ALAN WILSON
ATTORNEY GENERAL

July 28, 2025

Mollie DuPriest Taylor, Chair
South Carolina Board of Paroles and Pardons
PO Box 207
Columbia, SC 29202

Dear Chairperson Taylor:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. On behalf of the South Carolina Board of Paroles and Pardons (the Board), you seek guidance on the following three matters.

1. Pardons for Expunged Crimes
Our Board has recently received a significant number of applications requesting a pardon for offenses that have been expunged from an individual's record. This raises a fundamental question: How does the Board grant a pardon for a crime that legally no longer exists? Without access to official records, we must rely solely on the applicant's version of the offense when making our decision. We recognize that this information may not always be entirely accurate or complete. We seek clarification on the Board's authority and responsibility in these cases.

2. Quorum Requirements and Representation
Our board has established that four members constitute a quorum to conduct official business. However, there is ongoing discussion about whether hearings, including those that determine the release of violent offenders, may be conducted with fewer members present. The Legislature structured this Board with one member from each congressional district to ensure statewide representation in decision-making. Some of us believe that significant actions, such as granting release, should require a broader representation of the state. We request clarification on whether a quorum of four members is a legally mandated requirement and if decisions made with fewer members would be valid.

3. Board Social Gatherings and Open Meeting Requirements
The Board members have been advised that any gathering of two or more members may be perceived as an official meeting requiring public notice, published agenda,

and documentation and this would include meeting socially for dinner. It is our intent to maintain full transparency in all official business. We seek guidance on whether board members may meet socially without triggering open meeting requirements, provided no official business is discussed.

Law/Analysis

Pardon Applications for Expunged Crimes

You first ask about the board's authority and responsibility when presented with applications seeking pardons for convictions that have been expunged. It is the opinion of this office that if the applicant meets the criteria set forth by the General Assembly, the board may consider an application to pardon an offense even if the applicant has received an order of expungement for the same offense.

A pardon, as defined by the South Carolina Code, "means that an individual is fully pardoned from all the legal consequences of his crime and of his conviction, direct and collateral, including the punishment, whether of imprisonment, pecuniary penalty or whatever else the law has provided." S.C. Code Ann. § 24-21-940(A) (Rev. 2025). A pardon "shall fully restore all civil rights lost as a result of a conviction" including the right to:

(1) register to vote;
(2) vote;
(3) serve on a jury;
(4) hold public office, except as provided in Section 16-13-210;
(5) testify without having the fact of his conviction introduced for impeachment purposes to the extent provided by Rule 609(c) of the South Carolina Rules of Evidence;
(6) not have his testimony excluded in a legal proceeding if convicted of perjury; and
(7) be licensed for any occupation requiring a license.

S.C. Code Ann. § 24-21-990 (Rev. 2025).

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) (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).

On the issue of pardon eligibility, our Legislature has provided:

(A) The following guidelines must be utilized by the board when determining when an individual is eligible for pardon consideration.

> (1) Probationers must be considered upon the request of the individual anytime after discharge from supervision.
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> (2) Persons discharged from a sentence without benefit of parole must be considered upon the request of the individual anytime after the date of discharge.
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> (3) Parolees must be considered for a pardon upon the request of the individual anytime after the successful completion of five years under supervision. Parolees successfully completing the maximum parole period, if less than five years, must be considered for pardon upon the request of the individual anytime after the date of discharge.
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> (4) An inmate must be considered for pardon before a parole eligibility date only when he can produce evidence comprising the most extraordinary circumstances.
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> (5) The victim of a crime or a member of a convicted person's family living within this State may petition for a pardon for a person who has completed supervision or has been discharged from a sentence.
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> (B) Persons discharged from a sentence without benefit of supervision must be considered upon the request of the individual anytime after the date of discharge.

S.C. Code Ann. § 24-21-950 (Rev. 2025). Inmates with a terminal illness and a life expectancy of one year or less are also afforded consideration. S.C. Code Ann. § 24-21-970 (Rev. 2025). 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).

