CHAPTER 5

Magistrates' Powers and Duties in Criminal Matters

ARTICLE 1

Search Warrants

**SECTION 22‑5‑10.** Warrant to break open doors of gambling rooms.

 Any magistrate residing in any incorporated city or town of this State, 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, wherever such offense is alleged to prevail.

HISTORY: 1962 Code Section 43‑202; 1952 Code Section 43‑202; 1942 Code Section 947; 1932 Code Section 947; Cr. P. '22 Section 43; Cr. P. '12 Sections 60, 708; Cr. C. '02 Section 510; G. S. 1719; R. S. 395; 1816 (6) 28; 1904 (24) 500.

ARTICLE 3

Arrests

**SECTION 22‑5‑110.** Arrest, examination and commitment or punishment; warrant; courtesy summons.

 (A) Magistrates shall:

 (1) cause to be arrested all persons found within their counties charged with any offense and persons who after committing any offense within the county flee out of the county;

 (2) examine into treasons, felonies, grand larcenies, high crimes, and misdemeanors;

 (3) commit or bind over for trial those who appear to be guilty of crimes or offenses not within their jurisdiction; and

 (4) punish those guilty of such offenses within their jurisdiction.

 (B)(1) An arrest warrant may not be issued for the arrest of a person unless sought by a law enforcement officer acting in their official capacity.

 (2) If an arrest warrant is sought by someone other than a law enforcement officer, the court must issue a courtesy summons.

 (3) If a defendant named in a courtesy summons fails to appear before the court pursuant to the summons, the court must issue an arrest warrant for the underlying offense based upon the original sworn statement of the affiant who sought the courtesy summons, provided the sworn statement establishes probable cause that the underlying offense was committed.

HISTORY: 1962 Code Section 43‑211; 1952 Code Section 43‑211; 1942 Code Section 929; 1932 Code Section 929; Cr. P. '22 Section 25; Cr. C. '12 Section 27; Cr. C. '02 Section 19; G. S. 829; R. S. 18; 1870 (14) 403; 2008 Act No. 284, Section 2, eff June 11, 2008; 2008 Act No. 346, Section 5, eff June 25, 2008; 2011 Act No. 70, Section 1, eff June 28, 2011.

Effect of Amendment

The first 2008 amendment designated subsection (A) and added subsection (B) relating to courtesy summons.

The second 2008 amendment also designated subsection (A) and added an identical subsection (B) relating to courtesy summons.

The 2011 amendment rewrote the section.

**SECTION 22‑5‑115.** Summons to appear; issuance; design and contents of form; tracking.

 (A) Notwithstanding any other provision of law, a summary court or municipal judge may issue a summons to appear for trial instead of an arrest warrant, based upon a sworn statement of an affiant who is not a law enforcement officer investigating the case, if the sworn statement establishes probable cause that the alleged crime was committed. The summons must express adequately the charges against the defendant. If the defendant fails to appear before the court, he may be tried in his absence or a bench warrant may be issued for his arrest. The summons must be served personally upon the defendant.

 (B) The Attorney General must design the form containing the summons to appear. The form must include:

 (1) an affidavit that establishes probable cause;

 (2) a description of the charges against the defendant;

 (3) the date, time, and place of the trial;

 (4) the name of the issuing officer;

 (5) the defendant's and affiant's name, address, and telephone number;

 (6) the date and location of the incident; and

 (7) notice that the defendant may be tried in his absence or a bench warrant may be issued for his arrest.

 (C) A summons issued pursuant to this section must be tracked in the same manner as an arrest warrant.

HISTORY: 2002 Act No. 348, Section 15.

**SECTION 22‑5‑130.** Magistrate as prosecutor when offense committed in his view.

 Whenever there shall be an indictment for any offense committed in his view the magistrate shall be the prosecutor and he shall bind in recognizance all necessary witnesses.

HISTORY: 1962 Code Section 43‑213; 1952 Code Section 43‑213; 1942 Code Section 938; 1932 Code Section 938; Cr. P. '22 Section 34; Cr. C. '12 Section 35; Cr. C. '02 Section 26; G. S. 836; R. S. 25; 1830 (11) 21.

**SECTION 22‑5‑140.** Arrests by magistrates to preserve the peace.

 Any magistrate shall command all persons who, in his view, may be engaged in riotous or disorderly conduct to the disturbance of the peace, to desist therefrom and shall arrest any such person who shall refuse obedience to his command and commit to jail any such person who shall fail to enter into sufficient recognizance either to keep the peace or to answer to an indictment, as the magistrate may determine.

HISTORY: 1962 Code Section 43‑214; 1952 Code Section 43‑214; 1942 Code Section 938; 1932 Code Section 938; Cr. P. '22 Section 34; Cr. C. '12 Section 35; Cr. C. '02 Section 26; G. S. 836; R. S. 25; 1830 (11) 21.

