law

*Includes the full text of applicable South Carolina statutes,  
current as of January 2020, along with additional notes.*

JANUARY 2020

CHILDREN'S LAW CENTER  
UNIVERSITY OF SOUTH CAROLINA  
SCHOOL OF LAW

# INTRODUCTION

The *Kid's Law Companion* was developed by the Children's Law Center to assist those teaching *Kid's Law* to young people. It contains all the materials found in the *Kid's Law* publication, along with additional notes and the applicable South Carolina statutes for quick reference and further discussion. Each heading in the Companion is followed by a page number that corresponds to the page number for that heading in *Kid's Law*. The additional materials that are found only in the Companion (not in *Kid's Law*) follow an arrow bullet.

All statutes in the Companion are from the South Carolina Code of Laws and are listed by their section (e.g., § 63-19-1410). Emphasis has been added with underlined font to some of the statutory language to draw attention to important details.

The Children's Law Center will periodically update *Kid's Law* as the laws change. Contact the Children's Law Center to make sure you have the most updated version. If you have any questions about the *Kid's Law Companion*, contact Blanche Richey at (803) 777-1646.

The Children's Law Center, a program of the University of South Carolina School of Law, is a training and resource center for South Carolina professionals who are involved in child maltreatment or juvenile justice court proceedings. The overall purpose of the Children's Law Center is to help professionals enhance their knowledge and skills, so that court proceedings will have the best possible outcomes for children. This goal is accomplished through a variety of training events, information and technical assistance, written resource materials, and education. Most services are available to attorneys for all parties, prosecutors, guardians ad litem, judges, juvenile justice staff, child protection caseworkers, and expert witnesses.

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# Kid's Law Introduction

Today's young people are the future of our state and our country. You represent tomorrow's legislators, business leaders, teachers, and parents. With such important roles to fill, it is essential that you study, understand and respect the law.

It is important for you to know how our state and federal laws affect you. You should have a clear understanding of your rights and what the laws allow you to do, as well as limits that the laws place on you as a young person.

Kid's Law provides you with an overview of several areas of the law affecting young people in South Carolina. Its purpose is to educate you about issues that you or your peers are likely to encounter. A question/answer format has been used to directly address questions that are frequently asked by people your age.

This booklet is not meant to be your legal guide or sole source of legal information. It is meant to provide you with a starting point of reference for questions you may have about the law, your rights, or your responsibilities as a citizen of this state.

You can access *Kid's Law* on the Children's Law Center website at <http://childlaw.sc.edu> by clicking on Publications. If you would like to make copies, contact the Children's Law Center at (803) 777-1646.

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**\*\*Laws are subject to change at any time.**

**The information in this book is current as of January 2020.**

**If you have a specific legal problem, you may want to consult an attorney.**

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## DEFINITION OF A CHILD

### Who is a "child" in South Carolina? (page 4)

South Carolina law states that a child is a person under the age of 18. However, when used in the context of delinquency and criminal acts, "child" refers to a person who is under 18 (under 17 for some serious crimes). Children involved in delinquency proceedings are often referred to as "juveniles."

- ⇒ Another term used to describe a child is "minor."
- ⇒ **§ 63-1-40(1)** "Child" means a person under the age of eighteen.
- ⇒ **§ 63-19-20 Under the Juvenile Justice Code:** (1) "Child" or "juvenile" means a person less than eighteen years of age. "Child" or "juvenile" does not mean a person seventeen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person seventeen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.
- ⇒ For a complete list of offenses classified as A, B, C or D felonies, see **§ 16-1-90**.

### What does "age of majority" mean? (page 4)

"Age of majority" is the age, defined by law, at which a person gains all the rights and responsibilities that come with being an adult.

### When will I be considered an adult? (page 4)

You will be considered an adult when you reach the age of majority. In South Carolina, you are considered an adult for most purposes on your 18<sup>th</sup> birthday. The major exception is when purchasing alcohol you are not considered an adult until you turn 21. Furthermore, if you are accused of violating a criminal law and you are at least 18 years old (17 for certain serious crimes), you will be treated as an adult.

When you reach the age of majority, you are said to be "emancipated." Generally, emancipation is that point in time when parents are no longer legally responsible for their children, and children are no longer legally required to answer to their parents. It is when your parents no longer have to provide you with food, clothing, medical care, and education.

There are times when a person under the age of majority is treated as an adult and thus, emancipated. A child may be emancipated earlier when there is an agreement between the parent and child that the child is able to provide for herself/himself and therefore, may leave the home and take control of her/his own life. You may also be emancipated when you get married.

### **Why are the laws different for me than for an adult? (page 5)**

Many of the laws governing you, as a child, are different than those that apply to adults. This is simply for your protection. Children, because of their age, lack the experience that is needed to make mature and informed decisions about many of the things that affect them. The laws that apply to you were written to protect you from yourself and from people who might try to take advantage of you.

## **PARENTAL RIGHTS & RESPONSIBILITIES**

### **How long do my parents have control of me? (page 5)**

Generally, your parents have control of you until your 18th birthday, when you reach the age of majority, unless you become emancipated before your 18<sup>th</sup> birthday.

### **What rights do my parents have concerning me? (page 5)**

Generally, both your mother and father have equal power, rights, and duties. They each have the right to your custody and control. However, if they are divorced, a judge may alter these rights according to what is in your best interest.

There is an exception in cases where a child is born and the parents are not married. Under these circumstances, unless there is a court order saying otherwise, the custody of the child is solely with the mother.

Your parents' rights to your custody and control include things like deciding where and with whom you will live, what you will do from day to day, where you will attend school, when you will go to the doctor, and where, if at all, you will go to church. Both of your parents also have the right to your school and medical records and the right to participate in your school activities.

⇒ **§ 63-5-30. Rights and duties of parents regarding minor children.**

The mother and father are the joint natural guardians of their minor children and are equally charged with the welfare and education of their minor children and the care and management of the estates of their minor children; and the mother and father have equal power, rights, and duties, and neither parent has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of the minor or any other matter affecting the minor. Each parent, whether the custodial or noncustodial parent of the child, has equal access and the same right to obtain all educational records and medical records of their minor children and the right to participate in their children's school activities unless prohibited by order of the court. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to custody of the child.

**What happens if I don't obey my parents? (page 6)**

Your parents have the right to expect your cooperation and obedience. If you refuse to obey your parents, run away from home, refuse to go to school, or become incorrigible (beyond your parents' control), then your parents may request or the family court may require you to go before a judge to explain your actions. These behaviors may be delinquent acts called status offenses and are discussed in the section on Juvenile Delinquency.

⇒ **§ 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.

**Do my parents have the right to keep the money I earn? (page 6)**

Yes. As long as your parents are obligated to support you, they have the right to the money you earn at any job you perform, with few exceptions. However, most parents do not strictly enforce this right.

⇒ **§ 63-5-30. Rights and duties of parents regarding minor children.**

The mother and father...are equally charged with...the management of the estates of their minor children...and neither parent has any right paramount to the right of the other concerning the...control of the services or the earnings of the minor....( See full statute above.)

**What obligations and responsibilities do my parents have concerning me?**  
**(page 7)**

The most important obligation your parents have toward you is that of support. Your parents must provide you with the necessities of life, including food, clothing, shelter, medical care, and education. This responsibility of support falls equally on both of your parents whether or not they are married. However, the amount of support you are given is up to your parents, as long as the necessities are provided.

⇒ **§ 63-5-30.** The mother and father are the joint natural guardians of their minor children and are equally charged with the welfare and education of their minor children and the care and management of the estates of their minor children; and the mother and father have equal power, rights, and duties, and neither parent has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of the minor or any other matter affecting the minor. Each parent, whether the custodial or noncustodial parent of the child, has equal access and the same right to obtain all educational records and medical records of their minor children and the right to participate in their children's school activities unless prohibited by order of the court. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to custody of the child.

⇒ **§ 63-5-10. Spousal and child support.**

A husband or wife declared to be chargeable with the support of his or her spouse and children, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his or her means, as may be determined by the court.

⇒ **§ 63-5-20(A) Obligation to support.**

Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support to his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor....As used in this section "reasonable support" means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities.

## **Can my parents get in trouble for things that I do? (page 7)**

Yes they can. Your parents are responsible for exercising supervision and control over you. This means that they must make an effort to keep you from breaking the law. In some instances, your parents may even be held liable for your wrongful actions.

On the other hand, if you are 17 years old and have a record of being incorrigible (beyond your parent's control), then your parents may kick you out of their home and stop supporting you in any manner.

### **⇒ § 63-5-50. Parental immunity in case of incorrigibility of 17 year old.**

A parent, guardian, or other person responsible for the care and support of a child may not be charged with unlawful neglect of a child, cruelty to a child, failure to provide reasonable support of a child, or a similar offense based on the exclusion from the home of a seventeen-year-old child where there is a demonstrable record that the child is incorrigible (beyond the control of parents).

## **Is it possible for parents to lose their parental control? (page 7)**

Yes. A parent can voluntarily give up custody to someone else such as another relative, or a parent can voluntarily give up parental rights by consenting to adoption. In addition, the family court may take a parent's rights away if the parent abuses or neglects you or is otherwise found to be an unfit parent.

## **What is "emergency protective custody"? (page 8)**

If a child is taken into emergency protective custody, this means that either a law enforcement officer or a family court judge believed that the child's life, health, or physical safety was in danger due to abuse or neglect and thought it necessary to take temporary custody of that child.

Once a child is taken into custody, the Department of Social Services (DSS) investigates to decide whether or not the child should be returned to his or her parents, placed with extended family members, or held in foster care. If DSS cannot help the parents with making their home safe so that the child may return, then the court may terminate the parents' rights. Termination of the parents' rights allows the child to be adopted by another family who can properly care for him or her.

⇒ **§ 63-7-620. Emergency protective custody.**

(A) A law enforcement officer may take emergency protective custody of a child without the consent of the child's parents, guardians, or others exercising temporary or permanent control over the child if:

(1) the officer has probable cause to believe that by reason of abuse or neglect the child's life, health, or physical safety is in substantial and imminent danger if the child is not taken into emergency protective custody, and there is not time to apply for a court order pursuant to Section 63-7-1660. When a child is taken into emergency protective custody following an incident of excessive corporal punishment, and the only injury to the child is external lesions or minor bruises, other children in the home shall not be taken into emergency protective custody solely on account of the injury of one child through excessive corporal punishment. However, the officer may take emergency protective custody of other children in the home if a threat of harm to them is further indicated by factors including, but not limited to, a prior history of domestic violence or other abuse in the home, alcohol or drug abuse if known or evident at the time of the initial contact, or other circumstances indicative of danger to the children;

(2) the child's parent, parents, or guardian has been arrested or the child has become lost accidentally and as a result the child's welfare is threatened due to loss of adult protection and supervision; and

(a) in the circumstances of arrest, the parent, parents, or guardian does not consent in writing to another person assuming physical custody of the child;

(b) in the circumstances of a lost child, a search by law enforcement has not located the parent, parents, or guardian.

(B)(1) If the child is in need of emergency medical care at the time the child is taken into emergency protective custody, the officer shall transport the child to an appropriate health care facility. Emergency medical care may be provided to the child without consent, as provided in Section 63-5-350. The parent or guardian is responsible for the cost of emergency medical care that is provided to the child. However, the parent or guardian is not responsible for the cost of medical examinations performed at the request of law enforcement or the department solely for the purpose of assessing whether the child has been abused or neglected unless it is determined that the child has been harmed as defined in this chapter.

(2) If the child is not in need of emergency medical care, the officer or the department shall transport the child to a place agreed upon by the department and law enforcement, and the department within two hours shall assume physical control of the child and shall place the child in a licensed foster home or shelter within a reasonable period of time. In no case may the child be placed in a jail or other secure facility or a facility for the detention of criminal or juvenile offenders. While the child is in its custody, the department shall provide for the needs of the child and assure that a child of school age who is physically able to do so continues attending school.

⇒ **§ 63-7-660. Assumption of legal custody.**

If the department determines after the preliminary investigation that there is probable cause to believe that by reason of abuse or neglect the child's life, health,

or physical safety is in imminent and substantial danger, the department may assume legal custody of the child without the consent of the child's parent, guardian, or custodian. The department shall make every reasonable effort to notify the child's parent, guardian, or custodian of the location of the child and shall make arrangements for temporary visitation unless there are compelling reasons why visitation or notice of the location of the child would be contrary to the best interests of the child. The notification must be in writing and shall include notice of the right to a hearing and right to counsel pursuant to this article. Nothing in this section authorizes the department to physically remove a child from the care of the child's parent or guardian without an order of the court. The department may exercise the authority to assume legal custody only after a law enforcement officer has taken emergency protective custody of the child or the family court has granted emergency protective custody by ex parte order, and the department has conducted a preliminary investigation pursuant to Section 63-7-640.

⇒ **§ 63-7-740. Ex parte emergency protective custody.**

(A) The family court may order ex parte that a child be taken into emergency protective custody without the consent of parents, guardians, or others exercising temporary or permanent control over the child if:

(1) the family court judge determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent and substantial danger to the child's life, health, or physical safety; and

(2) parents, guardians, or others exercising temporary or permanent control over the child are unavailable or do not consent to the child's removal from their custody.

(B) If the court issues such an order, the department shall conduct a preliminary investigation and otherwise proceed as provided in this subarticle.

**If my parents are separated or divorced, do I have the right to live where I want? (page 8)**

The family court judge will take into consideration your preference as to where you want to live, based on your age and maturity level. Nonetheless, the judge will do what is in your best interest.

⇒ **§ 63-15-30. Child's preference.**

In determining the best interests of the child, the court must consider the child's reasonable preference for custody. The court shall place weight upon the preference based upon the child's age, experience, maturity, judgment, and ability to express a preference.

**Am I required to pay child support if I have a child? (page 8)**

Yes. Your parents may also be responsible for making your child support payments until you reach the age of 18 or are emancipated.

⇒ **§ 63-5-20 Obligation to support.**

(A) Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support to his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor and upon conviction shall be imprisoned for a term of not exceeding one year or be fined not less than three hundred dollars nor more than one thousand five hundred dollars, or both, in the discretion of the circuit court. A husband or wife abandoned by his or her spouse is not liable for the support of the abandoning spouse until such spouse offers to return unless the misconduct of the husband or wife justified the abandonment. If a fine be imposed the circuit court may, in its discretion, order that a portion of the fine be paid to a proper and suitable person or agency for the maintenance and support of the defendant's spouse or minor unmarried legitimate or illegitimate child. As used in this section "reasonable support" means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities.

(B) Any person who fails to receive the support required by this section may petition to a circuit court of competent jurisdiction for a rule to show cause why the obligated person should not be required to provide such support and after proper service and hearing the circuit court shall in all appropriate cases order such support to be paid. Any such petition shall specify the amount of support required. Compliance with the circuit court order shall bar prosecution under the provisions of subsection (A) of this section.

⇒ **§ 63-17-350. Grandparent responsibility.**

When a child is born to parents, either or both of whom are unmarried and under eighteen years of age, the Child Support Enforcement Division of the State Department of Social Services may pursue support and maintenance of that child from one or both of the child's maternal and paternal grandparents as long as the parent of the child is under eighteen years of age.

## **EDUCATION**

### **How long am I required to attend school? (page 9)**

You are required to attend a public or private school or an approved home study program from age 5 until your 17th birthday or until you graduate from high school. There are some very limited circumstances in which you would be allowed to quit school before turning 17.

⇒ Parents are required by law to make sure their children attend school regularly, or they could face charges of educational neglect.

⇒ **§ 59-65-10. Responsibility of parent or guardian; notification by school district of availability of kindergarten; transportation for kindergarten pupils.**

(A) All parents or guardians shall cause their children or wards to attend regularly a public or private school or kindergarten of this State which has been approved by the State Board of Education or a member school of the South Carolina Independent Schools' Association 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 or ward is five years of age before September first until the child or ward attains his seventeenth birthday or graduates from high school. A parent or guardian whose child or ward 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 or ward may not be 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.

⇒ **§ 59-65-30. Exceptions.**

The provisions of this article do not apply to:

(a) A child who has been graduated from high school or has received the equivalent of a high school education from a school approved by the State Board of Education, or member school of South Carolina Independent Schools' Association, or a private school in existence at the time of the passage of this article;

(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.

### **What happens if I don't go to school? (page 9)**

If you willfully fail to attend school without excuse, you may be guilty of truancy and you and your parents may have to appear before a family court judge.

As soon as you miss 3 days in a row or 5 days all together (if the absences are unexcused), the school is required to meet with you and your parents to identify the reasons for your absences and develop a plan to help you attend school without any additional unexcused absences.

⇒ **§ 59-65-60. Procedure upon receipt by court of report of nonattendance.**  
(See under "What will happen if I go to court?.")

⇒ **§ 59-65-90. Rules and regulations.**

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 Section 59-65-50.

## What will happen if I have to go to court? (page 9)

If the school files a petition for truancy against you, the solicitor will send you and your parents a summons to appear in family court on a certain day and time. In court, unless you can prove that you have attended school as required by law, the judge will most likely place you and your parents under a court order to attend school. The order will usually require you to attend school with no unexcused absences, class cuts, tardies, or discipline problems and may include any other conditions that the judge feels are necessary.

⇒ **§ 59-65-20. Penalty for failure to enroll or cause child to attend school.**

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.

⇒ **§ 59-65-60. Procedure upon receipt by court of report of nonattendance.**

(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 Section 59-65-20.

⇒ **§ 59-65-70. Court empowered to declare child delinquent.**

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.

## Can I really get in trouble for not following the judge's order? (page 10)

Yes. If you do not follow the judge's order, you and your parents may be brought back before the judge for contempt of court. At this hearing, you should have an attorney to represent you. If you cannot afford an attorney, the court can determine if you qualify for a public defender. The judge has the authority to place you on probation or send you to the Department of

Juvenile Justice for contempt of court. If your parents are found to be guilty of violating the order as well, the judge may make them pay a fine of up to \$50.00 per day missed or put them in jail for up to 30 days for each day missed.

⇒ See § 59-65-20 above

### **Can I bring my cell phone to school? (page 10)**

There is no law prohibiting bringing cell phones to school. However, you should check with your school's principal to see what your school's policy is regarding cell phones and pagers. Some schools have strict policies which forbid bringing cell phones on school property, and if you violate the policy, you may be at risk of being suspended or expelled.

### **What else can I not bring to school? (page 10)**

While on school property, you cannot have a knife, metal pipe or pole, gun, or any other weapon or object that may be used to cause bodily injury or death. If you are caught with a gun on school property, you will probably be expelled from school for at least a year. You cannot lawfully possess a gun until your 18th birthday.

⇒ **§ 16-23-430. Carrying weapon on school property; concealed weapons.**

(A) It shall be unlawful for any person, except state, county, or municipal law enforcement officers or personnel authorized by school officials, to carry on his person, while on any elementary or secondary school property, a knife, with a blade over two inches long, a blackjack, a metal pipe or pole, firearms, or any other type of weapon, device, or object which may be used to inflict bodily injury or death.

⇒ **§ 59-63-235. Expulsion of student determined to have brought firearm to school.**

The district board must expel for no less than one year a student who is determined to have brought a firearm to a school or any setting under the jurisdiction of a local board of trustees. The expulsion must follow the procedures established pursuant to Section 59-63-240. The one-year expulsion is subject to modification by the district superintendent of education on a case-by-case basis. Students expelled pursuant to this section are not precluded from receiving educational services in an alternative setting. Each local board of trustees is to establish a policy which requires the student to be referred to the local county office of the Department of Juvenile Justice or its representative.

## Can a teacher search my book bag? (page 10)

Yes. Under South Carolina law, any person who enters onto school property is deemed to have consented to a search of his person and property. A school administrator or official may conduct a reasonable search of your locker, desk, vehicle, and personal belongings such as your purse, book bag, and wallet. You may not, however, be strip-searched.

⇒ **§59-63-1110. Consent to search person or his effects.**

Any person entering the premises of any school in this State shall be deemed to have consented to a reasonable search of his person and effects.

⇒ **§ 59-63-1120. Searches by school administrators or officials with or without probable cause.**

Notwithstanding any other provision of law, school administrators and officials may conduct reasonable searches on school property of lockers, desks, vehicles, and personal belongings such as purses, bookbags, wallets, and satchels with or without probable cause.

⇒ **§ 59-63-1130. Searches by principals or their designees.**

Notwithstanding any other provision of law, school principals or their designees may conduct reasonable searches of the person and property of visitors on school premises.

⇒ **§ 59-63-1140. Strip searches prohibited.**

No school administrator or official may conduct a strip search.

⇒ **§ 59-63-1150. Compliance with case law; training of school administrators.**

Notwithstanding any other provision of this article, all searches conducted pursuant to this article must comply fully with the "reasonableness standard" set forth in *New Jersey v. T.L.O.*, 469 U.S. 328 (1985). All school administrators must receive training in the "reasonableness standard" under existing case law and in district procedures established to be followed in conducting searches of persons entering the school premises and of the students attending the school.

## Will people at school know when a student is arrested? (page 11)

Not everyone. The law requires law enforcement officers to tell the school principal when a student is arrested for just about any offense other than a traffic citation. The principal can use the information for monitoring purposes, but must keep the information confidential.

⇒ **§ 63-19-810. Taking a child into custody.**

(C) When a child is charged by a law enforcement officer for an offense which would be a misdemeanor or felony if committed by an adult, not including a traffic or wildlife violation over which courts other than the family court have concurrent jurisdiction as provided in Section 63-3-520, the law enforcement officer also shall notify the principal of the school in which the child is enrolled, if any, of the nature of the offense. This information may be used by the principal for monitoring and supervisory purposes but otherwise must be kept confidential by the principal in the same manner required by Section 63-19-2220(E).

⇒ **§ 59-63-370. Student's conviction or delinquency adjudication for certain offenses; notification of senior administrator at student's school; placement of information in permanent school records.**

Notwithstanding any other provision of law:

(1) When a student who is convicted of or adjudicated delinquent for assault and battery against school personnel, as defined in Section 16-3-612, assault and battery of a high and aggravated nature committed on school grounds or at a school-sponsored event against any person affiliated with the school in an official capacity, a violent offense as defined in Section 16-1-60, an offense in which a weapon as defined in Section 59-63-370 was used, or for distribution or trafficking in unlawful drugs as defined in Article 3, Chapter 53 of Title 44 is assigned to the Department of Juvenile Justice, the Department of Corrections, or to the Department of Probation, Parole, and Pardon Services, that agency is required to provide immediate notice of the student's conviction or adjudication to the senior administrator of the school in which the student is enrolled, intends to be enrolled, or was last enrolled. These agencies are authorized to request information concerning school enrollment from a student convicted of or adjudicated delinquent for an offense listed in this item.

(2) When a student convicted of or adjudicated delinquent for an offense listed in item (1) of this section is not sentenced to incarceration or probation, the presiding judge shall as part of his sentence order the clerk of the municipal, magistrate, or general sessions court to provide, within ten days, notification of the student's sentence to the appropriate school district for inclusion in the student's permanent record. If the student is under the jurisdiction of the family court and is not referred to the Department of Juvenile Justice, the prosecuting agency must provide notification within ten days to the appropriate school district.

(3) An administrator notified pursuant to this section is required to notify each teacher or instructor in whose class the student is enrolled of a student's conviction of or adjudication for an offense listed in item (1) of this section. This notification must be made to the appropriate teachers or instructors every year the student is enrolled in school.

(4) If a student is convicted of or adjudicated delinquent for an offense listed in item (1) of this section, information concerning the conviction or adjudication and sentencing must be placed in the student's permanent school record and must be forwarded with the student's permanent school records if the student transfers to another school or school district.

A "weapon", as used in this section, means a firearm, knife with a blade-length of over two inches, dirk, razor, metal knuckles, slingshot, bludgeon, or any other deadly instrument used for the infliction of bodily harm or death.

### **What are the LIFE and HOPE Scholarships? (page 11)**

These are scholarships provided to students attending college in South Carolina. You may be eligible for one of these scholarships that will help pay for college. However, some law violations may prevent you from getting the LIFE or HOPE Scholarship.

The amount of the LIFE Scholarship (as of 2012) for an eligible four-year institution is up to \$5000 (including a \$300 book allowance) each year towards the cost of attendance. Students must meet two of the three following criteria: 3.0 GPA, 1100 SAT or 24 ACT, top 30% of class. Additional requirements must be met in order to continue receiving the scholarship every year.

For eligible technical colleges you may receive up to the cost of tuition, plus a \$300 book allowance. For two-year public and independent institutions, you may receive up to the cost of tuition at USC Regional Campuses, plus a \$300 book allowance. LIFE Scholarship initial eligibility requirement for two- year institutions is a 3.0 GPA.

A LIFE Scholarship Enhancement for students receiving the LIFE Scholarship and majoring in science or math at four-year institutions may provide an additional \$2500 towards the cost of attendance.

