

South Carolina Restoration of Rights & Record Relief

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I. Loss & restoration of civil/firearms rights

A. Civil rights

The right to vote is lost if an individual is “serving a term of imprisonment resulting from a conviction of a crime;” or, if an individual has been “convicted of a felony or offenses against the election laws.” S.C. Code Ann. §§ 7-5-120(B)(2), (B)(3).

Imprisonment results in disqualification even if the conviction is for a misdemeanor. Because eligibility for office is contingent on being a qualified voter, S.C. Const. art. XVII, § 1, a person disqualified from voting is also disqualified from office. Both rights are restored automatically upon “service of the sentence, including probation and parole time unless sooner pardoned.”

S.C. Code Ann. § 7-5-120(B)(3).

Payment of fines and restitution is not a condition of re-enfranchisement; rather, the court has “continuing jurisdiction over court-ordered payments” and may hold a hearing to enter a civil judgment in favor of the state or a victim for unpaid fines and restitution. S.C. Code Ann. § 17-25-323. “A person who is in jail or pre-trial facility and who has not been convicted of any crime is not disenfranchised and should be allowed to register and vote.” 1993 Op Att’y Gen. No. 93-23.

The right to hold office after embezzlement of public funds is restored by a two-thirds vote of the General Assembly “upon payment in full of principal and interest of the sum embezzled.” § 16-13-210.

The right to serve on jury is restored only by pardon from the Probation, Parole, and Pardon Board. S.C. Code Ann. §§ 14-7-810(1), 24-21-920.

Juvenile adjudications do not “operate to impose civil disabilities ordinarily resulting from conviction.” S.C. Code Ann. § 63-19-1410.

B. Firearms

A person convicted of a “violent crime” may not possess a firearm or ammunition, S.C. Code Ann. § 16-23-500(A). Handgun rights are also lost upon

conviction of a “crime of violence.” § 16-23-30(B), as defined in § 16-23-10(c), *see Fernanders v. State*, 359 S.C. 130 (2004), 597 S.E.2d 787(S.C. 2004). These rights may be restored by a pardon. *See, e.g., Brunson v. Stewart*, 547 S.E.2d 504 (S.C. Ct. App. 2001). An exception for antique weapons elsewhere in the code would not appear to apply. *See* § 16-23-270.

II. Pardon policy & practice

A. Authority

The governor has the authority to grant reprieves and commute death sentences, but all other clemency authority is vested by statute in the Probation, Parole, and Pardon Board. S.C. Const. art. IV, § 14; S.C. Code Ann. § 24-21-920. (Power transferred by constitutional amendment from the governor to the Board in 1949. *See* 26 S.C. Jur., *Probation, Parole, and Pardon* § 28 (2004)). The Board has seven members appointed by the governor to six-year terms, six of whom are appointed from each of the state’s six congressional districts and one at-large. S.C. Code Ann. § 24-21-10(B) (2011). The Board chooses its own chair. *Id.*

B. Eligibility

Probationers are eligible to apply for pardon upon discharge from supervision and payment of restitution; parolees are eligible after successful completion of five years under supervision, or discharge from supervision, whichever comes first. S.C. Code Ann. §§ 24-21-950(A)(1) – (A)(3). No pardon application will be considered until restitution has been paid in full to the victim. § 17-25-322(E).

See also

Applying for a Pardon at:

<https://www.dppps.sc.gov/Parole-Pardon-Hearings/Pardon-Application>.

The victim of a crime or a member of a convicted person’s family living within the State may petition for a pardon for a person who has completed supervision or has been discharged from a sentence. § 24-21-950(A)(5). After denial, the applicant must wait one year before reapplying. § 24-21-960(B). People with federal and out-of-state offenses are not eligible.