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). A pardon is seen as an act of "forgiveness and not forgetfulness." Op. S.C. Att'y Gen, 1996 WL 265802 at *6 (April 23, 1996). In South Carolina, a pardon does not result in the expungement of records of the conviction pardoned or of the underlying arrest. Op. S.C. Att'y Gen, 1980 WL 81950 at *2 (June 12, 1980) (pardon "would not warrant the physical obliteration of the criminal record"). Whether a person is convicted or acquitted is a matter left to the judicial branch and cannot be changed by an executive act as the powers inherent to the judicial branch may not be assumed by another branch. Id.; see also S.C. Const. art. I, § 8 (separation of powers) and S.C. Const. art. V § 1 (judicial power vested in unified judicial system).

When the board grants a pardon, a certificate of pardon is issued "stating that the individual is absolved from all legal consequences of his crime and conviction, and that all of his civil rights are restored." S.C. Code Ann. § 24-21-1000 (Rev. 2025). Every pardon granted must be entered into the county clerk of court's "Record Book of Pardons" containing the names of the persons pardoned, the crimes for which they were convicted, the date of conviction, and the date of pardon. S.C. Code 14-17-540 (Rev. 2017).

An expungement is a court order that requires the destruction of specific public records. All orders for destruction of public records are regulated by statute. Op. S.C. Att'y Gen., 1986 WL 289825 at *1 (August 27, 1986). Our statutes permit issuance of expungement orders for the destruction of public records of arrest and conviction for specific offenses, each having its own set of eligibility criteria.[1] Juvenile records are also subject to expungement with records related to the custodial detention, charges, and adjudication ordered destroyed. S.C. Code Ann. § 63-19-2050 (Supp. 2024). The effect of an expungement order of juvenile records "is to restore the person in the contemplation of the law to the status the person occupied before being taken into custody." S.C. Code Ann. § 63-19-2050(E). The statutes permitting expungements of adult convictions, however, contain no such language. Although an expungement order requires the destruction of public records of an arrest and, when applicable, a conviction, it does not mean the crime no longer exists. Significantly, none of these statutes or the expungement order forms approved by the Supreme Court of South Carolina require destruction of police reports or evidence demonstrating criminal conduct. In fact, law enforcement and prosecuting agencies are required to maintain unredacted records including arrest records, incident reports, supplemental reports, and investigative files under seal for three years and one hundred twenty days following an expungement order and are permitted to maintain such records under seal indefinitely for several reasons including law enforcement purposes. Order for Destruction of Arrest Records, SCCA 223A1 (Rev. 06/2024) (citing S.C. Ann. § 17-1-40(B)(1)(a) and (C)(1)). The order for expungement of records following a juvenile adjudication or conviction also provides the same retention practice by statutory reference. Motion and Order for Expungement of Juvenile Records, SCCA 492 (07-2019). Records maintained under seal are "not subject to disclosure other than to a law enforcement or prosecution agency and attorneys representing a law enforcement or prosecution agency, unless disclosure is allowed by court order." S.C. Code Ann. § 17-1-40(A) (Supp. 2024).[2]

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[1] S.C. Code Ann. § 17-1-65 (Supp. 2024) (unlawful possession of a handgun where conviction occurred prior to enactment of S.C. Constitutional Carry/Second Amendment Preservation Act of 2024); S.C. Code Ann. § 22-5-910(A) (Supp. 2024) (first offense magistrate's court conviction and first offense unlawful possession of firearm or weapon); S.C. Code Ann. § 22-5-910(B) (Supp. 2024) (first offense domestic violence 3rd or former criminal domestic violence third); S.C. Code Ann. § 22-5-920(B) (Rev. 2025) (first offense conviction for many offenses as a youthful offender); S.C. Code Ann. § 22-5-930 (Rev. 2025) (specified first offense drug convictions) S.C. Code Ann. § 34-11-90(e) (Rev. 2020) (first offense misdemeanor fraudulent check conviction); S.C. Code Ann. § 56-5-750(F) (Rev. 2018) (first offense failure to stop for law enforcement with no death of great bodily injury). Several statutes permit expungement of arrest records where the criminal charges did not result in a conviction or an adjudication of delinquency. We do not discuss those statutes here because a pardon is only available in South Carolina following a conviction or juvenile adjudication. S.C. Code Ann. § 24-21-940(A) (d) (limiting pardons by definition to convicted crimes); Doe v. State, 399 S.C. 49, 49-50, 731 S.E.2d 595, 595-596 (2012) (holding juvenile adjudication is the equivalent of a conviction and thus eligible for a pardon).