The HOPE Scholarship is available to students who do not meet the requirements for the LIFE Scholarship. Students attending an eligible four-year college or university will receive up to \$2800 (including a \$300 book allowance) towards the cost of attendance during the first year of attendance only. You must earn a cumulative 3.0 GPA upon high school graduation for eligibility. There are no SAT or class ranking requirements.

⇒ **§ 59-149-10. LIFE scholarships established; public or independent institution defined; tuition.**

(A) Legislative Incentives for Future Excellence (LIFE) Scholarships are established which must be offered by the State. These scholarships cover the cost of attendance as defined by the Commission on Higher Education by regulation up to a maximum of two thousand dollars a year to eligible resident students attending four-year public or independent institutions as defined in subsection (B), and to cover the cost of attendance up to a maximum of one thousand dollars a year to

eligible resident students attending two-year public or independent institutions as defined in subsection (B).

(B) For purposes of this chapter, a "public or independent institution" which a student may attend to receive a LIFE Scholarship includes the following:

(1) a South Carolina public institution defined in Section 59-103-5 and an independent institution as defined in Section 59-113-50.

(2) a public or independent bachelor's level institution chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor's level institution which was incorporated in its original charter in 1962, was granted a license to operate in 1997 by the Commission on Higher Education, has continued to maintain a campus in South Carolina, and is accredited by the Southern Association of Colleges and Secondary Schools. Institutions whose sole purpose is religious or theological training, or the granting of professional degrees do not meet the definition of "public or independent institution" for purposes of this chapter.

(C) These LIFE Scholarships must be granted and awarded as provided in this chapter.

(D) Beginning with school year 2000-2001, the annual amount of a LIFE Scholarship for eligible resident students attending a four-year public or independent institution as defined herein is increased from the cost of attendance up to a maximum of two thousand dollars a year to the cost of attendance up to a maximum of three thousand dollars a year, and the annual amount of a LIFE Scholarship for eligible resident students attending a two-year public or independent institution as defined herein which includes state technical colleges is increased from the cost of attendance up to a maximum of one thousand dollars a year to the cost of tuition for thirty credit hours a year or its equivalent. Tuition for this purpose means the amount charged for registering for credit hours of instruction and shall not include other fees, charges, or costs of textbooks.

(E)(1) Beginning with school year 2002-2003, the annual amount of a LIFE Scholarship for eligible resident students attending a four-year public or independent institution as defined in this chapter is increased to the cost of tuition for thirty credit hours a year or its equivalent plus a three hundred dollar a year book allowance. Tuition for this purpose means the amount charged for registering for credit hours of instruction and shall not include other fees, charges, or costs of textbooks, except for the referenced three hundred dollar book allowance, and may not exceed four thousand seven hundred dollars for each student for each year, plus the book allowance.

(2) In addition, and notwithstanding the provisions of subsection (D) above, beginning with school year 2002-2003, eligible resident students attending two-year independent institutions may not receive an annual LIFE scholarship of more than the maximum cost of tuition at two-year regional public institutions for thirty credit hours a year or its equivalent. An eligible student attending a two-year public or independent institution or technical college shall receive the three hundred dollar book allowance in addition to his cost of tuition.

⇒ **§ 59-149-15. Additional LIFE Scholarship stipend.**

(A) A resident student who is at least a sophomore attending a four-year public or private institution of higher learning in this State, who is majoring in science or mathematics as defined below, and who is receiving a LIFE Scholarship for the current year, shall receive an additional LIFE Scholarship stipend equal to the cost of attendance after applying all other scholarships or grants, not to exceed two thousand five hundred dollars each year for no more than three additional years of instruction, including his sophomore year, if enrolled in a four-year degree program, or for not more than four additional years of instruction, including his sophomore year, if enrolled in a five-year degree program or a 3 plus 2 program. In addition, during his freshman year, the student must have successfully completed a total of at least fourteen credit hours of instruction in mathematics courses, or life and physical science courses, or a combination of both. A year is defined as thirty credit hours of instruction or its equivalent each year. To receive the additional LIFE Scholarship stipend each year, the student must receive the underlying LIFE Scholarship for that year and must be making acceptable progress each year toward receiving a degree in his science or mathematics major. For purposes of meeting the required minimum level of instruction in mathematics and life and physical science courses during a student's freshman year, advanced placement courses in mathematics and life and physical sciences taken in high school on which the student scored high enough on the advanced placement test to receive credit at his institution and for which he received credit, count toward the fulfillment of this minimum requirement.

(B) The Commission on Higher Education by regulation shall define what constitutes a science or mathematics major but at a minimum shall include majors in science or mathematics disciplines, computer science or informational technology, engineering, science education, math education, and health care and related disciplines including medicine and dentistry; provided, that nothing herein prevents a student from changing majors within acceptable science or mathematics disciplines. Additionally, the Commission on Higher Education annually shall communicate with high school guidance counselors regarding the list of qualifying majors.

(C) If the additional LIFE Scholarship stipend is lost, it may be regained in the same manner the underlying LIFE Scholarship is regained if lost.

⇒ **§ 59-150-370. HOPE Scholarships; eligibility; administration; reporting requirement.**

(A) SC HOPE Scholarships are hereby established and are provided by the State. These scholarships are authorized in an amount of up to two thousand five hundred dollars, plus a three hundred dollar book allowance to cover the cost of attendance, as defined by the Commission on Higher Education by regulation, during the first year of attendance only, to an eligible student attending a four-year public or independent institution as defined in subsection (B) who does not also qualify for a LIFE Scholarship or a Palmetto Fellows Scholarship.

(B) For purposes of this chapter, a "public or independent institution" that a student may attend to receive a SC HOPE Scholarship includes the following:

(1) a South Carolina four-year public institution as defined in Section 59-103-5 and a four-year independent institution as defined in Section 59-113-50;

(2) a public or independent bachelor's level institution chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor's level institution which is accredited by the Southern Association of Colleges and Secondary Schools; or an independent bachelor's level institution which is accredited by the New England Association of Colleges and Schools. Institutions whose sole purpose is religious or theological training, or the granting of professional degrees do not meet the definition of "public or independent institution" for purposes of this chapter.

(C) A student is eligible to receive a SC HOPE Scholarship if he meets the criteria for receiving and maintaining the Legislative Incentives for Future Excellence (LIFE) Scholarship except that a minimum Scholastic Aptitude Test (SAT) or ACT score and requisite class rank are not required for eligibility for the SC HOPE Scholarship. These SC HOPE Scholarships must be granted and awarded as provided in this section.

(D) These SC HOPE Scholarships in combination with all other grants and scholarships must not exceed the cost of attendance at the particular institutions referenced in subsection (B).

(E) The Commission on Higher Education must promulgate regulations and establish procedures to administer the provisions of this section.

(F) All institutions participating in the SC HOPE Scholarship Program must report their enrollment and other relevant data as solicited by the Commission on Higher Education which may audit these institutions to ensure compliance with this provision.

## **EMPLOYMENT**

### **When can I get a job? (page 12)**

There are a few types of jobs you can have at any age, such as selling or delivering newspapers or working for your parents' business. In general, you can get a job when you turn 14 years old. You can work in certain areas such as retail stores selling, cashiering, or bagging or other areas doing office or clerical work. After turning 16 years old, you can work in most areas except those determined to be hazardous, like operating power-driven equipment or heavy construction work such as excavating or roofing.

⇒ See Exempted Occupations (R. 71-3105) below for a list of occupations exempt from coverage of these regulations for minors of any age.

- ⇒ **§ 41-13-20. Oppressive child labor practices prohibited; Director of the Department of Labor, Licensing, and Regulation or his designee to promulgate regulations.**

No employer in this State shall engage in any oppressive child labor practices. The Director of the Department of Labor, Licensing, and Regulation or his designee shall promulgate regulations pursuant to Sections 1-23-10 et seq. which will prohibit and prevent such oppressive child labor practices provided that such regulations shall not be more restrictive or burdensome than applicable federal laws or regulations.

### **Code of Regulations of South Carolina**

- ⇒ **71-3102. Definitions.**

1. "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Director of the Department of Labor, Licensing and Regulation to be particularly hazardous for the employment of children sixteen and seventeen years or detrimental to their health or well-being) in any occupation, or (2) any employee sixteen and seventeen years is employed by an employer in any occupation which the Director of the Department of Labor, Licensing and Regulation shall find and by regulation declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being.

2. "Employer" means every person, firm, partnership, association, corporation, receiver or other officer of a court of this State, the State or any political subdivision thereof and any agent or officer of the above-mentioned classes employing any person in this State.

- ⇒ **71-3103. Age Restrictions.**

No person under the age of sixteen shall be employed in this State except according to the regulations in this subarticle.

- ⇒ **71-3104. Employment in Hazardous Occupations or Occupations Detrimental to Health or Well Being.**

Persons sixteen and seventeen shall not be employed in any occupation declared by the Director of the Department of Labor, Licensing and Regulation to be particularly hazardous or detrimental to the health or well-being of minors. Such occupations are identified at 71-3107.

- ⇒ **71-3105. Exempted Occupations; Apprentices; Student-Learners.**

(a) The following occupations are exempted from the coverage of these regulations for minors of any age according to the terms of each exemption.

(b) The provisions of this Article with the exception of 71-3108 do not apply to any employee employed in agriculture outside of school hours for the school district

where such employee is living while he is so employed, if such employee is fourteen years or older, or is twelve or thirteen years of age and the employment is with the consent of his parent or person standing in the place of his parent.

(c) The provisions of this Article do not apply with respect to any employee engaged in the street sale or delivery of newspapers to the consumer, including carriers making deliveries to the homes of subscribers.

(d) The provisions of this Article do not apply with respect to any employee engaged as an actor or performer in motion pictures, radio or television productions, or theatrical productions.

(e) The provisions of this Article do not apply with respect to any employee employed by his or her own parent or the person standing in place of his or her parent except in those occupations found by the Director of the Department of Labor, Licensing and Regulation to be particularly hazardous or detrimental to health or well-being of minors and identified at 71-3107.

(f) Where this Article contains any exemption for the employment of apprentices, such an exemption shall apply only when (1) the apprentice is employed in a craft recognized as an apprenticeable trade; (2) the work of the apprentice in the occupations declared particularly hazardous is incidental to his training; (3) such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and (4) the apprentice is registered by the Bureau of Apprenticeship and Training of the United States Department of Labor as employed in accordance with the standards established by that Bureau.

(g) Where this Article contains an exemption for the employment of student-learners, such an exemption shall apply when (1) the student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school; and (2) such student-learner is employed under a written agreement which provides:

(i) That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to his training;

(ii) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and

(iv) That a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder. A high school graduate may be employed in an occupation in which he has completed training as provided in this paragraph as a student-learner, even though he is not yet eighteen years of age.

⇒ **71-3106. Employment of Minors Between 14 and 16 Years of Age.**

(a) The employment of minors fourteen and fifteen years of age in the occupation, for the periods, and under the conditions hereafter specified does not interfere with their schooling or with their health and well-being and shall not be deemed to be oppressive child labor.

(b) In all occupations covered by this subpart the employment (including suffering or permitting to work) by an employer of minor employees fourteen and fifteen years of age shall be confined to the following periods:

(1) Outside school hours;

(2) Not more than 40 hours in any one week when school is not in session;

(3) Not more than 18 hours in any one week when school is in session;

(4) Not more than 8 hours in any one day when school is not in session;

(5) Not more than 3 hours in any one day when school is in session; and

(6) Between 7 a.m. and 7 p.m. in any one day, except during the period of summer break of the school district in which the minor resides, when the evening hour will be 9 p.m.

(c) Permitted occupations for minors fourteen and fifteen years employed by retail, food service, and gasoline service establishments include:

(1) Office and clerical work, including the operation of office machines;

(2) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping;

(3) Price marking and tagging by hand or by machine, assembling orders, packing and shelving;

(4) Bagging and carrying out customers' orders;

(5) Errand and delivery work by foot, bicycle, and public transportation;

(6) Clean up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of power-driven mowers, or cutters;

(7) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as but not limited to, dish-washers, toasters, dumb-waiters, popcorn poppers, milk shake blenders, coffee grinders, automatic coffee machines, devices used to maintain the temperature of prepared foods (such as warmers, steam tables, and heat lamps), and microwave ovens that are used only to warm prepared food and do not have the capacity to warm above 140 degrees Fahrenheit. Minors are permitted to clean kitchen equipment (not otherwise prohibited), remove oil or grease filters, pour oil or grease through filters, and move receptacles containing hot grease or hot oil, but only when the equipment, surfaces, containers, and liquids do not exceed a temperature of 100 degrees Fahrenheit;

(8) Work in connection with cars and trucks if confined to the following: Dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing; and other occupations permitted by this section, but not including work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring; and

- (9) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from those where the work described in paragraph (d)(12) of this section is performed.
- (d) Occupations which are not permitted for minors fourteen and fifteen years of age include:
- (1) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed, except those occupations permitted by paragraph (c) of this section;
  - (2) Occupations which involve the operation or tending of hoisting apparatus or of
  - (3) The operation of motor vehicles or service as helpers on such vehicles;
  - (4) Public messenger service;
  - (5) Occupations which the Director of the Department of Labor, Licensing and Regulation may find and declare to be hazardous for the employment of minors sixteen and seventeen years of age or detrimental to their health or well-being;
  - (6) Occupations in connection with:
    - (a) Transportation of persons or property by rail, highway, air, water, pipeline, or other means;
    - (b) Warehousing and storage;
    - (c) Communications and public utilities;
    - (d) Construction (including demolition and repair);  
except such office (including ticket office) work, or sales work, in connection with paragraphs (6)(a), (b), (c), and (d) of this section, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations;
  - (7) Work performed in or about boiler or engine rooms;
  - (8) Work in connection with maintenance or repair of the establishment, machines or equipment;
  - (9) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes;
  - (10) Cooking and baking except:
    - (a) Cooking is permitted with electric or gas grills which does not involve cooking over an open flame (Note: this provision does not authorize cooking with equipment such as rotisseries, broilers, pressurized equipment including fryolators, and cooking devices that operate at extremely high temperatures such as "Neico broilers"); and
    - (b) Cooking is permitted with deep fryers that are equipped with and utilize a device which automatically lowers the baskets into the hot oil or grease and automatically raises the baskets from the hot oil or grease;
  - (11) Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, and cutters, and bakery-type mixers;
  - (12) Work in freezers and meat coolers and all work in the preparation of meats for sale except as described in paragraph (c)(9) of this section;
  - (13) Loading and unloading goods to and from trucks, railroad cars, or conveyors;
  - (14) All occupations in warehouses except office and clerical work.

(e) This section shall not apply to any Work Experience or Career Exploration Program approved by the Administrator of the Wage and Hour Division of the United States Department of Labor. The South Carolina Department of Labor will not make separate determinations concerning such programs. See 29 CFR Section 570.35(a).

⇒ **71-3107. List of Hazardous Occupations or Occupations Detrimental to Health of Minor; Exemptions.**

### **What hours can I work? (page 12)**

While you are under the age of 16, you can work after school hours during the school year but not more than 3 hours on school days or a total of 18 hours a week. You cannot work from 7:00 p.m. until 7:00 a.m. on school days. During the summer, you cannot work more than 40 hours in one week and not during the hours of 9:00 p.m. until 7:00 a.m.

⇒ **71-3106. Employment of Minors Between 14 and 16 Years of Age.**

(b) In all occupations covered by this subpart the employment (including suffering or permitting to work) by an employer of minor employees fourteen and fifteen years of age shall be confined to the following periods:

- (1) Outside school hours;
- (2) Not more than 40 hours in any one week when school is not in session;
- (3) Not more than 18 hours in any one week when school is in session;
- (4) Not more than 8 hours in any one day when school is not in session;
- (5) Not more than 3 hours in any one day when school is in session; and
- (6) Between 7 a.m. and 7 p.m. in any one day, except during the period of summer break of the school district in which the minor resides, when the evening hour will be 9 p.m.

### **What is the minimum wage? (page 12)**

The minimum wage is \$7.25 an hour. However, if you are under 20 years of age, you can be paid a youth sub-minimum wage of not less than \$4.25 an hour during the first 90 days of your job. This is called an opportunity wage.

⇒ This is controlled by federal law, 29 U.S.C.A. §206 Minimum Wage.

# CONTRACTS, PROPERTY & BUSINESS

## Are kids treated like adults in business arrangements? (page 13)

In general, a child cannot enter into a contract or other legally binding agreement. However, if you enter into a contract while you are under age 18, you can make it legally binding by agreeing to the contract in writing (called ratification) when you turn 18 years old.

- ⇒ See “Can I borrow money?” below for the exception to this rule regarding a minor contracting to borrow money for college.
- ⇒ **§ 63-5-310. Ratification after reaching majority of contracts made by minor must be in writing.**  
No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification after full age of any promise (except upon contracts for necessities) made during infancy unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

## Can I own property? (page 13)

Yes. A child does have the legal capacity to acquire and own property. You may receive title to property by deed or gift and may in turn transfer that title to another person.

## Can I have a checking account? (page 13)

Yes. A minor may have a checking account and will be held fully responsible, just as an adult, for any deposits or checks. However, most banks have a policy that will only allow you to open a checking account if you are at least 15 years old. If you are under 15, you may be able to open a custodial account with an adult.

- ⇒ **§ 34-11-20. Acceptance and disbursement of deposits of minors.**  
A bank may accept deposits of and pay out deposits upon a check or other order of a minor and act in any other matter with respect to the deposits of a minor with the same effect as if dealing with a person of full legal capacity.
- ⇒ **§ 34-28-610. Married persons and minors.**  
Subject to Section 34-28-500, any association operating under this chapter and any federal savings and loan association authorized to conduct business in this

State may accept a savings or other deposit account from any married person or minor as the sole and absolute owner of the account, receive payments thereon by or for the owner, pay withdrawals, accept pledges to the association, and act in any other matter with respect to the account of the married person or minor. Any payment or delivery of rights by an association to a married person or by a minor who holds a deposit account is a valid and sufficient release and discharge of the association for any payment so made or delivery of rights to the married person or minor. In the case of a minor, the receipt, acquittance, pledge, or other action required by the association to be taken by the minor is binding upon the minor with like effect as if he were of full age and legal capacity. The parent or guardian of the minor shall not in his capacity as parent or guardian have the power to attach or in any manner to transfer any savings account issued to or in the name of the minor. However, in the event of the death of the minor, the receipt or acquittance of either parent or guardian of the minor is a valid and sufficient discharge of the association for any sum not exceeding, in the aggregate, two thousand five hundred dollars unless the minor shall have given written notice to the association to accept the signature of the parent or guardian for a larger sum.

### **Can I borrow money? (page 13)**

Yes. A child has the full capacity to enter into a contract to borrow money to help pay the costs of attending an institution of higher education, and the child is responsible for the repayment of the money. This is an exception to the general rule that children cannot enter into a legally binding contract.

⇒ **§ 63-5-320. Minor's capacity to borrow for higher education.**

Notwithstanding any other provisions of law to the contrary, any person who, not having attained his majority, contracts to borrow money to defray the expenses of attending any institution of higher learning, shall have full legal capacity to act in his own behalf and shall have all the rights, powers and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

## **ALCOHOL & TOBACCO**

### **When can I buy beer and alcohol? (page 14)**

In South Carolina, it is against the law for someone under the age of 21 to purchase or possess beer or any other alcoholic beverage. It is also illegal for anyone else to give beer or alcohol to an underage person. It is also against the law for a person under age 21 to present a false identification (fake I.D.) of his or her age in order to purchase beer or alcohol.

⇒ **§ 63-19-2440. Beer and wine purchase, consumption, or possession.**

(A) It is unlawful for a person under the age of twenty-one 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 one hundred dollars nor more than two hundred dollars or must be imprisoned for not more than thirty 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 one hundred fifty dollars.

(C) A person eighteen years of age and over lawfully employed to serve or remove beer, wine, or alcoholic beverages in establishments licensed to sell these beverages is not considered to be in unlawful possession of the beverages during the course and scope of his duties as an employee. The provisions of this subsection do not affect the requirement that a bartender must be at least twenty-one years of age.

(D) This section does not apply to an employee lawfully engaged in the sale or delivery of these beverages in an unopened container.

(E) The provisions of this section do not apply to a student who:

(1) is eighteen years of age or older;

(2) is enrolled in an accredited college or university and a student in a culinary course that has been approved through review by the State Commission on Higher Education;

(3) is required to taste, but not consume or imbibe, any beer, ale, porter, wine, or other similar malt or fermented beverage as part of the required curriculum; and

(4) tastes a beverage pursuant to item (3) only for instructional purposes during classes that are part of the curriculum of the accredited college or university.

The beverage must remain at all times in the possession and control of an authorized instructor of the college or university who must be twenty-one years of age or older. Nothing in this subsection may be construed to allow a student under the age of twenty-one to receive any beer, ale, porter, wine, or other similar malt or fermented beverage unless the beverage is delivered as part of the student's required curriculum and the beverage is used only for instructional purposes during classes conducted pursuant to the curriculum.

(F) The provisions of this section do not apply to a person under the age of twenty-one who is recruited and authorized by a law enforcement agency to test an establishment's compliance with laws relating to the unlawful transfer or sale of beer or wine to a minor. The testing must be under the direct supervision of a law enforcement agency, and the agency must have the person's parental consent.

⇒ **§ 63-19-2450. Alcoholic beverages purchase, consumption, or possession.**

(A) It is unlawful for a person under the age of twenty-one to purchase, attempt to purchase, consume, or knowingly possess alcoholic liquors. Possession is prima facie evidence that it was knowingly possessed. It is also unlawful for a person to falsely represent his age for the purpose of procuring alcoholic liquors. 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.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than two hundred dollars or must be imprisoned for not more than thirty days, or both.

(C) 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 one hundred fifty dollars.

(D) The provisions of this section do not apply to a student who:

(1) is eighteen years of age or older;

(2) is enrolled in an accredited college or university and a student in a culinary course that has been approved through review by the State Commission on Higher Education;

(3) is required to taste, but not consume or imbibe, any alcoholic liquor as part of the required curriculum; and

(4) tastes the liquor pursuant to item (3) only for instructional purposes during classes that are part of the curriculum of the accredited college or university.

The alcoholic liquor must remain at all times in the possession and control of an authorized instructor of the college or university who must be twenty-one years of age or older. Nothing in this subsection may be construed to allow a student under the age of twenty-one to receive alcoholic liquor unless it is delivered as part of the student's required curriculum, and it is used only for instructional purposes during classes conducted pursuant to the curriculum.

(E) The provisions of this section do not apply to a person under the age of twenty-one who is recruited and authorized by a law enforcement agency to test an establishment's compliance with the laws relating to the unlawful transfer or sale of alcoholic liquors to a minor. The testing must be under the direct supervision of a law enforcement agency, and the agency must have the person's parental consent.

⇒ **§ 56-1-510. Unlawful use of license; fraudulent application.**

It is a misdemeanor punishable by a fine of not more than two hundred dollars or imprisonment for not more than thirty days for a first offense and not more than five hundred dollars or imprisonment for not more than six months for a second or subsequent offense for any person:

- (1) to display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, or fraudulently altered driver's license or personal identification card;
- (2) to lend his driver's or personal identification card to any other person or knowingly permit the use of it by another;
- (3) to display or represent as one's own driver's license or personal identification card any driver's license acquired in violation of this section;
- (4) to fail or refuse to surrender to the department upon lawful demand any driver's license which has been suspended, canceled, or revoked;
- (5) to use a false or fictitious name in any application for a driver's license or personal identification card or knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;
- (6) to permit any unlawful use of a driver's license or personal identification card issued to him; or
- (7) to do any act forbidden or fail to perform any act required by this article.

⇒ **§ 56-1-515. Unlawful alteration of license; sale or issuance of fictitious license; use of another's license or other false documentation to defraud or violate law; violations and penalties.**

- (1) It is unlawful for any person to alter a motor vehicle driver's license so as to provide false information on the license or to sell or issue a fictitious driver's license.
- (2) It is unlawful for any person to use a motor vehicle driver's license not issued to the person, an altered motor vehicle driver's license, an identification card containing false information, or an identification card not issued to the person to defraud another or violate the law.
- (3) Any person violating the provisions of subsection (1) is guilty of a misdemeanor and upon conviction must be fined not more than two thousand five hundred dollars or imprisoned for not more than six months, or both.
- (4) Any person violating the provisions of subsection (2) is guilty of a misdemeanor and upon conviction must be fined not more than one hundred dollars or imprisoned for not more than thirty days.

**What if my parents will let me drink? (page 14)**

The laws prohibiting a person under age 21 from drinking alcohol do not apply to a minor in his parent's home or to any such beverage used for religious purposes, as long as the beverage was legally purchased.

⇒ **§ 63-19-2460. Alcoholic beverages in home; religious use exception.**

No provision of law prohibiting the use or possession of beer, wine, or alcoholic beverages by minors shall apply to any minor in the home of his parents or guardian or to any such beverage used for religious ceremonies or purposes so long as such beverage was legally purchased.