C. Effect

Pardon restores all civil rights, gun rights, and the right to be licensed for any occupation requiring a license. See also S.C. Code Ann. § 24-21-990; § 24-21-940 (“Pardon’ 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.”) This provision is so broad that it precludes using a pardoned conviction as a predicate offense. *State v. Baucom*, 531 S.E.2d 922, 924-25 (S.C. 2000).¹ See also *Brunson v. Stewart*, *supra* (relying on reasoning of *Baucom*, court found that the denial of a handgun permit is an impermissible collateral consequence.); *cf.* Effect of Pardon on Admission to Criminal Justice Academy, Op. Att’y Gen., 2002 WL 1340420 (May 16, 2002) (“facts underlying a pardoned conviction can still be considered in determining whether an applicant is suitable for admission to the Criminal Justice Academy”). Prior to 2005, a pardon was sufficient to remove an individual from the state’s sex offender registry; however, the registration statute was amended in 2005 so that only a pardon based on innocence now has this effect. See S.C. Code § 23-3-430(F); *Edwards v. SLED*, 720 S.E.2d 462 (S.C. 2011).

A pardon does not expunge the record of conviction, and a pardoned conviction must be reported on job applications.

See https://www.dppps.sc.gov/FAQ#parole_pardon_hearings; 1984 S.C. Op. Att’y Gen. No. 84-115.

D. Process

The application process is described at <https://www.dppps.sc.gov/Parole-Pardon-Hearings/Pardon-Application>. The process of investigation up to the hearing takes seven to nine months, and longer for out-of-state applicants given the necessity of verifying all references and information. The Board is required to hold hearings at least four times a year, and in recent years, it has held hearings every two months, at which it is required to allow the applicant to appear.

S.C. Code Ann. §§ 24-21-30(A), 24-21-50.

Hearings are always before the full Board. § 24-21-30

(A). A non-unanimous vote shall be referred to the full Board to decide by majority. *Id.* An order of pardon must be signed by two-thirds of the Board.
§ 24-21-930.

If denied, the applicant must wait one year to reapply. See § 24-21-960(B).

The pardon application package is available at:

[://www.dppps.sc.gov/content/download/138528/3154712/file/1118+Pardon+Application+Rvsd+12-19-17+Fillable.pdf](http://www.dppps.sc.gov/content/download/138528/3154712/file/1118+Pardon+Application+Rvsd+12-19-17+Fillable.pdf).

The statutory application fee is \$100. § 24-21-960(A).

E. Frequency of grants

Year	Cases heard	Pardons granted	Percentage granted
2017	692	481	69.50%
2015	636	419	65.88%
2014	567	393	63.31%
2013	830	532	64.10%
2012	869	554	63.75%

Source: Dept. of Probation, Paroles and Pardon Services

Between 2007 and 2017, the Board approved about 60 pardons at each bi-monthly hearing (or about 400 per year), about 65% of the cases heard.

See <https://www.greenvilleonline.com/story/news/2018/10/18/south-carolina-grants-pardon-most-convicts-who-ask/1681160002/>.

These numbers are up from about 200 per year prior to 2005 (same proportion of applications granted.) Hearing results are posted on the Board's website at: http://www.dppps.sc.gov/victim_services_hearing_schedules.html.

There are few applications from misdemeanants.

F. Contact

Pete O'Boyle Public Information Director Dept. of Probation, Paroles, and Pardon Services 803-734-9267 Peter.OBoyle@ppp.sc.us.

III. Expungement, sealing & other record relief

In general – Expungement authorities

The Uniform Expungement of Criminal Records Act of 2009, S.C. Code Ann. §§ 17-22-910 et seq., consolidated provisions for expungement of both conviction and non-conviction records, placed responsibility for processing all eligible conviction records in the county solicitor's office, and expanded eligibility in a few cases. The South Carolina Appleseed Legal Justice Center publishes a helpful guide to state expungement law:

<https://www.scjustice.org/brochure/sc-expungement-reference-guide/>.