**SECTION 22‑5‑150.** Arrest of persons threatening breach of peace; trial or binding over.

 Magistrates may cause to be arrested (a) all affrayers, rioters, disturbers and breakers of the peace, (b) all who go armed offensively, to the terror of the people, (c) such as utter menaces or threatening speeches and (d) otherwise dangerous and disorderly persons. Persons arrested for any of such offenses shall be examined by the magistrate before whom they are brought and may be tried before him. If found guilty they may be required to find sureties of the peace and be punished within the limits prescribed in Section 22‑3‑560 or, when the offense is of a high and aggravated nature, they may be committed or bound over for trial before the court of general sessions.

HISTORY: 1962 Code Section 43‑215; 1952 Code Section 43‑215; 1942 Code Section 925; 1932 Code Section 925; Cr. P. '22 Section 21; Cr. C. '12 Section 22; Cr. C. '02 Section 14; R. S. 13; 1870 (14) 402.

**SECTION 22‑5‑160.** Appointment of special officer to arrest persons charged with offense above grade of misdemeanor.

 Whenever a magistrate shall have issued a warrant for the arrest of any person charged with an offense above the grade of a misdemeanor he may select any citizen of the county to execute such warrant upon his endorsement upon the warrant that, in his judgment, the selection of such person will be conducive to the certain and speedy execution of the warrant. The person so selected shall have all the powers conferred by law upon any constable within this State.

HISTORY: 1962 Code Section 43‑217; 1952 Code Section 43‑217; 1942 Code Section 934; 1932 Code Section 935; Cr. P. '22 Section 31; Cr. C. '12 Section 32; Cr. C. '02 Section 23; G. S. 838; R. S. 22; 1871 (14) 666.

**SECTION 22‑5‑170.** Duty of special officer appointed by magistrate.

 Any person so selected shall forthwith proceed to execute the warrant and upon his wilfully, negligently or carelessly failing to make the arrest or permitting the party to escape after arrest he shall be punished, upon conviction after indictment, by fine and imprisonment in the county jail, in the discretion of the judge before whom the indictment may be tried, such imprisonment not to be less than six months.

HISTORY: 1962 Code Section 43‑218; 1952 Code Section 43‑218; 1942 Code Section 934; 1932 Code Section 935; Cr. P. '22 Section 31; Cr. C. '12 Section 32; Cr. C. '02 Section 23; G. S. 838; R. S. 22; 1871 (14) 666.

**SECTION 22‑5‑180.** Swearer of warrant precluded from serving it.

 No magistrate shall deputize the person swearing out a warrant in any case to serve it.

HISTORY: 1962 Code Section 43‑220; 1952 Code Section 43‑220; 1942 Code Section 948; 1932 Code Section 948; Cr. P. '22 Section 45; Cr. C. '12 Section 45; Cr. C. '02 Section 35; R. S. 31; 1886 (19) 531.

**SECTION 22‑5‑190.** Endorsement and execution of warrants issued in other counties or by municipal authorities.

 (A) A magistrate may endorse a warrant issued by a magistrate of another county when the person charged with a crime in the warrant resides in or is in the county of the endorsing magistrate. When a warrant is presented to a magistrate for endorsement, as provided in this section, the magistrate shall authorize the person presenting it or any special constable to execute it within his county.

 (B) Whenever a warrant is issued by a mayor, recorder, judge, or other proper judicial officer of any municipality requiring the arrest of any person charged with a violation of a municipal ordinance, or a state statute within the trial jurisdiction of the municipal authorities, and the person sought to be arrested is presently incarcerated in a jail or detention center of the county in which the municipality is located, law enforcement officers of that municipality with the assistance of law enforcement officials of the county operating the jail or detention center may serve the warrant on that person without the necessity of a magistrate of the county endorsing the warrant as required by this section.

 (C) Except as otherwise provided in subsection (B), whenever a warrant is issued by an intendant, mayor, recorder, judge, or other proper judicial officer of any municipality of this State, requiring the arrest of anyone charged with the violation of a municipal ordinance, or of a state statute within the trial jurisdiction of the municipal authorities, and the person sought to be arrested cannot be found within the municipal limits but is within the State, the officer issuing the warrant may send it to the magistrate having jurisdiction over the area in which the person may be found, which magistrate may endorse the warrant, which shall then be executed by the magistrates' constable or the sheriff of the county of the endorsing magistrate. The endorsement shall be to the following effect: It shall be addressed to the sheriff or any lawful constable of the county of the endorsing magistrate, directing the officer to arrest the person named in the warrant and bring the person before the endorsing magistrate, to be dealt with according to law. Unless a proper bond is filed with the endorsing magistrate by the person arrested, conditioned upon his or her appearance before the officer originally issuing the warrant, to answer the charges in it, the person arrested shall be promptly turned over to police officers of the municipality from which the warrant was originally issued who are hereby empowered to return the person to the municipality involved. A magistrate shall not be required to endorse the warrant when the maximum penalty for each offense charged by the warrant does not exceed ten dollars or when the offense consists of the illegal parking of a motor vehicle.

 (D) All costs, fees, travel, and other expenses in connection with the endorsement and execution of such warrants shall be paid by the municipality involved to the county or officers entitled thereto.

