

1974 WL 27585 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 8, 1974

***1 In Re: Disposition of DUI Prosecutions Upon Attendance of Rehabilitation School**

Honorable Carl V. Barrs, Sr.
Municipal Judge
City of Goose Creek
Box 236
Goose Creek, South Carolina

Dear Judge Barrs:

You have inquired as to the proper disposition of a DUI charge after the defendant has successfully completed attendance at a 'rehabilitation School'. I assume that you have reference to the practice that has been instituted in some localities under the ASAP program wherein a DUI defendant is in some cases permitted to attend an ASAP training program and upon successful completion of the course of instruction permitted to plead guilty to a lesser offense.

There is no provision under State law authorizing such procedure. The offense of DUI has no lesser included offenses and therefore the charge of drunk driving cannot be lawfully reduced to a lesser charge.

In DUI prosecutions, as with all other criminal prosecutions, the State, whether it be represented by the solicitor, city or county attorney, or the arresting traffic officer, may lawfully not prosse the charge originally preferred and substitute another charge therefor when there is evidence to support such other charge. Whether or not such action is taken is a matter of policy with the police department involved and is not a question of law that can be properly answered by this Office. For your information, I am enclosing a copy of a letter written by this Office to Mr. William J. McCord, Director of the South Carolina Commission on Alcoholism, with reference to a similar question posed by Director McCord.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

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