**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 13 TO CHAPTER 22, TITLE 17 SO AS TO PROVIDE THAT EACH SOLICITOR HAS THE AUTHORITY TO ESTABLISH A DEFERRED PROSECUTION PROGRAM FOR PERSONS WHO COMMIT SUMMARY COURT OFFENSES, TO ESTABLISH THE PROCEDURES FOR THE OPERATION OF THE PROGRAM AND THE REQUIREMENTS FOR ENTRY INTO THE PROGRAM, TO ALLOW FOR THE DISPOSITION OF THE OFFENSE UPON COMPLETION OF THE PROGRAM, AND TO AUTHORIZE A CIRCUIT SOLICITOR TO DESIGNATE A SUMMARY COURT JUDGE TO OVERSEE A DEFERRED PROSECUTION PROGRAM.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 22, Title 17 of the 1976 Code is amended by adding:

“Article 13

Deferred Prosecution Program

Section 17‑22‑1310. (A) Each circuit solicitor has prosecutorial discretion as defined in this chapter and may as a matter of prosecutorial discretion establish a deferred prosecution program for summary court offenses in the respective circuits for certain offenders if:

(1) the solicitor, or summary court judge if applicable, and the offender agree in writing to defer the prosecution of the offense with the approval of the court for the purpose of allowing the offender to demonstrate his good conduct;

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

(3) the victims of the offense are notified of the motion for deferred prosecution by certified mail and are given an opportunity to be heard by the court; and

(4) the offender has no significant history of prior delinquency or criminal activity and is unlikely to commit another offense.

(B) An offender may be considered for a deferred prosecution program if charged with a misdemeanor triable in summary court.

(C) Each circuit solicitor is specifically endowed with and retains all discretionary powers pursuant to the common law.

(D) A deferred prosecution program must be under the direct supervision and control of the circuit solicitor except as provided in Section 17‑22‑1360.

(E) The South Carolina Commission on Prosecution Coordination shall oversee administrative procedures for a deferred prosecution program established pursuant to this article.

(F) A deferred prosecution program must include a community service component.

Section 17‑22‑1320. When a person pleads guilty to or is found guilty of an offense eligible for deferred prosecution pursuant to the provisions of this article, the court may, on joint motion of the defendant and the prosecutor, and without entering a judgment of guilt and with the consent of the person, defer further proceedings and require the person to perform community service for the purpose of allowing the defendant to demonstrate the defendant’s good conduct pursuant to the provisions of this article.

Section 17‑22‑1330. (A) When a person successfully completes a deferred prosecution program, the circuit solicitor shall notify the court and any plea or finding of guilt previously entered must be withdrawn and the court shall discharge the person and dismiss the proceedings against the person. There must be no record maintained of the offense except by the Commission on Prosecution Coordination.

(B) If applicable, upon successful completion of the program, the person may apply to the court for an order to destroy all official records relating to his arrest and any admission or plea of guilt.

(C) If a person violates the conditions of a deferred prosecution program, the person may be terminated from the program and the offense reinstated by the circuit solicitor for sentencing in the discretion of the summary court with jurisdiction over the offense.

Section 17‑22‑1340. (A) The Pretrial Intervention Coordinator also shall serve as the Deferred Prosecution Program Coordinator whose responsibility is to assist in the establishment and maintenance of the deferred prosecution program in each circuit solicitor’s office

(B) The fee provisions established in Article 1 apply to the deferred prosecution program participants.

Section 17‑22‑1350. Each circuit solicitor shall submit to the Commission on Prosecution Coordination necessary identifying information on each enrollee for the creation and maintenance of a list of enrollees in deferred prosecution programs. This list is to be used by the commission for the sole purpose of complying with this article. The information maintained by the commission may be released only to a circuit solicitor for the purpose of determining eligibility for a deferred prosecution program.

Section 17‑22‑1360. A circuit solicitor, in his discretion, may designate a summary court judge to oversee a deferred prosecution program subject to the provisions of this article for persons who commit offenses triable in summary court. In such cases, the circuit solicitor, together with the summary court judge, shall enter into a memorandum of understanding to ensure that the provisions of this article and chapter are complied with including, but not limited to, applicable fee and reporting requirements.”

SECTION 2. This act takes effect upon approval by the Governor.

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