HISTORY: 1962 Code Section 43‑221; 1952 Code Section 43‑221; 1942 Code Section 950; 1932 Code Section 950; Cr. P. '22 Section 47; Cr. C. '12 Section 47; Cr. C. '02 Section 37; R. S. 33; 1891 (20) 1052; 1961 (52) 587; 1996 Act No. 246, Section 1.

**SECTION 22‑5‑200.** Disposition of persons arrested by deputy sheriffs without warrants.

 When an arrest is made by a deputy sheriff without a warrant pursuant to Section 23‑13‑60 the person so arrested shall be forthwith carried before a magistrate and a warrant of arrest procured and disposed of as the magistrate shall direct.

HISTORY: 1962 Code Section 43‑222; 1952 Code Section 43‑222; 1942 Code Section 3493; 1932 Code Section 3493; Civ. C. '22 Section 2038; Cr. C. '22 Section 328; 1912 (27) 865.

**SECTION 22‑5‑210.** Copy of arrest warrant to arrested person.

 When any person is arrested in a criminal matter pursuant to an arrest warrant, the person so arrested shall be furnished with a copy of such warrant and the affidavit upon which the warrant was issued.

HISTORY: 1962 Code Section 43‑111.1; 1975 (59) 95.

ARTICLE 5

Preliminary Examinations

**SECTION 22‑5‑310.** Sitting as examining court in matters beyond magistrates' jurisdiction.

 In criminal matters beyond their jurisdiction to try, magistrates shall sit as examining courts and commit, discharge and, except in capital cases, recognize persons charged with such offenses.

HISTORY: 1962 Code Section 43‑231; 1952 Code Section 43‑231; 1942 Code Section 3709; 1932 Code Section 3709; Civ. C. '22 Section 2243; Civ. C. '12 Section 1393; Civ. C. '02 Section 985; 1897 (22) 472.

**SECTION 22‑5‑320.** Defendant's demand for preliminary investigation; appearance by attorney.

 Any magistrate who issues a warrant charging a crime beyond his jurisdiction shall grant and hold a preliminary hearing of it upon the demand in writing of the defendant made within twenty days of the hearing to set bond for such charge; provided, however, that if such twenty‑day period expires on a date prior to the convening of the next term of General Sessions Court having jurisdiction then the defendant may wait to make such request until a date at least ten days before the next term of General Sessions Court convenes. At the preliminary hearing, the defendant may cross‑examine the state's witnesses in person or by counsel, have the reply in argument if there be counsel for the State, and be heard in argument in person or by counsel as to whether a probable case has been made out and as to whether the case ought to be dismissed by the magistrate and the defendant discharged without delay. When such a hearing has been so demanded the case shall not be transmitted to the court of general sessions or submitted to the grand jury until the preliminary hearing shall have been had, the magistrate to retain jurisdiction and the court of general sessions not to acquire jurisdiction until after such preliminary hearing. Provided, however, that the defendant shall not be required to appear in person at the appointed time, date and place set for the hearing if he is represented by his attorney.

HISTORY: 1962 Code Section 43‑232; 1952 Code Section 43‑232; 1942 Code Section 935; 1932 Code Section 936; Cr. P. '22 Section 32; Cr. C. '12 Section 33; Cr. C. '02 Section 24; 1898 (22) 698; 1930 (36) 1322; 1978 Act No. 475; 1980 Act No. 393.

**SECTION 22‑5‑330.** Request for preliminary investigation when warrant for crime beyond jurisdiction issued by coroner.

 In instances in which a warrant charging a crime beyond the jurisdiction of a magistrate is issued by a coroner, a preliminary investigation as provided for herein shall be granted, upon demand of the defendant, by the magistrate having territorial jurisdiction.

HISTORY: 1962 Code Section 43‑232.1; 1952 (47) 2171.

**SECTION 22‑5‑340.** Removal of hearing.

 A defendant when first brought before a magistrate may demand a removal of the hearing to the next magistrate on the same grounds as in cases within the jurisdiction of the magistrate and shall be granted two days, if requested, within which to prepare a showing for such removal during which time he shall be held by recognizance in bailable cases or committed for custody.

HISTORY: 1962 Code Section 43‑233; 1952 Code Section 43‑233; 1942 Code Section 935; 1932 Code Section 936; Cr. P. '22 Section 32; Cr. C. '12 Section 33; Cr. C. '02 Section 24; 1898 (22) 698; 1930 (36) 1322.

**SECTION 22‑5‑350.** Return of papers pertaining to general sessions court; character of the papers.

 All papers pertaining to the court of general sessions shall be returned, with a report of the case with the names and addresses of all material witnesses and a synopsis of all testimony, by each magistrate to the clerk of court within fifteen days after the arrest in each case has been made and a preliminary hearing had or waived, except such as may have been issued or received by the magistrate within fifteen days preceding the convening of any court and except when preliminary hearings have been demanded and no opportunity had for such hearing, in which cases magistrates shall return such papers and report thereon to the clerk of court, as directed in this section, not later than the first day of such term. Every such paper shall be endorsed legibly with the title of the case, nature of the offense, kind of proceeding and the magistrate's name.

