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CHAPTER 13.

ARREST, PROCESS, SEARCHES AND SEIZURES

**SECTION 17‑13‑10.** Circumstances where any person may arrest a felon or thief.

Upon (a) view of a felony committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law.

HISTORY: 1962 Code Section 17‑251; 1952 Code Section 17‑251; 1942 Code Section 907; 1932 Code Section 907; Cr. P. '22 Section 1; Cr. C. '12 Section 1; Cr. C. '02 Section 1; G. S. 2616; R. S. 1; 1866 (13) 406; 1898 (22) 809.

**SECTION 17‑13‑20.** Additional circumstances where citizens may arrest; means to be used.

A citizen may arrest a person in the nighttime by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person:

(a) has committed a felony;

(b) has entered a dwelling house without express or implied permission;

(c) has broken or is breaking into an outhouse with a view to plunder;

(d) has in his possession stolen property; or

(e) being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

HISTORY: 1962 Code Section 17‑252; 1952 Code Section 17‑252; 1942 Code Section 908; 1932 Code Section 908; Cr. P. '22 Section 2; Cr. C. '12 Section 2; Cr. C. '02 Section 2; G. S. 2617; R. S. 2; 1866 (13) 406; 1995 Act No. 53, Section 1.

**SECTION 17‑13‑30.** Officers may arrest without warrant for offenses committed in view.

The sheriffs and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State if such arrest be made at the time of such violation of law or immediately thereafter.

HISTORY: 1962 Code Section 17‑253; 1952 Code Section 17‑253; 1942 Code Section 909; 1932 Code Section 909; Cr. P. '22 Section 3; Cr. C. '12 Section 3; Cr. C. '02 Section 3; 1898 (22) 808.

**SECTION 17‑13‑40.** Law enforcement officer jurisdiction when in pursuit of offender; authority, rights, privileges, and immunities extended.

(A) When the police authorities of a town or city are in pursuit of an offender for a violation of a municipal ordinance or statute of this State committed within the corporate limits, the authorities may arrest the offender, with or without a warrant, at a place within the corporate limits, at a place within the county in which the town or city is located, or at a place within a radius of three miles of the corporate limits.

(B) When the police authorities of a county are in pursuit of an offender for a violation of a county ordinance or statute of this State committed within the county, the authorities may arrest the offender, with or without a warrant, at a place within the county, or at a place within an adjacent county.

(C) When a law enforcement officer's jurisdiction is expanded pursuant to this section, the authority, rights, privileges, and immunities, including coverage under the workers' compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78, Title 15, that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the expanded areas of jurisdiction granted pursuant to this section.

HISTORY: 1962 Code Section 17‑254; 1952 Code Section 17‑254; 1942 Code Section 910; 1932 Code Section 910; Cr. P. '22 Section 4; Cr. C. '12 Section 4; 1908 (25) 1089; 1970 (56) 2560; 1998 Act No. 265, Section 1; 1999 Act No. 9, Section 1.

**SECTION 17‑13‑45.** Response to distress calls or requests for assistance in adjacent jurisdictions; extension of rights, privileges and immunities.

When a law enforcement officer responds to a distress call or a request for assistance in an adjacent jurisdiction, the authority, rights, privileges, and immunities, including coverage under the workers' compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78, Title 15, that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the adjacent jurisdiction.

HISTORY: 1997 Act No. 105, Section 1.

**SECTION 17‑13‑47.** Arrest in State by officer from Georgia or North Carolina; procedure for determining lawfulness of arrest; extradition.

(A) A law enforcement officer from Georgia or North Carolina who enters this State in fresh pursuit of a person has the same authority to arrest and hold in custody the person within this State as a law enforcement officer of this State has to arrest and hold in custody a person for committing a criminal offense in this State.

(B)(1) When an arrest is made in this State by a law enforcement officer of another state pursuant to subsection (A), the law enforcement officer must, without unnecessary delay, take the person arrested before a judicial official of this State.

(2) The judicial official must conduct a hearing for the limited purpose of determining whether the arrest meets the requirements of this section unless the person arrested executes a written waiver of his right to a hearing under this section. If the judicial official determines that the arrest was unlawful, he must discharge the person arrested. If the judicial official determines that the arrest was lawful, he must commit the person arrested to imprisonment for twenty days as provided in Section 17‑9‑10. Once the person is imprisoned pursuant to this section, the provisions of Title 17, Chapter 9 govern the extradition and return of the person to the state in which the criminal offense was committed.