In 2018, the South Carolina legislature overrode a governor's veto to extend eligibility for expungement in several modest but significant ways, including:

- a. making first-offender drug possession offenses eligible for the first time,
- b. eliminating first offender limits on eligibility of minor misdemeanor and summary offenses, and
- c. authorizing retroactive relief to first offenders prosecuted prior to passage of the Youthful Offender Act of 2010 who would have been eligible for sentencing under that law upon completion of sentence.
- d. Convictions for misdemeanors that carry a maximum sentence of 30 days and/or \$1000 fine are eligible after a 3-year conviction-free waiting period (five years if the conviction is for domestic violence).

See H3209 (2018); <https://qsabusiness.com/news/government/74723/>.

In certain circumstances, the new law also allows any number of offenses for which the individual received sentences at a single sentencing proceeding for offenses 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.

A. Minor misdemeanor/summary offenses

Records of misdemeanors and summary offenses carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, may be expunged upon application to the circuit court if no other conviction after 3 years, or 5 years in the case of domestic violence, and no charges are pending.

Traffic offenses are not eligible. S.C. Code Ann. § 22-5-910(A). In 2018, a provision limiting eligibility to first offenders was repealed by HR 3209. However, expungement of records under this statute may only be granted one time.

B. First-time drug possession offenses

In 2018, HR 3209 extended eligibility for expungement to first-time drug possession offenses after a 3-year waiting period, see S.C. Code Ann. § 22-5-930(A), and to first-time possession with intent to distribute offenses after a 20-year waiting period. § 22-5-930(B). These authorities are retroactive, although relief is available only once under these provisions.

C. Youthful Offender Act

The Youthful Offender Act (2010) provides that individuals between the ages of 17 and 25 who are convicted of certain non-violent misdemeanors and Class D, E, or F felonies (felonies which carry a possible term of imprisonment up to 15 years) may be sentenced to probation and/or treatment (certain burglary charges have a mandatory minimum). S.C. Code Ann. § 24-19-50; § 24-19-10(d) (specifying eligible offenses based on age and offense). Section 22-5-920 allows **for expungement of records of first offenders sentenced pursuant to the YOA following completion of sentence, after five conviction-free years:**

If the defendant has had no other conviction during the five-year period following completion of his sentence, including probation and parole,² for a first offense conviction as a youthful offender . . . the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once.

While traffic offenses are generally not eligible for expungement, a 2023 amendment created a limited exception for “driving under suspension” offenses. § 22-5-920, as amended by H3890. This amendment also made “disturbing schools” offenses eligible.

Expungement pursuant to this authority is available only once. The expungement authority applies only to those sentenced pursuant to the 2010 Youthful Offender Act,

so that individuals otherwise YOA-eligible for YOA sentencing sentenced prior to 2010 pursuant to that Act is not eligible to have the person's record expunged. § 22-5-920(B)(3).

In 2018, the South Carolina legislature extended eligibility for expungement to anyone sentenced prior to 2010 who would have been eligible for YOA treatment, overriding the governor's veto.

See HR 3209 @

http://www.scstatehouse.gov/sess122_2017-2018/bills/3209.htm.

The legislature also authorized graduates of the South Carolina Youth Challenge Academy and the South Carolina Jobs Challenge Program (administered for at-risk youth by the South Carolina Army National Guard), to expunge eligible records immediately upon graduation from both programs, without being subject to the longer waiting periods that would otherwise apply. § 17-22-1010; H 3789

D. Miscellaneous expungement authorities, including for victims of human trafficking

Expungement is also available for first offender fraudulent check offenses, S.C. Code. Ann. § 34-11-90(e); persons participating in an alcohol education program, § 17-22-530(A); and first offender failure to stop for law enforcement. § 56-5-750(F). Victims of human trafficking convicted of prostitution or trafficking may move the court to vacate the conviction and expunge the record. S.C. Code Ann. § 16-3-2020.