HISTORY: 1962 Code Section 43‑234; 1952 Code Section 43‑234; 1942 Code Sections 944, 3721; 1932 Code Sections 944, 3721; Civ. C. '22 Section 2255; Cr. P. '22 Section 40; Civ. C. '12 Section 1405; Cr. C. '12 Section 565; Civ. C. '02 Section 997; Cr. C. '02 Section 408; G. S. 855, 856; R. S. 323; 1836 (6) 552; 1839 (11) 23; 1918 (30) 769; 1940 (41) 1648.

**SECTION 22‑5‑360.** Penalty for failing to hold preliminary examination.

 If any magistrate fails to hold a preliminary examination or have it waived by setting a date for such preliminary examination and to return such papers and report thereon to the clerk, as directed in this Code, he shall be subject to the payment of a fine of five dollars for every such default, within the discretion of the court to which a rule thereof shall be made returnable.

HISTORY: 1962 Code Section 43‑235; 1952 Code Section 43‑235; 1942 Code Section 936; 1932 Code Section 1545; Cr. C. '22 Section 492; Cr. C. '12 Section 565; Cr. C. '02 Section 408; G. S. 855, 856; R. S. 323; 1836 (6) 552; 1839 (11) 23; 1918 (30) 769.

ARTICLE 7

Bail and Recognizance; Arrest and Committal of Witnesses

**SECTION 22‑5‑510.** Bail; bond hearing; conditions of release; information to be provided to court; contempt.

 (A) Magistrates may admit to bail a person charged with an offense, the punishment of which is not death or imprisonment for life; provided, however, with respect to violent offenses as defined by the General Assembly pursuant to Section 15, Article I of the Constitution of South Carolina, 1895, magistrates may deny bail giving due weight to the evidence and to the nature and circumstances of the event including, but not limited to, any charges pending against the person requesting bail. "Violent offenses" as used in this section means the offenses contained in Section 16‑1‑60. If a person under lawful arrest on a charge not bailable is brought before a magistrate, the magistrate shall commit the person to jail. If the offense charged is bailable, the magistrate shall take recognizance with sufficient surety, if it is offered, in default whereof the person must be incarcerated.

 (B) A person charged with a bailable offense must have a bond hearing within twenty‑four hours of his arrest and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility.

 (C) In determining conditions of release that will reasonably assure appearance, or if release would constitute an unreasonable danger to the community or an individual, a court, on the basis of the following information, may consider the nature and circumstances of an offense charged and the charged person's:

 (1) family ties;

 (2) employment;

 (3) financial resources;

 (4) character and mental condition;

 (5) length of residence in the community;

 (6) record of convictions; and

 (7) record of flight to avoid prosecution or failure to appear at other court proceedings.

 (D) A court must consider:

 (1) a person's criminal record;

 (2) any charges pending against a person at the time release is requested;

 (3) all incident reports generated as a result of an offense charged;

 (4) whether a person is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status;

 (5) whether the charged person appears in the state gang database maintained at the State Law Enforcement Division; and

 (6) whether a person is currently out on bond for another offense.

 (E) Prior to or at the time of the bond hearing, the arresting law enforcement agency must provide the court with the following information:

 (1) the person's criminal record;

 (2) any charges pending against the person at the time release is requested;

 (3) all incident reports generated as a result of the offense charged; and

 (4) any other information that will assist the court in determining conditions of release to include, but not be limited to, notification of any existing bonds for another offense.

 (F) The arresting law enforcement agency shall inform the court if any of the information required in subsections (C), (D), and (E) is not available at the time of the hearing and the reason the information is not available. Failure on the part of the law enforcement agency to provide the court with the information does not constitute grounds for the postponement or delay of the person's bond hearing. Notwithstanding the provisions of this subsection, when a person is charged with a violation of Chapter 25, Title 16, the bond hearing may not proceed without the person's criminal record and incident report or the presence of the arresting officer. The bond hearing for a violation of Chapter 25, Title 16 must occur within twenty‑four hours after the arrest.

 (G) A court hearing this matter has contempt powers to enforce these provisions.

HISTORY: 1962 Code Section 43‑241; 1952 Code Section 43‑241; 1942 Code Section 939; 1932 Code Section 939; Cr. P. '22 Section 35; Cr. C. '12 Section 36; Cr. C. '02 Section 28; G. S. 2621; R. S. 34; 1839 (11) 22; 1998 Act No. 425, Section 1; 2010 Act No. 273, Section 10, eff June 2, 2010; 2014 Act No. 144 (S.19), Section 3, eff April 7, 2014; 2015 Act No. 58 (S.3), Pt III, Section 11, eff June 4, 2015; 2023 Act No. 83 (H.3532), Section 7, eff June 20, 2023.

Effect of Amendment

The 2010 amendment, in subsection (A) inserted ", including, but not limited to, any charges pending against the person requesting bail" in the first sentence, and added subsections (C), (D), and (E), relating to information provided to the court by law enforcement and contempt powers of the court.