(C) For the purpose of this section:

(1) "law enforcement officer" means an appointed officer or employee who is hired by and regularly on the payroll of a state or any political subdivision, who is granted the statutory authority to enforce all or some of the criminal, traffic, or penal laws of their respective state, and who is granted or possesses with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed; and

(2) "fresh pursuit" means a pursuit by a law enforcement officer of a person who is in the immediate and continuous flight from the commission of a criminal offense.

(D) The authority granted by this section is limited to criminal offenses of the pursuing state that also are criminal offenses under the laws of this State and that are punishable by death or imprisonment in excess of one year under the laws of the pursuing state.

(E) This section applies only to a law enforcement officer from Georgia or North Carolina if the officer's employing or appointing state has enacted a provision similar to this section relating to the arrest and custody of a person pursued into a neighboring state.

HISTORY: 2006 Act No. 230, Section 1, eff February 17, 2006.

**SECTION 17‑13‑50.** Right to be informed of ground of arrest; consequences of refusal to answer or false answer.

(A) A person arrested by virtue of process or taken into custody by an officer in this State has a right to know from the officer who arrests or claims to detain him the true ground on which the arrest is made. It is unlawful for an officer to:

(1) refuse to answer a question relative to the reason for the arrest;

(2) answer the question untruly;

(3) assign to the person arrested an untrue reason for the arrest; or

(4) neglect on request to exhibit to the person arrested or any other person acting in his behalf the precept by virtue of which the arrest is made.

(B) An officer who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

HISTORY: 1962 Code Section 17‑255; 1952 Code Section 17‑255; 1942 Code Section 993; 1932 Code Section 993; Cr. P. '22 Section 80; Cr. C. '12 Section 74; Cr. C. '02 Section 47; G. S. 2447; R. S. 46; 1993 Act No. 184, Section 53.

**SECTION 17‑13‑60.** Circumstances where persons are not to be arrested but may be served process.

No person shall be arrested while actually engaged in or attending military or militia duty or going to or returning from such duty, nor while attending, going to or returning from any court, as party or witness or by order of the court, except for treason, felony or breach of the peace. But in any such case process may be served without actual arrest of body or goods.

HISTORY: 1962 Code Section 17‑256; 1952 Code Section 17‑256; 1942 Code Section 3522; 1932 Code Section 3522; Civ. C. '22 Section 2065; Civ. C. '12 Section 1172; Civ. C. '02 Section 847; G. S. 662; R. S. 727; 1839 (11) 41.

**SECTION 17‑13‑70.** Warrant authorizing breaking open gambling rooms.

The mayor, any of the aldermen or the sheriff of the city of Charleston or the mayor, intendant or any alderman, warden or recorder of any incorporated city or town of this State or any judge residing in any such city or town, on information by oath of any credible witness that any of the criminal laws against gambling is being violated, may grant his warrant, under his hand and seal, to break open and enter any closed door or room within such city or town, wherever such offense is alleged to prevail.

HISTORY: 1962 Code Section 17‑257; 1952 Code Section 17‑257; 1942 Code Sections 947, 957; 1932 Code Sections 947, 957; Cr. P. '22 Sections 43, 61; Cr. C. '12 Sections 60, 708; Cr. C. '02 Section 510; G. S. 1719; R. S. 395; 1816 (6) 28; 1904 (24) 500.

**SECTION 17‑13‑80.** Service of process on domestic and foreign corporations.

Whenever a warrant has been issued against a corporation under the provisions of Section 22‑3‑750 or an indictment has been returned against it under the provisions of Section 17‑19‑70, a copy of the warrant or indictment, accompanied in the case of an indictment by a notice to such corporation of the term of the court of general sessions at which such case shall be tried, shall be served upon such corporation in the manner provided by law for the service of process in civil actions. And when there is no agent or officer of the company within the county the service shall be made upon such person as is in charge of the property of the corporation and, if no such person can be found, it shall be served upon the Secretary of State, who shall transmit a copy of the warrant or indictment and notice by mail to the last known residence of the managing officer of the corporation, directed to such officer; provided, that in the case of a foreign corporation if such foreign corporation have no agent or other officer within the county in which the offense, or some part thereof, has been committed then process shall be served on the person appointed by such corporation to receive service of process as now required by law regulating foreign corporations or upon the Director of the Department of Insurance when by law service of process in civil actions may be made upon the Director of the Department of Insurance and such service shall be made in the same manner provided by law for service of summons in civil actions against such corporations.