**Is it really a crime for me to buy or possess cigarettes, tobacco products, or alternative nicotine products? (page 14)**

Under state law, it is a crime for anyone to sell or give tobacco products or alternative nicotine products to anyone under age 18. However, as of December 2019, under federal law, it is now illegal for anyone to sell any tobacco product, including e-cigarettes, to anyone under 21.

It is also a noncriminal, civil offense for anyone under 18 to purchase or possess tobacco products or alternative nicotine products. Anyone under 18 who violates this law may be fined; may be ordered to complete a smoking cessation class or community service; or may have his or her driving privileges delayed, suspended or restricted.

⇒ **§ 16-17-500. Sale or purchase of tobacco products or alternative nicotine products for minors; proof of age; location of vending machines; penalties; smoking cessation programs.**

(A) It is unlawful for an individual to sell, furnish, give, distribute, purchase for, or provide a tobacco product or an alternative nicotine product to a minor under the age of eighteen years.

(B) It is unlawful to sell a tobacco product or an alternative nicotine product to an individual who does not present upon demand proper proof of age. Failure to demand identification to verify an individual's age is not a defense to an action initiated pursuant to this subsection. Proof that is demanded, is shown, and reasonably is relied upon for the individual's proof of age is a defense to an action initiated pursuant to this subsection.

(C) A person engaged in the sale of tobacco products or alternative nicotine products made through the Internet or other remote sales methods shall perform an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process that establishes the individual is eighteen years of age or older and shall use a method of mailing, shipping, or delivery that requires the signature of a person at least eighteen years of age before a tobacco product or alternative nicotine product will be released to the purchaser, unless the Internet or other remote sales methods employ the following protections to ensure age verification:

(1) the customer creates an online profile or account with personal information including, but not limited to, name, address, social security information, and a valid phone number, and that personal information is verified through publicly available records; or

(2) the customer is required to upload a copy of his or her government-issued identification in addition to a current photograph of the customer; and

(3) delivery is made to the customer's name and address.

(D) It is unlawful to sell a tobacco product or an alternative nicotine product through a vending machine unless the vending machine is located in an establishment:

(1) which is open only to individuals who are eighteen years of age or older; or  
(2) where the vending machine is under continuous control by the owner or licensee of the premises, or an employee of the owner or licensee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed.

(E)(1) An individual who knowingly violates a provision of subsections (A), (B), (C), (D), or (J) in person, by agent, or in any other way is guilty of a misdemeanor and, upon conviction, must be:

(a) for a first offense, fined not less than two hundred dollars and not more than three hundred dollars;

(b) for a second and subsequent offense, fined not less than four hundred dollars and not more than five hundred dollars, imprisoned for not more than thirty days, or both.

(2) In lieu of the fine, the court may require an individual to successfully complete a Department of Alcohol and Other Drug Abuse Services approved merchant tobacco enforcement education program.

(3) Failure of an individual to require identification for the purpose of verifying a person's age is prima facie evidence of a violation of this section.

(F)(1)(a) A minor under the age of eighteen years must not purchase, attempt to purchase, possess, or attempt to possess a tobacco product or an alternative nicotine product, or present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing these products.

(b) A minor under the age of eighteen years is prohibited from entering a retail establishment that has as its primary purpose the sale of tobacco products, alternative nicotine products, or both, unless the minor is actively supervised and accompanied by an adult.

(c) The provisions of this subsection do not apply to a minor under the age of eighteen who is recruited and authorized by a law enforcement agency to test an establishment's compliance with laws relating to the unlawful transfer of tobacco or alternative nicotine products. The testing must be conducted under the direct supervision of a law enforcement agency, and the law enforcement agency must have the minor's parental consent.

(2) A minor who knowingly violates a provision of item (1) in person, by agent, or in any other way commits a noncriminal offense and is subject to a civil fine of twenty-five dollars. The civil fine is subject to all applicable court costs, assessments, and surcharges.

(3) In lieu of the civil fine, the court may require a minor to successfully complete a Department of Health and Environmental Control approved smoking cessation or tobacco prevention program, or to perform not more than five hours of community service for a charitable institution.

(4) If a minor fails to pay the civil fine, successfully complete a smoking cessation or tobacco prevention program, or perform the required hours of community service as ordered by the court, the court may restrict the minor's driving privileges to driving only to and from school, work, and church, or as the court

considers appropriate for a period of ninety days beginning from the date provided by the court. If the minor does not have a driver's license or permit, the court may delay the issuance of the minor's driver's license or permit for a period of ninety days beginning from the date the minor applies for a driver's license or permit. Upon restricting or delaying the issuance of the minor's driver's license or permit, the court must complete and remit to the Department of Motor Vehicles any required forms or documentation. The minor is not required to submit his driver's license or permit to the court or the Department of Motor Vehicles. The Department of Motor Vehicles must clearly indicate on the minor's driving record that the restriction or delayed issuance of the minor's driver's license or permit is not a traffic violation or a driver's license suspension. The Department of Motor Vehicles must notify the minor's parent, guardian, or custodian of the restriction or delayed issuance of the minor's driver's license or permit. At the completion of the ninety-day period, the Department of Motor Vehicles must remove the restriction or allow for the issuance of the minor's license or permit. No record may be maintained by the Department of Motor Vehicles of the restriction or delayed issuance of the minor's driver's license or permit after the ninety-day period. The restriction or delayed issuance of the minor's driver's license or permit must not be considered by any insurance company for automobile insurance purposes or result in any automobile insurance penalty, including any penalty under the Merit Rating Plan promulgated by the Department of Insurance.

(5) A violation of this subsection is not a criminal or delinquent offense and no criminal or delinquent record may be maintained. A minor may not be detained, taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this subsection or for the failure to pay a fine, successfully complete a smoking cessation or tobacco prevention program, or perform community service.

(6) A violation of this subsection is not grounds for denying, suspending, or revoking an individual's participation in a state college or university financial assistance program including, but not limited to, a Life Scholarship, a Palmetto Fellows Scholarship, or a need-based grant.

(7) The uniform traffic ticket, established pursuant to Section 56-7-10, may be used by law enforcement officers for a violation of this subsection. A law enforcement officer issuing a uniform traffic ticket pursuant to this subsection must immediately seize the tobacco product or alternative nicotine product. The law enforcement officer also must notify a minor's parent, guardian, or custodian of the minor's offense, if reasonable, within ten days of the issuance of the uniform traffic ticket.

(G) This section does not apply to the possession of a tobacco product or an alternative nicotine product by a minor working within the course and scope of his duties as an employee or participating within the course and scope of an authorized inspection or compliance check.

(H) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court and the magistrates court. A hearing pursuant to subsection (F) must be placed on the court's appropriate docket for traffic violations, and not on

the court's docket for civil matters.

(I) A retail establishment that distributes tobacco products or alternative nicotine products must train all retail sales employees regarding the unlawful distribution of tobacco products or alternative nicotine products to minors.

(J)(1) A retail establishment that has as its primary purpose the sale of tobacco products, alternative nicotine products, or both, must prohibit minors under the age of eighteen years of age from entering the retail establishment, unless the minor is actively supervised and accompanied by an adult, and shall determine whether a person is at least eighteen years by requiring proper proof of age in accordance with subsection (B), prior to the purchase of a tobacco or alternative nicotine product.

(2) A retail establishment described in item (1) must conspicuously post on all entrances to the establishment the following:

(a) a sign in boldface type that states "NOTICE: It is unlawful for a person under eighteen years of age to enter this store, unless the minor is actively supervised and accompanied by an adult. Age will be verified prior to purchase.";

(b) a sign printed in letters and numbers at least one-half inch high that displays a toll free number for assistance to callers in quitting smoking, as determined by the Department of Health and Environmental Control.

(3) For purposes of this section, whether a retail establishment has as its primary purpose the sale of tobacco products, alternative nicotine products, or both, must be based on the totality of the circumstances. Facts that must be considered, but not be limited to, are the retail establishment's business filings, business name and signage, marketing and other advertisements, and the percentage of revenue and inventory directly related to the sale of tobacco and alternative nicotine products.

(K) Notwithstanding any other provision of law, a violation of this section does not violate the terms and conditions of an establishment's beer and wine permit and is not grounds for revocation or suspension of a beer and wine permit.

## **MARRIAGE**

### **When can I get married? (page 15)**

In order to get married, you must be at least 16 years old.

⇒ **§ 20-1-100. Minimum age for valid marriage.**

Any person under the age of sixteen is not capable of entering into a valid marriage, and all marriages hereinafter entered into by such persons are void ab initio. A common-law marriage hereinafter entered into by a person under the age of sixteen is void ab initio.

⇒ **§ 20-1-250. Applicants under age of consent; consent of relative or guardian.**

A marriage license must not be issued when either applicant is under the age of

sixteen. When either applicant is between the ages of sixteen to eighteen and that applicant resides with father, mother, other relative, or guardian, the probate judge or other officer authorized to issue marriage licenses shall not issue a license for the marriage until furnished with a sworn affidavit signed by the father, mother, other relative, or guardian giving consent to the marriage.

### **How do I get a marriage license? (page 15)**

In South Carolina, a couple must have a license to get married. The Probate Court or Clerk of Court, depending on the county in which you live, usually issues these licenses. In order to get a license, both the female and the male must be at least 16. If you are under 18, you must have the written consent of your parent or guardian.

⇒ **§ 20-1-210. License required for marriage.**

It shall be unlawful for any persons to contract matrimony within this State without first procuring a license as is herein provided and it shall likewise be unlawful for anyone whomsoever to perform the marriage ceremony for any such persons unless such persons shall first have delivered to the party performing such marriage ceremony a license as is herein provided duly authorizing such persons to contract matrimony. Any officer or person performing the marriage ceremony without the production of such license shall, on conviction thereof, be punished by a fine of not more than one hundred dollars nor less than twenty-five dollars or by imprisonment for not more than thirty days nor less than ten days.

⇒ **§ 20-1-220. Written application required twenty-four hours prior to issuance of license.** No marriage license may be issued unless a written application has been filed with the probate judge, or in Darlington and Georgetown counties the clerk of court who issues the license, at least twenty-four hours before the issuance of the license. The application must be signed by both of the contracting parties and shall contain the same information as required for the issuing of the license including the social security numbers, or the alien identification numbers assigned to resident aliens who do not have social security numbers, of the contracting parties...

⇒ **§ 20-1-230. Issuance of license; premarital preparation course.**

(A) The judge of probate or clerk of court with whom a marriage license application was filed shall issue a license upon:

- (1) the filing of the application required under the provisions of Section 20-1-220;
- (2) the lapse of at least twenty-four hours thereafter;
- (3) the payment of the fee provided by law; and
- (4) the filing of a statement, under oath or affirmation, to the effect that the persons seeking the contract of matrimony are legally entitled to marry, together with the full names of the persons, their ages, and places of residence.

- ⇒ **§ 20-1-250. Applicants under age of consent; consent of relative or guardian.**  
(See under “When can I get married?”)

## HEALTHCARE

### Do I need my parent’s permission to get a medical examination or see a doctor? (page 16)

Yes, if you are under the age of 16. Married minors can consent to health care services without their parent’s consent. Minors who have children can also consent to health services for their child. Additionally, if you are 16, your parent’s consent to health care services is not required unless the medical treatment includes surgery.

- ⇒ **§ 63-5-330. Married minors consent to health procedures.**

The consent of a married minor or, if a married minor be unable to give consent by reason of physical disability, then the consent of the spouse of the married minor to the performance by any licensed medical, surgical or dental practitioners, or any hospital, or their agents or employees, of any lawful diagnostic, therapeutic surgical or postmortem procedure upon or in respect to such minor or any minor child of such minor, shall, notwithstanding the minority of such minor, be valid and legally effective for all purposes and shall be binding upon such minor, his parents, spouse, heirs, executors and administrators as effectively as if such minor or the spouse of such minor were eighteen years of age.

- ⇒ **§ 63-5-340. Minor’s consent to health services.**

Any minor who has reached the age of sixteen years may consent to any health services from a person authorized by law to render the particular health service for himself and the consent of no other person shall be necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available.

- ⇒ **§ 63-5-350. Health services to minors without parental consent.**

Health services of any kind may be rendered to minors of any age without the consent of a parent or legal guardian when, in the judgment of a person authorized by law to render a particular health service, such services are deemed necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available.

⇒ **§ 63-5-360. Minor parent may consent to health services for child.**

Any minor who has been married or has borne a child may consent to health services for the child.

**Do girls need parental consent to get an abortion? (page 16)**

Generally speaking, yes, an adult must participate in a teenager's decision to have an abortion. If a minor desires to have an abortion, but a parent, legal guardian, or grandparent will not sign the consent form, there is a process to ask the family court for consent. The Adoption and Birth Parent Services Division of the Department of Social Services must help the teenager with this process. Asking the court for permission has very specific time schedules and rules. The court must consider the maturity, emotional development, intellect, and understanding of the minor. The minor must also have a clear understanding of the consequences and alternatives to an abortion.

⇒ **§ 44-41-31. Abortion upon minors; consent requirements; support obligations of parent or legal guardian who refuses to give consent for minor's abortion; penalty for false representation.**

(A) No person may perform an abortion upon a minor unless consent is obtained in accordance with one of the following provisions:

(1) the attending physician or his agent or the referring physician or his agent has secured the informed written consent, signed and witnessed, of the pregnant minor and:

(a) one parent of the minor; or

(b) a legal guardian of the minor; or

(c) a grandparent of the minor; or

(d) any person who has been standing in loco parentis to the minor for a period not less than sixty days;

(2) the minor is emancipated and the attending physician or his agent has received the informed signed written consent of the minor; or

(3) the attending physician or his agent has obtained the informed signed written consent of the minor and has received the order of the court obtained by the minor pursuant to this chapter.

(B) If a parent or legal guardian refuses to give the informed written consent for the minor's abortion and there has been a judicial finding of refusal of consent, and the minor has a child or children as a result of that pregnancy, the duty imposed by law of supporting the child or children extends to the minor and jointly and severally to the refusing parent or legal guardian and the natural father until the minor reaches the age of eighteen years or is emancipated.

(C) Any person standing in loco parentis and who consents to the abortion of the minor as permitted in subsection (A)(1) of this section shall sign an affidavit indicating the nature and length of his or her relationship with the minor. The affidavit must state the penalties for wilfully or knowingly making a false

representation. Anyone who knowingly or wilfully makes a false representation in the affidavit shall be guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than one year.

- ⇒ **§ 44-41-32. Petitioning court for right to obtain abortion without consent of parent or legal guardian.** Every minor has the right to petition the court for an order granting her the right to obtain an abortion without the consent required in Section 44-41-31(1). In seeking this relief the following procedures apply:
- (1) The minor may prepare and file a petition in either the circuit or family court. The petition may be filed in the name of Jane Doe to protect the anonymity of the minor.
  - (2) The Adoption and Birth Parent Services Division of the Department of Social Services, upon request of the minor, must provide assistance to the minor in preparing and filing the petition. Preparation and filing of the petition must be completed within forty-eight hours after the request. The Department of Social Services shall promulgate regulations establishing the procedures to be followed in providing this assistance.
  - (3) Upon the filing of the petition, the court shall appoint a guardian ad litem for the minor, taking into consideration the preference of the minor. The minor may participate in court proceedings on her own behalf, but the court shall advise her that she has a right to court-appointed counsel and shall provide her with counsel upon her request.
  - (4) All proceedings pursuant to this section must be given precedence over other matters pending before the court.
  - (5) The court shall hold a hearing and rule on the merits of the petition within seventy-two hours of the filing of the petition. This time may be extended upon the request of the minor. The court shall consider the emotional development, maturity, intellect, and understanding of the minor; the nature and possible consequences of the abortion and of the alternatives to the abortion; and other evidence that the court may find useful in determining whether the minor should be granted the right on her own behalf to consent to the abortion or whether the abortion is in the best interest of the minor.

## **DANIEL'S LAW**

### **What is Daniel's Law? (page 17)**

Daniel's Law is a law named after an infant boy who was abandoned and buried in a landfill at birth. He survived and was named Daniel by the nurses who took care of him.

Daniel's Law was designed to save babies born to mothers in crisis who are considering abandoning their newborn infants. Daniel's Law is not designed to punish

anyone. It allows a person to leave an unharmed, newborn baby (newborn is defined as up to 60 days old for purposes of this law) with a staff member or employee of a designated *Safe Haven* without fear of prosecution. A *Safe Haven* is a hospital or hospital outpatient facility, law enforcement agency, fire station, emergency medical services (EMS) station, or house of worship (during the time the church or synagogue is staffed). The baby must be unharmed and must be left with a person. The person leaving the baby does not have to identify him or herself, but will be asked to provide medical information about the baby. This may include a request to provide the name of the baby's parent(s); again, the person leaving the baby does not have to disclose his or her name even if he or she is a parent of the baby. DSS will be contacted and will have legal custody of the baby, who will be placed in an appropriate foster home. DSS will then go through the family court process necessary to free the baby for adoption.

The parent(s) or person who left the baby will not be prosecuted and does not have to go to court as long as:

- (1) the baby is less than 60 days old;
- (2) the baby is not hurt; and
- (3) the baby is given to a person at a *Safe Haven*.

⇒ **§ 63-7-40. Safe haven for abandoned babies.**

(A) A safe haven in this State must, without a court order, take temporary physical custody of an infant who is voluntarily left with the safe haven by a person who does not express an intent to return for the infant and the circumstances give rise to a reasonable belief that the person does not intend to return for the infant. If the safe haven is a hospital or hospital outpatient facility, the hospital or hospital facility shall perform any act necessary to protect the physical health or safety of the infant; any other safe haven shall, as soon as possible, but no later than six hours after receiving an infant, transport the infant to a hospital or hospital outpatient facility. The person leaving the infant is not required to disclose his or her identity; however, the person must leave the infant in the physical custody of a staff member or employee of the safe haven.

(B)(1) A facility, agency, or other location designated as a safe haven pursuant to subsection (J)(2) must post a notice prepared by the department on its premises that is prominently displayed for view by the public, stating that the facility, agency, or other location is a safe haven at which a person may leave an infant.

(2) The safe haven must offer the person leaving the infant information concerning the legal effect of leaving the infant with the safe haven.

(3) The safe haven must ask the person leaving the infant to identify any parent of the infant other than the person leaving the infant with the safe haven. The safe haven also must attempt to obtain from the person information concerning the infant's background and medical history as specified on a form provided by the department. This information must include, but is not limited to, information

concerning the use of a controlled substance by the infant's mother, provided that information regarding the use of a controlled substance by the infant's mother is not admissible as evidence of the unlawful use of a controlled substance in any court proceeding. The safe haven must give the person a copy of the form and a prepaid envelope for mailing the form to the department if the person does not wish to provide the information to the safe haven. The department must provide these materials to safe havens.

(4) Identifying information disclosed by the person leaving the infant must be kept confidential by the safe haven and disclosed to no one other than the department. However, if a court determines that the immunity provisions of subsection (H) do not apply, the safe haven may disclose the information as permitted by confidentiality protections applicable to records of the safe haven, if the safe haven has such confidentiality protections for records. The department must maintain confidentiality of this information in accordance with Section 63-7-1990.

(C) Not later than the close of the first business day after the date on which a hospital or hospital outpatient facility takes possession of an infant pursuant to subsection (A), the hospital or hospital outpatient facility shall notify the department that it has taken temporary physical custody of the infant. The department has legal custody of the infant immediately upon receipt of the notice. The department shall assume physical control of the infant as soon as practicable upon receipt of the notice, but no later than twenty-four hours after receiving notice that the infant is ready for discharge from the hospital or hospital outpatient facility. Assumption of custody by the department pursuant to this subsection does not constitute emergency protective custody, and the provisions of Subarticle 3 of Article 3 do not apply. The department is not required to initiate a child protective services investigation solely because an infant comes into its custody under this subsection.

(D) Immediately after receiving notice from a hospital or hospital outpatient facility pursuant to subsection (C), the department shall contact the South Carolina Law Enforcement Division for assistance in assuring that the infant is not a missing infant. The South Carolina Law Enforcement Division shall treat the request as ongoing for a period of thirty days and shall contact the department if a missing infant report is received that might relate to the infant.

(E)(1) Within forty-eight hours after taking legal custody of the infant, the department shall publish notice, in a newspaper of general circulation in the area where the safe haven that initially took the infant is located, and send a news release to broadcast and print media in the area. The notice and the news release must state the circumstances under which the infant was left at the safe haven, a description of the infant, and the date, time, and place of the permanency planning hearing provided for in subsection (E)(2). The notice and the news release must also state that any person wishing to assert parental rights in regard to the infant must do so at the hearing. If the person leaving the infant identified anyone as being a parent of the infant, the notice must be sent by certified mail to the last known address of the person identified as a parent at least two weeks prior to the hearing.

(2) Within forty-eight hours after obtaining legal custody of the infant, the department shall file a petition alleging that the infant has been abandoned, that the court should dispense with reasonable efforts to preserve or reunify the family,

that continuation of keeping the infant in the home of the parent or parents would be contrary to the welfare of the infant, and that termination of parental rights is in the best interest of the infant. A hearing on the petition must be held no earlier than thirty and no later than sixty days after the department takes legal custody of the infant. This hearing is the permanency planning hearing for the infant. If the court approves the permanent plan of termination of parental rights, the order must also provide that a petition for termination of parental rights on the grounds of abandonment must be filed within ten days after receipt of the order by the department.

(F) The act of leaving an infant with a safe haven pursuant to this section is conclusive evidence that the infant has been abused or neglected for purposes of Department of Social Services' jurisdiction and for evidentiary purposes in any judicial proceeding in which abuse or neglect of an infant is an issue. It is also conclusive evidence that the requirements for termination of parental rights have been satisfied as to any parent who left the infant or acted in concert with the person leaving the infant.

(G) A person who leaves an infant at a safe haven or directs another person to do so must not be prosecuted for any criminal offense on account of such action if:

- (1) the person is a parent of the infant or is acting at the direction of a parent;
- (2) the person leaves the infant in the physical custody of a staff member or an employee of the safe haven; and
- (3) the infant is not more than sixty days old or the infant is reasonably determined by the hospital or hospital outpatient facility to be not more than sixty days old.

This subsection does not apply to prosecution for the infliction of any harm upon the infant other than the harm inherent in abandonment.

(H) A safe haven and its agents, and any health care professionals practicing within a hospital or hospital outpatient facility, are immune from civil or criminal liability for any action authorized by this section, so long as the safe haven, or health care professional, complies with all provisions of this section.

(I) The department, either alone or in collaboration with any other public entity, shall take appropriate measures to achieve public awareness of the provisions of this section.

(J) For purposes of this section:

- (1) "infant" means a person not more than sixty days old; and
- (2) "safe haven" means a hospital or hospital outpatient facility, a law enforcement agency, a fire station, an emergency medical services station, or any staffed house of worship during hours when the facility is staffed.

(K) Annually the department shall submit a report to the General Assembly containing data on infants who come into the custody of the department pursuant to this section. The data must include, but are not limited to, the date, time, and place where the infant was left, the hospital to which the infant was taken, the health of the infant at the time of being admitted to the hospital, disposition and placement of the infant, and, if available, circumstances surrounding the infant being left at the safe haven. No data in the report may contain identifying information.

# DRIVING

## DRIVER'S LICENSE

### When can I start to drive? (page 18)

You can apply for a beginner's permit when you turn 15. This permit allows you to drive a car with a licensed driver who is at least 21 years old and has at least one year's driving experience. This licensed driver must sit in the passenger seat beside you. If you are driving between the hours of midnight and 6:00 a.m., the licensed driver must be your parent or guardian. If you are under 18, your permit application must be signed by your parent or guardian or a responsible adult willing to assume the obligation and who has written permission from your parent or guardian. If you are in foster care, the application may be signed by a person with written approval by DSS.

⇒ **§ 56-1-50. Beginner's permit; hours and conditions of vehicle operation; renewal and fee; driver's training course; eligibility for full licensure**

(A) A person who is at least fifteen years of age may apply to the Department of Motor Vehicles for a beginner's permit. After the applicant has passed successfully all parts of the examination other than the driving test, the department may issue to the applicant a beginner's permit which entitles the applicant having the permit in his immediate possession to drive a motor vehicle under the conditions contained in this section on the public highways for not more than twelve months.

(B) The permit is valid only in the operation of:

(1) vehicles after six o'clock a.m. and not later than midnight. Except as provided in subsection (E), while driving, the permittee must be accompanied by a licensed driver twenty-one years of age or older who has had at least one year of driving experience. A permittee may not drive between midnight and six o'clock a.m. unless accompanied by the permittee's licensed parent or guardian;

(2) motorcycles or mopeds after six o'clock a.m. and not later than six o'clock p.m. However, beginning on the day that daylight saving time goes into effect through the day that daylight saving time ends, the permittee may operate motorcycles or mopeds after six o'clock a.m. and not later than eight o'clock p.m. A permittee may not operate a motorcycle at any other time unless accompanied by a licensed motorcycle operator twenty-one years of age or older who has at least one year of driving experience. A permittee may not operate a moped at any other time unless accompanied by a licensed driver twenty-one years of age or older who has at least one year of driving experience.

