



ALAN WILSON
ATTORNEY GENERAL

September 11, 2025

The Honorable Paul B. Wickensimer, Member
South Carolina House of Representatives
1105 Pendleton Street
312-D Blatt Building
Columbia, SC 29201

Dear Representative Wickensimer:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. After receiving communications from a constituent, you seek an opinion on the following questions regarding South Carolina Code Section 22-5-910.

First: Should someone be convicted of an offense falling under SC Code Section 22-5-910(A), but then within three years' time is convicted of another crime, after three years from the date of this second conviction can that person still qualify for consideration of the issuance of an expungement order by a court with jurisdiction to do so?

Second: If the two convictions are first offenses involving two separate crimes, does your opinion vary about the person's eligibility for an expungement order being issued for both convictions?

Third: Should someone be convicted of an offense falling under SC Code Section 22-5-910(B), but then within five years' time is convicted of another crime, after five years from this second conviction can that person qualify for expungement?

Fourth: If your opinion is that this person is not qualified to seek expungement within three- or five -years' time, do you see any time period elapsing that would allow this person to seek expungement orders?

Fifth: If expungement is not available to this person, could they nevertheless seek a pardon from our Governor for both convictions?

As discussed more fully below, we believe to receive an expungement pursuant to Section 22-5-910, an individual must remain free of any subsequent conviction during the period the statute

requires them to wait before applying for the expungement. However, a person who is not eligible for an expungement under Section 22-5-910 because of a disqualifying subsequent conviction may still be eligible to apply for a pardon.

Law/Analysis

Section 22-5-910 concerns the expungement of convictions falling within two categories. Currently, the statute provides:

- (A) Following a conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, or a first offense for unlawful possession of a firearm or weapon carrying a penalty of not more than one year or a fine of one thousand dollars, or both, the defendant after three years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant. However, this section does not apply to an offense involving the operation of a motor vehicle.
- (B) Following a conviction for domestic violence in the third degree pursuant to Section 16-25-20(D), or Section 16-25-20(B)(1) as it existed before June 4, 2015, the defendant after five years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant.
- (C) If the defendant has had no other conviction, including out-of-state convictions, during the three-year period as provided in subsection (A), or during the five-year period as provided in subsection (B), the circuit court may issue an order expunging the records including any associated bench warrant.
- (D) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34-11-95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.
- (E) As used in this section, “conviction” includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail. For the purpose of this section, any number

of offenses listed pursuant to subsection (A), for which the individual received sentences at a single sentencing proceeding 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.

- (F) No person may have the person's record expunged under this section if the person has pending criminal charges of any kind unless the charges have been pending for more than five years; however, this five-year time period is tolled for any time the defendant has been under a bench warrant for failure to appear. No person may have the person's records expunged under this section more than once. A person may have the person's record expunged even though the conviction occurred before the effective date of this section.

S.C. Code Ann. § 22-5-910 (Supp. 2024).

When construing a statute, the primary goal is to understand and give effect to the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where possible, legislative intent "should be ascertained primarily from the plain language of the statute." State v. Hudson, 336 S.C. 237, 246, 519 S.E.2d 577, 581 (Ct. App. 1999). We believe the plain language of Section 22-5-910 permits us to answer your questions about its application without resorting to other rules of statutory construction.

In response to your first question, a person who has been convicted of an offense falling under Section 22-5-910(A) is not eligible for an expungement of that offense if convicted of another offense within three years following the initial conviction. We believe this is true even if the person waits for three years following the second conviction without another new conviction. Under the plain language of the statute, the convicted person is eligible to apply for an expungement following the period designated for the type of offense in question. In the case of an offense falling under subsection (A), the individual can apply "after three years from the date of the conviction." S.C. Code Ann. § 22-5-910(A). If the person has had no other conviction in any state during that three-year period, the circuit court may issue an order expunging the records of arrest, conviction and any bench warrant associated with the conviction. S.C. Code Ann. § 22-5-910(C). A conviction for a minor traffic-related offense that is not related in any way to driving under the influence of alcohol or drugs does not count as a disqualifying conviction. S.C. Code Ann. § 17-22-940(E) (Supp. 2024). To receive an expungement for an offense falling under subsection (A), the individual must also not have any pending charges. S.C. Code Ann. § 22-5-910(F). Charges that have been pending for more than five years do not bar the expungement, but the five-year period is tolled during the time the person was under a bench warrant for failure to appear. Id. Finally, an individual can only receive one expungement order pursuant to Section 22-5-910. Id. In summary, to qualify for an expungement for an offense falling under Section 22-5-910(A), the individual must remain free of any conviction other than minor traffic-related offenses for three years following the conviction. However, it is important to note the conviction that disqualified a person from receiving an expungement under Section 22-5-910(A) might itself

be capable of expungement if the individual meets the criteria of one of the many expungement statutes.