HISTORY: 1962 Code Section 17‑258; 1952 Code Section 17‑258; 1942 Code Section 989; 1932 Code Section 989; Civ. C. '22 Section 4297; Civ. C. '12 Section 2830; 1911 (27) 39; 1960 (51) 1646; 1993 Act No.181, Section 277.

**SECTION 17‑13‑90.** Service of criminal process on Sunday.

Criminal process may be served on Sunday, as on any other day of the week, for all crimes, felonies, and misdemeanors alike. However, only law enforcement officers under bond shall be permitted to execute a search warrant.

HISTORY: 1962 Code Section 17‑259; 1952 Code Section 17‑259; 1942 Code Section 3523; 1932 Code Section 3523; Civ. C. '22 Section 2066; Civ. C. '12 Section 1173; Civ. C. '02 Section 848; G. S. 663; R. S. 728; 1931 (37) 78; 1954 (48) 1759; 1970 (56) 2414; 1973 (58) 126; 1994 Act No. 343, Section 1.

**SECTION 17‑13‑100.** Escaped prisoners may be retaken on Sunday.

It shall be lawful for the sheriff, deputy sheriff or jailer to retake on Sunday, as on any other day, and at court, muster or any other place any prisoner who has escaped.

HISTORY: 1962 Code Section 17‑260; 1952 Code Section 17‑260; 1942 Code Section 3524; 1932 Code Section 3524; Civ. C. '22 Section 2067; Civ. C. '12 Section 1174; Civ. C. '02 Section 849; G. S. 664; R. S. 729; 1839 (11) 45.

**SECTION 17‑13‑110.** Confinement in industrial communities.

Any police officer or deputy sheriff in any industrial community may confine in such prison or building as the president, treasurer or other executive officer having the management of any industrial corporation may provide in any such community any person who may be arrested charged with violation of law until such arrested person can be conveniently carried before a magistrate; provided, however, that:

(1) Such police officer or deputy sheriff shall not detain any arrested person in such prison longer than eighteen hours, except a person arrested on Saturday and then not over forty‑two hours; and

(2) Such police officer or deputy sheriff shall provide water and food and shall also furnish such arrested person with sufficient bedding or clothing to make him comfortable in cold weather.

HISTORY: 1962 Code Section 17‑261; 1952 Code Section 17‑261; 1942 Code Section 920; 1932 Code Section 920; Cr. P. '22 Section 13; Cr. C. '12 Section 14; 1910 (26) 765.

**SECTION 17‑13‑120.** Persons shall not be removed from one prison to another without cause.

If any person, a citizen of this State, shall be committed to any prison or in custody of any officer whatsoever for any criminal or supposed criminal matter such person shall not be removed from such prison and custody into the custody of any other officer, unless it be:

(1) By habeas corpus or some other legal writ;

(2) When the prisoner is delivered to a constable or other inferior officer, to carry such prisoner to some common jail;

(3) When any person is sent, according to law, to any common workhouse of correction;

(4) When the prisoner is removed from one place or prison to another within the same county for his trial or discharge in due course of law;

(5) In case of sudden fire, infection or other necessity; or

(6) When brought into court as a witness in some matter or cause as provided by law.

HISTORY: 1962 Code Section 17‑262; 1952 Code Section 17‑262; 1942 Code Section 1063; 1932 Code Section 1063; Cr. P. '22 Section 150; Cr. C. '12 Section 132; Cr. C. '02 Section 105; G. S. 2338; R. S. 105; 1679 (1) 120.

**SECTION 17‑13‑130.** Penalty for signing warrant for illegal removal of prisoner.

If any person shall, after such commitment aforesaid, make out and sign or countersign any warrant for such removal aforesaid, contrary to the provisions of this chapter or Chapter 17 of this Title, as well he that makes or signs or countersigns such warrant as the officer that obeys or executes it shall suffer and incur the pains and forfeitures mentioned in Sections 17‑17‑150 and 17‑17‑170.

HISTORY: 1962 Code Section 17‑263; 1952 Code Section 17‑263; 1942 Code Section 1064; 1932 Code Section 1064; Cr. C. '22 Section 151; Cr. C. '12 Section 133; Cr. C. '02 Section 106; 1679 (1) 120.

**SECTION 17‑13‑140.** Issuance, execution and return of search warrants for property connected with the commission of crime; inventory of property seized.

Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize (1) stolen or embezzled property; (2) property, the possession of which is unlawful; (3) property which is being used or has been used in the commission of a criminal offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; (4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense; (5) any narcotic drugs, barbiturates, amphetamines or other drugs restricted to sale, possession, or use on prescription only, which are manufactured, possessed, controlled, sold, prescribed, administered, dispensed or compounded in violation of any of the laws of this State or of the United States. Narcotics, barbiturates or other drugs seized hereunder shall be disposed of as provided by Section 44‑53‑520.

The property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control.

A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. In the case of a warrant issued by a magistrate or a judge of a court of record, it shall be directed to any peace officer having jurisdiction in the county where issued, including members of the South Carolina Law Enforcement Division, and shall be returnable to the issuing magistrate. In case of a warrant issued by a judge of a court of record, it shall be returnable to a magistrate having jurisdiction of the area where the property is located or the person to be searched is found. If any warrant is issued by any municipal judicial officer to municipal police officers, the return shall be made to the issuing municipal judicial officer. Any warrant issued shall command the officer to whom it is directed to forthwith search the person or place named for the property specified.

Any warrant issued hereunder shall be executed and return made only within ten days after it is dated. The officer executing the warrant shall make and deliver a signed inventory of any articles seized by virtue of the warrant, which shall be delivered to the judicial officer to whom the return is to be made, and if a copy of the inventory is demanded by the person from whose person or premises the property is taken, a copy of the inventory shall be delivered to him.

This section is not intended to and does not either modify or limit any statute or other law regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.

HISTORY: 1962 Code Section 17‑271; 1964 (53) 1821; 1966 (54) 2268; 1969 (56) 217.

**SECTION 17‑13‑141.** Records to be kept by judiciary officers authorized to issue search warrants; penalty.

(a) Every judiciary official authorized to issue search warrants in this State shall keep a record along with a copy of the returned search warrant and supporting affidavit and documents for a period of three years from the date of issuance of each warrant. The records shall be on a form prescribed by the Attorney General and reflect as to each warrant:

(1) Date and exact time of issuance.

(2) Name of person to whom warrant issued.

(3) Name of person whose property is to be searched or, if unknown, description of person and address of property to be searched.

(4) Reason for issuing warrant.

(5) Description of article sought in the search.

(6) Date and time of return.

(b) Any person who alters or fails to keep for the prescribed period of time the records, warrants, and documents as provided for in subsection (a) shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one hundred dollars or by imprisonment not to exceed thirty days.

HISTORY: 1976 Act No. 454 Sections 1, 2.

**SECTION 17‑13‑150.** Person served search warrant shall also be furnished copy of warrant and supporting affidavit.

When any person is served with a search warrant, such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued.

HISTORY: 1975 (59) 69.

Notwithstanding any other provision of law, effective September 1, 1975, all arrest warrants and search warrants issued by the State or any political subdivision thereof shall be in a form as prescribed by the Attorney General and the Attorney General's office shall prescribe such forms to all law enforcement agencies.

HISTORY: 1975 (59) 333.

(A) If a law enforcement officer of this State or a political subdivision of this State lawfully stops, detains, investigates, or arrests a person for a criminal offense, and during the commission of the stop, detention, investigation, or arrest the officer has reasonable suspicion to believe that the person is unlawfully present in the United States, the officer shall make a reasonable effort, when practicable, to determine whether the person is lawfully present in the United States, unless the determination would hinder or obstruct an investigation.

(B)(1) If the person provides the officer with a valid form of any of the following picture identifications, the person is presumed to be lawfully present in the United States:

(a) a driver's license or picture identification issued by the South Carolina Department of Motor Vehicles;

(b) a driver's license or picture identification issued by another state;

(c) a picture identification issued by the United States, including a passport or military identification; or

(d) a tribal picture identification.

(2) It is unlawful for a person to display, cause or permit to be displayed, or have in the person's possession a false, fictitious, fraudulent, or counterfeit picture identification for the purpose of offering proof of the person's lawful presence in the United States. A person who violates the provisions of this item:

(a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days; and

(b) for a second offense or subsequent offenses, is guilty of a felony, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than five years.

(3) If the person cannot provide the law enforcement officer with any of the forms of picture identification listed in this subsection, the person may still be presumed to be lawfully present in the United States, if the officer is able to otherwise verify that the person has been issued any of those forms of picture identification.

(4) If the person is operating a motor vehicle on a public highway of this State without a driver's license in violation of Section 56‑1‑20, the person may be arrested pursuant to Section 56‑1‑440.

(5) If the person meets the presumption established pursuant to this subsection, the officer may not further stop, detain, investigate, or arrest the person based solely on the person's lawful presence in the United States.