2014 Act No. 144, Section 3, rewrote the section.

2015 Act No. 58, Section 11, in (C), inserted "or an individual"; and in (F), added the last two sentences relating to Chapter 25, Title 16.

2023 Act No. 83, Section 7, in (D), substituted "must" for "shall", and added (6); in (E), substituted "must" for "shall", and in (4), inserted "to include, but not be limited to, notification of any existing bonds for another offense"; and made nonsubstantive changes.

**SECTION 22‑5‑520.** Amount of recognizance of accused.

 If the offense charged be punishable with fine and imprisonment, or either, the recognizance of the accused entered into before a magistrate shall not be for less than two hundred dollars and in all cases the magistrate taking the recognizance shall cause it to be in such amount as the circumstances may seem to require.

HISTORY: 1962 Code Section 43‑242; 1952 Code Section 43‑242; 1942 Code Section 941; 1932 Code Section 941; Cr. P. '22 Section 37; Cr. C. '12 Section 38; Cr. C. '02 Section 29; G. S. 2622; R. S. 35; 1839 (11) 22; 1885 (19) 439.

**SECTION 22‑5‑530.** Deposits in lieu of recognizance; payment to jail or detention facility to secure immediate release.

 (A) A person charged and to be tried before a magistrate or municipal judge for a violation of law is entitled to deposit with the magistrate or municipal judge, in lieu of entering into recognizance, a sum of money not to exceed the maximum fine in the case for which the person is to be tried. However, an individualized hearing must be held when the person is charged with a violation of the provisions of Chapter 25, Title 16 and the victim of the offense must be notified pursuant to the provisions of Section 16‑3‑1525(H).

 (B) In a jurisdiction in which the governing body has established a system for receipt of deposits in lieu of recognizance:

 (1) a person held or incarcerated in a jail or detention center who is entitled to deposit a sum of money in lieu of entering into recognizance pursuant to this section may secure the person's immediate release from custody by paying to or depositing the sum of money required by this section with the jail or detention facility in which the person is being held; and

 (2) a person held or incarcerated in a jail or detention center whose bond has been set by a summary court judge may secure the person's immediate release from custody by paying to or depositing the sum of money set by the summary court judge with the jail or detention facility in which the person is being held.

 (C) Money paid to or deposited with a jail or detention facility under the authority of this section is considered paid to or deposited with the magistrate or municipal judge in lieu of entering into recognizance and must be accounted for and paid over to the magistrate or municipal judge by the jail or detention facility for disposition according to law. Money paid to or deposited pursuant to this section must be accounted for and audited in the manner required by the governing body and any other appropriate agency.

 The provisions of this section must not be construed to abrogate or otherwise affect the notice requirements for victims of crime and other rights of victims of crime provided for in Article 5 of Title 16.

HISTORY: 1962 Code Section 43‑243; 1952 Code Section 43‑243; 1942 Code Section 940; 1932 Code Section 940; Cr. P. '22 Section 36; Cr. C. '12 Section 37; 1904 (24) 388; 1940 (41) 1648; 1944 (43) 1290; 2002 Act No. 295, Section 2; 2005 Act No. 166, Section 12; 2014 Act No. 144 (S.19), Section 4, eff April 7, 2014.

Effect of Amendment

2014 Act No. 144, Section 4, in subsection (B), added paragraph designator (1); in subsection (B)(1), substituted "pursuant to" for "under", substituted "the person's" for "his" and substituted "the person" for "he"; and added subsection (B)(2).

**SECTION 22‑5‑540.** Return of papers to clerk of general sessions.

 All magistrates before whom recognizances of witnesses, defendants or prosecutors for their respective appearances at any of the courts of general sessions for this State shall be taken or before whom any information or other paper returnable to such courts shall be made shall lodge such recognizances, informations or other papers in the respective clerk's offices of the courts to which they are returnable at least ten days before the meeting of such courts, respectively.

HISTORY: 1962 Code Section 43‑245; 1952 Code Section 43‑245; 1942 Code Section 943; 1932 Code Section 943; Cr. P. '22 Section 39; Cr. C. '12 Section 40; Cr. C. '02 Section 31; G. S. 2624; R. S. 37, 323; 1836 (6) 552; 1940 (41) 1648; 1946 (44) 1510.

**SECTION 22‑5‑550.** Arrest and committal of witness on refusal to enter into recognizance.

 Upon information made of the materiality of any witness within the State to support any accusation made or when the materiality of such witness shall be within the knowledge of any magistrate, he shall issue his warrant requiring such witness to appear before him or the next magistrate to enter into recognizance, with good security, if deemed proper. Such warrant shall authorize the arrest and detention of any such witness in any county in the State. On being brought before such magistrate and refusing to enter into recognizance, such witness may be committed by the magistrate to the jail of the county, there to remain until he shall be regularly discharged or shall enter into recognizance as required by this chapter.