(C) The accompanying driver must:

(1) occupy a seat beside the permittee when the permittee is operating a motor vehicle; or

(2) be within a safe viewing distance of the permittee when the permittee is

operating a motorcycle or a moped.

(D) A beginner's permit may be renewed or a new permit issued for additional periods of twelve months, but the department may refuse to renew or issue a new permit where the examining officer has reason to believe the applicant has not made a bona fide effort to pass the required driver's road test or does not appear to the examining officer to have the aptitude to pass the road test. The fee for every beginner's or renewal permit is two dollars and fifty cents, and the permit must bear the full name, date of birth, and residence address and a brief description and color photograph of the permittee and a facsimile of the signature of the permittee or a space upon which the permittee shall write his usual signature with pen and ink immediately upon receipt of the permit. A permit is not valid until it has been signed by the permittee.

(E) The following persons are not required to obtain a beginner's permit to operate a motor vehicle:

(1) a student at least fifteen years of age regularly enrolled in a high school of this State which conducts a driver's training course while the student is participating in the course and when accompanied by a qualified instructor of the course; and

(2) a person fifteen years of age or older enrolled in a driver training course conducted by a driver training school licensed under Chapter 23 of this title. However, this person at all times must be accompanied by an instructor of the school and may drive only an automobile owned or leased by the school which is covered by liability insurance in an amount not less than the minimum required by law.

(F) A person who has never held a form of license evidencing previous driving experience first must be issued a beginner's permit and must hold the permit for at least one hundred eighty days before being eligible for full licensure.

⇒ **§ 56-1-100. Application by unemancipated minor.**

(A) The application of an unemancipated minor for a beginner's permit or driver's license must be signed in the presence of a South Carolina Department of Motor Vehicles employee at the time of application by:

(1) the father of the minor;

(2) the mother of the minor;

(3) the guardian of the minor;

(4) an individual who has custody, care, and control of the minor;

(5) any person set forth in subsection (C)(3) below with written approval by the Department of Social Services;

(6) any person who has been standing in loco parentis of a minor for a continuous period of not less than sixty days; or

(7) any responsible adult who is willing to assume the obligation imposed under this article and who has written permission, from a person listed in items (1) - (7) above, signed and verified before a person authorized to administer oaths.

(B) The application of an emancipated minor for a beginner's permit or driver's license must be signed in the presence of a South Carolina Department of Motor Vehicles employee at the time of application by a responsible adult who is willing to assume the obligation imposed under this article.

(C) If the Department of Social Services has guardianship or legal custody of a minor, the application may be signed by:

(1) the father of the minor;

(2) the mother of the minor; or

(3) the foster parent, preadoptive parent, or person responsible for the welfare of the child who resides in a childcare facility or residential group care home, upon written approval by the Department of Social Services. The disclosure of information by the Department of Social Services to the Department of Motor Vehicles in order to provide approval for the limited purpose of this code section shall not be a violation of Section 63-7-1990 or any other section of the Children's Code governing the dissemination of confidential information. The foster parent, preadoptive parent, or person responsible for the welfare of a child who resides in a childcare facility or residential group care home must obtain approval from the Department of Social Services prior to the request for an extension of a permit pursuant to Section 56-1-50.

(D) Except as set forth in subsection (C)(3) above, upon the extension of a permit pursuant to Section 56-1-50, authorization by the person who originally signed the application, under subsections (A), (B), or (C) above, is not required."

### **When can I get my license to drive alone? (page 18)**

There are several ways to earn your regular driver's license:

**Option one - Conditional license** (for people who are at least 15 years old and less than 16): Obtain a beginner's permit at age 15. After driving with this permit for 180 days (approximately six months), you can apply for a conditional license. You must submit a certificate of completion for a driver's education course and a certificate of satisfactory school attendance. You must also have completed at least 40 hours of driving practice, including at least 10 hours of driving during darkness, while supervised by licensed parent or guardian.

The conditional license allows you to drive by yourself during daylight hours (you are not allowed to drive alone at night). After a year of driving with this license, you can get a regular driver's license if you have no violations or at-fault accidents.

**Option two- Special restricted license** (for people who are 16 years old and less than 17): A 16 year-old must have a beginner's permit for at least 180 days; submit a certificate of completion for a driver's education course and a certificate of satisfactory school attendance; and complete at least 40 hours of driving practice with at least 10 hours of driving after dark. This restricted license allows you to drive by yourself during daylight hours (you are not allowed to drive alone at night). You may obtain a time restriction waiver with the submission of two notarized statements allowing you to drive alone after dark. These waivers are granted for

people who have school activities, jobs, or vocational training that requires them to be out after dark. The waiver only allows you to drive back and forth to the school event or job. After a year of driving with this license, you can get a regular driver's license if you have no violations or at-fault accidents.

**Option three**- If you are at least 17 years old and have had a beginner's permit for 180 days, you can get a regular license with no restrictions. If you are 17, you still must have an adult sign the application with you.

⇒ **§ 56-1-175. Issuance of conditional driver's license.**

The Department of Motor Vehicles may issue a conditional driver's license to a person who is at least fifteen years of age and less than sixteen years of age, who has:

- (1) held a beginner's permit for at least one hundred eighty days;
- (2) passed a driver's education course as defined in subsection (E);
- (3) completed at least forty hours of driving practice, including at least ten hours of driving practice during darkness, supervised by the person's licensed parent or guardian;
- (4) passed successfully the road tests or other requirements the department may prescribe; and
- (5) satisfied the school attendance requirement contained in Section 56-1-176.

(B) A conditional driver's license is valid only in the operation of:

- (1) vehicles during daylight hours. The holder of a conditional license must be accompanied by a licensed adult twenty-one years of age or older after six o'clock p.m. or eight o'clock p.m. during daylight saving time. A conditional driver's license holder may not drive between midnight and six o'clock a.m., unless accompanied by the holder's licensed parent or guardian;
- (2) a motor scooter or light motor-driven cycle of five-brake horsepower or less, during daylight hours.

(C) A conditional driver's license holder may not transport more than two passengers who are under twenty-one years of age unless accompanied by a licensed adult who is twenty-one years of age or older. This restriction does not apply when the conditional driver's license holder is transporting family members, or students to or from school.

(D) Daylight hours, as used in this section, means after the hour of six o'clock a.m. and no later than six o'clock p.m. However, beginning on the day that daylight saving time goes into effect through the day that daylight saving time ends, the holder of the conditional license may operate a vehicle after six o'clock a.m. and no later than eight o'clock p.m. For purposes of this section, all other hours are designated as nighttime hours.

(E) A driver training course, as used in this section, means a driver's training course administered by a driver's training school or a private, parochial, or public high school conducted by a person holding a valid driver's instructor permit contained in Section 56-23-85.

(F) For purposes of issuing a conditional driver's license pursuant to this section, the department must accept a certificate of completion for a student who attends or is attending an out-of-state high school and passed a qualified driver's training course or program that is equivalent to an approved course or program in this State. The department must establish procedures for approving qualified driver's training courses or programs for out-of-state students.

⇒ **§ 56-1-176. Conditions for issuance of conditional driver's license and special restricted driver's license.**

(A) School attendance is a condition for the issuance of a conditional driver's license and a special restricted driver's license. The Department of Motor Vehicles may not issue a conditional driver's license or a special restricted driver's license to a person pursuant to Section 56-1-175 or Section 56-1-180 unless the person:

(1) has a high school diploma or certificate, or a General Education Development Certificate; or

(2) is enrolled in a public or private school or is home schooled under the provisions contained in Section 59-65-40, 59-65-45, or 59-65-47, and:

(a) the person has conformed to the attendance laws, regulations, and policies of the school, school district, and the State Board of Education, as applicable; and

(b) the person is not suspended or expelled from school.

(B) Documentation of enrollment status must be presented to the department by the applicant on a form approved by the department. The documentation must indicate whether the student is in compliance with the requirements as provided in item (2).

⇒ **§ 56-1-180. Special restricted licenses for certain minors.**

(A) The Department of Motor Vehicles may issue a special restricted driver's license to a person who is at least sixteen years of age and less than seventeen years of age, who has:

(1) held a beginner's permit for at least one hundred eighty days;

(2) passed a driver's education course as defined in subsection (F);

(3) completed at least forty hours of driving practice, including at least ten hours of driving practice during darkness, supervised by the person's licensed parent or guardian;

(4) passed successfully the road test or other requirements the department may prescribe; and

(5) satisfied the school attendance requirement contained in Section 56-1-176.

(B) The special restricted driver's license is valid only in the operation of:

(1) vehicles during daylight hours. During nighttime hours, the holder of a special restricted driver's license must be accompanied by a licensed adult, twenty-one years of age or older. The holder of a special restricted driver's license may not drive between midnight and six o'clock a.m., unless accompanied by the holder's licensed parent or guardian. The restrictions in this section may be modified or waived by the department if the restricted licensee proves to the department's satisfaction that the restriction interferes or substantially interferes with:

(a) employment or the opportunity for employment;

(b) travel between the licensee's home and place of employment or school; or

(c) travel between the licensee's home or place of employment and vocational training;

(2) a motor scooter or light motor-driven cycle of five-brake horsepower or less during daylight hours.

(C) The waiver or modification of restrictions provided for in item (1) must include a statement of the purpose of the waiver or modification executed by the parents or legal guardian of the holder of the restricted license and documents executed by the driver's employment or school official, as is appropriate, evidencing the holder's need for the waiver or modification.

(D) A special restricted license holder may not transport more than two passengers who are under twenty-one years of age unless accompanied by a licensed adult twenty-one years of age or older. This restriction does not apply when the special restricted license holder is transporting family members or students to or from school.

(E) Daylight hours, as used in this section, means after the hour of six o'clock a.m. and no later than six o'clock p.m. However, beginning on the day that daylight saving time goes into effect through the day that daylight saving time ends, the holder of the special restricted license may operate a vehicle after six o'clock a.m. and no later than eight o'clock p.m. For purposes of this section, all other hours are designated as nighttime hours.

(F) A driver training course, as used in this section, means a driver's training course administered by a driver's training school or a private, parochial, or public high school conducted by a person holding a valid driver's instruction permit contained in Section 56-23-85.

(G) For purposes of issuing a special restricted driver's license pursuant to this section, the department must accept a certificate of completion for a student who attends or is attending an out-of-state high school and passed a qualified driver's training course or program that is equivalent to an approved course or program in this State. The department must establish procedures for approving qualified driver's training courses or programs for out-of-state students.

## **Will I be tested in order to obtain a driver's license? (page 19)**

Yes. With any type of driver's license (permit, conditional, restricted or regular), you will (1) have your eyesight tested; (2) be tested on your ability to read and understand highway signs; and (3) be given a written test on your knowledge of traffic laws. You will also have to pass a driving test in order to receive any license, except for your beginner's permit.

### **⇒ § 56-1-130. License examinations; basic and classified licenses.**

(A) The Department of Motor Vehicles shall examine every applicant for a driver's license, except as otherwise provided in this article. The examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, and his knowledge of the traffic laws of this State and shall include an actual demonstration of ability to exercise ordinary

and reasonable control in the operation of the type motor vehicle, including motorcycles, for which a license is sought. The department may require a further physical and mental examination as it considers necessary to determine the applicant's fitness to operate a motor vehicle upon the highways, the further examination to be at the applicant's expense. The department shall make provisions for giving an examination in the county where the applicant resides. The department shall charge an appropriate fee for each complete examination or reexamination required in this article.

(B) No persons, except those exempted under Section 56-1-30 and Section 56-1-60, or those holding beginner's permits under Section 56-1-50, shall operate any classification of motor vehicle without first being examined and duly licensed by the driver examiner as a qualified driver of that classification of motor vehicle.

(C) A basic driver's license authorizes the licensee to operate motor vehicles, automotive three-wheel vehicles, motorcycle three-wheel vehicles, excluding a motorcycle with a detachable side car, or combinations of vehicles which do not exceed twenty-six thousand pounds gross vehicle weight rating; provided, that the driver has successfully demonstrated the ability to exercise ordinary and reasonable control in the operation of a motor vehicle in this category. A basic driver's license also authorizes the licensee to operate farm trucks provided for in Sections 56-3-670, 56-3-680, and 56-3-690, which are used exclusively by the owner for agricultural, horticultural, and dairying operations or livestock and poultry raising. Notwithstanding another provision of law, the holder of a conditional license, or special restricted license operating a farm truck for the purposes provided in this subsection, may operate the farm truck without an accompanying adult after six o'clock a.m. and no later than nine o'clock p.m. , but may not operate a farm truck on a freeway. A person operating a farm truck while holding a conditional driver's license or a special restricted license may not use the farm truck for ordinary domestic purposes or general transportation.

A classified driver's license shall authorize the licensee to operate a motorcycle, motorcycle three-wheel vehicle, including a motorcycle with a detachable side car, or those vehicles in excess of twenty-six thousand pounds gross vehicle weight rating which are indicated by endorsement on the license. The endorsement may include classifications such as: motorcycle, two-axle truck, three- or more axle truck, combination of vehicles, motor busses, or oversize or overweight vehicles. The department shall determine from the driving demonstration the endorsements to be indicated on the license.

### **How can I prepare for this test? (page 19)**

You can get a driving booklet from your nearest Department of Motor Vehicles (DMV). This booklet gives you a thorough explanation of the road signs and traffic laws of South Carolina. It is wise for you to study this booklet to prepare for the beginner's permit test.

# ACCIDENTS

## What should I do if I am in an accident with another car? (page 20)

If you are involved in an accident with another car, you must immediately stop and remain at the scene of the accident until the police arrive. You must also give your name, address, and vehicle registration number to the driver/occupants of the other car, and if requested, you are required to show the other driver/occupants your driver's license. If anyone in the other car is injured, you should assist in getting help for him or her.

⇒ **§ 56-5-1210. Duties of drivers involved in accident resulting in death or personal injury; moving or removing vehicles.**

(A) The driver of a vehicle involved in an accident resulting in injury to or the death of a person immediately shall stop the vehicle at the scene of the accident or as close to it as possible. He then shall return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 56-5-1230. However, he may temporarily leave the scene to report the accident to the proper authorities. The stop must be made without obstructing traffic more than is necessary. A person who fails to stop or to comply with the requirements of this section is guilty of:

(1) a misdemeanor and, upon conviction, must be imprisoned not less than thirty days nor more than one year or fined not less than one hundred dollars nor more than five thousand dollars, or both, when injury results but great bodily injury or death does not result;

(2) a felony and, upon conviction, must be imprisoned not less than thirty days nor more than ten years and fined not less than five thousand dollars nor more than ten thousand dollars when great bodily injury results; or

(3) a felony and, upon conviction, must be imprisoned not less than one year nor more than twenty-five years and fined not less than ten thousand dollars nor more than twenty-five thousand dollars when death results.

(B) Law enforcement officers or authorized employees of the Department of Transportation may move or have removed from the traveled way all disabled vehicles and vehicles involved in an accident and any debris caused by motor vehicle traffic collisions where it can be accomplished safely and may result in the improved safety or traffic flow upon the road; however, where a vehicle has been involved in an accident resulting in great bodily injury or death to a person, the vehicle shall not be moved until it is authorized by the investigating law enforcement officer. The State, its political subdivisions, and its officers and employees are not liable for any damages to vehicles that result from the removal unless the removal was carried out in a reckless or grossly negligent manner. The vehicle owner and any driver, or the owner's, driver's, or the at-fault party's insurance company, of a vehicle removed under this subsection, or the owner's, driver's, or the at-fault party's insurance company, shall bear all reasonable costs of removal.

Nothing in this section shall bar recovery from an at-fault party when the accident was caused by the actions of that party.

(C) As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(D) The Department of Motor Vehicles shall revoke the driver's license of the person convicted pursuant to this section.

⇒ **§ 56-5-1220. Duties of driver involved in accident resulting in damage to attended vehicles.**

The driver of a vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by a person immediately shall stop the vehicle at the scene of the accident or as close to it as possible, but shall return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 56-5-1230. However, he may temporarily leave the scene to report the accident to the proper authorities. A person who fails to stop or comply with the requirements of this subsection is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than one hundred dollars nor more than five thousand dollars, or both.

(B) If a disabled vehicle or a vehicle involved in an accident resulting only in damage to a vehicle is obstructing traffic, the driver of the vehicle shall make every reasonable effort to move any vehicle that is capable of being driven safely off the roadway as defined by Section 56-5-460 so as not to block the flow of traffic. The driver or any other person who has moved a motor vehicle to facilitate the flow of traffic as provided in this subsection before the arrival of a law enforcement officer shall not be considered liable or at fault regarding the cause of the accident solely by reason of moving the vehicle pursuant to this section.

(C) State and local authorities may erect signs along highways and streets that instruct the public that the driver of a disabled vehicle or a vehicle involved in an accident resulting only in damage to vehicles shall make every reasonable effort to move any vehicle that is capable of being driven off the roadway.

⇒ **§ 56-5-1230. Duty to give information and render aid.** The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or making arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

⇒ **§ 56-5-1240. Duties of driver involved in accident involving unattended vehicle.** The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and

owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

- ⇒ **§ 56-5-1260. Immediate report of accidents resulting in personal injury or death.** The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication, whether oral or written, give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the South Carolina Highway Patrol.

### **What if I hit a car in the parking lot? (page 20)**

If you cause damage to a parked vehicle, you must immediately stop and either find the driver of that vehicle and give him or her your contact information or leave a note containing your name, address, and an explanation of what happened in an obvious place on the damaged car.

- ⇒ **§ 56-5-1240. Duties of driver involved in accident involving unattended vehicle.** The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

### **TRAFFIC OFFENSES (page 20)**

There are many laws that you must follow when driving a car. If you break these laws, you may have to pay a fine, lose your privilege to drive, or you may even risk going to jail. Usually, when you break a traffic law, you will be given a number of points for that violation. Once you have twelve points, you may lose your license for anywhere from 3 to 6 months. However, if you are 15 or 16 years old, have a conditional or restricted license, and receive 6 or more points, your license will be suspended for 6 months. A few of the traffic laws, which you should know about, are listed next.

- ⇒ **§ 56-1-720. Point system established; schedule of points for violations.** There is established a point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges

granted by the license to operate motor vehicles. The system shall have as its basic element a graduated scale of points assigning relative values to the various violations in accordance with the following schedule:

VIOLATION POINTS  
Reckless driving 6  
Passing stopped school bus 6  
Hit-and-run, property damages only 6  
Driving too fast for conditions, or speeding: (1) No more than 10 m.p.h. above the posted limits 2 (2) More than 10 m.p.h. but less than 25 m.p.h. above the posted limits 4 (3) 25 m.p.h. or above the posted limits 6  
Disobedience of any official traffic control device 4  
Disobedience to officer directing traffic 4  
Failing to yield right-of-way 4  
Driving on wrong side of road 4  
Passing unlawfully 4  
Turning unlawfully 4  
Driving through or within safety zone 4  
Shifting lanes without safety precaution 2  
Improper dangerous parking 2  
Following too closely 4  
Failing to dim lights 2  
Operating with improper lights 2  
Operating with improper brakes 4  
Operating a vehicle in unsafe condition 2  
Driving in improper lane 2  
Improper backing 2  
Endangerment of a highway worker, no injury 2  
Endangerment of a highway worker, injury results 4

⇒ **§ 56-1-740. Suspension of driver's license or nonresident's privilege to drive; special restricted driver's licenses.**

(A) The Department of Motor Vehicles may suspend, for not more than six months, the driver's license and privilege of a person upon a showing by its records, based on a uniform point system as authorized in this article, that the licensee has been convicted with such frequency of offenses against motor vehicle traffic laws or ordinances as to indicate a disrespect for the laws or ordinances and a disregard for the safety of other persons on the highways. For the purposes of this article, a total of twelve points assessed against a driver as determined by the values designated in Section 56-1-720 indicates disrespect and disregard...

Periods of suspension of the license or privilege of a person for various accumulation of points must be as follows, with the person having the privilege to request a review of his driving record:

- (1) twelve to fifteen points--three months' suspension;
- (2) sixteen or seventeen points--four months' suspension;
- (3) eighteen or nineteen points--five months' suspension;
- (4) twenty points and over--six months' suspension.

### **Driving Without a License (page 21)**

It is against the law for you to drive a car without having been issued a permit or a license by the DMV. Once you have been issued a license, you must have that license in your possession at all times when you are driving a vehicle.

⇒ **§ 56-1-440. Penalties for driving without license; summary court jurisdiction.**

(A) A person who drives a motor vehicle on a public highway of this State without a driver's license in violation of Section 56-1-20 is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not less than fifty dollars nor more than one hundred dollars or imprisoned for thirty days and, upon conviction of a

second offense, be fined five hundred dollars or imprisoned for forty-five days, or both, and for a third and subsequent offense must be imprisoned for not less than forty-five days nor more than six months. However, a charge of driving a motor vehicle without a driver's license must be dismissed if the person provides proof of being a licensed driver at the time of the violation to the court on or before the date this matter is set to be disposed of by the court.

(B) The summary courts are vested with jurisdiction to hear and dispose of cases involving a violation of this section.

## **Speeding (page 21)**

As a general rule, you should operate your vehicle at a speed, which is safe under the existing conditions and potential hazards of the road. Our lawmakers have determined what speed is safe in various areas and have posted speed limit signs for every driver to follow. However, when a special hazard exists, such as bad weather or road conditions, it may be a violation of the law to even travel at these posted speeds.

⇒ **§ 56-5-1520. General rules as to maximum speed limits; lower speeds may be required.**

(A) A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must be so controlled to avoid colliding with a person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care.

(B) Except when a special hazard exists that requires lower speed for compliance with subsection (A), the limits specified in this section or established as hereinafter authorized are maximum lawful speeds, and a person shall not drive a vehicle on a highway at a speed in excess of these maximum limits:

(1) seventy miles an hour on the interstate highway system and other freeways where official signs giving notice of this speed are posted;

(2) sixty miles an hour on multilane divided primary highways where official signs giving notice of this speed limit are posted;

(3) fifty-five miles an hour in other locations or on other sections of highways and unpaved roads are limited to the speed of forty miles an hour; and

(C) Thirty miles an hour is the maximum speed in an urban district. "Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred feet for a distance of a quarter of a mile or more.

(F) The driver of a vehicle shall drive, consistent with the requirements of subsection (A), at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, approaching a hillcrest, when traveling upon any narrow bridge, narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(G) A person violating the speed limits established by this section is guilty of a misdemeanor and, upon conviction for a first offense, must be fined or imprisoned as follows:

(1) in excess of the above posted limit but not in excess of ten miles an hour by a fine of not less than fifteen dollars nor more than twenty-five dollars;

(2) in excess of ten miles an hour but less than fifteen miles an hour above the posted limit by a fine of not less than twenty-five dollars nor more than fifty dollars;

(3) in excess of fifteen miles an hour but less than twenty-five miles an hour above the posted limit by a fine of not less than fifty dollars nor more than seventy-five dollars; and

(4) in excess of twenty-five miles an hour above the posted limit by a fine of not less than seventy-five dollars nor more than two hundred dollars or imprisoned for not more than thirty days.

(H) A citation for violating the speed limits issued by any authorized officer must note on it the rate of speed for which the citation is issued.

## **Racing** (page 21)

Any person who is involved with a vehicle race or speed contest on any public road, street, or highway is breaking the law. If you participate in or assist in any way with such a race, you will be liable for any injuries received by a third person.

⇒ **§ 56-5-1590. Unlawful to race or assist in racing on public roads.**

It shall be unlawful to engage in a motor vehicle race or contest for speed on any public road, street or highway in this State or to aid, abet or assist in any manner whatsoever in any such race or contest. Altering, changing, tampering with or "souping up" a motor vehicle for the purpose of racing or speeding on any public road, street or highway in this State shall be considered as aiding, abetting or assisting for the purposes of Sections 56-5-1590 to 56-5-1620.

⇒ **§ 56-5-1600. Unlawful to acquiesce in or permit use of car in race.**

It shall also be unlawful for any owner of a motor vehicle to acquiesce in or permit his car to be used by another in any motor vehicle race or contest for speed on any public road, street or highway in this State.

⇒ **§ 56-5-1620. Penalties for racing; revocation or suspension of drivers' licenses and registrations.**

Any person violating the provisions of Sections 56-5-1590 to 56-5-1620 by driving a motor vehicle shall, upon conviction, be fined not less than two hundred dollars nor more than six hundred dollars or imprisoned for not less than two months nor more than six months, or both, in the discretion of the trial judge. In addition to such penalty the driver of any vehicle who violates the provisions of Sections 56-5-1590 to 56-5-1620 shall upon conviction, entry of a plea of guilty or forfeiture of bail have his driver's license revoked for a period of one year. Any person violating the provisions of Sections 56-5-1590 to 56-5-1620 by acquiescing in or permitting the driving of his car shall, upon conviction, be fined not to exceed one hundred

dollars or imprisoned for a period not to exceed thirty days, or both, in the discretion of the court and, in addition thereto, shall have his driver's license and the registration of his vehicle suspended for a period of three months.

