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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.

ARTICLE 3.

ARRESTS

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

(A) Magistrates shall cause to be arrested all persons found within their counties charged with any offense and persons who after committing any offense within the county escape out of it, examine into treasons, felonies, grand larcenies, high crimes and misdemeanors, commit or bind over for trial those who appear to be guilty of crimes or offenses not within their jurisdiction, and punish those guilty of such offenses within their jurisdiction.

(B) Notwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

**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.

**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.

ARTICLE 7.

BAIL AND RECOGNIZANCE; ARREST AND COMMITTAL OF WITNESSES

**SECTION 22‑5‑510.** Bailing persons; bond hearing; 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, 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) Prior to or at the time of the bond hearing, the law enforcement officer, local detention facility officer, or local jail officer, as applicable, attending the hearing shall provide the court with the following information if available:

(1) the person’s criminal record;

(2) any charges pending against the person;

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

(4) any other information that will assist the court in determining bail.

(D) The law enforcement officer, local detention facility officer, or local jail officer, as applicable, shall inform the court if any of the information required in subsection (C) is not available at the time of the bond hearing and the reason the information is not available. Failure on the part of the law enforcement officer, local detention facility officer, or local jail officer, as applicable, to provide the court with the information required in subsection (C) does not constitute grounds for the postponement or delay of the person’s bond hearing.

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

**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.

**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, 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 under this section may secure his 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 he 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.

**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.

**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.

**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.

**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.

**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.

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.

**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.

ARTICLE 11.

EXPUNGEMENT OF CRIMINAL RECORDS

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

(A) Following a first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of five hundred dollars, or both, the defendant after three years from the date of the 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. However, this section does not apply to:

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

(2) a violation of Title 50 or the regulations promulgated pursuant to Title 50 for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses are authorized; or

(3) an offense contained in Chapter 25, Title 16, except first offense criminal domestic violence as contained in Section 16‑25‑20, which may be expunged five years from the date of the conviction.

(B) If the defendant has had no other conviction during the three‑year period, or during the five‑year period as provided in subsection (A)(3), following the first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of not more than five hundred dollars, or both, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred prior to June 1, 1992.

(C) 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 under 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.

(D) As used in this section, “conviction” includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail.

**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.

(B) 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, after five years from the date of completion of his sentence, including probation and parole, 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. However, this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, to an offense classified as a violent crime in Section 16‑1‑60, or to an offense contained in Chapter 25, Title 16, except as otherwise provided in Section 16‑25‑30. If the defendant has had no other conviction during the five‑year period following completion of his 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 his records expunged under this section more than once. A person may have his 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 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.