HISTORY: 1962 Code Section 43‑248; 1952 Code Section 43‑248; 1942 Code Sections 937, 942; 1932 Code Sections 937, 942; Cr. P. '22 Sections 33, 38; Cr. C. '12 Sections 34, 39; Cr. C. '02 Sections 25, 30; G. S. 835, 2623; R. S. 24, 36; 1830 (11) 22; 1839 (11) 22.

**SECTION 22‑5‑560.** Arrest of witness on behalf of accused.

 The accused shall, in felonies and in no other case, have the like process to compel the attendance of any witness in his behalf as is granted or permitted on the part of the State.

HISTORY: 1962 Code Section 43‑249; 1952 Code Section 43‑249; 1942 Code Section 937; 1932 Code Section 937; Cr. P. '22 Section 33; Cr. C. '12 Section 34; Cr. C. '02 Section 25; G. S. 835; R. S. 24; 1830 (11) 22.

**SECTION 22‑5‑570.** Amount of recognizance of witness.

 The recognizance of any prosecutor or witness, in a case of misdemeanor, shall not be for less than one hundred dollars and, in case of a capital felony, shall not be for less than five hundred dollars though in all cases the magistrate shall cause it to be in such amount as the circumstances may seem to require.

HISTORY: 1962 Code Section 43‑250; 1952 Code Section 43‑250; 1942 Code Section 941; 1932 Code Section 941; Cr. P. '22 Section 37; Cr. C. '12 Section 38; Cr. C. '02 Section 29; G. S. 2622; R. S. 35; 1839 (11) 22; 1885 (19) 349.

**SECTION 22‑5‑580.** Statewide pretrial classification program; bail‑setting; Department of Probation, Parole and Pardon Services to promulgate regulations; "point‑total" system.

 (A) A statewide pretrial classification program is established to bring about an improvement of magistrates' collections and consideration of information concerning release of persons placed in jail pending disposition of criminal charges. The program must allow magistrates to make more fully informed bail‑setting decisions so those persons who present low risks of absconding while under appearance recognizance or an appearance bond may be released and those persons presenting unacceptably high risks of absconding or committing crime will continue to be held in custody.

 (B) The Department of Probation, Parole and Pardon Services shall promulgate regulations in accordance with the Administrative Procedures Act to be used by magistrates in improving the collection and consideration of information on persons requesting release on appearance recognizance or appearance bonds. The regulations developed by the Department of Probation, Parole and Pardon Services must include the establishment of a "point‑total" system for pretrial screening of appropriate defendants. This system must establish an amount or range of the recognizance entered into based on the nature of the offense charged, the danger the accused presents to himself and others, the likelihood the accused will flee to avoid trial, and other applicable factors. The regulations also must provide guidance for the collection and verification of relevant information on the person under consideration for the release.

HISTORY: 1995 Act No. 7, Part II, Section 41.

Code Commissioner's Note

The Code Commissioner corrected the reference to the Department of Probation, Parole and Pardon Services in the first and second sentences of subsection (B).

ARTICLE 9

Provisions Applicable in Counties Where County Courts Exist

**SECTION 22‑5‑710.** Warrants, preliminary examinations and commitment in counties where county courts exist.

 Magistrates in counties in which a county court has been established under the provisions of Chapter 9 of Title 14 shall issue warrants and hold preliminary examinations in all criminal cases and take such action therein as is provided by law in criminal cases beyond the jurisdiction of magistrates. In committing or binding over defendants and witnesses such magistrates shall commit and bind over for trial at the next ensuing session of the county court except in those cases over which the county court has no jurisdiction, in which cases the magistrates shall commit or bind over for trial in the court of general sessions. Such magistrates, immediately after committing or binding over a defendant for trial shall lodge with the clerk of the court by which the defendant is to be tried all papers and proceedings connected with the case.

HISTORY: 1962 Code Section 43‑261; 1952 Code Section 43‑261; 1942 Code Section 94; 1932 Code Section 94; Civ. P. '22 Section 91; Civ. C. '12 Section 3866; Civ. C. '02 Section 2769; 1900 (23) 322.

**SECTION 22‑5‑720.** Recognizances of witnesses.

 Magistrates in counties in which a county court has been established under the provisions of Chapter 9 of Title 14 shall, in binding over witnesses to appear and testify on behalf of the State before the county court in cases wherein the punishment exceeds a fine of one hundred dollars or imprisonment for thirty days, insert a provision in the recognizance requiring such witnesses to appear and testify in such case before the grand jury at the next ensuing term of the circuit court when the next ensuing term of the circuit court is appointed by law to be held before a term of the county court.

HISTORY: 1962 Code Section 43‑262; 1952 Code Section 43‑262; 1942 Code Section 94; 1932 Code Section 94; Civ. P. '22 Section 91; Civ. C. '12 Section 3866; Civ. C. '02 Section 2769; 1900 (23) 322.

ARTICLE 11

Expungement of Criminal Records

**SECTION 22‑5‑910.** Expungement of criminal records.

 (A) Following a conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, the defendant after three years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant. However, this section does not apply to an offense involving the operation of a motor vehicle.