[2] The South Carolina Law Enforcement Division also maintains nonpublic records of many expunged convictions although currently access to those records is limited to officials who need access to the information to ensure an individual does not take advantage of a particular expungement opportunity more than once. S.C. Code Ann. § 22-5-910(D); S.C. Code Ann. § 22-5-920(C); S.C. Code Ann. § 22-5-930(D) and (E); S.C. Code Ann. § 34-11-90(e); S.C. Code Ann. § 56-5-750(F).

A pardon and an order of expungement serve different purposes. A pardon forgives an individual for all legal consequences of the person's crime and conviction and restores any lost rights. An expungement, however, orders the destruction of specific public records demonstrating the arrest and, when applicable, the conviction. It is logical that an eligible person may wish to reap the benefits of both a pardon and an expungement. Nothing in Section 24-21-950 excludes a person from pardon eligibility because the conviction in question has been expunged. Of course, if our Legislature wishes to so restrict the availability of a pardon, it may do so.

Although we do not believe an expungement is a bar to later receiving a pardon for the same offense, we recognize it presents logistical challenges. According to the department's policy and procedure manual for Board of Paroles and Pardons, departmental staff investigate pardon applications and prepare the cases for the board's review. South Carolina Department of Probation, Parole and Pardon Services, South Carolina Board of Paroles and Pardons Policy and Procedure Manual, Part IV § A ¶ 3, p.43 (November 2019), https://ppp.sc.gov/sites/dppps/files/Documents/Parole%20Pardon%20Release/Board_of_Paroles_and_Pardons_11062019.pdf (last visited July 22, 2025). Because the public records of an arrest and conviction including any references on the public index are destroyed pursuant to the expungement order, it will not be as easy for department staff to perform their investigation as it would be for an unexpunged offense. However, the department's director, who is charged with developing written policies and procedures for consideration of pardons, could establish procedures to assist the investigators. S.C. Code Ann. § 24-21-13(A)(2) (Rev. 2025). For example, it would be reasonable to require an applicant seeking a pardon for an expunged offense to provide details of the crime and its investigation and to supply copies of any documents they have including a copy of the expungement order provided to them pursuant to statute. S.C. Code Ann. § 17-22-940(C) (Supp. 2024) (solicitor's office to provide copy of completed expungement order to applicant or applicant's counsel). Pardon applicants could be cautioned to be as transparent as possible so the board can reach an informed decision on their application. Pardon applicants could also be advised of the entry that will be made in the Record Book of Pardons if their pardon is granted, essentially reintroducing their conviction back into the public to some extent. Finally, because the department is a law enforcement agency, the pardon investigators would be able to request any public and unredacted nonpublic records law enforcement and prosecuting agencies have with the understanding that records under seal must and will remain under seal in compliance with Section 17-1-40.

Even if the department implemented new procedures, it is possible that records of an expunged offense will nevertheless be unavailable. But that is also true of an application for a pardon where the offense occurred so long ago that no law enforcement or prosecuting agency can provide records. While in our opinion it is possible for a person to seek and receive a pardon for an expunged offense, a person who seeks the benefit of both an expungement and a pardon might do well to seek the pardon before or at the same time as the expungement to ensure availability of relevant records. Alternatively, a person could secure certified copies of all available law

enforcement records prior to seeking an expungement and then provide those records with the pardon application.