### **Failure to Stop for a Blue Light and Siren (page 21)**

Whenever a police officer signals you to stop by using a blue light and/or siren, you are required by law to stop. If you attempt to increase your speed or in any way avoid the police, you are guilty of a criminal offense and may have to pay a fine, spend time in jail and/or lose your driver's license for a period of time.

⇒ **§ 56-5-750. Failure to stop motor vehicle when signaled by law-enforcement vehicle.**

(A) In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse a failure to stop when the distance between the vehicles and other road conditions are such that it would be reasonable for a driver to hear or see the signals from the law enforcement vehicle.

(B) A person who violates the provisions of subsection (A):

(1) for a first offense where no great bodily injury or death resulted from the violation, is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or imprisoned for not less than ninety days nor more than three years. The department must suspend the person's driver's license for at least thirty days; or

(2) for a second or subsequent offense where no great bodily injury or death resulted from the violation, is guilty of a felony and, upon conviction, must be imprisoned for not more than five years. The person's driver's license must be suspended by the department for a period of one year from the date of the conviction.

(C) A person who violates the provisions of subsection (A) and when driving performs an act forbidden by law or neglects a duty imposed by law in the driving of the vehicle:

(1) where great bodily injury resulted, is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years; or

(2) where death resulted, is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty-five years.

(D) The department must revoke the driver's license of any person who is convicted pursuant to subsection (C)(1) or (C)(2) for a period to include any term of imprisonment, suspended sentence, parole, or probation, plus three years.

(E) "Great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss of or impairment of the function of a bodily member or organ.

### **Seat Belt and Child Passenger Restraint (page 22)**

The driver and every occupant of a vehicle must wear a fastened seat belt. It is the responsibility of the driver to make sure passengers who are age 17 and younger and who do not have a driver's license or beginner's permit are wearing their seat belts or are in a child's safety seat or booster seat.

Children under two must be in the back seat in a rear-facing child safety seat until they exceed the height or weight limit allowed by the child safety seat's manufacturer. Children who are at least two and those under two who have outgrown their rear-facing child safety seat must be secured in a forward-facing child safety seat with a harness in the back seat until they exceed the highest height or weight requirements of the forward-facing child safety seat.

Children who are at least four who have outgrown their forward-facing child safety seat must be in a booster seat in the back seat until they meet the height and fit requirements for a seat belt as described below. The booster seat must be used with both lap and shoulder belts.

Children who are at least eight or at least 57 inches tall may use a seat belt if they can be secured properly with: (1) the lap belt fitting across the child's thighs and hips and not across the abdomen; (2) the shoulder belt crossing the center of the child's chest and not the neck; and (3) the child able to sit with his back straight against the vehicle seat back cushion and his knees bent over the vehicle's seat edge without slouching. Children under eight may not sit in the front seat of a car (unless there is no back seat or there are other children under eight who are taking up all the room in the back seat).

You are subject to a fine if you are stopped with children in your car who are not in a car seat, booster seat, or wearing a seat belt as required.

⇒ **§ 56-5-6520. Mandatory use of seat belt.**

The driver and every occupant of a motor vehicle, when it is being operated on the public streets and highways of this State, must wear a fastened safety belt which complies with all provisions of federal law for its use. The driver is charged with the responsibility of requiring each occupant seventeen years of age or younger to wear a safety belt or be secured in a child restraint system as provided in Article 47 of this chapter. However, a driver is not responsible for an occupant seventeen

years of age or younger who has a driver's license, special restricted license, or beginner's permit and who is not wearing a seat belt; such occupant is in violation of this article and must be fined in accordance with Section 56-5-6540.

⇒ **§ 56-5-6530. Exceptions.**

The provisions of this article do not apply to:

- (1) a driver or occupant who possesses a written verification from a physician that he is unable to wear a safety belt for physical or medical reasons;
- (2) medical or rescue personnel attending to injured or sick individuals in an emergency vehicle when operating in an emergency situation as well as the injured or sick individuals;
- (3) school, church, or day care buses;
- (4) public transportation vehicles except taxis;
- (5) occupants of vehicles in parades;
- (6) United States mail carriers;
- (7) an occupant for which no safety belt is available because all belts are being used by other occupants;
- (8) a driver or occupants in a vehicle not originally equipped with safety belts.

⇒ **§ 56-5-6540. Penalty; nature of offense; issuance of citations at checkpoints; admissibility as evidence of negligence in civil action; searches; probable cause that violation has occurred; trial; appeals.**

(A) A person who is adjudicated to be in violation of the provisions of this article must be fined not more than twenty-five dollars, no part of which may be suspended. No court costs, assessments, or surcharges may be assessed against a person who violates a provision of this article. A person must not be fined more than fifty dollars for any one incident of one or more violations of the provisions of this article. A custodial arrest for a violation of this article must not be made, except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine. A violation of this article does not constitute a criminal offense. Notwithstanding Section 56-1-640, a violation of this article must not be:

- (1) included in the offender's motor vehicle records maintained by the Department of Motor Vehicles or in the criminal records maintained by SLED; or
- (2) reported to the offender's motor vehicle insurer.

(B) A law enforcement officer must not issue a citation to a driver or a passenger for a violation of this article when the stop is made in conjunction with a driver's license check, safety check, or registration check conducted at a checkpoint established to stop all drivers on a certain road for a period of time, except when the driver is cited for violating another motor vehicle law. The driver and any passenger shall be required to buckle up before departing the checkpoint and should the driver or the passenger refuse, then the person refusing may be charged with a primary violation.

(C) A violation of this article is not negligence per se or contributory negligence, and is not admissible as evidence in a civil action.

(D) A vehicle, driver, or occupant in a vehicle must not be searched, nor may consent to search be requested by a law enforcement officer, solely because of a violation of this article.

(E) A law enforcement officer must not stop a driver for a violation of this article except when the officer has probable cause that a violation has occurred based on his clear and unobstructed view of a driver or an occupant of the motor vehicle who is not wearing a safety belt or is not secured in a child restraint system as required by Article 47 of this chapter.

(F) A person charged with a violation of this article may admit or deny the violation, enter a plea of nolo contendere, or be tried before either a judge or a jury. If the trier of fact is convinced beyond a reasonable doubt that the person was not wearing a safety belt at the time of the incident, the penalty is a civil fine pursuant to Section 56-5-6540. If the trier of fact determines that the State has failed to prove beyond a reasonable doubt that the person was not wearing a safety belt, no penalty shall be assessed.

(G) A person found to be in violation of this article may bring an appeal to the court of common pleas pursuant to Section 18-3-10 or Section 14-25-95.

⇒ **§ 56-5-6410. Child passenger restraint systems; age and weight as basis for required restraining system; standards.**

(A) Every driver of a motor vehicle (passenger car, pickup truck, van, or recreational vehicle) operated on the highways and streets of this State when transporting a child under eight years of age upon the public streets and highways of the State must properly secure the child in the vehicle as follows:

(1) An infant or child under two years of age must be properly secured in a rear-facing child passenger restraint system in a rear passenger seat of the vehicle until the child exceeds the height or weight limit allowed by the manufacturer of the child passenger restraint system being used.

(2) A child at least two years of age or a child under two years of age who has outgrown his rear-facing child passenger restraint system must be secured in a forward-facing child passenger restraint system with a harness in a rear passenger seat of the vehicle until the child exceeds the highest height or weight requirements of the forward-facing child passenger restraint system.

(3) A child at least four years of age who has outgrown his forward-facing child passenger restraint system must be secured by a belt-positioning booster seat in a rear seat of the vehicle until he can meet the height and fit requirements for an adult safety seat belt as described in item (4). The belt-positioning booster seat must be used with both lap and shoulder belts. A booster seat must not be used with a lap belt alone.

(4) A child at least eight years of age or at least fifty-seven inches tall may be restrained by an adult safety seat belt if the child can be secured properly by an adult safety seat belt. A child is properly secured by an adult safety seat belt if:

(a) the lap belt fits across the child's thighs and hips and not across the abdomen;  
(b) the shoulder belt crosses the center of the child's chest and not the neck; and  
(c) the child is able to sit with his back straight against the vehicle seat back cushion with his knees bent over the vehicle's seat edge without slouching.

(5) For medical reasons that are substantiated with written documentation from the child's physician, advanced nurse practitioner, or physician assistant, a child who is unable to be transported in a standard child passenger safety restraint

system may be transported in a standard child passenger safety restraint system designed for his medical needs.

Any child restraint system of a type sufficient to meet the physical standards prescribed by the National Highway Traffic Safety Administration at the time of its manufacture is sufficient to meet the requirements of this article.

(B) For the purposes of this section, any portion of a recreational vehicle that is equipped with temporary living quarters shall be considered a rear passenger seat.

⇒ **§ 56-5-6420. Transportation of children with insufficient number of restraint devices.** If a motor vehicle lacks a rear passenger seat or if all of its rear seating positions are occupied by children under eight years of age, a child under eight years of age may be transported in the front seat of the motor vehicle if the child is secured properly in an appropriate child passenger safety restraint system or belt-positioning booster seat as described in § 56-5-6410(1), (2), or (3).

⇒ **§ 56-5-6440. Persons and vehicles excepted from article.**

The provisions of this article do not apply to: (1) Taxi drivers, (2) Drivers of emergency vehicles when operating in an emergency situation, (3) Church, day care and school bus drivers, (4) Public transportation operators, (5) Commercial vehicles.

## **Open Container (page 23)**

It is against the law in South Carolina for any person, regardless of age, to have an open container of alcohol in a moving vehicle. However, it is not against the law to have an open container in the trunk or luggage compartment of the vehicle.

⇒ **§ 61-4-110. Open containers in motor vehicle.**

It is unlawful for a person to have in his possession, except in the trunk or luggage compartment, beer or wine in an open container in a motor vehicle of any kind while located upon the public highways or highway rights of way of this State. This section must not be construed to prohibit the transporting of beer or wine in a closed container, and this section does not apply to vehicles parked in legal parking places during functions such as sporting events where law enforcement officers are on duty to perform traffic control duties. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days. For purposes of this section, beer or wine means any beer or wine containing one-half of one percent or more of alcohol by volume.

⇒ **§ 61-6-4020. Transportation in motor vehicle.**

(A) A person who is twenty-one years of age or older may transport lawfully acquired alcoholic liquors to and from a place where alcoholic liquors may be lawfully possessed or consumed. If the cap or seal on the container has been opened or broken, it is unlawful to transport the liquors in a motor vehicle, except

in a trunk, luggage compartment, or cargo area that is separate and distinct from the driver's and passengers' compartments. For purposes of this exception, the luggage compartment or cargo area is not required to be a closed trunk that is accessible only from the exterior of the motor vehicle. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. For purposes of this section, alcoholic liquors means all distilled spirits regardless of the percentage of alcohol by volume that they contain.

(B) Sections 61-6-4290 and 61-6-4300 do not apply to violations of this section, including violations prior to the effective date of this section.

## **DRIVING UNDER THE INFLUENCE (DUI)**

### **What is the law in South Carolina regarding driving under the influence?** **(page 23)**

It is against the law for any person to drive a vehicle while under the influence of any substance or combination of substances that impair his or her mental and physical abilities. Impairment can be inferred if a driver 21 years old or older has a blood alcohol concentration of 0.08 percent, whereas a driver **under** age 21 may be guilty of DUI with a 0.02 percent concentration.

⇒ **§ 56-5-2930. Operating motor vehicle while under influence of alcohol or drugs; penalties; enrollment in Alcohol and Drug Safety Action Program; prosecution.**

(A) It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired. A person who violates the provisions of this section is guilty of the offense of driving under the influence and, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail must be punished as follows:

*(See SC Code of Laws for full statute and applicable penalties).*

### **How does alcohol affect your driving?** (page 23)

Alcohol causes poor judgment, loss of concentration, vision problems, impaired reaction time, and other physical and mental effects. Alcohol-impaired drivers are a major threat to the safety of people using the roads.

## What is a Breathalyzer test? (page 23)

The Breathalyzer, Datamaster as it is now called, measures the percentage of alcohol in a person's blood by means of a breath sample. This test is administered at the request of the arresting officer as soon as possible after someone is arrested for DUI.

## What is the "implied consent" law? (page 24)

Any person who drives a vehicle in South Carolina and is arrested for DUI is considered to have given consent, or permission, to conduct a chemical test of his or her breath, blood, or urine to determine the presence of alcohol or drugs.

⇒ **§ 56-5-2950. Implied consent to testing for alcohol or drugs; procedures; inference of DUI.**

(A) A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol or drugs or the combination of alcohol and drugs if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. A breath test must be administered at the direction of a law enforcement officer who has arrested a person for driving a motor vehicle in this State while under the influence of alcohol, drugs, or a combination of alcohol and drugs. At the direction of the arresting officer, the person first must be offered a breath test to determine the person's alcohol concentration. If the person is physically unable to provide an acceptable breath sample because he has an injured mouth, is unconscious or dead, or for any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken. If the officer has reasonable suspicion that the person is under the influence of drugs other than alcohol, or is under the influence of a combination of alcohol and drugs, the officer may order that a urine sample be taken for testing. A breath sample taken for testing must be collected within two hours of the arrest. Any additional tests to collect other samples must be collected within three hours of the arrest. The breath test must be administered by a person trained and certified by the South Carolina Criminal Justice Academy, pursuant to SLED policies. Before the breath test is administered, an eight one-hundredths of one percent simulator test must be performed and the result must reflect a reading between 0.076 percent and 0.084 percent. Blood and urine samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, and other medical personnel trained to obtain the samples in a licensed medical facility. Blood and urine samples must be obtained and handled in accordance with procedures approved by SLED.

(B) No tests may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

- (1) he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;
- (2) his privilege to drive must be suspended for at least one month if he takes the test or gives the samples and has an alcohol concentration of fifteen one-hundredths of one percent or more;
- (3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;
- (4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and
- (5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

(C) A hospital, physician, qualified technician, chemist, or registered nurse who obtains the samples or conducts the test or participates in the process of obtaining the samples or conducting the test in accordance with this section is not subject to a cause of action for assault, battery, or another cause alleging that the drawing of blood or taking samples at the request of the arrested person or a law enforcement officer was wrongful. This release from liability does not reduce the standard of medical care required of the person obtaining the samples or conducting the test. This qualified release also applies to the employer of the person who conducts the test or obtains the samples.

(D) The person tested or giving samples for testing may have a qualified person of his own choosing conduct additional tests at his expense and must be notified in writing of that right. A person's request or failure to request additional blood or urine tests is not admissible against the person in the criminal trial. The failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples obtained at the direction of the law enforcement officer.

(E) The arresting officer must provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests. Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which performs blood tests to determine a person's alcohol concentration. If the medical facility obtains the blood sample but refuses or fails to test the blood sample to determine the person's alcohol concentration, SLED must test the blood sample and provide the result to the person and to the arresting officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in any judicial or administrative proceeding.

SLED must administer the provisions of this subsection and must make regulations necessary to carry out its provisions. The costs of the tests administered at the direction of the law enforcement officer must be paid from the general fund of the state. However, if the person is subsequently convicted of violating Section 56-5-2930, 56-5-2933, or 56-5-2945, then, upon conviction, the person must pay twenty-five dollars for the costs of the tests. The twenty-five dollars must be placed by the Comptroller General into a special restricted account to be used by the State

Law Enforcement Division to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

(F) A qualified person who obtains samples or administers the tests or assists in obtaining samples or the administration of tests at the direction of a law enforcement officer is released from civil and criminal liability unless the obtaining of samples or tests is performed in a negligent, reckless, or fraudulent manner. No person may be required by the arresting officer, or by another law enforcement officer, to obtain or take any sample of blood or urine.

(G) In the criminal prosecution for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 the alcohol concentration at the time of the test, as shown by chemical analysis of the person's breath or other body fluids, gives rise to the following:

(1) if the alcohol concentration was at that time five one-hundredths of one percent or less, it is conclusively presumed that the person was not under the influence of alcohol;

(2) if the alcohol concentration was at that time in excess of five one-hundredths of one percent but less than eight one-hundredths of one percent, this fact does not give rise to any inference that the person was or was not under the influence of alcohol, but this fact may be considered with other evidence in determining the guilt or innocence of the person; or

(3) if the alcohol concentration was at that time eight one-hundredths of one percent or more, it may be inferred that the person was under the influence of alcohol.

The provisions of this section must not be construed as limiting the introduction of any other evidence bearing upon the question of whether or not the person was under the influence of alcohol, drugs, or a combination of them.

(H) A person who is unconscious or otherwise in a condition rendering him incapable of refusal is considered to be informed and not to have withdrawn the consent provided by subsection (A) of this section.

(I) A person required to submit to tests by the arresting law enforcement officer must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any trial or other proceeding in which the results of the tests are used as evidence. A person who obtains additional tests must furnish a copy of the time, method, and results of any test to the officer before any trial, hearing, or other proceeding in which the person attempts to use the results of the additional tests as evidence.

(J) Policies, procedures, and regulations promulgated by SLED may be reviewed by the trial judge or hearing officer on motion of either party. The failure to follow any of these policies, procedures, and regulations, or the provisions of this section, shall result in the exclusion from evidence of any test results, if the trial judge or hearing officer finds that this failure materially affected the accuracy or reliability of the test results or the fairness of the testing procedure and the court trial judge or hearing officer rules specifically as to the manner in which the failure materially affected the accuracy or reliability of the test results or the fairness of the procedure.

(K) If a state employee charged with the maintenance of breath testing devices in this State and the administration of breath testing policy is required to testify at an

administrative hearing or court proceeding, the entity employing the witness may charge a reasonable fee to the defendant for these services.

## **What happens if a person refuses to be tested? (page 24)**

If a driver refuses to be tested, then his or her driver's license is automatically suspended. If the driver is under 21 years of age, he or she loses the privilege to drive for a period of 6 months. .

⇒ **§ 56-5-2951. Suspension of license for refusal to submit to testing or for certain level of alcohol concentration; temporary alcohol license; administrative hearing; special restricted driver's license; administrative hearings; restricted driver's license; penalties.**

(A) The Department of Motor Vehicles must suspend the driver's license, permit, or nonresident operating privilege of or deny the issuance of a license or permit to a person who drives a motor vehicle and refuses to submit to a test provided for in Section 56-5-2950 or has an alcohol concentration of fifteen one-hundredths of one percent or more. The arresting officer must issue a notice of suspension which is effective beginning on the date of the alleged violation of Section 56-5-2930, 56-5-2933, or 56-5-2945.

(B) Within thirty days of the issuance of the notice of suspension, the person may:

- (1) obtain a temporary alcohol license by filing with the Department of Motor Vehicles a form for this purpose. A one hundred dollar fee must be assessed for obtaining a temporary alcohol license. Twenty-five dollars of the fee must be retained by the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy-five dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray its expenses. The temporary alcohol license allows the person to drive without any restrictive conditions pending the outcome of the administrative hearing provided for in subsection (F) or the final decision or disposition of the matter. If the suspension is upheld at the administrative hearing, the temporary alcohol license remains in effect until the Department of Motor Vehicles issues the hearing officer's decision and sends notice to the person that he is eligible to receive a restricted license pursuant to subsection (H); and

- (2) request an administrative hearing.

At the administrative hearing if:

- (a) the suspension is upheld, the person's driver's license, permit, or nonresident operating privilege must be suspended or the person must be denied the issuance of a license or permit for the remainder of the suspension period provided for in subsection (I). Within thirty days of the issuance of the notice that the suspension has been upheld, the person must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990;

- (b) the suspension is overturned, the person must have his driver's license, permit, or nonresident operating privilege reinstated.

The provisions of this subsection do not affect the trial for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945.

(C) The period of suspension provided for in subsection (I) begins on the day the notice of suspension is issued, or at the expiration of any other suspensions, and continues until the person applies for a temporary alcohol license and requests an administrative hearing.

(D) If a person does not request an administrative hearing, he waives his right to the hearing, and his suspension must not be stayed but continues for the period provided for in subsection (I).

(E) The notice of suspension must advise the person of his right to obtain a temporary alcohol driver's license and to request an administrative hearing. The notice of suspension also must advise the person that, if he does not request an administrative hearing within thirty days of the issuance of the notice of suspension, he waives his right to the administrative hearing, and the suspension continues for the period provided for in subsection (I). The notice of suspension must also advise the person that if the suspension is upheld at the administrative hearing or if he does not request an administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

(F) An administrative hearing must be held after the request for the hearing is received by the Division of Motor Vehicle Hearings. The scope of the hearing is limited to whether the person:

- (1) was lawfully arrested or detained;
- (2) was given a written copy of and verbally informed of the rights enumerated in Section 56-5-2950;
- (3) refused to submit to a test pursuant to Section 56-5-2950; or
- (4) consented to taking a test pursuant to Section 56-5-2950, and the:
  - (a) reported alcohol concentration at the time of testing was fifteen one-hundredths of one percent or more;
  - (b) individual who administered the test or took samples was qualified pursuant to Section 56-5-2950;
  - (c) tests administered and samples obtained were conducted pursuant to Section 56-5-2950; and
  - (d) machine was working properly.

Nothing in this section prohibits the introduction of evidence at the administrative hearing on the issue of the accuracy of the breath test result.

A written order must be issued to all parties either reversing or upholding the suspension of the person's license, permit, or nonresident's operating privilege, or denying the issuance of a license or permit. If the suspension is upheld, the person must receive credit for the number of days his license was suspended before he received a temporary alcohol license and requested the administrative hearing.

(G) An administrative hearing is a contested case proceeding under the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with its appellate rules. The filing of an appeal stays the suspension until a final decision is issued on appeal.

(H)(1) If the suspension is upheld at the administrative hearing, the person must enroll in an Alcohol and Drug Safety Action Program pursuant to Section

56-5-2990 and may apply for a restricted license if he is employed or enrolled in a college or university. The restricted license permits him to drive only to and from work and his place of education and in the course of his employment or education during the period of suspension. The restricted license also permits him to drive to and from the Alcohol Drug Safety Action Program classes or to a court-ordered drug program. The department may issue the restricted license only upon showing by the individual that he is employed or enrolled in a college or university, that he lives further than one mile from his place of employment, place of education, or location of his Alcohol and Drug Safety Action Program classes, or the location of his court-ordered drug program, and that there is no adequate public transportation between his residence and his place of employment, his place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court-ordered drug program.

(2) If the department issues a restricted license, it must designate reasonable restrictions on the times during which and routes on which the individual may drive a motor vehicle. A change in the employment hours, place of employment, status as a student, status of attendance of Alcohol and Drug Safety Action Program classes, status of attendance of his court-ordered drug program, or residence must be reported immediately to the department by the licensee.

(3) The fee for a restricted license is one hundred dollars, but no additional fee may be charged because of changes in the place and hours of employment, education, or residence. Twenty dollars of this fee must be deposited in the state general fund, and eighty dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of the Department of Motor Vehicles.

(4) Driving a motor vehicle outside the time limits and route imposed by a restricted license by the person issued that license is a violation of Section 56-1-460.

(1)(1) The period of a driver's license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, an arrested person who has no previous convictions for violating Section 56-5-2930, 56-5-2933, or 56-5-2945, or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or any other drug within the ten years preceding a violation of this section, and who has had no previous suspension imposed pursuant to Section 56-5-2950 or 56-5-2951 within the ten years preceding a violation of this section is:

(a) six months for a person who refuses to submit to a test pursuant to Section 56-5-2950; or

(b) one month for a person who takes a test pursuant to Section 56-5-2950 and has an alcohol concentration of fifteen one-hundredths of one percent or more.

(2) The period of a driver's license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, an arrested person who has been convicted previously for violating Section 56-5-2930, 56-5-2933, or 56-5-2945, or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or any other drug within the ten years preceding a violation of this section, or who has had a previous suspension imposed pursuant to Section 56-5-2950 or 56-5-2951 within the ten years preceding a violation of this section is:

(a) for a second offense, nine months if he refuses to submit to a test pursuant to Section 56-5-2950 or two months if he takes a test pursuant to Section 56-5-2950 and has an alcohol concentration of fifteen one-hundredths of one percent or more;

(b) for a third offense, twelve months if he refuses to submit to a test pursuant to Section 56-5-2950 or three months if he takes a test pursuant to Section 56-5-2950 and has an alcohol concentration of fifteen one-hundredths of one percent or more;

and

(c) for a fourth or subsequent offense, fifteen months if he refuses to submit to a test pursuant to Section 56-5-2950 or four months if he takes a test pursuant to Section 56-5-2950 and has an alcohol concentration of fifteen one-hundredths of one percent or more.

(J) A person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension under subsection (I) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program in which he is enrolled. After the person's driving privilege is restored, he must continue the services of the Alcohol and Drug Safety Action Program in which he is enrolled. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the Alcohol and Drug Safety Action Program, the person's license must be suspended until the completion of the Alcohol and Drug Safety Action Program. A person must be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 before his driving privilege can be restored at the conclusion of the suspension period.

(K) When a nonresident's privilege to drive a motor vehicle in this State has been suspended under the provisions of this section, the department must give written notice of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license or permit.