 (B) Following a conviction for domestic violence in the third degree pursuant to Section 16‑25‑20(D), or Section 16‑25‑20(B)(1) as it existed before June 4, 2015, the defendant after five years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant.

 (C) If the defendant has had no other conviction, including out‑of‑state convictions, during the three‑year period as provided in subsection (A), or during the five‑year period as provided in subsection (B), the circuit court may issue an order expunging the records including any associated bench warrant.

 (D) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34‑11‑95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

 (E) As used in this section, "conviction" includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail. For the purpose of this section, any number of offenses for crimes carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, for which the individual received sentences at a single sentencing proceeding 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.

 (F) No person may have the person's record expunged under this section if the person has pending criminal charges of any kind unless the charges have been pending for more than five years; however, this five‑year time period is tolled for any time the defendant has been under a bench warrant for failure to appear. No person may have the person's records expunged under this section more than once. A person may have the person's record expunged even though the conviction occurred before the effective date of this section.

HISTORY: 1992 Act No. 395, Section 1; 1995 Act No. 83, Section 22; 1997 Act No. 37, Section 1; 2003 Act No. 92, Section 6; 2005 Act No. 166, Section 13; 2009 Act No. 36, Section 5, eff June 2, 2009; 2013 Act No. 75, Section 1, eff June 13, 2013; 2014 Act No. 276 (H.4560), Section 2, eff June 9, 2014; 2015 Act No. 58 (S.3), Pt VI, Section 25, eff June 4, 2015; 2016 Act No. 132 (S.255), Section 4, eff May 16, 2016; 2018 Act No. 254 (H.3209), Section 2, eff December 27, 2018.

Editor's Note

2016 Act No. 132, Section 6, provides as follows:

"SECTION 6. This act takes effect ninety days after approval by the Governor. This act applies retroactively to allow for the expungement of offenses charged, discharged, dismissed, or nolle prossed prior to the effective date of this act, and persons convicted or found not guilty prior to the effective date of this act."

Effect of Amendment

The 2009 amendment, in subsections (A) and (B), in the respective first sentences substituted "for a crime carrying a penalty of not more than thirty days imprisonment or a fine of five hundred dollars, or both," for "in a magistrates court or a municipal court,".

The 2013 amendment, in subsection (A), substituted "one thousand dollars, or both, the defendant after three years from the date of the conviction, including a conviction in magistrates or general sessions court" for "five hundred dollars, or both, the defendant after three years from the date of the conviction"; in subsection (B), substituted "one thousand dollars, or both, including a conviction in magistrates or general sessions court" for "five hundred dollars, or both"; and in subsection (C), substituted "pursuant to" for "under".

2014 Act No. 276, Section 2, in subsection (A), inserted "and any associated bench warrant"; and in subsection (B), inserted "including any associated bench warrant".

2015 Act No. 58, Section 25, in (A), substituted "this subsection" for "this section", and deleted former (A)(3), relating to offenses contained in Chapter 25, Title 16 except criminal domestic violence; added new (B); redesignated former (B) through (D) accordingly; and rewrote (C).

2016 Act No. 132, Section 4, in (A), incorporated text from former (1) into the last sentence, and deleted former (2), relating to a violation of Title 50.

2018 Act No. 254, Section 2, in (A), in the first sentence, deleted "first offense" following "Following a"; in (B), deleted "first offense" following "Following a", and inserted "or Section 16‑25‑20(B)(1) as it existed before June 4, 2015," following "to Section 16‑25‑20(D),"; in (C), in the first sentence, inserted ", including out‑of‑state convictions," following "has had no other conviction", and deleted the second and third sentences, which related to records being expunged more than once and records being expunged for convictions prior to June 1, 1992; in (E), added the second sentence, relating to multiple offenses; and added (F), providing that no person may have the person's records expunged more than once, and that a record may be expunged even though the conviction occurred before the effective date of this section.

**SECTION 22‑5‑920.** Conviction as a youthful offender.

 (A) As used in this section, "conviction" includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail. For the purpose of this section, any number of offenses for which the individual received a youthful offender sentence 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.

 (B)(1) Following a first offense conviction as a youthful offender for which a defendant is sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the defendant, who has not been convicted of any offense, including an out‑of‑state offense, but not including a conviction for driving under suspension or a conviction for disturbing schools as provided for in Section 16‑17‑420 before May 17, 2018, while serving the youthful offender sentence, including probation and parole, and for a period of five years from the date of completion of the defendant's sentence, including probation and parole, may apply, or cause someone acting on the defendant's behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction.

 (2) However, this section does not apply to:

 (a) an offense involving the operation of a motor vehicle;

 (b) an offense classified as a violent crime in Section 16‑1‑60;

 (c) an offense contained in Chapter 25, Title 16, except as otherwise provided in Section 16‑25‑30; or

 (d) an offense for which the individual is required to register in accordance with the South Carolina Sex Offender Registry Act.