Quorum Requirements

The South Carolina Board of Probation, Parole and Pardon Services is comprised of seven members. S.C. Code Ann. § 24-21-10 (Rev. 2025). The board has established that a quorum is four members. This is consistent with the common law requirement that, absent some statutory or other legal provision to the contrary, a majority of the whole board is needed to form a quorum. Garris v. Governing Bd. of S.C. Reinsurance Facility, 333 S.C. 432, 453, 511 S.E. 2d 48, 59 (1998). Generally, a board can do no valid act without a quorum. Id. However, in regard to this board Section 24-21-30 of our code provides in pertinent part:

> (A) A person who commits a "no parole offense" as defined in Section 24-13-100 on or after the effective date of this section is not eligible for parole consideration, but must complete a community supervision program as set forth in Section 24-21-560 prior to discharge from the sentence imposed by the court. For all offenders who are eligible for parole, the board shall hold regular meetings, as may be necessary to carry out its duties, but at least four times each year, and as many extra meetings as the chairman, or the Governor acting through the chairman, may order. The board may preserve order at its meetings and punish any disrespect or contempt committed in its presence. The chairman may direct the members of the board to meet as three-member panels to hear matters relating to paroles and pardons as often as necessary to carry out the board's responsibilities. Membership on these panels shall be periodically rotated on a random basis by the chairman. At the meetings of the panels, any unanimous vote shall be considered the final decision of the board, and the panel may issue an order of parole with the same force and effect of an order issued by the full board pursuant to Section 24-21-650. Any vote that is not unanimous shall not be considered as a decision of the board, and the matter shall be referred to the full board which shall decide it based on a vote of a majority of the membership.
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> (B) The board may grant parole to an offender who commits a violent crime as defined in Section 16-1-60 which is not included as a "no parole offense" as defined in Section 24-13-100 on or after the effective date of this section by a two-thirds majority vote of the full board. The board may grant parole to an offender convicted of an offense which is not a violent crime as defined in Section 16-1-60 or a "no parole offense" as defined in Section 24-13-100 by a unanimous vote of a three-member panel or by a majority vote of the full board.
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> Nothing in this subsection may be construed to allow any person who commits a "no parole offense" as defined in Section 24-13-100 on or after the effective date of this section to be eligible for parole.

S.C. Code Ann. § 24-21-30 (Rev. 2025).

"The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly." Creswick v. Univ. of S.C., 434 S.C. 77, 81, 862 S.E.2d 706, 708 (2021). Regarding parole hearings, the legislative intent is clear. The chair of the board may appoint three-person panels to meet and hold parole hearings. § 24-21-30(A). A hearing panel may only grant parole if the convicted offense is not a violent crime within the definition provided by Section 16-1-60 and is not considered a "no parole offense" as defined in Section 24-13-100. § 24-21-30(B). At the panel meetings, any unanimous decision of the panel will be considered the decision of the entire board. Id. All matters on which the panel does not reach a unanimous vote shall be referred back to the full board and will be decided on a majority vote of the full board. Id. Thus, a three member panel can consider parole matters generally, but may not grant parole if the offense in question is a violent crime or a no parole offense.

We are less confident, however, that a hearing panel of three could make any valid decision regarding a pardon application. "The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd." Hodges v. Rainey, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000). Although Section 21-21-30, clearly states that the board chair may appoint three-member panels to hear both parole and pardon matters, the focus of the statute is parole hearings, not pardon hearings. The language of how to proceed if the decision of the panel is unanimous mentions parole decisions, but not pardon decisions. The next sentence, which addresses referring the matter back to the full board if a unanimous vote is not reached, does not include the words parole or pardon, but clearly refers back to the sentence regarding a unanimous vote. Moreover, if we were to interpret Section 24-21-30 to permit three-member panels to conduct pardon hearings, it is unclear how the board would comply with the requirement that an order of pardon must be signed by two-thirds of the members of the board. S.C. Code Ann. § 24-21-930 (Rev. 2025). Where a conflict exists between a general statute and a specific one, the specific statute prevails. State v. Cutler, 274 S.C. 376, 378-379, 264 S.E.2d 420, 421 (1980). To the extent that Section 24-21-30 and Section 24-21-930 conflict on whether pardon hearings may be conducted by a three-member panel, it is the opinion of this office that section 24-21-930 would prevail and put any pardon decision made by a three-member panel in doubt. We therefore caution the board not to use three-member panels for pardon hearings without first receiving either judicial or legislative clarification.