(6) This section does not apply to a law enforcement officer who is acting as a school resource officer for any elementary or secondary school.

(C)(1) If the person does not meet the presumption established pursuant to subsection (B), the officer shall make a reasonable effort, when practicable, to verify the person's lawful presence in the United States by at least one of the following methods:

(a) contacting the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety;

(b) submitting an Immigration Alien Query through the International Justice and Public Safety Network;

(c) contacting the United States Immigration and Customs Enforcement's Law Enforcement Support Center; or

(d) contacting the United States Immigration and Customs Enforcement's local field office.

(2) The officer shall stop, detain, or investigate the person only for a reasonable amount of time as allowed by law. If, after making a reasonable effort, the officer is unable to verify the person's lawful presence in the United States by one of the methods described in item (1), the officer may not further stop, detain, investigate, or arrest the person based solely on the person's lawful presence in the United States.

(3) If the officer verifies that the person is lawfully present in the United States, the officer may not further stop, detain, investigate, or arrest the person based solely on the person's lawful presence in the United States.

(4) If the officer determines that the person is unlawfully present in the United States, the officer shall determine in cooperation with the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety or the United States Immigration and Customs Enforcement, as applicable, whether the officer shall retain custody of the person for the underlying criminal offense for which the person was stopped, detained, investigated, or arrested, or whether the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety or the United States Immigration and Customs Enforcement, as applicable, shall assume custody of the person. The officer is not required by this section to retain custody of the person based solely on the person's lawful presence in the United States. The officer may securely transport the person to a federal facility in this State or to any other point of transfer into federal custody that is outside of the officer's jurisdiction. The officer shall obtain judicial authorization before securely transporting a person to a point of transfer that is outside of this State.

(D) Nothing in this section must be construed to require a law enforcement officer to stop, detain, investigate, arrest, or confine a person based solely on the person's lawful presence in the United States. A law enforcement officer may not attempt to make an independent judgment of a person's lawful presence in the United States. A law enforcement officer may not consider race, color, or national origin in implementing this section, except to the extent permitted by the United States or South Carolina Constitution. This section must be implemented in a manner that is consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

(E) Except as provided by federal law, officers and agencies of this State and political subdivisions of this State may not be prohibited or restricted from sending, receiving, or maintaining information related to the immigration status of any person or exchanging that information with other federal, state, or local government entities for the following purposes:

(1) determining eligibility for any public benefit, service, or license provided by the federal government, this State, or a political subdivision of this State;

(2) verifying any claim of residence or domicile, if determination of residence or domicile is required under the laws of this State or a judicial order issued pursuant to a civil or criminal proceeding in this State;

(3) determining whether an alien is in compliance with the federal registration laws prescribed by Chapter 7, Title II of the federal Immigration and Nationality Act; or

(4) pursuant to 8 U.S.C. Section 1373 and 8 U.S.C. Section 1644.

(F) Nothing in this section must be construed to deny a person bond or from being released from confinement when such person is otherwise eligible for release. However, pursuant to the provisions of Section 17‑15‑30, a court setting bond shall consider whether the person charged is an alien unlawfully present in the United States.

(G) No official, agency, or political subdivision of this State may limit or restrict the enforcement of this section or federal immigration laws.

(H) This section does not implement, authorize, or establish, and shall not be construed to implement, authorize, or establish the federal Real ID Act of 2005.

(I) Any time a motor vehicle is stopped by a state or local law enforcement officer without a citation being issued or an arrest being made, and the officer contacts the Illegal Immigration Enforcement Unit within the Department of Public Safety pursuant to this section, the officer who initiated the stop must complete a data collection form designed by the Department of Public Safety, which must include information regarding the age, gender, and race or ethnicity of the driver of the vehicle. This information may be gathered and transmitted electronically under the supervision of the Department of Public Safety, which shall develop and maintain a database storing the information collected. The Department of Public Safety must promulgate regulations with regard to the collection and submission of the information gathered. In addition, the Department of Public Safety shall prepare a report to be posted on the Department of Public Safety's website regarding motor vehicle stops using the collected information. The General Assembly shall have the authority to withhold any state funds or federal pass‑through funds from any state or local law enforcement agency that fails to comply with the requirements of this subsection.

HISTORY: 2011 Act No. 69, Section 6, eff January 1, 2012.

VALIDITY

< For validity of this section, see U.S. v. South Carolina, 840 F.Supp.2d 898 (D.S.C. December 22, 2011). >