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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 14, 1996

The Honorable Liz Godard
Clerk of Court of Aiken County
Post Office Box 583
Aiken, South Carolina 29802-0583

RE: Informal Opinion

Dear Ms. Godard:

By your recent letter to Attorney General Condon, you have sought an opinion as to how clerks of court are to maintain dockets which indicate that cases involving defendants who have entered pretrial intervention ("PTI") programs have not yet been disposed. You point out that it is important to "track" the pretrial intervention cases, but you are concerned about various statutes which may prohibit clerks of court from keeping adequate records until cases have been disposed.

You have advised that if a defendant is accepted for participation in a pretrial intervention program, "PTI" is noted on the docket. Participation in a PTI program requires no admission of guilt. The notation concerning participation allows the clerk of court, chief administrative judge, presiding judge, and solicitors to "track" criminal cases and determine which are ready for trial. All cases, including PTI cases, remain on the docket until the case is disposed. For a defendant in a PTI program, disposition may occur upon successful completion of the program, when the case is dismissed and all records are expunged upon receipt of an expungement order. If the defendant does not successfully complete the program, he may then be tried, and an appropriate verdict entered upon the court records.

Further, as you point out, opinions of this Office have concluded that an arrest warrant is public information. All arrest warrants are placed on a docket, which is also public information.

Request Letter

Specifically you have asked whether S.C. Code Ann. §17-22-170 requires that clerks of court maintain as confidential information otherwise public records of arrest and docketing on defendants who have been accepted for participation in PTI programs but who have not yet completed the program. You have also asked whether §17-22-170 should be read in conjunction with §17-22-150, which indicates that the courts retain "official" (and presumably public) records until receipt of expungement orders.

Relevant Statutes

The Pretrial Intervention Act is codified at S.C. Code Ann. §17-22-10 et seq. (1976, revised 1985, & 1995 Cum. Supp.). Section 17-22-50 states that "[a] person may not be considered for intervention if he has previously been accepted into an intervention program nor may intervention be considered" for individuals charged with certain offenses. Clearly, an individual cannot be considered for a pretrial intervention program if he or she has been accepted into a pretrial intervention program previously. That qualification is repeated in §17-22-60, which details the standards of eligibility for a pretrial intervention program; that statute states that "[i]ntervention is appropriate only where: ... (7) the offender has not previously been accepted in a pretrial intervention program."

As to reports concerning individuals in PTI programs, §17-22-130 provides:

> Notwithstanding the provisions of Section 17-1-40[1], in all cases where an offender is accepted for intervention a report must be made and retained on file in the solicitor's office, regardless of whether or not the offender successfully completes the intervention program. All reports must be retained on file in the solicitor's office for a period of two years after successful completion, two years after rejection, or two years after unsuccessful completion of the program. After the retention of these reports for two years, they may be destroyed. The circuit solicitor shall furnish to the South Carolina Law Enforcement Division personal identification

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[1]Section 17-1-40 provides:

> Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law-enforcement agency.

> information on each person who applies for intervention, is subsequently accepted or rejected and successfully or unsuccessfully completes the program. This information may only be used by the division and the State Coordinator's Office in those cases where a circuit solicitor inquires as to whether a person has previously been accepted in an intervention program. However, that information may be confidentially released to the State Coordinator's Office to assist in compiling annual reports. The identification information on any defendant must not be under any circumstances released as public knowledge.

In addition, §17-22-150 provides for the disposition of charges and the expungement of records, upon proper application to the court, upon successful completion of a pretrial intervention program:

> (a) In the event an offender successfully completes a pretrial intervention program, the solicitor shall effect a noncriminal disposition of the charge or charges pending against the offender. Upon such disposition, the offender may apply to the court for an order to destroy all official records relating to his arrest and no evidence of the records pertaining to the charge may be retained by any municipal, county, or state entity or any individual, except as otherwise provided in Section 17-22-130. The effect of the order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest. No person as to whom the order has been entered may be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest in response to any inquiry made of him for any purpose.
>
> ....

Finally, certain penalties are provided in §17-22-170 for the unlawful release or retention of information regarding an individual's participation in an intervention program:

> Any municipal, county, or state entity or any individual who unlawfully retains or releases information on an offender's participation in a pretrial intervention program is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding two thousand dollars or by imprisonment not to exceed one year.
>
> The provisions of this section do not apply to circuit solicitors or their staff in the performance of their official duties.

Discussion

To respond to your inquiry, it is necessary to consider the legislative intent of these statutes. The primary objective in construing statutes is to determine and effectuate legislative intent if it is at all possible to do so. Bankers Trust of South Carolina, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in a statute are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Where the terms of a statute are clear and unambiguous, they must be applied according to their literal meaning. Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977). The meaning of a statute should not be sought in any single section but should be sought in all parts of the statute together in relation to the end intended by the statute. DeLoach v. Scheper, 188 S.C. 21, 198 S.E. 409 (1938).

I understand that in at least some of the counties, when a solicitor places an individual in a pretrial intervention program, the individual's name is administratively removed from the docket and the case ended on the computer. The information stays on the computer in that form unless and until an order of expungement should be received. The documents relative to the case (which could include arrest warrants, indictments, bond information, and the like) are kept in a file and marked as an ended file. I am informed that in at least some of the counties, these documents are treated as public records unless and until the file is expunged. In keeping with the statutes cited above, the individual who has successfully completed the pretrial intervention program is responsible for applying for the order of expungement; such is not automatically issued upon successful completion of the program. I am further advised that in at least some of the counties, when the order of expungement is received, the clerk of court marks off the relevant information from public records (warrant book, index, or whatever) with a marker so that the information is effectively obliterated.

Considering the statutes cited above, I am of the opinion that the records in question remain public records unless and until an order of expungement is received after an individual has successfully completed a pretrial intervention program.[2] Moreover, merely enrolling in a pretrial intervention program does not automatically ensure that an individual will successfully complete the program and avoid prosecution. While information about a participant may have been administratively deleted from the docket and from the computer, no statute appears to govern the removal of records from the

[2]I do not see a statute specifically directing the clerk of court to take specific action with respect to records of individuals enrolled in pretrial intervention programs. Perhaps legislative clarification would be helpful to resolve any possible doubt.

public venue unless and until an order of expungement is received. Even after an order of expungement is received and official records have been expunged, certain records are to be kept in accordance with §17-22-130. I am further of the opinion that the terms of §17-22-170 as to unlawful retention of records do not come into consideration until the order of expungement has been received by a municipal, county, or state entity and has then been violated or disregarded.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D Petway

Patricia D. Petway
Senior Assistant Attorney General