F. Diversionary dispositions

Deferred adjudication for first-time drug offenses: The court may defer adjudication and place a person with a first-time minor drug offense, and charges will be dismissed if the probation is completed successfully. S.C. Code Ann. § 44-53-450(A). Moreover, no conviction results, including for predicate offense purposes. *Id.* Records of arrest may also be expunged. § 44-53-450(B).³

“The effect of the [expungement] order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person as to whom the order has been entered may be held pursuant to another provision of law to be guilty of perjury or otherwise giving a false

statement by reason of his failure to recite or acknowledge the arrest, or indictment or information, or trial in response to an inquiry made of him for any purpose.”

Pretrial Intervention: S.C. Code Ann. § 17-22-10 *et seq.* – Most non-violent first offenses are eligible for pretrial intervention, eventual non-criminal disposition, and expungement. Admission to and completion of program controlled by county solicitor, though application for admission may also be made to the court. Per section 17-22-60, intervention is only appropriate where

“(1) there is substantial likelihood that justice will be served if the offender is placed in an intervention program;

(2) it is determined that the needs of the offender and the State can better be met outside the traditional criminal justice process;

(3) it is apparent that the offender poses no threat to the community;

(4) it appears that the offender is unlikely to be involved in further criminal activity;

(5) the offender, in those cases where it is required, is likely to respond quickly to rehabilitative treatment;

(6) the offender has no significant history of prior delinquency or criminal activity; (7) the offender has not previously been accepted in a pretrial intervention program.”

Solicitor (or court if applicable) receives recommendations from the prosecutor and the victim. § 17-22-80.

Section 17-22-150(a) provides for non-criminal disposition upon successful completion of probation and restitution to the victim, and “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.” *Id.* See also § 17-1-40 (A) (“the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence

of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency”). “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.” § 17-22-150(a).

G. Non-conviction records – dismissals, acquittals

A person may petition for expungement if charges are dismissed or the person is found not guilty, and upon expungement all law enforcement records “must be destroyed and no evidence of the record pertaining to the charge . . . may be retained by any municipal, county or state law enforcement agency.” S.C. Code Ann. §§ 17-1-40(B)(1); 17-22-910. There is no fee for expungement of non-conviction records. As amended in 2016, this section provides that records may be kept by law enforcement and prosecution agencies for three years and 120 days, or indefinitely in case of an on-going investigation, before destruction for administrative purposes. “The information is not a public document and is exempt from disclosure, except by court order.” Provision is made for disclosure to other parties charged in an on-going investigation. § 17-1-40(C).

Automatic expungement for non-convictions in summary courts: Upon acquittal, dismissal, or nolle prosequi of charges in Magistrate or Municipal Court after June 2, 2011, the court is required to automatically expunge the record, unless a prosecution or law enforcement agency objects on the basis that the person has other charges pending or the charges are ineligible for expungement; older charges may be expunged by petition.

§ 17-22-950; see

a/so <https://www.sccourts.org/selfhelp/FAQExpungementPardon.pdf>.

H. Juvenile records

Expungement is available upon petition to the court for persons who are adjudicated delinquent for a status or nonviolent offense, if they have reached the age of 18. S.C. Code Ann. § 63-19-2050(A). Juveniles are ineligible for expungement if they have a prior adjudication for an offense that would carry a five-year prison sentence for an adult, have not completed their sentence, have subsequently been charged with another offense, or if their offense was a violent crime. *Id.* “If the expungement order is granted by the court, the records must be destroyed or retained by any law enforcement agency or municipal, county, state agency, or department pursuant to the provisions of Section 17-1-40.” § 63-19-2050(D). Expungement restores the recipient to same position he was in before the offense, and the person may deny existence of any record. § 63-19-2050(C).