Board Social Gatherings and Open Meeting Requirements

You ask whether your board members may meet socially without triggering the open meeting requirements of South Carolina's Freedom of Information Act. Your board members may gather socially, but are cautioned that presence of a quorum will in our opinion create a rebuttable presumption that the members have gathered together for the purpose of a meeting within the definition of FOIA.

> The "Findings and purpose" section of our state's FOIA provides:
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> The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15 (Rev. 2007).

The Act requires all meetings of public bodies to be open unless closed pursuant to Section 30-4-70. S.C. Code Ann. § 30-4-60. A meeting is defined as "the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." S.C. Code Ann. § 30-4-20(d) (Rev. 2007). A quorum is defined in FOIA as "a simple majority of the constituent membership of a public body" unless otherwise defined by applicable law. S.C. Code Ann. § 30-4-20(e). Section 30-4-70, which enumerates reasons a public body is permitted to hold a meeting closed to the public, also provides "[n]o chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." S.C. Code Ann. § 30-4-70(c) (Rev. 2007). With the exception of emergency meetings, all meetings of a public body require advance public notice. S.C. Code Ann. § 30-4-80 (Supp. 2024). Minutes of all public meetings must also be maintained and made available to the public. S.C. Code Ann. § 30-4-90 (Rev. 2007).

If members of the board are gathered together and either discussing or acting on any matter over which the board has control, supervision, jurisdiction, or advisory power, the gathering is, by definition, a meeting if a quorum is present. S.C. Code Ann. § 30-4-20(d). A majority of the board constitutes a quorum. S.C. Code Ann. § 30-4-20(e). Because, as discussed above, the law permits a panel of the board to decide on certain parole matters, the entire membership of a current parole panel would also constitute a quorum for the purposes of matters on which a parole panel can act. § 24-21-30(A). This office has repeatedly taken the view adopted by other jurisdictions that if a quorum of a public body is present, "there is a rebuttable presumption that it is for the purpose of holding a meeting." Op. S.C. Att'y Gen., 2008 WL 2324810 at *2 (May 5, 2008) (reaffirming Op. S.C. Att'y Gen., 2002 WL 31341811 (August 19, 2002)); see also Op. S.C. Att'y Gen, 2015 WL 1093149 (February 25, 2015); Op. S.C. Att'y Gen., 2004 WL 2451475 (October 7, 2004). Although none of these opinions involved social gatherings, we maintain this view for social gatherings as well. If a quorum gathers for purely social reasons, the attending members should take care that no business is discussed or acted upon. Further, the attending members would be

wise to be prepared to rebut the presumption that they in fact held a meeting. It is important to note that "[t]he essential purpose of FOIA is to protect the public from secret government activity." Lambries v. Saluda County Council, 409 S.C. 1, 8-9, 760 S.E.2d 785, 789 (2014). By including the prohibition against using a chance or social meeting or electronic communication as a means to circumvent FOIA rules, our General Assembly recognized that some bodies might use the same as a means to avoid discussing in public what they are not permitted to discuss in private. Additionally, the board should be mindful that members of the public might suspect that a purely social gathering was something more. Thus, while a purely social gathering is not prohibited, it is important to ensure that a social gathering does not intentionally or unintentionally become a "meeting" as defined in FOIA.

Conclusion

It is the opinion of this office that an expunged conviction is eligible for a pardon and that policies and procedures can be created to assist those who investigate pardon applications. A panel of three members of the board may be appointed to consider certain parole applications provided the offense is not a violent crime or a no parole offense. Finally, board members may socialize with one another, but should take great care to not discuss or act on any board business while a quorum is present and may wish to avoid the gathering of a quorum altogether to prevent creating the presumption that the members have gathered to hold a meeting.

Sincerely,

Sabrina C. Todd

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REVIEWED AND APPROVED BY:

Robert D. Cook

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