(L) The department must not suspend the privilege to drive of a person under the age of twenty-one pursuant to Section 56-1-286 if the person's privilege to drive has been suspended under this section arising from the same incident.

(M) A person whose driver's license or permit is suspended pursuant to this section is not required to file proof of financial responsibility.

(N) An insurer may not increase premiums on, add surcharges to, or cancel the automobile insurance of a person charged with a violation of Section 56-1-286, 56-5-2930, 56-5-2933, or 56-5-2945, or another law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or any other drug based solely on the violation unless he is convicted of the violation.

(O) The department must administer the provisions of this section and must promulgate regulations necessary to carry out its provisions.

(P) If a person does not request an administrative hearing within the thirty-day period as authorized pursuant to this section, the person may file with the department a form after enrolling in a certified Alcohol and Drug Safety Action Program to apply for a restricted license. The restricted license permits him to drive only to and from work and his place of education and in the course of his employment or education during the period of suspension. The restricted license also permits him to drive to and from Alcohol and Drug Safety Action Program

classes or a court-ordered drug program. The department may issue the restricted license at any time following the suspension upon a showing by the individual that he is employed or enrolled in a college or university, that he lives further than one mile from his place of employment, place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court-ordered drug program, and that there is no adequate public transportation between his residence and his place of employment, his place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court-ordered drug program. The department must designate reasonable restrictions on the times during which and routes on which the individual may drive a motor vehicle. A change in the employment hours, place of employment, status as a student, status of attendance of Alcohol and Drug Safety Action Program classes, status of his court-ordered drug program, or residence must be reported immediately to the department by the licensee. The route restrictions, requirements, and fees imposed by the department for the issuance of the restricted license issued pursuant to this item are the same as those provided in this section had the person requested an administrative hearing. A restricted license is valid until the person successfully completes a certified Alcohol and Drug Safety Action Program, unless the person fails to complete or make satisfactory progress to complete the program.

### **What happens if a person takes the test? (page 24)**

The results of the Datamaster test can be used against the driver in court. Also, if the driver is over age 21 and his or her test registers a 0.08 or greater, that person's driver's license is suspended for 30 days. If a driver under age 21 takes the test and registers a breath alcohol concentration of 0.02 or greater, then his or her driving privileges are suspended for 3 months.

### **What are the penalties for DUI? (page 24)**

Depending on the circumstances and the prior record of the driver, a person convicted of DUI may be fined from \$400 to \$10,000 and imprisoned for 2 days to 7 years. The offender's driver's license will also be suspended, and he or she must complete an Alcohol and Drug Safety Action Program before his or her license can be given back.

⇒ **§ 56-5-2930. Operating motor vehicle while under influence of alcohol or drugs; penalties; enrollment in Alcohol and Drug Safety Action Program; prosecution.**

(A) It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other

drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired. A person who violates the provisions of this section is guilty of the offense of driving under the influence and, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail must be punished as follows:  
(See SC Code of Laws for full statute and applicable penalties).

⇒ **§ 56-1-286. Suspension of license or permit or denial of issuance of license or permit to persons under the age of twenty-one who drive motor vehicles with certain amount of alcohol concentration.**

(A) The Department of Motor Vehicles must suspend the driver's license, permit, or nonresident operating privilege of, or deny the issuance of a license or permit to a person under the age of twenty-one who drives a motor vehicle and has an alcohol concentration of two one-hundredths of one percent or more. In cases in which a law enforcement officer initiates suspension proceedings for a violation of this section, the officer has elected to pursue a violation of this section and is subsequently prohibited from prosecuting the person for a violation of Section 63-19-2440, 63-19-2450, 56-5-2930, or 56-5-2933, arising from the same incident.

(B) A person under the age of twenty-one who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath or blood for the purpose of determining the presence of alcohol.

(C) A law enforcement officer who has arrested a person under the age of twenty-one for a violation of Chapter 5 of this title (Uniform Act Regulating Traffic on Highways), or any other traffic offense established by a political subdivision of this State, and has reasonable suspicion that the person under the age of twenty-one has consumed alcoholic beverages and driven a motor vehicle may order the testing of the person arrested to determine the person's alcohol concentration.

A law enforcement officer may detain and order the testing of a person to determine the person's alcohol concentration if the officer has reasonable suspicion that a motor vehicle is being driven by a person under the age of twenty-one who has consumed alcoholic beverages.

(D) A test must be administered at the direction of the primary investigating law enforcement officer. At the direction of the officer, the person first must be offered a breath test to determine the person's alcohol concentration. If the person physically is unable to provide an acceptable breath sample because he has an injured mouth or is unconscious or dead, or for any other reason considered acceptable by licensed medical personnel, a blood sample may be taken. The breath test must be administered by a person trained and certified by the South Carolina Criminal Justice Academy, pursuant to SLED policies. The primary investigating officer may administer the test. Blood samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, or other medical personnel trained to obtain these samples in a licensed medical facility. Blood samples must be

obtained and handled in accordance with procedures approved by the division. The division shall administer the provisions of this subsection and shall promulgate regulations necessary to carry out its provisions. The costs of the tests administered at the direction of the officer must be paid from the general fund of the State. However, if the person is subsequently convicted of violating Section 56-5-2930, 56-5-2933, or 56-5-2945, then, upon conviction, the person must pay twenty-five dollars for the costs of the tests. The twenty-five dollars must be placed by the Comptroller General into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

The person tested or giving samples for testing may have a qualified person of his choice conduct additional tests at the person's expense and must be notified in writing of that right. A person's request or failure to request additional blood tests is not admissible against the person in any proceeding. The failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples taken at the direction of the officer. The officer must provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests. Affirmative assistance shall, at a minimum, include providing transportation for the person to the nearest medical facility which provides blood tests to determine a person's alcohol concentration. If the medical facility obtains the blood sample but refuses or fails to test the blood to determine the person's alcohol concentration, SLED must test the blood and provide the result to the person and to the officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in any judicial or administrative proceeding.

(E) A qualified person and his employer who obtain samples or administer the tests or assist in obtaining samples or administering of tests at the direction of the primary investigating officer are immune from civil and criminal liability unless the obtaining of samples or the administering of tests is performed in a negligent, reckless, or fraudulent manner. A person may not be required by the officer ordering the tests to obtain or take any sample of blood or urine.

(F) If a person refuses upon the request of the primary investigating officer to submit to chemical tests as provided in subsection (C), the department must suspend his license, permit, or any nonresident operating privilege, or deny the issuance of a license or permit to him for:

(1) six months; or

(2) one year, if the person, within the five years preceding the violation of this section, has been previously convicted of violating Section 56-5-2930, 56-5-2933, or 56-5-2945 or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug or has had a previous suspension imposed pursuant to Section 56-1-286, 56-5-2950, or 56-5-2951.

(G) If a person submits to a chemical test and the test result indicates an alcohol concentration of two one-hundredths of one percent or more, the department must suspend his license, permit, or any nonresident operating privilege, or deny the issuance of a license or permit to him for:

(1) three months; or

(2) six months, if the person, within the five years preceding the violation of this section, has been previously convicted of violating Section 56-5-2930, 56-5-2933, or 56-5-2945 or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or any other drug or has had a previous suspension imposed pursuant to Section 56-1-286, 56-5-2950, or 56-5-2951.

(H) A person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension under subsection (F) or (G) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program in which he is enrolled. After the person's driving privilege is restored, he must continue to participate in the Alcohol and Drug Safety Action Program in which he is enrolled. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the Alcohol and Drug Safety Action Program, the person's license must be suspended until he completes the Alcohol and Drug Safety Action Program. A person must be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 before his driving privilege can be restored at the conclusion of the suspension period.

(I) A test may not be administered or samples taken unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

(1) he does not have to take the test or give the samples but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the tests and that his refusal may be used against him in court;

(2) his privilege to drive must be suspended for at least three months if he takes the test or gives the samples and has an alcohol concentration of two one-hundredths of one percent or more;

(3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;

(4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and

(5) he must enroll in an Alcohol and Drug Safety Action Program within thirty days of the issuance of the notice of suspension if he does not request an administrative hearing or within thirty days of the issuance of notice that the suspension has been upheld at the administrative hearing.

The primary investigating officer must notify promptly the department of the refusal of a person to submit to a test requested pursuant to this section as well as the test result of any person who submits to a test pursuant to this section and registers an alcohol concentration of two one-hundredths of one percent or more. The notification must be in a manner prescribed by the department.

(J) If the test registers an alcohol concentration of two one-hundredths of one percent or more or if the person refuses to be tested, the primary investigating officer must issue a notice of suspension, and the suspension is effective beginning on the date of the alleged violation of this section. The person, within thirty days of the issuance of the notice of suspension, must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 if he does not request an administrative hearing. If the person does not request an administrative

hearing and does not enroll in an Alcohol and Drug Safety Action Program within thirty days, the suspension remains in effect, and a temporary alcohol license must not be issued. If the person drives a motor vehicle during the period of suspension without a temporary alcohol license, the person must be penalized for driving while his license is suspended pursuant to Section 56-1-460.

(K) Within thirty days of the issuance of the notice of suspension the person may:

- (1) obtain a temporary alcohol license by filing with the department a form for this purpose. A one-hundred-dollar fee must be assessed for obtaining a temporary alcohol license. Twenty-five dollars of the fee must be retained by the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy-five dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray its expenses. The temporary alcohol license allows the person to drive a motor vehicle without any restrictive conditions pending the outcome of the administrative hearing provided for in this section or the final decision or disposition of the matter; and

- (2) request an administrative hearing. At the administrative hearing if:

- (a) the suspension is upheld, the person must enroll in an Alcohol and Drug Safety Action Program and his driver's license, permit, or nonresident operating privilege must be suspended or the person must be denied the issuance of a license or permit for the remainder of the suspension periods provided for in subsections (F) and (G); or

- (b) the suspension is overturned, the person must have his driver's license, permit, or nonresident operating privilege reinstated.

(L) The periods of suspension provided for in subsections (F) and (G) begin on the day the notice of suspension is issued, or at the expiration of any other suspensions, and continue until the person applies for a temporary alcohol license and requests an administrative hearing.

(M) If a person does not request an administrative hearing, he shall have waived his right to the hearing and his suspension must not be stayed but shall continue for the periods provided for in subsections (F) and (G).

(N) The notice of suspension must advise the person of the requirement to enroll in an Alcohol and Drug Safety Action Program and of his right to obtain a temporary alcohol license and to request an administrative hearing. The notice of suspension also must advise the person that, if he does not request an administrative hearing within thirty days of the issuance of the notice of suspension, he must enroll in an Alcohol and Drug Safety Action Program, and he waives his right to the administrative hearing, and the suspension continues for the periods provided for in subsections (F) and (G).

(O) An administrative hearing must be held after the request for the hearing is received by the Division of Motor Vehicle Hearings. The scope of the hearing is limited to whether the person:

- (1) was lawfully arrested or detained;

- (2) was given a written copy of and verbally informed of the rights enumerated in subsection (I);

- (3) refused to submit to a test pursuant to this section; or

- (4) consented to taking a test pursuant to this section, and the:

- (a) reported alcohol concentration at the time of testing was two one-hundredths of one percent or more;
- (b) individual who administered the test or took samples was qualified pursuant to this section;
- (c) test administered and samples taken were conducted pursuant to this section; and
- (d) the machine was operating properly.

Nothing in this section prohibits the introduction of evidence at the administrative hearing on the issue of the accuracy of the breath test result.

A written order must be issued to all parties either reversing or upholding the suspension of the person's license, permit, or nonresident's operating privilege, or denying the issuance of a license or permit. If the suspension is upheld, the person must receive credit for the number of days his license was suspended before he received a temporary alcohol license and requested the administrative hearing.

(P) An administrative hearing is a contested proceeding under the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with its appellate rules. The filing of an appeal shall stay the suspension until a final decision is issued.

(Q) A person who is unconscious or otherwise in a condition rendering him incapable of refusal is considered to be informed and not to have withdrawn the consent provided for in subsection (B) of this section.

(R) When a nonresident's privilege to drive a motor vehicle in this State has been suspended under the procedures of this section, the department shall give written notice of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license or permit.

(S) A person required to submit to a test must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any proceeding in which the results of the tests are used as evidence. A person who obtains additional tests shall furnish a copy of the time, method, and results of any additional tests to the officer before any trial, hearing, or other proceeding in which the person attempts to use the results of the additional tests as evidence.

(T) A person whose driver's license or permit is suspended under this section is not required to file proof of financial responsibility.

(U) The department shall administer the provisions of this section, not including subsection (D), and shall promulgate regulations necessary to carry out its provisions.

(V) Notwithstanding any other provision of law, no suspension imposed pursuant to this section is counted as a demerit or result in any insurance penalty for automobile insurance purposes if at the time he was stopped, the person whose license is suspended had an alcohol concentration that was less than eight one-hundredths of one percent.

⇒ **§ 56-5-2941. Penalties; installation of ignition interlock device.**

(A) Except as otherwise provided in this section, in addition to the penalties required and authorized to be imposed against a person violating the provisions of Section 56-5-2930, 56-5-2933, or 56-5-2945, or violating the provisions of another

law of any other state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, the Department of Motor Vehicles must require the person, if he is a subsequent offender and a resident of this State, to have installed on any motor vehicle the person drives an ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. The Department of Motor Vehicles may waive the requirements of this section if it finds that the offender has a medical condition that makes him incapable of properly operating the installed device.

The length of time that an interlock device is required to be affixed to a motor vehicle following the completion of a period of license suspension imposed on the offender is two years for a second offense, three years for a third offense, and the remainder of the offender's life for a fourth or subsequent offense. Notwithstanding the pleadings, for purposes of a second or a subsequent offense, the specified length of time that an interlock device is required to be affixed to a motor vehicle is based on the Department of Motor Vehicle's records for offenses pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945.

(B) If a person who is a subsequent offender and a resident of this State is convicted of violating the provisions of a law of any other state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, and, as a result of the conviction, the person is subject to an ignition interlock device requirement in the other state, the person is subject to the requirements of this section for the length of time that would have been required for an offense committed in South Carolina, or for the length of time that is required by the other state, whichever is longer.

(C) If a person from another state becomes a resident of South Carolina while subject to an ignition interlock device requirement in another state, the person may only obtain a South Carolina driver's license if the person enrolls in the South Carolina ignition interlock device program pursuant to this section. The person is subject to the requirements of this section for the length of time that would have been required for an offense committed in South Carolina, or for the length of time that is required by the other state, whichever is longer.

(D) The offender shall be subject to an Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services. An offender receiving a total of two points will have their length of time that the interlock device is required extended by two months. An offender receiving a total of three points will have their length of time that the interlock device is required extended by four months and must submit to a substance abuse assessment pursuant to Section 56-5-2990 and successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. Should the individual not complete the recommended plan, or not make progress toward completing the plan, the Department of Motor Vehicles must suspend the individual's driver's license until the plan is completed or progress is being made toward completing the plan. An offender receiving a total of four points shall have their license suspended for a period of one year and submit to a substance abuse assessment pursuant to Section 56-5-2990 and successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. Completion of the plan is mandatory as a condition of reinstatement of

the person's driving privileges. The Department of Alcohol and Other Drug Abuse Services is responsible for notifying the Department of Motor Vehicles of an individual's completion and compliance with education and treatment programs.

(E) The cost of the interlock device must be borne by the offender. However, if the offender believes he is indigent and cannot afford the cost of the ignition interlock device, the offender may submit an affidavit of indigency to the Department of Probation, Parole and Pardon Services for a determination of indigency as it pertains to the cost of the ignition interlock device. The affidavit of indigency form must be made publicly accessible on the Department of Probation, Parole and Pardon Services' Internet web site. If the Department of Probation, Parole and Pardon Services determines that the offender is indigent as it pertains to the ignition interlock device, it may authorize an interlock device to be affixed to the motor vehicle and the cost of the installation and use of the ignition interlock device to be paid for by the Interlock Device Fund managed by the Department of Probation, Parole and Pardon Services. For purposes of this section, a person is indigent if the person is financially unable to afford the cost of the ignition interlock device. In making a determination whether a person is indigent, all factors concerning the person's financial conditions should be considered including, but not limited to, income, debts, assets, number of dependants claimed for tax purposes, living expenses, and family situation. A presumption that the person is indigent is created if the person's net family income is less than or equal to the poverty guidelines established and revised annually by the United States Department of Health and Human Services published in the Federal Register. "Net income" means gross income minus deductions required by law. The determination of indigency is subject to periodic review at the discretion of the Department of Probation, Parole and Pardon Services.

(F) The ignition interlock service provider must collect and remit monthly to the Interlock Device Fund a fee as determined by the Department of Probation, Parole and Pardon Services not to exceed three hundred sixty dollars per year for each year the person is required to drive a vehicle with an ignition interlock device. Any ignition service provider failing to properly remit funds to the Interlock Device Fund may be decertified as an ignition interlock service provider by the Department of Probation, Parole and Pardon Services. If a service provider is decertified for failing to remit funds to the Interlock Device Fund, the cost for removal and replacement of an ignition interlock device must be borne by the service provider.

(G) The offender must have the interlock device inspected every sixty days to verify that the device is affixed to the motor vehicle and properly operating, and to allow for the preparation of an interlock device inspection report by the service provider indicating the offender's alcohol content at each attempt to start and running re-test during each sixty-day period. Only a service provider authorized by the Department of Probation, Parole and Pardon Services to perform inspections on interlock devices may conduct inspections. The service provider immediately must report any devices that fail inspection to the Department of Probation, Parole and Pardon Services. The report must contain the name of the offender, identify the vehicle upon which the failed device is installed and the reason for the failed inspection, and indicate the offender's alcohol content at each attempt to start and running re-test during each sixty-day period. Failure of the offender to have the

interlock device inspected every sixty days will result in one interlock device point. Upon review of the interlock device inspection report, if the report reflects that the offender attempted to start the motor vehicle with an alcohol concentration of two one-hundredths of one percent or more, the offender is assessed one-half interlock device point. Upon review of the interlock device inspection report, if the report reflects that the offender violated a running re-test by having an alcohol concentration between two one-hundredths of one percent and less than four one-hundredths of one percent, the offender is assessed one-half interlock device point. Upon review of the interlock device inspection report, if the report reflects that the offender violated a running re-test by having an alcohol concentration between four one-hundredths of one percent and less than fifteen one-hundredths of one percent, the offender is assessed one interlock device point. Upon review of the interlock device inspection report, if the report reflects that the offender violated a running re-test by having an alcohol concentration above fifteen one-hundredths of one percent, the offender is assessed two interlock device points. An individual may appeal any interlock device points received to an administrative hearing officer with the Department of Probation, Parole and Pardon Services through a process established by the Department of Probation, Parole and Pardon Services. The administrative hearing officer's decision on appeal shall be final and no appeal from such decision shall be allowed.

(H) Ten years from the date of the person's last conviction and every five years thereafter a fourth or subsequent offender whose license has been reinstated pursuant to Section 56-1-385 may apply to the Department of Probation, Parole and Pardon Services for removal of the ignition interlock device and the removal of the restriction from his driver's license. The Department of Probation, Parole and Pardon Services may, for good cause shown, remove the device and remove the restriction from the offender's license.

(I) Except as otherwise provided in this section, it is unlawful for a person issued a driver's license with an ignition interlock restriction to drive a motor vehicle that is not equipped with a properly operating, certified ignition interlock device. A person who violates this section must be punished in the manner provided by law.

(J) An offender that is required in the course and scope of his employment to drive a motor vehicle owned by the offender's employer may drive his employer's motor vehicle without installation of an ignition interlock device, provided that the offender's use of the employer's motor vehicle is solely for the employer's business purposes. This subsection does not apply to an offender who is self-employed or to an offender who is employed by a business owned in whole or in part by the offender or a member of the offender's household or immediate family unless during the defense of a criminal charge, the court finds that the vehicle's ownership by the business serves a legitimate business purpose and that titling and registration of the vehicle by the business was not done to circumvent the intent of this section.

(K) It is unlawful for a person to tamper with or disable, or attempt to tamper with or disable, an ignition interlock device installed on a motor vehicle pursuant to this section. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(L) It is unlawful for a person to knowingly rent, lease, or otherwise provide an offender with a motor vehicle without a properly operating, certified ignition interlock device. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(M) It is unlawful for an offender to solicit or request another person, or for a person to solicit or request another person on behalf of an offender, to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(N) It is unlawful for another person to engage an ignition interlock device to start a motor vehicle with a device installed pursuant to this section. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(O) Only ignition interlock devices certified by the Department of Probation, Parole and Pardon Services may be used to fulfill the requirements of this section.

(1) The Department of Probation, Parole and Pardon Services must certify whether a device meets the accuracy requirements and specifications provided in guidelines or regulations adopted by the National Highway Traffic Safety Administration, as amended from time to time. All devices certified to be used in South Carolina must be set to prohibit the starting of a motor vehicle when an alcohol concentration of two one-hundredths of one percent or more is measured and all running re-tests must record violations of an alcohol concentration of two one-hundredths of one percent or more.

(2) The Department of Probation, Parole and Pardon Services shall maintain a current list of certified devices and their manufacturers. The list must be updated at least quarterly. If a particular certified device fails to continue to meet federal requirements, the device must be decertified, may not be used until it is compliant with federal requirements, and must be replaced with a device that meets federal requirements. The cost for removal and replacement must be borne by the manufacturer of the noncertified device.

(3) Only ignition interlock installers certified by the Department of Probation, Parole and Pardon Services may install and service ignition interlock devices required pursuant to this section. The Department of Probation, Parole and Pardon Services shall maintain a current list of vendors that are certified to install the devices.

(P) In addition to availability under the Freedom of Information Act, any Department of Probation, Parole and Pardon Services policy concerning ignition interlock devices must be made publicly accessible on the Department of Probation, Parole and Pardon Service's Internet web site.

(Q) The Department of Probation, Parole and Pardon Services shall develop policies including, but not limited to, the certification, use, maintenance, and operation of ignition interlock devices and the Interlock Device Fund.

# JUVENILE DELINQUENCY & CRIMINAL ACTS

## THE COURT SYSTEM

### What happens when a minor gets in trouble? (page 25)

In South Carolina, if you break the law while you are under the age of 18 (or under 17 for some serious crimes), you are treated as a juvenile. Juveniles who are charged with a criminal offense go to the family court. In family court, a juvenile has the right to have an attorney and the right to a hearing before a family court judge, but a juvenile does not have the right to a jury trial.

Being "arrested" and going to court is serious. (Juveniles are not actually "arrested," they are "taken into custody" by law enforcement.) Depending on your age and the seriousness of the offense, you could be placed in a juvenile corrections facility (which is not very different from a prison, except everyone is under 19).

Upon turning 18, if you have been taken into custody for, charged with, or adjudicated delinquent for having committed a status or a nonviolent offense and you have successfully completed any sentence imposed, you may petition the court to destroy all records related to the offense. The judge will decide whether or not to destroy the records.

#### ⇒ **§ 63-19-20. Definitions.**

When used in this chapter and unless otherwise defined or the specific context indicates otherwise:

(1) "Child" or "juvenile" means a person less than eighteen years of age. "Child" or "juvenile" does not mean a person seventeen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person seventeen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.

#### ⇒ **§ 63-19-2050. Petition for record destruction.**

(A)(1) A person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense or a nonviolent crime, as defined in Section 16-1-70, may petition the court for an order

expunging all official records relating to:

- (a) being taken into custody;
- (b) the charges filed against the person;
- (c) the adjudication; and
- (d) the disposition.

(2) A person may not petition the court if the person 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.

(B) A prosecution or law enforcement agency may file an objection to the expungement. If an objection is filed, the expungement must be heard by the court. The prosecution or law enforcement agency's reason for objecting must be that the person has other charges pending or the charges are not eligible for expungement. The prosecution or law enforcement agency shall notify the person of the objection. The notice must be given in writing at the most current address on file with the court, or through the person's counsel of record.

(C)(1) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense, the court shall grant the expungement order. If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed multiple status offenses, the court may grant an expungement order for the multiple status offenses.

(2) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a nonviolent crime, as defined in Section 16-1-70, the court may grant the expungement order. For the purpose of this section, any number of offenses for which the individual received youthful offender sentences at a single sentencing proceeding for offenses that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.

(3) The court shall not grant the expungement order unless the court finds that the person is at least eighteen years of age, has successfully completed any dispositional sentence imposed, has not been subsequently adjudicated for or convicted of any criminal offense, and does not have any criminal charges pending in family court or general sessions court. If the person was found not guilty in an adjudicatory hearing in the family court, the court shall grant the expungement order regardless of the person's age and the person must not be charged a fee for the expungement. An adjudication for a violent crime, as defined in Section 16-1-60, must not be expunged.

(D) If the expungement order is granted by the court, the records must be destroyed or retained by any law enforcement agency or municipal, county, state agency, or department pursuant to the provisions of Section 17-1-40.

(E) The effect of the expungement 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 expungement order has been entered may be held thereafter under any provision of 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.