I. Procedure for Expungement

Procedure for expungement under all existing authorities is now subject to Uniform Expungement of Criminal Records Act of 2009, S.C. Code Ann. § 17-22-910 et seq.. All applications for expungement must be made through the Solicitor’s Office in the judicial circuit where the charge originated, which office is responsible for determining eligibility, coordinating with other agencies and with courts, and processing application as necessary. An applicant may retain counsel to go directly to court to contest the solicitor’s determination of eligibility. *Id.* Typical application instructions (for Office of the Solicitor, Fourteenth Judicial Circuit) can be accessed at <http://www.scsolicitor14.org/uploads/Expungement%20APPLICATION.pdf>.

The Solicitor’s Office charges a \$250 filing fee for expungement of most records, and there may be modest additional fees to obtain copies of record (for a total of \$310). There is no filing fee for expunging dismissed charges (unless dismissed as part of a plea agreement). HR 3209 modified the fee provisions to authorize private contributions to the Solicitor’s fund to defray costs for those who cannot afford the fee.

S.C. Code Ann. § 17-22-950(A) allows prosecutors and law enforcement agencies to object to a motion for expungement:

“The prosecuting agency or appropriate law enforcement agency may file an objection to a summary court expungement. If an objection is filed by the prosecuting

agency or law enforcement agency, that expungement then must be heard by the judge of a general sessions court. Reason for objecting must be that the:

- (1) accused person has other charges pending;
- (2) prosecuting agency or the appropriate law enforcement agency believes that the evidence in the case needs to be preserved; or
- (3) accused person's charges were dismissed as a part of a plea agreement.”

J. Effect of Expungement

Once records have been expunged they are “placed under seal so they are no longer public record . . . [and] can only be used for limited law enforcement purposes and otherwise can only be disclosed by court order.” See Appleseed guide, *supra*. “The South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of its expungement to ensure that, [in the case of first offender authorities,] no person takes advantage of the rights” permitted by the various authorities more than once. See S.C. Code Ann. §§ 22-5-910(C), 22-5-920(C). “This nonpublic record is not subject to release under . . . the Freedom of Information Act, or [another] provision of law except to those authorized law [enforcement] or court officials who need this information in order to prevent the rights afforded by this section from being taken advantage of more than once.” *Id.*

IV. Criminal record in employment & licensing

South Carolina has no general law limiting consideration of criminal history in public or private employment.

Occupational Licensing: Most licensed occupations and professions are administered pursuant to a unified scheme under the Department of Labor, Licensing and Regulation, whose director is appointed by the governor and serves as a member of the governor’s cabinet. S.C. Code Ann. § 40-1-40(D). Each profession or occupation is administered by a separate board.⁴ The law provides that conviction of a felony, or of a crime or moral turpitude or involving drugs, may be grounds for suspension or revocation of a license. § 40-1-110(1)(h). However, the law also provides that:

A professional or occupational board may not deny a license to an applicant solely because of a prior criminal conviction, unless the criminal conviction directly relates to the duties, responsibilities, or fitness of the occupation or profession for which the applicant is seeking a license.

§ 40-1-140. Until 2023, this statement of a “direct relationship” standard was immediately followed (and undercut) by a further provision authorizing a board to deny a license “if, based upon all information available, including the applicant’s record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the profession or occupation.” *Id.*

This law had not been amended for decades when the “**Earn and Learn Act of 2023**” made a number of important substantive and procedural changes to it. See §40-1-140(A) through (C), [H3605](#) (2023). This 2023 law began by deleting the language giving licensing boards open-ended authority to deny licensure based on a finding that an applicant is “unfit” or “unsuited,” leaving only the “direct relationship” language. It went on to prohibit the use of “vague or generic terms including, but not limited to, ‘moral turpitude’ or ‘good character’; and also prohibited consideration of charges that have been dismissed, nol prossed, or adjudicated with a finding of not guilty as a justification for denying an applicant a license.” §40-1-140(A)(2).

