

1982 WL 189482 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 5, 1982

*1 Ms. Mary Z. Ramsey
Room 3
Berkeley County Health Department
Post Office Box 884
Moncks Corner, South Carolina 92461

Dear Mr. Ramsey:

In regard to your letter concerning the possibility of a circuit judge ordering defendants to return to a Pre-Trial Intervention Program once they have been dismissed from the program, it is the opinion of this office that this would not be an appropriate action for a judge to take.

PTI is a Pre-Trial Diversion program, not a vehicle to provide alternative sentences. Whether to accept a defendant into the PTI program or prosecute him is a matter of prosecutorial discretion with the solicitors. Whether to allow a defendant to remain in the PTI program if he violates the conditions of the program is again a matter which falls within the prosecutorial discretion of the solicitor.

[Section 17-22-150\(B\), Code of Laws of South Carolina](#) provides the procedure to be used when an offender violates the conditions of the program agreement. The statute states (in pertinent part): 'In the event the offender violates the conditions of the program agreement: (1) the solicitor may terminate the offender's participation, . . . and (3) the prosecution of pending criminal charges against the offender shall be resumed by the solicitor.' (Emphasis added). Please note the usage of 'may' in Section (1) and 'shall' in Section (3). By the use of 'shall' in Section (3), the Legislature has seen fit to remove from the discretion of the solicitor the power to let an offender re-enter a PTI program once the solicitor has terminated the offender's participation in the program.

In addition, [Section 17-22-50, Code of Laws of South Carolina](#) provides (in pertinent part) that 'a person shall not be considered for (pre-trial) intervention if he or she has previously been accepted into an intervention program . . .'

In this Code section, the Legislature has provided that a solicitor may, in his discretion, allow an offender to remain in a PTI program even if the offender violates the conditions of the program agreement. Once the solicitor has properly and officially terminated the offender's participation in the program, however, the Legislature has provided that the particular offender is no longer eligible to participate in the PTI program. Therefore, once an offender's participation in PTI has been properly and officially terminated by the solicitor, the solicitor is powerless to make an agreement with a judge to accept the offender back into PTI even if ordered to do so by the Court.

I hope this fully covers your questions on this matter.

Sincerely,

John M. Barton
Assistant Attorney General

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