~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

March 6, 2013

**H. 3057**

Introduced by Reps. Rutherford, Bales, Jefferson, Williams, Mitchell and King

S. Printed 3/6/13--H.

Read the first time January 8, 2013.

**A** **BILL**

TO AMEND SECTION 17‑22‑50, AS AMENDED, AND SECTION 17‑22‑60, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS WHO MAY NOT BE CONSIDERED FOR PARTICIPATION IN A PRETRIAL INTERVENTION PROGRAM AND PROGRAM ELIGIBILITY, RESPECTIVELY, BOTH SO AS TO ALLOW A PERSON TO PARTICIPATE IN A PROGRAM MORE THAN ONCE WITH THE SOLICITOR’S CONSENT.

Amend Title To Conform

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

SECTION 1. Section 17‑22‑50 of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

“Section 17‑22‑50. (A) A person must not be considered for intervention if:

(1) he previously has been accepted into an intervention program unless the solicitor, in his discretion, consents to allow the offender to participate in a pretrial intervention program more than once; ~~or~~

(2) he has previously been accepted into a pretrial intervention program for an offense contained in Chapter 25, Title 16; or

(3) the person is charged with:

(a) blackmail;

(b) driving under the influence or driving with an unlawful alcohol concentration;

(c) a traffic‑related offense which is punishable only by fine or loss of points;

(d) a fish, game, wildlife, or commercial fishery‑related offense which is punishable by a loss of eighteen points as provided in Section 50‑9‑1020;

(e) a crime of violence as defined in Section 16‑1‑60; or

(f) an offense contained in Chapter 25 of Title 16 if the offender has been convicted previously of a violation of that chapter or a similar offense in another jurisdiction.

(B) However, this section does not apply if the solicitor determines the elements of the crime do not fit the charge.”

SECTION 2. Section 17‑22‑60 of the 1976 Code is amended to read:

“Section 17‑22‑60. Intervention is appropriate only ~~where~~ when:

(1) there is substantial likelihood that justice will be served if the offender is placed in an intervention program;

(2) it is determined that the needs of the offender and the State can better be met outside the traditional criminal justice process;

(3) it is apparent that the offender poses no threat to the community;

(4) it appears that the offender is unlikely to be involved in further criminal activity;

(5) the offender, in those cases where it is required, is likely to respond quickly to rehabilitative treatment;

(6) the offender has no significant history of prior delinquency or criminal activity;

(7) the offender has not previously been accepted in a pretrial intervention program unless the solicitor, in his discretion, consents to allow the offender to participate in a pretrial intervention program more than once;

(8) the offender has not previously been accepted into a pretrial intervention program for an offense contained in Chapter 25, Title 16.”

SECTION 3. Section 17‑22‑110 of the 1976 Code is amended to read:

“Section 17‑22‑110. An applicant to an intervention program or an offender who applies to the chief administrative judge of the court of general sessions for admission to a program pursuant to Section 17‑22‑100 shall pay a nonrefundable application fee of one hundred dollars and, if accepted into the program, a nonrefundable participation fee of two hundred fifty dollars prior to admission. An applicant who has previously been accepted into a pretrial intervention program and who is accepted for a second or subsequent time into a program as provided by law shall pay a nonrefundable participation fee of five hundred dollars. All fees paid must be deposited into a special circuit solicitor’s fund for operation of the pretrial intervention program. All fees or costs of supervision may be waived partially or totally by the solicitor in cases of indigency. The solicitor may also, if he determines necessary, in situations other than indigency allow scheduling of payments in lieu of lump sum payment. ~~In no case shall aggregate fees for application and participation in an intervention program exceed three hundred fifty dollars. However,~~ In cases where the solicitor determines that referral to another agency or program is needed to achieve rehabilitation for a problem directly related to the charge, the defendant may be required to pay his participation in that special program, except that no services may be denied due to inability to pay.”

SECTION 4. Section 17‑22‑940(F), (H), and (J), as added by Act 36 of 2009, are amended to read:

“(F) SLED shall verify and document that the criminal charges in all cases, except in cases when charges are sought to be expunged pursuant to Section 17‑1‑40, are appropriate for expungement before the solicitor or his designee, and then a circuit court judge, or a family court judge in the case of a juvenile, signs the application for expungement. If the expungement is sought pursuant to Section 34‑11‑90(e), Section 22‑5‑910, Section 22‑5‑920, or Section 56‑5‑750(f), the conviction for any traffic‑related offense which is punishable only by a fine or loss of points will not be considered as a bar to expungement.

(1) SLED shall receive a twenty‑five dollar certified check or money order from the solicitor or his designee on behalf of the applicant made payable to SLED for each verification request, except that no verification fee may be charged when an expungement is sought pursuant to Section 17‑1‑40~~, 17‑22‑150(a),~~ or 44‑53‑450(b). SLED then shall forward the necessary documentation back to the solicitor’s office involved in the process.

(2) In the case of juvenile expungements, verification and documentation that the charge is statutorily appropriate for expungement must first be accomplished by the Department of Juvenile Justice and then SLED.

(3) Neither SLED, the Department of Juvenile Justice, nor any other official shall allow the applicant to take possession of the application for expungement during the expungement process.

(4) In cases in which a person has successfully completed a pretrial intervention program for the first time, SLED shall receive a twenty‑five dollar certified check or money order from the solicitor or his designee on behalf of the applicant made payable to SLED for each verification request. In cases in which a person has successfully completed a pretrial intervention program for a second or subsequent time, SLED shall receive a fifty dollar certified check or money order from the solicitor or his designee on behalf of the applicant made payable to SLED for each verification request.

(H) Each expungement order may contain only one charge sought to be expunged, except in those circumstances when expungement is sought for multiple charges occurring out of a single incident and subject to expungement pursuant to Section 17‑1‑40 or 17‑22‑150(a). Only in those circumstances may more than one charge be included on a single application for expungement and, when applicable, only one two hundred fifty‑dollar fee, one ~~twenty‑five dollar~~ SLED verification fee, and one thirty‑five dollar clerk of court filing fee may be charged.

(J) Nothing in this article precludes an applicant from retaining counsel to apply to the solicitor’s office on his behalf or precludes retained counsel from initiating an action in circuit court seeking a judicial determination of eligibility when the solicitor, in his discretion, does not consent to the expungement. In either event, retained counsel is responsible to the solicitor or his designee, when applicable, for the two hundred fifty‑dollar fee, the ~~twenty‑five dollar~~ SLED verification fee, and the thirty‑five dollar clerk of court filing fee which must be paid by retained counsel’s client. ”

SECTION 5. This act takes effect upon approval by the Governor.

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