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

(G) The judge, at the time of adjudication, shall notify the person of the person's ability to have the person's record expunged, the conditions that must be met, as well as the process for receiving an expungement in the particular jurisdiction pursuant to this section.

### **When is a juvenile treated like an adult in court? (page 25)**

When you turn 18 years old (17 for some serious offenses), you are no longer dealt with in family court. Instead, you are treated as an adult in either magistrate or general sessions court and are subject to the same types of punishment as an adult for the crimes you commit. Also, a person under age 18 may be treated as an adult (or "waived" to adult court). In general, the more serious the offense, the more likely it is the court can treat you like an adult at a young age.

⇒ See § 63-19-20 for definition of "Child "

⇒ A child who is 14, 15, 16, or 17 may be waived to adult court for allegedly committing certain offenses after a full investigation and a hearing before a family court judge.

⇒ A child of any age who has allegedly committed murder may be waived to adult court.

⇒ **§ 63-19-1210. Transfer of jurisdiction.**

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

(1) If, during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this State, it is ascertained that the child was under the age of eighteen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the Constitution gives to the circuit court exclusive jurisdiction or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall order the child to be taken immediately to the place of detention designated by the court or to that court itself, or shall release the child to the custody of some suitable person to be brought before the court at a time designated. The court then shall proceed as provided in this chapter. The provisions of this section are applicable to all existing offenses and to offenses

created in the future unless the General Assembly specifically directs otherwise.

(2) Whenever a child is brought before a magistrate or city recorder and, in the opinion of the magistrate or city recorder, the child should be brought to the family court of competent jurisdiction under the provisions of this section, the magistrate or city recorder shall transfer the case to the family court and direct that the child involved be taken there.

(3) When an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.

(4) If a child seventeen years of age or older is charged with an offense which, if committed by an adult, would be a misdemeanor, a Class E or F felony as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.

(5) If a child fourteen, fifteen, or sixteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this chapter. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.

(7) Once the family court relinquishes its jurisdiction over the child and the child is bound over to be treated as an adult, Section 63-19-2020 dealing with the confidentiality of identity and fingerprints does not apply.

(8) When jurisdiction is relinquished by the family court in favor of another court, the court shall have full authority and power to grant bail, hold a preliminary hearing and any other powers as now provided by law for magistrates in such cases.

(9) If a child fourteen years of age or older is charged with a violation of Section 16-23-430, Section 16-23-20, or Section 44-53-445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child

or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(10) If a child fourteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense.

⇒ **§ 16-3-659. Criminal sexual conduct: males under fourteen not presumed incapable of committing crime of rape.**

The common law rule that a boy under fourteen years is conclusively presumed to be incapable of committing the crime of rape shall not be enforced in this State. Provided, that any person under the age of 14 shall be tried as a juvenile for any violations of Sections 16-3-651 to 16-3-659.1.

**Are there offenses that only apply to me because I am a juvenile?**  
**(page 26)**

Yes. Some acts are unlawful only for children under 18 and not for adults. These are called status offenses. Status offenses include running away, incorrigible behavior (a child who is beyond the control of parents), and truancy (not going to school) (Note: Truancy requirements may be extended beyond the age of 17 by court order)

⇒ **§ 63-19-20. Definitions.**

(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.

**What criminal acts should I be aware of? (page 26)**

As a juvenile, you will be held responsible for breaking the law, and therefore, you should know the boundaries of what you legally can and cannot do. Some of the more common offenses committed by juveniles are listed below.

**Disturbing School (page 26):** It is against the law for you to interfere with or disturb the normal operations of a school you are not attending as an enrolled student.

⇒ **§ 16-17-420. Disturbing schools; summary court jurisdiction.**

(A) It is unlawful for a person who is not a student to wilfully interfere with, disrupt, or disturb the normal operations of a school or college in this State by:

(1) entering upon school or college grounds or property without the permission of the principal or president in charge;

(2) loitering upon or about school or college grounds or property, after notice is given to vacate the grounds or property and after having reasonable opportunity to vacate;

(3) initiating a physical assault on, or fighting with, another person on school or college grounds or property;

(4) being loud or boisterous on school or college grounds or property after instruction by school or college personnel to refrain from the conduct;

(5) threatening physical harm to a student or a school or college employee while on school or college grounds or property; or

(6) threatening the use of deadly force on school or college property or involving school or college grounds or property when the person has the present ability, or is reasonably believed to have the present ability, to carry out the threat.

(B) For the purpose of this section, 'person who is not a student' means a person who is not enrolled in, or who is suspended or expelled from, the school or college that the person interferes with, disrupts, or disturbs at the time the interference, disruption, or disturbance occurs.

(C) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not more than one year, or both.

**Fighting (page 26):** Getting into a fight can lead to a number of criminal charges. If you injure another person, you could be charged with assault and battery. If you and one or more people gang up on another person and are violent toward that person, you could be charged with assault and battery by mob.

⇒ **§16-3-600. Assault and battery.**

(A) For purposes of this section:

(1) "Great bodily injury" means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

(2) "Moderate bodily injury" means physical injury requiring treatment to an organ system of the body other than the skin, muscles, and connective tissues of the body, except when there is penetration of the skin, muscles, and connective tissues that require surgical repair of a complex nature or when treatment of the injuries requires the use of regional or general anesthesia.

(3) "Private parts" means the genital area or buttocks of a male or female or the breasts of a female.

(B)(1) A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:

(a) great bodily injury to another person results; or

(b) the act is accomplished by means likely to produce death or great bodily injury.

(2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than twenty years.

(3) Assault and battery of a high and aggravated nature is a lesser-included offense of attempted murder, as defined in Section 16-3-29.

(C)(1) A person commits the offense of **assault and battery in the first degree** if the person unlawfully:

(a) injures another person, and the act:

(i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or

(b) offers or attempts to injure another person with the present ability to do so, and the act:

(i) is accomplished by means likely to produce death or great bodily injury; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

(2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than ten years.

(3) Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

(D)(1) A person commits the offense of **assault and battery in the second degree** if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:

(a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or

(b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand five hundred dollars, or imprisoned for not more than three years, or both.

(3) Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

(E)(1) A person commits the offense of **assault and battery in the third degree** if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars, or imprisoned for not more than thirty days, or both.

(3) Assault and battery in the third degree is a lesser-included offense of assault and battery in the second degree, as defined in subsection (D)(1), assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a

high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

⇒ **§ 16-3-210. Assault and battery by mob; investigation and apprehension; civil liability.**

(A) For purposes of this section, a "mob" is defined as the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another.

(B) Any act of violence inflicted by a mob upon the body of another person, which results in the death of the person, shall constitute the felony crime of assault and battery by mob in the first degree and, upon conviction, an offender shall be punished by imprisonment for not less than thirty years.

(C) Any act of violence inflicted by a mob upon the body of another person, which results in serious bodily injury to the person, shall constitute the felony crime of assault and battery by mob in the second degree and, upon conviction, an offender shall be punished by imprisonment for not less than three years nor more than twenty-five years.

(D) Any act of violence inflicted by a mob upon the body of another person, which results in bodily injury to the person, shall constitute the misdemeanor crime of assault and battery by mob in the third degree and, upon conviction, an offender shall be punished by imprisonment for not more than one year.

(E) When any mob commits an act of violence, the sheriff of the county where the crime occurs and the solicitor of the circuit where the county is located shall act as speedily as possible to apprehend and identify the members of the mob and bring them to trial.

(F) The solicitor of any circuit has summary power to conduct any investigation deemed necessary by him in order to apprehend the members of a mob and may subpoena witnesses and take testimony under oath.

(G) This article shall not be construed to relieve a member of any such mob from civil liability.

**Disorderly Conduct (page 26):** If you act disorderly or use profanity in a public place or within hearing distance of a school or church, you may be charged with public disorderly conduct.

**Shoplifting (page 27):** You are guilty of shoplifting when you (1) intentionally take an item from a store without paying for it, (2) hide an item in your pocket, under your clothing or in your purse or book bag, with the intention of stealing it, even if you never make it out of the store, or (3) take an item from its original container or box and put it in another one or change the price tag with the intention of not paying full price for the item.

⇒ **§ 16-13-105. Definitions as to shoplifting and similar offenses.**

When used in Sections 16-13-110, 16-13-120 and 16-13-140 the terms listed below shall have the following meanings:

(1) "Conceal" means to hide merchandise on the person or among the belongings of a person so that, although there may be some notice of its presence, it is not visible through ordinary observation.

(2) "Full retail value" means the merchant's stated or advertised price of merchandise.

(3) "Merchandise" means any goods, chattels, foodstuffs or wares of any type and description, regardless of value.

(4) "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of the owner or operator.

(5) "Store or other retail mercantile establishment" means a place where merchandise is displayed, held, stored or sold or offered to the public for sale.

⇒ **§ 16-13-110. Shoplifting.**

(A) A person is guilty of shoplifting if he:

(1) takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value;

(2) alters, transfers, or removes any label, price tag marking, indicia of value, or any other markings which aid in determining value affixed to any merchandise displayed, held, stored, or offered for sale in a store or other retail mercantile establishment and attempts to purchase the merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of the full retail value of the merchandise;

(3) transfers any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment from the container in which it is displayed to any other container with intent to deprive the merchant of the full retail value.

(B) A person who violates the provisions of this section is guilty of a:

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than thirty days if the value of the shoplifted merchandise is two thousand dollars or less;

(2) felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than five years, or both, if the value of the shoplifted merchandise is more than two thousand dollars but less than ten thousand dollars;

(3) felony and, upon conviction, must be imprisoned not more than ten years if the value of the shoplifted merchandise is ten thousand dollars or more.

⇒ **§ 16-13-120. Shoplifting; presumptions from concealment of unpurchased goods.**

It is permissible to infer that any person wilfully concealing unpurchased goods or merchandise of any store or other mercantile establishment either on the premises or outside the premises of the store has concealed the article with the intention of converting it to his own use without paying the purchase price thereof within the meaning of Section 16-13-110. It is also permissible to infer that the finding of the unpurchased goods or merchandise concealed upon the person or among the belongings of the person is evidence of wilful concealment. If the person conceals or causes to be concealed the unpurchased goods or merchandise upon the person or among the belongings of another, it is also permissible to infer that the person so concealing such goods wilfully concealed them with the intention of converting them to his own use without paying the purchase price thereof within the meaning of Section 16-13-110.

**Vandalism or Malicious Injury to Property (page 27):** If you injure or damage someone's house, a tree in their yard, or any of their personal property, you have committed the crime of vandalism, or malicious injury to property. These acts include "egging" someone's house, spray-painting on walls or fences, keying someone's car, smashing someone's mailbox, breaking a window, or destroying school property.

⇒ **§ 16-11-510. Malicious injury to animals and other personal property.**

(A) It is unlawful for a person to wilfully and maliciously cut, shoot, maim, wound, or otherwise injure or destroy any horse, mule, cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property, or the goods and chattels of another.

(B) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the injury to the property or the property loss is worth ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the injury to the property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned, not more than thirty days, or both.

⇒ **§ 16-11-520. Malicious injury to tree, house, outside fence, or fixture; trespass upon real property.**

(A) It is unlawful for a person to wilfully and maliciously cut, mutilate, deface, or otherwise injure a tree, house, outside fence, or fixture of another or commit any other trespass upon real property of another.

(B) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the injury to the property or the property loss is worth ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the injury to the property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

⇒ **§ 16-11-535. Malicious injury to place of worship.**

Whoever shall wilfully, unlawfully, and maliciously vandalize, deface, damage, or destroy or attempt to vandalize, deface, damage, or destroy any place, structure, or building of worship or aid, agree with, employ, or conspire with any person to do or cause to be done any of the acts mentioned above is guilty of a felony and, upon conviction, must be imprisoned not less than six months nor more than ten years or fined not more than ten thousand dollars, or both.

⇒ **§ 16-11-560. Burning or cutting untenanted or unfinished buildings.**

It is unlawful for a person to maliciously, unlawfully, and wilfully burn or cause to be burned, cut or cause to be cut, or destroyed any untenanted or unfinished house or building or any frame of timber of another person made and prepared for or towards the making of a house, so that the house is not suitable for the purposes for which it was prepared.

A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

**Larceny (page 27):** If you steal something that belongs to someone else, you could be charged with larceny. If you use force to take the item from the "person" of another, then you may be charged with robbery.

⇒ **§ 16-13-30. Petit larceny; grand larceny.**

(A) Simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattels, or other article of personalty of which by law larceny may be committed, or of any fixture, part, or product of the soil severed from the soil by an

unlawful act, or has a value of two thousand dollars or less, is petit larceny, a misdemeanor, triable in the magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days.

(B) Larceny of goods, chattels, instruments, or other personalty valued in excess of two thousand dollars is grand larceny. Upon conviction, the person is guilty of a felony and must be fined in the discretion of the court or imprisoned not more than:

(1) five years if the value of the personalty is more than two thousand dollars but less than ten thousand dollars;

(2) ten years if the value of the personalty is ten thousand dollars or more.

⇒ **§ 16-13-80. Larceny of bicycles.**

The larceny of a bicycle is a misdemeanor and, upon conviction, the person must be punishable at the discretion of the court. When the value of the bicycle is less than two thousand dollars, the case is triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days.

**Receiving Stolen Goods (page 27):** You may be charged with receiving stolen goods if you purchase or possess stolen property, and you have reason to believe the property is stolen.

⇒ You can be charged with receiving stolen goods even if no one was charged with stealing the property.

⇒ **§ 16-13-180. Receiving stolen goods.**

(A) It is unlawful for a person to buy, receive, or possess stolen goods, chattels, or other property if the person knows or has reason to believe the goods, chattels, or property is stolen. A person is guilty of this offense whether or not anyone is convicted of the theft of the property.

(B) A person who violates the provisions of this section is guilty of a:

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days;

(2) felony and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than five years if the value of the property is more than two thousand dollars but less than ten thousand dollars;

(3) felony and, upon conviction, must be fined not less than two thousand dollars or imprisoned not more than ten years if the value of the property is ten thousand dollars or more.

(C) For the purposes of this section, the receipt of multiple items in a single transaction or event constitutes a single offense.

**Possession of Stolen Motor Vehicle (page 27):** If you are in a car that is stolen, even if you are not driving the car, you could be charged with possession of stolen motor vehicle.

⇒ Discuss the importance of not getting into a car that is being driven by someone you do not know, even if you have other friends in that car, especially if there is a broken window or there are no keys in the ignition (i.e., the car was “hot wired”).

⇒ **§ 16-21-80. Receiving, possessing, concealing, selling, or disposing of stolen vehicle.**

A person not entitled to the possession of a vehicle who receives, possesses, conceals, sells, or disposes of it, knowing it to be stolen or converted under circumstances constituting a crime, is guilty of a:

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the vehicle is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the value of the vehicle is more than two thousand dollars but less than ten thousand dollars;

(3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the value of the vehicle is ten thousand dollars or more.

**Criminal Sexual Conduct (page 28):** It is always a crime to *force* another person to have anal, vaginal, or oral sex. The use of force can include actual physical violence or threats of violence used to make another person have sex.

It may be a crime for one teenager to have sex with another teenager. As the law is written, it is a crime for a person older than 18 to have sexual intercourse (oral, vaginal, or anal sex) with a person who is under 16; it is also a crime for a person 18 or younger to have sexual intercourse with a person under 14.

It is a crime for a person over 18 to commit a “lewd or lascivious act” with a person who is under 16. It is also a crime for a person 14 to 18 to commit a “lewd or lascivious act” with a person who is under 14.

Sex crimes are extremely serious and can result in long prison terms. Anyone (including a teenager) found guilty of certain sex offenses may be required to register as a sex offender for the rest of his or her life. The sex offender registry

is a list of every person in the state who has been adjudicated or convicted of a sex offense. The law allows this list to be released to the public. Although the names of children under 12 are not usually released, it is very likely that the names of persons 12 or older who are convicted of sex offenses will be released.

⇒ The **South Carolina Sex Offender Registry** can be found on SLED's website at <http://www.sled.state.sc.us> (under Sex Offender Registry). Registered sex offenders can be looked up by name, city, county, or zip code.

⇒ **§16-3-600. Assault and battery.**

(A) For purposes of this section:

(3) "Private parts" means the genital area or buttocks of a male or female or the breasts of a female.

(C)(1) A person commits the offense of **assault and battery in the first degree** if the person unlawfully:

(a) injures another person, and the act:

(i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent

(2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than ten years.

⇒ **§ 16-3-651. Criminal sexual conduct: definitions.**

For the purposes of Sections 16-3-651 to 16-3-659.1:

(a) "Actor" means a person accused of criminal sexual conduct.

(b) "Aggravated coercion" means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person.

(c) "Aggravated force" means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon.

(d) "Intimate parts" includes the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breasts of a female human being.

(e) "Mentally defective" means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct.

(f) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.

(g) "Physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(h) "Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of

any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

(i) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

⇒ **§ 16-3-652. Criminal sexual conduct in the first degree.**

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

(a) The actor uses aggravated force to accomplish sexual battery.

(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.

(c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court.

⇒ **§ 16-3-653. Criminal sexual conduct in the second degree.**

(1) A person is guilty of criminal sexual conduct in the second degree if the actor uses aggravated coercion to accomplish sexual battery.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than twenty years according to the discretion of the court.

⇒ **§ 16-3-654. Criminal sexual conduct in the third degree.**

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

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

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

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than ten years, according to the discretion of the court.

⇒ **§ 16-3-655. Criminal sexual conduct with a minor; aggravating and mitigating circumstances; penalties; repeat offenders.**

(A) A person is guilty of criminal sexual conduct with a minor in the first degree if:

(1) the actor engages in sexual battery with a victim who is less than eleven years of age; or

(2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D).

(B) A person is guilty of criminal sexual conduct with a minor in the second degree if:

(1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or

(2) the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age.

(C)(1) A person convicted of a violation of subsection (A)(1) is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum of twenty-five years, no part of which may be suspended or probation granted, or must be imprisoned for life. In the case of a person pleading guilty or nolo contendere to a violation of subsection (A)(1), the judge must make a specific finding on the record regarding whether the type of conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. In the case of a person convicted at trial for a violation of subsection (A)(1), the judge or jury, whichever is applicable, must designate as part of the verdict whether the conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. If the person has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out-of-state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age, he must be punished by death or by imprisonment for life, as provided by this section. For the purpose of determining a prior conviction under this subsection, the person must have been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent on a separate occasion, prior to the instant adjudication, for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out-of-state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age. In order to be eligible for the death penalty pursuant to this section, the sexual battery constituting the current offense and any prior offense must have involved sexual or anal intercourse by a person or intrusion by an object. If any prior offense that would make a person eligible for the death penalty pursuant to this section occurred prior to the effective date of this act and no specific finding was made regarding the nature of the conduct or is an out-of-state or federal conviction, the determination of whether the sexual battery constituting the prior offense involved sexual or anal intercourse by a person or intrusion by an object must be made in the separate sentencing proceeding provided by this section and proven beyond a reasonable doubt and designated in writing by the judge or jury, whichever is applicable. If the judge or jury, whichever

is applicable, does not find that the prior offense involved sexual or anal intercourse by a person or intrusion by an object, then the person must be sentenced to imprisonment for life. For purposes of this subsection, imprisonment for life means imprisonment until death.

(2) A person convicted of a violation of subsection (A)(2) is guilty of a felony and, upon conviction, must be imprisoned for not less than ten years nor more than thirty years, no part of which may be suspended or probation granted.

(3) A person convicted of a violation of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years according to the discretion of the court.

**Subsections (D) – (H) are not included in these materials.**

⇒ **§ 16-3-656. Criminal sexual conduct: assaults with intent to commit.**

Assault with intent to commit criminal sexual conduct described in the above sections shall be punishable as if the criminal sexual conduct was committed.

⇒ **§ 16-3-659. Criminal sexual conduct: males under fourteen not presumed incapable of committing crime of rape.**

The common law rule that a boy under fourteen years is conclusively presumed to be incapable of committing the crime of rape shall not be enforced in this State. Provided, that any person under the age of 14 shall be tried as a juvenile for any violations of Sections 16-3-651 to 16-3-659.1.

⇒ **§ 23-3-430. Sex offender registry; convictions and not guilty by reason of insanity findings requiring registration.**

(A) Any person, regardless of age, residing in the State of South Carolina who in this State has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense described below, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere, or found not guilty by reason of insanity in any comparable court in the United States, or a foreign country, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere, or found not guilty by reason of insanity in the United States federal courts of a similar offense, or who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere, or found not guilty by reason of insanity to an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register pursuant to the provisions of this article. A person who has been found not guilty by reason of insanity shall not be required to register pursuant to the provisions of this article unless and until the person is declared to no longer be insane or is ordered to register by the trial judge. A person who has been convicted, adjudicated delinquent, pled guilty or nolo contendere, or found not guilty by reason of insanity in any court in a foreign country may raise as a defense to a prosecution for failure to register that the offense in the foreign country was not equivalent to any offense in this State for which he would be required to register and may raise as a defense that the conviction, adjudication, plea, or finding in the foreign country was based on a proceeding or trial in which the person was not afforded the due process of law as guaranteed by the Constitution of the United States and this State.

(B) For purposes of this article, a person who remains in this State for a total of thirty days during a twelve-month period is a resident of this State.

(C) For purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as an offender:

- (1) criminal sexual conduct in the first degree (Section 16-3-652);
- (2) criminal sexual conduct in the second degree (Section 16-3-653);
- (3) criminal sexual conduct in the third degree (Section 16-3-654);
- (4) criminal sexual conduct with minors, first degree (Section 16-3-655(1));
- (5) criminal sexual conduct with minors, second degree. If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16-3-655(3) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article;
- (6) engaging a child for sexual performance (Section 16-3-810);
- (7) producing, directing, or promoting sexual performance by a child (Section 16-3-820);
- (8) criminal sexual conduct: assaults with intent to commit (Section 16-3-656);
- (9) incest (Section 16-15-20);
- (10) buggery (Section 16-15-120);
- (11) committing or attempting lewd act upon child under sixteen (Section 16-15-140);
- (12) peeping, voyeurism, or aggravated voyeurism (Section 16-17-470);
- (13) violations of Article 3, Chapter 15 of Title 16 involving a minor;
- (14) a person, regardless of age, who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of indecent exposure or of a similar offense in other jurisdictions is required to register pursuant to the provisions of this article if the court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender;
- (15) kidnapping (Section 16-3-910) of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;
- (16) kidnapping (Section 16-3-910) of a person under eighteen years of age except when the offense is committed by a parent;
- (17) trafficking in persons (Section 16-3-930) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;
- (18) criminal sexual conduct when the victim is a spouse (Section 16-3-658);
- (19) sexual battery of a spouse (Section 16-3-615);
- (20) sexual intercourse with a patient or trainee (Section 44-23-1150);
- (21) criminal solicitation of a minor if the purpose or intent of the solicitation or attempted solicitation was to:

- (a) persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16-15-375(5);
- (b) perform a sexual activity in the presence of the person solicited (Section 16-15-342); or
- (22) administering, distributing, dispensing, delivering, or aiding, abetting, attempting, or conspiring to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit a crime listed in Section 44-53-370(f), except petit larceny or grand larceny.
- (23) any other offense specified by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA).
- (D) Upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere of a person of an offense not listed in this article, the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the solicitor.
- (E) SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered.
- (F) If an offender receives a pardon for the offense for which he was required to register, the offender must reregister as provided by Section 23-3-460 and may not be removed from the registry except:
  - (1) as provided by the provisions of subsection (E); or
  - (2) if the pardon is based on a finding of not guilty specifically stated in the pardon.
- (G) If an offender files a petition for a writ of habeas corpus or a motion for a new trial pursuant to Rule 29(b), South Carolina Rules of Criminal Procedure, based on newly discovered evidence, the offender must reregister as provided by Section 23-3-460 and may not be removed from the registry except:
  - (1) as provided by the provisions of subsection (E); or
  - (2)(a) if the circuit court grants the offender's petition or motion and orders a new trial; and (b) a verdict of acquittal is returned at the new trial or entered with the state's consent.

## **GETTING "ARRESTED"**

### **Can I be arrested? (page 28)**

As a juvenile, you may be taken into custody and held, or "detained," by the police officer under certain circumstances, but, by law, this is not considered an arrest.

If you are taken into custody, the police officer has the option of releasing you to your parent or a responsible adult or detaining you (if you are detained, you are locked up in a detention facility or jail) until you go before a family court judge for a hearing. Juvenile offenders can only be detained under certain conditions outlined

by law, and even if those conditions are met, the officer may release the child if he or she determines that detention is not necessary.

⇒ **§ 63-19-810. Taking a child into custody.**

(A) When a child found violating a criminal law or ordinance is taken into custody, the taking into custody is not an arrest. The jurisdiction of the court attaches from the time of the taking into custody. When a child is taken into custody, the officer taking the child into custody shall notify the parent, guardian, or custodian of the child as soon as possible. Unless otherwise ordered by the court, the person taking the child into custody may release the child to a parent, a responsible adult, a responsible agent of a court-approved foster home, group home, nonsecure facility, or program upon the written promise, signed by the person, to bring the child to the court at a stated time or at a time the court may direct. The written promise, accompanied by a written report by the officer, must be submitted to the South Carolina Department of Juvenile Justice as soon as possible, but not later than twenty-four hours after the child is taken into custody. If the person fails to produce the child as agreed, or upon notice from the court, a summons or a warrant may be issued for the apprehension of the person or of the child.

