

"South Carolina Criminal Court Diversion and Discharge Programs"

For the general and criminal practitioner, a summary of recent developments and requirements associated with pretrial diversion programs, conditional discharges and the expungement of criminal records in South Carolina.

As a criminal defense attorney, I am frequently asked about pretrial diversion programs and the potential expungement of a person's criminal record. While a judicial dismissal of a charge or a "not guilty" verdict from a jury allows a defendant to have their record expunged, that is not always in the cards. The good news is it doesn't have to be. Let's take a look at some general practice points regarding diversion programs, conditional discharges and expungements in South Carolina.

Generally speaking.....

While participation in each of the following programs is strictly limited to one time, completion of one program does not bar a person from completing any of the other programs.

Specifically speaking.....

1. "Pretrial Intervention" (SC Code Section 17-22-10)

PTI is the oldest formal diversion program in South Carolina, originally established in 1980. Each of the circuit solicitor's offices have primary discretionary control over both the establishment and administration of the program for their individual circuit. The primary statutory prerequisites for PTI are that the applicant has not previously been accepted into any intervention program, the crime accused be classified as a non-violent offense, no prior convictions for criminal domestic violence (CDV) if the current offense is also for CDV; DUI's and DUAC's are not eligible under any circumstances; and finally, certain fish and wildlife offenses are not eligible. Additionally, the offender must have "no significant history of prior delinquency or criminal activity." The applicant can be required by the solicitor's office to provide their criminal record, education and work record, along with any medical or psychiatric treatment or care received in the past as part of their application. While not determinative, the solicitor must consider the recommendations of the arresting agency and any victims prior to making a final decision on the application. Prior to completion of the program the offender must make full restitution to any victims (in an amount determined by the solicitor's office). Total fees and costs run around \$350. Successful completion of the program allows for expungement of the charge or charges for which the person was enrolled.

PTI Checklist:

- a. *Has client ever previously been accepted into or completed any intervention program?*
- b. *Is it a non-violent offense?*
- c. *With a CDV charge is there a previous conviction?*
- d. *Does the client's criminal history reflect any significant history of prior convictions?*

- e. *Will law enforcement and/or the victims support a PTI referral?*
- f. *Can the client realistically make full restitution by the end of the program?*

2. **"Alcohol Education Program" (SC Code Section 17-22-500)**

Established in 2007, this program is also established and administered at the discretion of each circuit solicitor. Statutory eligibility for the applicant are that they be at least seventeen (17) years old but less than twenty-one (21) years old at the time of this arrest, no prior alcohol related convictions, no significant prior criminal record and has not participated in this program before. Criminal offenses or charges eligible for this program include minor in possession of beer, wine or liquor; open container, public disorderly conduct, possession of a false or fake ID and the improper transfer of beer, wine or liquor to an underage person. The enrollment fee is \$250. Expungement is available upon successful completion.

AEP Checklist:

- a. *Was client 17 through 20 years old on this arrest?*
- b. *No prior alcohol convictions;*
- c. *No significant record;*
- d. *This would be the first time through the program.*

3. **"Traffic Education Program" (SC Code Section 17-22-300)**

Again, established and administered at the discretion of the circuit solicitor. An applicant cannot have a significant history of traffic violations or participate more than once. Eligible offenses are traffic violations punishable only by a fine and loss of four (4) points or less. Interestingly, the "traffic education program must include both a community service and an educational component". After completion all records related to the traffic offense are destroyed; and the person may apply for an expungement off all official records related to their arrest if applicable.

TEP Checklist:

- a. *Advise client that the statute calls for community service in addition to the educational component.*

4. **"Conditional Discharge" (SC Code Section 44-53-450)**

Although originally established by statute in 1971, this section was significantly amended in 2010. If a defendant has no prior state or federal drug convictions, they are now eligible for a "conditional discharge" for possession of any drug. This is a major expansion of the prior statute. While previously limited only to marijuana charges, the statute has now opened up eligibility to those accused of possession of cocaine, heroin, "crack cocaine", etcetera. In a "conditional discharge", the court accepts a conditional

guilty plea from the defendant and then places them on a type of "informal" probation along with any terms and conditions it sees fit (typical terms here are often would be completion of substance counseling and/or community service employment or both). With successful completion of the court ordered requirements, the charge is dismissed and eligible for expungement.

Conditional Discharge Checklist:

- a. *No prior drug convictions;*
- b. *Generally requires a guilty plea at the beginning; so if the client fails to complete the terms and conditions and adjudication of guilty has been recorded.*

South Carolina DUI Lawyer Steve Sumner exclusively handles misdemeanor and felony DUI defense. He is a member the National College for DUI Defense, holds an AV-preeminent rating from Martindale-Hubbell and a "Superb" ranking with Avvo. He represents clients in Greenville, Spartanburg and Anderson counties, South Carolina. You can contact him at upstatedui.com or 864-235-3834. His office is located at 1088 N. Church Street, Greenville, SC 29601.