The 2023 law provided procedural protections: a board may not deny a license because of a criminal record unless the applicant has been given “an opportunity to appear at an application hearing to determine the applicant’s fitness for the occupation or profession.” §40-1-140(B).

If a board “denies an applicant’s license solely or in part because of the applicant’s prior criminal history, then the board must issue a written final order within thirty days following the date of the application hearing,” which order shall include

- (1) the grounds for the denial; and
- (2) that the final order is appealable to the Administrative Law Court pursuant to Chapter 23, Title 1.

Unchanged by the 2023 law, a person aggrieved by the action of any board may appeal under the state Administrative Procedure Act (“APA”). § 40-1-160; see *Osman v. South Carolina Dep’t of Labor*, 676 S.E. 2d 672, 675 (S.C. 2009).

A juvenile disposition “does not disqualify the child in a future civil service application or appointment.” § 63-19-14-10.

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1. See 531 S.E. 2d at 924:

The Court of Appeals based its holding on the theory that a pardon involves forgiveness, but not forgetfulness. In other words, a pardon forgives the punishment for a crime, but does not forget or obliterate the act of the commission of the crime. . . . We disagree. The pardon statute relieves the convict of “all the legal consequences of his crime and 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) (1989). Punishment is only one of the consequences absolved by a pardon in South Carolina. We believe the better way to approach this question is to ask whether enhancement of a subsequent sentence is a collateral legal consequence of the pardoned conviction. The pardon statute states unambiguously that “an individual is fully pardoned from all the legal consequences of his crime and of his conviction, direct and collateral.” § 24-21-940(A). We conclude sentence enhancement is a forbidden collateral legal consequence of a pardoned conviction. The words “any conviction” in the repeat offender statute must be read in light of the plain language of the pardon statute.

2. The waiting period was reduced to five years after completion of sentence from 15 years by Section 6 of the Uniform Expungement of Criminal Records Act of 2009.
3. The 25-year age limitation was removed by Section 7 of Uniform Expungement of Criminal Records Act of 2009.

4. The following boards and the professions and occupations are administered pursuant to this scheme:

- a. Board of Accountancy;
- b. Board of Architectural Examiners;
- c. Athletic Commission;
- d. Auctioneers Commission;
- e. Board of Barber Examiners;
- f. Accessibility Committee of the Building Codes Council;
- g. Building Code Council;
- h. Board of Chiropractic Examiners;
- i. Contractors' Licensing Board;
- j. Board of Cosmetology;
- k. Board of Dentistry;
- l. Engineers and Land Surveyors Board;
- m. Environmental Certification Board;
- n. Board of Registration for Foresters;
- o. Board of Funeral Service;
- p. Board of Registration for Geologists;
- q. Manufactured Housing Board;
- r. Board of Medical Examiners;
- s. Modular Buildings Board of Appeals;
- t. Board of Nursing;
- u. Long Term Health Care Administrators Board;
- v. Board of Occupational Therapy;
- w. Board of Examiners in Opticianry;
- x. Board of Examiners in Optometry;
- y. Board of Pharmacy;
- z. Board of Physical Therapy Examiners;
- aa. Pilotage Commission;
- bb. Board of Podiatry Examiners;
- cc. Board of Examiners for Licensure of Professional Counselors and Marital and Family Therapists;
- dd. Board of Examiners in Psychology;
- ee. Board of Pyrotechnic Safety;
- ff. Real Estate Appraisers Board;
- gg. Real Estate Commission;
- hh. Residential Builders Commission;
- ii. Board of Social Work Examiners;
- jj. Board of Examiners in Speech-Language Pathology and Audiology;
- kk. Board of Veterinary Medical Examiners. § 40-1-40(B).

Collateral Consequences Resource Center. (2023, August 29). *Restoration of Rights Project. South Carolina Restoration of Rights & Record Relief*
<https://ccresourcecenter.org/state-restoration-profiles/south-carolina-restoration-of-rights-pardon-expungement-sealing/>