 (3) If the defendant has had no other conviction, to include out‑of‑state convictions, but to not include a conviction for driving under suspension or a conviction for disturbing schools as provided for in Section 16‑17‑420 before May 17, 2018, during the service of the youthful offender sentence, including probation and parole, and during the five‑year period following completion of the defendant's sentence, including probation and parole, for a first offense conviction as a youthful offender for which the defendant was sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the circuit court may issue an order expunging the records. No person may have the person's records expunged under this section more than once. A person may have the person's record expunged even though the conviction occurred before the effective date of this section. A person eligible for a sentence pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, and who is not sentenced pursuant to those provisions, is not eligible to have the person's record expunged pursuant to the provisions of this section; however, a person who was convicted prior to June 2, 2010, and was a youthful offender as that term is defined in Section 24‑19‑10(d) is eligible to have his record expunged pursuant to the provisions of this section.

 (C) After the expungement, 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 no person takes advantage of the rights permitted by this section more than once. This nonpublic record is not subject to release under Section 34‑11‑95, 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.

HISTORY: 2003 Act No. 1, Section 1; 2009 Act No. 36, Section 6, eff June 2, 2009; 2010 Act No. 273, Section 32, eff June 2, 2010; 2016 Act No. 132 (S.255), Section 5, eff May 16, 2016; 2018 Act No. 254 (H.3209), Section 3, eff December 27, 2018; 2023 Act No. 73 (H.3890), Section 1, eff June 14, 2023.

Editor's Note

2016 Act No. 132, Section 6, provides as follows:

"SECTION 6. This act takes effect ninety days after approval by the Governor. This act applies retroactively to allow for the expungement of offenses charged, discharged, dismissed, or nolle prossed prior to the effective date of this act, and persons convicted or found not guilty prior to the effective date of this act."

2023 Act No. 73, Section 2, provides as follows:

"SECTION 2. This act takes effect upon approval by the Governor, and applies retroactively to convictions before the effective date of this act."

Effect of Amendment

The 2009 amendment, in subsection (B), in the first sentence substituted "five years" for "fifteen years" and "completion of his sentence, including probation and parole," for "the conviction", and in the third sentence substituted "five‑year period" for "fifteen‑year period" and "completion of his sentence, including probation and parole, for a" for "the".

The 2010 amendment in subsection (B), added reference to "Youth Offender Act" in the first and second sentences, and added the last sentence relating to a person who was eligible but was not sentenced pursuant to the provisions of the Youth Offender Act.

2016 Act No. 132, Section 5, rewrote (B), adding the paragraph identifiers, deleting reference to Title 50 violations, and making other nonsubstantive changes.

2018 Act No. 254, Section 3, rewrote the section, redefining "conviction" to expand eligibility, including that a person required to register on the sex offender registry is not eligible for expungement, and providing retroactive application under certain circumstances.

2023 Act No. 73, Section 1, in (B), in (1), inserted "but not including a conviction for driving under suspension or a conviction for disturbing schools as provided for in Section 16‑17‑420 before May 17, 2018,", and in (3), in the first sentence, inserted "but to not include a conviction for driving under suspension or a conviction for disturbing schools as provided for in Section 16‑17‑420 before May 17, 2018,".

**SECTION 22‑5‑930.** Expungement; first offense drug convictions.

 (A) Following a first offense conviction for either simple possession of a controlled substance under Article 3, Chapter 53, Title 44 or unlawful possession of a prescription drug under Section 40‑43‑86(EE), including those charges for which the person would now be eligible for a conditional discharge pursuant to Section 44‑53‑450, the defendant after three years from the date of the completion of the sentence, including probation and parole, for this conviction, and including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant.

 (B) Following a first offense conviction for possession with intent to distribute a controlled substance under Article 3, Chapter 53, Title 44, the defendant after twenty years from the date of the completion of any sentence, including probation and parole, for a drug conviction or any felony conviction may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant.

 (C) If the defendant had no other convictions, to include out‑of‑state convictions, during the three‑year period as provided in subsection (A) or no other drug conviction or felony conviction during the twenty‑year period as provided in subsection (B), the circuit court may issue an order expunging the records including any associated bench warrant.

 (D) No person may have the person's record expunged under this section if the person has pending criminal charges of any kind unless the charges have been pending for more than five years; however, this five‑year time period is tolled for any time the defendant has been under a bench warrant for failure to appear. No person may have the person's records expunged under this section more than once. No person may have the person's records expunged pursuant to this section if the person has had a conditional discharge within the five years prior to the date of arrest for the charge sought to be expunged if the charge sought to be expunged is simple possession of marijuana, or within the ten years prior to the date of arrest for the charge sought to be expunged if the charge sought to be expunged is for the simple possession of any other controlled substance or the unlawful possession of a prescription drug under Section 40‑43‑86(EE). A person may have the person's record expunged even though the conviction occurred before the effective date of this section; however, the expungement will not affect a subsequent enhanced conviction or sentence that occurred before the effective date of this section.

 (E) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34‑11‑95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

 (F) As used in this section, "conviction" includes a guilty plea, a nolo contendere, or the forfeiting of bail. For the purpose of this section, 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.

HISTORY: 2018 Act No. 254 (H.3209), Section 4, eff December 27, 2018.