Regarding your second question, our opinion does not change if the two convictions are first offenses for separate crimes. When it was first enacted, Section 22-5-910 only permitted first offense convictions in summary court to be expunged. Act No. 395, 1992 S.C. Acts 2191. Under the current statute, however, expungements are not limited to first offenses except for unlawful possession of a firearm or weapon. S.C. Code Ann. § 22-5-910(A). Although the statute permits multiple convictions falling under subsection (A) to be expunged by a single order, the convictions must have arisen from the same incident and sentences issued during a single sentencing proceeding. S.C. Code Ann. § 22-5-910(E). If that is not the case, the first conviction is not eligible for an expungement under Section 22-5-910. However, if the second conviction falls within Section 22-5-910(A) or (B), the person may be eligible for an expungement of the second offense following successful completion of the requisite waiting period with no subsequent conviction as provided in subsection (C) and no pending charges as explained in subsection (F).

Our answer to your third question is in line with our answer to your first. Under subsection (B), a person convicted of criminal domestic violence in the third degree may apply for an expungement after five years from the date of conviction. S.C. Code Ann. § 22-5-910(B). Any conviction during that five-year period disqualifies the person from receiving the expungement of the initial conviction. S.C. Code Ann. § 22-5-910(C). As with convictions falling under subsection (A), however, any conviction during that period for a minor traffic-related offense completely unrelated to driving under the influence of alcohol or drugs is not a bar to the expungement. S.C. Code Ann. § 17-22-940(E). The requirement that the individual also be free from pending criminal charges works the same for an offense falling under subsection (B) as it does with an offense falling under subsection (A). S.C. Code Ann. § 22-5-910(F). Although a conviction during the five-year waiting period prevents an individual from receiving an expungement for a criminal domestic violence in the third degree, if the disqualifying conviction itself qualifies for an expungement under Section 22-5-910 or some other statute, the individual may be able to successfully seek expungement of the disqualifying conviction.

Responding to your fourth question, if a person is not eligible to receive an expungement because of a disqualifying subsequent conviction, the additional passage of time will not allow the person to receive an expungement of the first conviction under Section 22-5-910 as it is currently written. To receive an expungement under the current statute, the person must apply for an expungement after the requisite waiting period and have been free from additional convictions during the waiting period. S.C. Code Ann. § 22-5-910(C). The statute provides no mechanism to restore expungement eligibility once lost by a conviction during the required waiting period.

In answer to your final question, being ineligible for an expungement pursuant to Section 22-5-910 because of a subsequent conviction does not render the person ineligible for a pardon for either conviction or both convictions. The Board of Probation, Parole and Pardon Services has the exclusive duty to consider cases for pardons in South Carolina. S.C. Code Ann. § 24-21-13(B)

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(Rev. 2025) (board to consider cases for parole, pardon, and other forms of clemency provided for by law); see S.C. Const. art. IV, § 14 (providing the Governor has the power to grant reprieves and commutations of death sentences and all other forms of clemency are regulated by law). Our General Assembly established pardon eligibility guidelines in Section 24-21-950 of the South Carolina Code. S.C. Code Ann. § 24-21-950 (Rev. 2025). The statute contains no language indicating pardon eligibility is impacted by expungement eligibility. One of the guidelines applicable to many convictions falling under Section 22-5-910 is that a person who has been discharged from their sentence without the benefit of supervision must be considered for a pardon on request after the date of discharge. S.C. Code Ann. § 24-21-13(B). To determine whether the disqualifying conviction itself is eligible for a pardon, the individual must review the pardon eligibility guidelines. In addition to the general guidelines, a defendant who has been ordered to pay restitution to a victim may not be granted a pardon until the restitution and any collection fees required by the order of restitution have been paid. S.C. Code Ann. § 17-25-322(E) (Rev. 2014). Although there is no indication that being ineligible for expungement prevents a person from applying for a pardon, it is important to remember that a pardon is an act of grace and can be refused. State v. Kimbrough, 212 S.C. 348, 358, 46 S.E.2d 273, 277 (1948).

Conclusion

To be eligible for an expungement pursuant to Section 22-5-910, the convicted person must remain conviction-free during the period between the original conviction and the time they are first eligible to apply for an expungement. Failing to remain free from all convictions save for minor traffic offenses during the waiting period is an absolute bar to receiving an expungement of the original conviction. Whether the person is eligible for an expungement of the second, disqualifying conviction will depend on the nature of the offense and whether it qualifies for expungement under Section 22-5-910 or some other expungement statute. The inability of a person to receive an expungement pursuant to Section 22-5-910 because of the person's failure to remain conviction free during the waiting period required by statute does not render the initial conviction or the subsequent conviction ineligible for a pardon and pardon eligibility must be judged based on Section 24-21-13.

Sincerely,



Sabrina C. Todd

Assistant Attorney General

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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook
Solicitor General Emeritus