(B) When a child is not released pursuant to subsection (A), the officer taking the child into custody shall immediately notify the authorized representative of the Department of Juvenile Justice, who shall respond within one hour by telephone or to the location where the child is being detained. Upon responding, the authorized representative of the department shall review the facts in the officer's report or petition and any other relevant facts and advise the officer if, in his opinion, there is a need for detention of the child. The officer's written report must be furnished to the authorized representatives of the department and must state:

(1) the facts of the offense;

(2) the reason why the child was not released to the parent. Unless the child is to be detained, the child must be released by the officer to the custody of his parents or other responsible adult upon their written promise to bring the child to the court at a stated time or at a time the court may direct. However, if the offense for which the child was taken into custody is a violent crime as defined in Section 16-1-60, the child may be released only by the officer who took the child into custody. If the officer does not consent to the release of the child, the parents or other responsible adult may apply to any judge of 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. The family court judge may establish conditions for such release.

(C) When a child is charged by a law enforcement officer for an offense which would be a misdemeanor or felony if committed by an adult, not including a traffic or wildlife violation over which courts other than the family court have concurrent jurisdiction as provided in Section 63-3-520, the law enforcement officer also shall notify the principal of the school in which the child is enrolled, if any, of the nature of the offense. This information may be used by the principal for monitoring and supervisory purposes but otherwise must be kept confidential by the principal in the same manner required by Section 63-19-2220(E).

(D) Juveniles may be held in nonsecure custody within the law enforcement center for only the time necessary for purposes of identification, investigation, detention, intake screening, awaiting release to parents or other responsible adult, or awaiting transfer to a juvenile detention facility or to the court for a detention hearing.

### **What happens if I am detained? (page 29)**

If the officer will not release you to your parent or a responsible adult, he must make arrangements for your temporary placement pending your detention hearing. The officer will call a representative of the Department of Juvenile Justice (DJJ) who will place you in a home, program, or detention facility.

- ⇒ The DJJ representative is required by law to make a diligent effort to place a child who is being detained in an appropriate home, program, or facility before resorting to a secure detention facility
- ⇒ Children 10 years old and younger may not be detained in a secure facility for any reason.
- ⇒ Children who are 11 or 12 years old may not be detained in a secure facility without a family court order.
- ⇒ **§ 63-19-820. Out-of-home placement.**
  - (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.

### **What happens after I am detained? (page 29)**

If you are detained, a detention hearing before a family court judge must be held within 48 hours, excluding weekends and holidays. At this hearing, you should have an attorney. A public defender will be appointed if your parents have not had time to hire an attorney or if they cannot afford an attorney. DJJ will make a recommendation to the court about your continued detention, but the court will decide whether you will be allowed to return home or if you will remain in the detention facility until your court date.

After this initial hearing, you have the right to another hearing within 10 days and again within 30. You can be detained for up to 90 days pending your court date.

⇒ **§ 63-19-830. Detention hearings; screenings.**

(A) If the officer who took the child into custody has not released the child to the custody the child's parents or other responsible adult, the court shall hold a detention hearing within forty-eight hours from the time the child was taken into custody, excluding Saturdays, Sundays, and holidays. At this hearing, the authorized representative of the department shall submit to the court a report stating the facts surrounding the case and a recommendation as to the child's continued detention pending the adjudicatory and dispositional hearings. The court shall appoint counsel for the child if none is retained. No child may proceed without counsel in this hearing, unless the child waives the right to counsel and then only after consulting at least once with an attorney. At the conclusion of this hearing, the court shall determine whether probable cause exists to justify the

detention of the child and the appropriateness of, and need for, the child's continued detention. If continued detention of a juvenile is considered appropriate by the court and if a juvenile detention facility exists in that county which meets state and federal requirements for the secure detention of juveniles or if that facility exists in another county with which the committing county has a contract for the secure detention of its juveniles and if commitment of a juvenile by the court to that facility does not cause the facility to exceed its design and operational capacity, the family court shall order the detention of the juvenile in that facility. A juvenile must not be detained in secure confinement in excess of ninety days except in exceptional circumstances as determined by the court. A detained juvenile is entitled to further and periodic review:

- (1) within ten days following the juvenile's initial detention hearing;
- (2) within thirty days following the ten-day hearing; and
- (3) at any other time for good cause shown upon motion of the child, the State, or the department.

If the child does not qualify for detention or otherwise require continued detention under the terms of Section 63-19-820(A) or (B), the child must be released to a parent, guardian, or other responsible person.

(B) A juvenile ordered detained in a facility must be screened within twenty-four hours by a social worker or if considered appropriate by a psychologist in order to determine whether the juvenile is emotionally disturbed, mentally ill, or otherwise in need of services. The services must be provided immediately.

## **WHO DOES WHAT?**

### **Who is the first person I will have contact with if I am caught breaking the law? (page 29)**

The police are usually the first to become involved when someone breaks the law. The officer will take a report about what happened and who was involved. From this report he or she will determine who, if anyone, will be charged with a criminal offense.

### **What does the solicitor do? (page 30)**

The solicitor is an attorney who prosecutes criminal cases for the state in both the general sessions and family courts. He or she is the person who will decide when and if you will go to court. The solicitor has the responsibility of proving to the court that you have committed a crime.

### **Who will represent me? (page 30)**

You have a constitutional right to an attorney in delinquency court proceedings. If your parents cannot afford to hire a defense attorney for you, one (usually a public defender) will be appointed by the court to represent you. The role of your attorney is to represent your "expressed interests."

### **Who will make the decision about what happens to me? (page 30)**

Once your case goes to court, only the family court judge can decide what your punishment will be. You do not have the right to a trial in front of a jury in family court. The judge will listen to the facts of the case against you and determine what action is in your best interest.

### **Who else will be involved in my case? (page 30)**

The Department of Juvenile Justice (DJJ) is involved in your case from the very beginning. DJJ provides services for you and your family and for the family court. They initially do an intake screening to gather background information about the juvenile who is charged with an offense. They are also responsible for conducting evaluations ordered by the court. If a juvenile is placed on probation or committed to a secure juvenile facility, DJJ is the agency that oversees the child's performance.

The Department of Social Services may become involved with your case if there have been allegations of abuse, neglect, or lack of supervision in the home.

#### **⇒ § 63-19-1010. Intake and probation.**

(A) The Department of Juvenile Justice shall provide intake and probation services for juveniles brought before the family courts of this State and for persons committed or referred to the department in cooperation with all local officials or agencies concerned. The role and function of intake is to independently assess the circumstances and needs of children referred for possible prosecution in the family court. Recommendations by the department as to intake must be reviewed by the office of the solicitor in the circuit concerned, and the final determination as to whether or not the juvenile is to be prosecuted in the family court must be made by the solicitor or by the solicitor's authorized assistant. Statements of the juvenile contained in the department's files must not be furnished to the solicitor's office as part of the intake review procedure, and the solicitor's office must not be privy to these statements in connection with its intake review.

(B) Where circumstances do not warrant prosecution in the discretion of the solicitor, the intake counselor shall offer referral assistance for services as

appropriate for the child and family. In the event that a juvenile is adjudicated to be delinquent or found by the family court to be in violation of the terms of probation, the intake counselor shall offer appropriate dispositional recommendations to the family court for its consideration and determination of the disposition of the case.

## THE COURT PROCESS

### How does a charge against a juvenile get started in the family court system? (page 31)

Anyone who believes that a child has committed a delinquent act may initiate a family court proceeding involving the child. Under most circumstances, a police officer or someone authorized by the family court will prepare a juvenile petition, which is a formal document claiming that the child committed a delinquent act, and file it with the family court. The petition should contain the juvenile's name, address, date of birth, parent or guardian's name and address, and the facts surrounding the incident.

⇒ **§ 63-19-1020. Instituting proceedings.**

The parent or custodian of a child, an official of a child welfare board, a public official charged by law with the care of the poor, the recognized agents of an agency, association, society, or institution, a person having knowledge or information of a nature which convinces the person that a child is delinquent or that a child, by reason of his own acts in accordance with this chapter, is subject to the jurisdiction of the court, any person who has suffered injury through the delinquency of a child, or an officer having an arrested child in charge, may institute a proceeding respecting the child.

⇒ **§ 63-19-1030. Prehearing inquiry.**

(A) Whenever a person informs the court that a child is within the purview of this chapter, the court shall make preliminary inquiry to determine whether the interest of the public or of the child requires that further action be taken. Thereupon, the court may make an informal adjustment as is practicable without a petition or may authorize a petition to be filed by any person.

(B) The petition and all subsequent court documents must be entitled:

"In the Family Court of \_\_\_\_ County.

In the Interest of \_\_\_\_, a child under seventeen years of age."

The petition must be verified and may be upon information and belief. It shall set forth plainly:

(1) the facts which bring the child within the purview of this chapter;

(2) the name, age, and residence of the child;

(3) the names and residences of the child's parents;

(4) the name and residence of a legal guardian, if there is one, of the person or persons having custody of or control of the child, or of the nearest known relative

if no parent or guardian can be found. If any of these facts are not known by the petitioner, the petition shall state that.

(C) Before the hearing of a case of a child, the judge shall cause an investigation of all the facts pertaining to the issue to be made. The investigation shall consist of an examination of the parentage and surroundings of the child, the child's age, habits and history, and also shall include inquiry into the home conditions, habits and character of the child's parents or guardian, if that is necessary in the discretion of the court. In these cases the court, if advisable, shall cause the child to be examined as to the child's mentality by a competent and experienced psychologist or psychiatrist who shall make a report of the findings. Before the hearing in the case of a child, if the child attends school, a report on the child must be obtained from the school which the child attends. The school officials shall furnish the report upon the request of the court or its probation counselor. The court, when it is considered necessary, shall cause a complete physical examination to be made of the child by a competent physician.

(D) In a case where the delinquency proceedings may result in commitment to an institution in which the child's freedom is curtailed, the child or the child's parents or guardian must be given written notice with particularity of the specific charge or factual allegations to be considered at the hearing. The notice must be given as soon as practicable and sufficiently in advance to permit preparation. The child or the child's parent or guardian also must be advised in the notice of their right to be represented by counsel and that, if they are unable to employ counsel, counsel will be appointed to represent them. In the hearing, the parent and child also must be expressly informed of their right to counsel and must be specifically required to consider whether they do or do not waive the right of counsel.

### **What rights does a juvenile charged with an offense have once a petition is filed? (page 31)**

Once the petition is filed, the juvenile has certain constitutional rights that apply. These rights include the right to notice of the charges against him, right not to incriminate himself, right to counsel, and right to cross-examine and confront witnesses against him.

⇒ **The Fifth Amendment** provides that no person shall be held for "a capital or otherwise infamous crime" without indictment, be twice put in "jeopardy of life or limb" for the same offense, be compelled to testify against himself, or "be deprived of life, liberty, or property without due process of law."

⇒ **§ 63-19-1030**

(D) In a case where the delinquency proceedings may result in commitment to an institution in which the child's freedom is curtailed, the child or the child's parents or guardian must be given written notice with particularity of the specific charge or factual allegations to be considered at the hearing. The notice must be given as soon as practicable and sufficiently in advance to permit preparation. The child or

the child's parent or guardian also must be advised in the notice of their right to be represented by counsel and that, if they are unable to employ counsel, counsel will be appointed to represent them. In the hearing, the parent and child also must be expressly informed of their right to counsel and must be specifically required to consider whether they do or do not waive the right of counsel.

⇒ **§ 63-19-1040. Indigent defense.**

Notwithstanding Title 17, Chapter 3, Defense of Indigents, in determining indigence for the purpose of appointing legal counsel for a child in a delinquency proceeding, the court shall determine the financial ability of the child's parents to retain counsel for the child. If the court determines that the parents are able to retain counsel for the child but the parents refuse to retain counsel and the court appoints counsel, the court may order the parents to reimburse the Indigent Defense Fund or pay the court-appointed attorney in an amount to be determined by the court.

### **What happens after a juvenile petition is filed? (page 31)**

When a petition is filed, the juvenile and his parent or guardian are notified of the charges against the juvenile, and a date for the adjudicatory hearing (the hearing to decide guilt or innocence) is set.

During the adjudicatory stage, the juvenile may choose to plead guilty to the charges or may plead not guilty and go to trial. If the juvenile pleads guilty or is found guilty following a trial, the family court judge will find him or her delinquent and has the option of ordering the juvenile to undergo a social, physical, psychological, and mental evaluation. This evaluation may either be conducted in the community while the juvenile is living at home, or the judge may find it more appropriate to temporarily commit the juvenile for evaluation in a DJJ secure facility for a period of not more than 45 days.

Juveniles ordered to undergo an evaluation return to court for the dispositional hearing (the hearing where the judge sentences the child) with a complete written evaluation report. At this stage, the juvenile has already been found guilty and adjudicated delinquent, and he or she has been evaluated. The DJJ representative, the solicitor, and the defense attorney make recommendations to the court as to sentencing.

Juveniles who are not ordered to undergo an evaluation usually have their adjudicatory and dispositional hearings on the same day.

⇒ **§ 63-19-1440**

(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 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.

**What are the possible dispositions or sentences that the court may order?**  
**(page 32)**

The least restrictive disposition is probation. A family court judge can put a juvenile on probation for any certain period of time, but that probation cannot go past the juvenile's 20th birthday. A juvenile on probation is under the supervision of DJJ.

The judge may place certain conditions or requirements on the juvenile that must be met during the time he is on probation. These conditions may include things such as obeying the rules of the parent's home, having no unexcused absences from school, having no disciplinary problems at school, completing community service hours, and paying money to a victim for damages you caused (called restitution). The judge also has the power to suspend or restrict your driver's license until your 18<sup>th</sup> or 20<sup>th</sup> birthday, depending on what crime you have committed.

The court may also order the juvenile to live outside of his or her home. This is called alternative placement and could involve a foster home, a group home, or a residential youth program.

The most serious disposition that a judge can order is commitment to the Department of Juvenile Justice. This means that a family court judge can sentence you to time in a secure juvenile facility or institution. The length of the commitment can be anywhere from a set amount of time of up to 90 days or for an indefinite

period not to go past the juvenile's 22<sup>nd</sup> birthday. When a juvenile is sent to DJJ for an indefinite period, the DJJ Release Authority or the Juvenile Parole Board determines when he or she is ready to return home.

Once a juvenile is conditionally released from a correctional facility on parole, the juvenile may be required to permit his or her aftercare counselor, a probation agent or any other law enforcement officer to search and/or seize at any time, without a search warrant: the juvenile's person, any car the juvenile owns or drives, and any of the juvenile's possessions. Any juvenile whose crime qualifies the juvenile to be subject to such warrantless searches and/or seizures must consent in writing to these searches and/or seizures before the juvenile can be released from the correctional facility.

⇒ **§ 63-19-1410. Adjudication.**

(A) When a child is found by decree of the court to be subject to this chapter, the court shall in its decree make a finding of the facts upon which the court exercises its jurisdiction over the child. Following the decree, the court by order may:

(1) cause a child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist, or psychologist and for that purpose place the child in a hospital or other suitable facility;

(2) order care and treatment as it considers best, except as otherwise provided in this section and may designate a state agency as the lead agency to provide a family assessment to the court. The assessment shall include, but is not limited to, the strengths and weaknesses of the family, problems interfering with the functioning of the family and with the best interests of the child, and recommendations for a comprehensive service plan to strengthen the family and assist in resolving these issues.

The lead agency shall provide the family assessment to the court in a timely manner, and the court shall conduct a hearing to review the proposed plan and adopt a plan as part of its order that will best meet the needs and best interest of the child. In arriving at a comprehensive plan, the court shall consider:

(a) additional testing or evaluation that may be needed;

(b) economic services including, but not limited to, employment services, job training, food stamps, and aid to families with dependent children;

(c) counseling services including, but not limited to, marital counseling, parenting skills, and alcohol and drug abuse counseling; and

(d) any other programs or services appropriate to the child's and family's needs.

The lead agency is responsible for monitoring compliance with the court-ordered plan and shall report to the court as the court requires. In support of an order, the court may require the parents or other persons having custody of the child or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter to do or omit to do acts required or forbidden by law, when the judge

considers the requirement necessary for the welfare of the child. In case of failure to comply with the requirement, the court may proceed against those persons for contempt of court;

(3) place the child on probation or under supervision in the child's own home or in the custody of a suitable person elsewhere, upon conditions as the court may determine. A child placed on probation by the court remains under the authority of the court only until the expiration of the specified term of the child's probation. This specified term of probation may expire before but not after the twentieth birthday of the child. Probation means casework services during a continuance of the case. Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well-being of the child and the child's family. Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child's personality and character, with the aid of the social resources of the community. As a condition of probation, the court may order the child to participate in a community mentor program as provided for in Section 63-19-1430. The court may impose monetary restitution or participation in supervised work or community service, or both, as a condition of probation. The Department of Juvenile Justice, in coordination with local community agencies, shall develop and encourage employment of a constructive nature designed to make reparation and to promote the rehabilitation of the child. When considering the appropriate amount of monetary restitution to be ordered, the court shall establish the monetary loss suffered by the victim and then weigh and consider this amount against the number of individuals involved in causing the monetary loss, the child's particular role in causing this loss, and the child's ability to pay the amount over a reasonable period of time. The Department of Juvenile Justice shall develop a system for the transferring of court-ordered restitution from the child to the victim or owner of property injured, destroyed, or stolen. As a condition of probation the court may impose upon the child a fine not exceeding two hundred dollars when the offense is one in which a magistrate, municipal, or circuit court judge has the authority to impose a fine. A fine may be imposed when commitment is suspended but not in addition to commitment;

(4) order the child to participate in a community mentor program as provided in Section 63-19-1430;

(5) commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in family homes or under the guardianship of a suitable person. Commitment must be for an indeterminate period but in no event beyond the child's twenty-second birthday;

(6) require that a child under twelve years of age who is adjudicated delinquent for an offense listed in Section 23-3-430(C) be given appropriate psychiatric or psychological treatment to address the circumstances of the offense for which the child was adjudicated; and

(7) dismiss the petition or otherwise terminate its jurisdiction at any time on the motion of either party or on its own motion.

(B) Whenever the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and the institution or agency shall give to the court information concerning the child which the court may require. Counsel of record, if any, must be notified by the court

of an adjudication under this section, and in the event there is no counsel of record, the child or the child's parents or guardian must be notified of the adjudication by regular mail from the court to the last address of the child or the child's parents or guardian.

(C) No adjudication by the court of the status of a child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction, nor may a child be charged with crime or convicted in a court, except as provided in Section 63-19-1210(6). The disposition made of a child or any evidence given in court does not disqualify the child in a future civil service application or appointment.

⇒ **§ 63-19-1420. Driver's license suspension.**

(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 eighteenth 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 twentieth 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.

⇒ **§ 63-19-1440. Commitment.**

A) A child, after the child's twelfth birthday and before the eighteenth birthday or while under the jurisdiction of the family court for disposition of an offense that occurred prior to the child's eighteenth 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 eighteen 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-second 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-two 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-two 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 eighteenth 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-second 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.

## **DIVERSION PROGRAMS**

### **Is there any way I can avoid going to court if this is the first time I have been in trouble? (page 33)**

Yes. Before the solicitor schedules a court date, the juvenile may be offered the chance to participate in a diversion program and avoid going to court altogether. Arbitration, DJJ Behavioral Contracts, or other diversion programs may be available, depending on the county where you live.

### **Who decides whether or not I may participate in a diversion program? (page 34)**

The solicitor will decide if you may participate in a diversion program and avoid formal prosecution. In making this decision, the recommendations of the victims, if any, and the police officer are considered.

### **What are the requirements of the programs? (page 34)**

There may be fees to participate in the program that can be waived if you have an extreme financial hardship. You must sign an agreement to the requirements of the program that must be met before completion. These requirements may include community service hours, group counseling, proof that you are in school, payment of restitution, and drug testing. A curfew may also be imposed.

### **Can I be kicked out of a diversion program? (page 34)**

Yes. If you do not follow or complete the requirements and conditions in your agreement, you may be kicked out of the program and you will be taken to court for the original charge. Also, if you are charged with a new offense, you will probably be kicked out of the program.

If you are kicked out for a new charge, you must go to court for not only the new charge, but also the old charge for which you were placed in the diversion program.

### **What happens with my charge if I complete the program? (page 34)**

If you successfully complete the diversion program, the solicitor will dismiss the charge against you, and you will be able to have the information regarding your "arrest removed" (or "expunged") from your record.

### **Is there any other way to get a charge removed from my record? (p.35)**

Yes. You may be able to get your record cleared (or "expunged") if you have been taken into custody or charged with or adjudicated delinquent for having committed a status offense or a nonviolent offense. To do this, you must petition the family court for an order destroying all official records of this incident. The court may only grant the order if you are at least 18, you have successfully completed any juvenile sentence given by the court, you have not been subsequently adjudicated for or convicted of any criminal offense, and you do not have any pending criminal charges. If you were found not guilty in an adjudicatory hearing, the court must grant the order regardless of your age.

#### **⇒ § 63-19-2050. Petition for record destruction.**

(A)(1) A person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense or a nonviolent crime, as defined in Section 16-1-70, may petition the court for an order expunging all official records relating to:

- (a) being taken into custody;
- (b) the charges filed against the person;
- (c) the adjudication; and
- (d) the disposition.

(2) A person may not petition the court if the person 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.

(B) A prosecution or law enforcement agency may file an objection to the expungement. If an objection is filed, the expungement must be heard by the court. The prosecution or law enforcement agency's reason for objecting must be that the person has other charges pending or the charges are not eligible for expungement. The prosecution or law enforcement agency shall notify the person of the objection. The notice must be given in writing at the most current address on file with the court, or through the person's counsel of record.

(C)(1) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense, the court shall grant the expungement order. If the person has been taken into custody for, charged with,

or adjudicated delinquent for having committed multiple status offenses, the court may grant an expungement order for the multiple status offenses.

(2) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a nonviolent crime, as defined in Section 16-1-70, the court may grant the expungement order. For the purpose of this section, any number of offenses for which the individual received youthful offender sentences at a single sentencing proceeding for offenses that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.

(3) The court shall not grant the expungement order unless the court finds that the person is at least eighteen years of age, has successfully completed any dispositional sentence imposed, has not been subsequently adjudicated for or convicted of any criminal offense, and does not have any criminal charges pending in family court or general sessions court. If the person was found not guilty in an adjudicatory hearing in the family court, the court shall grant the expungement order regardless of the person's age and the person must not be charged a fee for the expungement. An adjudication for a violent crime, as defined in Section 16-1-60, must not be expunged.

(D) If the expungement order is granted by the court, the records must be destroyed or retained by any law enforcement agency or municipal, county, state agency, or department pursuant to the provisions of Section 17-1-40.

(E) The effect of the expungement 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 expungement order has been entered may be held thereafter under any provision of 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.

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

(G) The judge, at the time of adjudication, shall notify the person of the person's ability to have the person's record expunged, the conditions that must be met, as well as the process for receiving an expungement in the particular jurisdiction pursuant to this section.

## SELECTED FEDERAL RIGHTS & RESPONSIBILITIES

### When can I vote? (page 35)

When you turn 18, you have the right to vote. This right was granted to every U.S. citizen by the 26th Amendment to the United States Constitution. Before you can vote, you must be registered. To register to vote, contact the county government where you live and ask for the voter registration office.

- ⇒ **United States Constitution, 26<sup>th</sup> Amendment**, [Proposed 1971; Ratified 1971], Section. 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.
- ⇒ **§ 7-5-110. Persons must register in order to vote.**  
No person shall be allowed to vote at any election unless he shall be registered as herein required.
- ⇒ **§ 7-5-120. Qualifications for registration; persons disqualified from registering or voting.**  
(A) Every citizen of this State and the United States who applies for registration must be registered if he meets the following qualifications:  
(1) meets the age qualification as provided in Section 4, Article II of the Constitution of this State; (2) is not laboring under disabilities named in the Constitution of 1895 of this State; and (3) is a resident in the county and in the polling precinct in which the elector offers to vote.  
(B) A person is disqualified from being registered or voting if he:  
(1) is mentally incompetent as adjudicated by a court of competent jurisdiction; or  
(2) is serving a term of imprisonment resulting from a conviction of a crime; or  
(3) is convicted of a felony or offenses against the election laws, unless the disqualification has been removed by service of the sentence, including probation and parole time unless sooner pardoned.

### Who has to register with the Selective Service Administration? (page 35)

Every male who is 18 or older must register with the Selective Service Administration. This list can be used if the United States goes to war and the government decides to draft citizens into military service. You can register on-line ([www.sss.gov](http://www.sss.gov)) or by sending in the form available at any post office.

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