CHAPTER 23

Pleading and Trial

**SECTION 17‑23‑10.** Plea of autrefois acquit or convict.

In any plea of autrefois acquit or autrefois convict it shall be sufficient for any defendant to state that he has been lawfully acquitted or convicted, as the case may be, of the offense charged in the indictment.

HISTORY: 1962 Code Section 17‑501; 1952 Code Section 17‑501; 1942 Code Section 1006; 1932 Code Section 1006; Cr. P. ‘22 Section 92; Cr. C. ‘12 Section 86; Cr. C. ‘02 Section 59; R. S. 58; 1887 (19) 829.

**SECTION 17‑23‑20.** Double jeopardy after trial in municipal or magistrates court.

Whenever a municipal court or a magistrates court shall have acquired jurisdiction by reason of a person committing an act which is alleged to be in violation of a municipal ordinance and which is in violation of the criminal law of this State a conviction or an acquittal by the first court acquiring jurisdiction shall be a complete bar to a trial by another court for the same alleged unlawful act or acts.

HISTORY: 1962 Code Section 17‑502; 1952 Code Section 17‑502; 1942 Code Section 994; 1932 Code Section 994; 1928 (35) 1317.

**SECTION 17‑23‑30.** Permitting second indictment and trial for same offense.

If a person on his trial be acquitted upon the ground of a variance between the indictment and the proof or upon an exception to the form or substance of the indictment he may be arraigned again on a new indictment and tried and convicted for the same offense, notwithstanding such former acquittal.

HISTORY: 1962 Code Section 17‑503; 1952 Code Section 17‑503; 1942 Code Section 998; 1932 Code Section 998; Cr. P. ‘22 Section 84; Cr. C. ‘12 Section 78; Cr. C. ‘02 Section 51; G. S. 2451; R. S. 50.

**SECTION 17‑23‑40.** Nolo contendere in misdemeanor cases.

The defendant in any misdemeanor case in any of the courts of this State may, with the consent of the court, enter a plea of “nolo contendere” thereto and upon so doing such defendant shall be dealt with in like manner as if he had entered a plea of guilty thereto.

HISTORY: 1962 Code Section 17‑504; 1952 Code Section 17‑504; 1947 (45) 214.

**SECTION 17‑23‑50.** Traverse of indictment is not a continuance.

A traverse of any indictment shall not, in any court of criminal jurisdiction in this State, of itself operate to continue the case.

HISTORY: 1962 Code Section 17‑505; 1952 Code Section 17‑505; 1942 Code Section 981; 1932 Code Section 981; Cr. P. ‘22 Section 72; Cr. C. ‘12 Section 69; Cr. C. ‘02 Section 43; G. S. 2635; R. S. 43; 1871 (14) 534.

**SECTION 17‑23‑60.** Accused’s right to counsel, to produce witnesses and proofs, and to confront witnesses.

Every person accused shall, at his trial, be allowed to be heard by counsel, may defend himself and shall have a right to produce witnesses and proofs in his favor and to meet the witnesses produced against him face to face.

HISTORY: 1962 Code Section 17‑506; 1952 Code Section 17‑506; 1942 Code Section 996; 1932 Code Section 996; Cr. P. ‘22 Section 82; Cr. C. ‘12 Section 76; Cr. C. ‘02 Section 49; G. S. 2449; R. S. 48.

**SECTION 17‑23‑80.** Manner by which persons who have been indicted may be convicted.

No person indicted for an offense shall be convicted thereof unless by confession of his guilt in open court, by admitting the truth of the charge against him by his plea or demurrer, by the verdict of a jury accepted and recorded by the court or as provided in Section 17‑23‑40.

HISTORY: 1962 Code Section 17‑508; 1952 Code Section 17‑508; 1942 Code Section 997; 1932 Code Section 997; Cr. P. ‘22 Section 83; Cr. C. ‘12 Section 77; Cr. C. ‘02 Section 50; G. S. 2450; R. S. 49.

**SECTION 17‑23‑90.** Indictment and trial of persons committed for treason or felony; consequences of failure to indict.

If any person committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term to be brought to his trial shall not be indicted some time in the next term after such commitment, the judge of the circuit court shall, upon motion made in open court the last day of the term either by the prisoner or anyone in his behalf, set at liberty the prisoner upon bail, unless it appear to him, upon oath made, that the witnesses for the State could not be produced at the same term. And if any person committed as aforesaid, upon his prayer or petition in open court the first week of the term to be brought to his trial, shall not be indicted and tried the second term after his commitment or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

HISTORY: 1962 Code Section 17‑509; 1952 Code Section 17‑509; 1942 Code Section 1048; 1932 Code Section 1048; Cr. P. ‘22 Section 135; Cr. C. ‘12 Section 117; Cr. C. ‘02 Section 90; G. S. 2323; R. S. 90; 1679 (1) 119.

**SECTION 17‑23‑100.** Right to object to charge or request additional charge out of presence of jury.

In all cases tried before a jury, other than cases in a magistrates or municipal court, after the court has delivered to the jury a charge on the law in the case, the court shall temporarily excuse the jury from the presence of counsel and litigants in order to give counsel and litigants an opportunity to express objections to the charge or request the charge of additional propositions made necessary by the charge, out of the presence of the jury.

HISTORY: 1962 Code Section 17‑513.1; 1953 (48) 28.

**SECTION 17‑23‑110.** Circuit courts may grant new trials.

All the circuit courts of this State shall have power to grant new trials in cases in which there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law of the United States.

HISTORY: 1962 Code Section 17‑514; 1952 Code Section 17‑514; 1942 Code Section 1030; 1932 Code Section 1030; Cr. P. ‘22 Section 120; Cr. C. ‘12 Section 99; Cr. C. ‘02 Section 72; G. S. 2652; R. S. 72.

**SECTION 17‑23‑120.** Immediate disposition of certain misdemeanors or felonies; application to clerk.

When any defendant is arrested upon a warrant charging a misdemeanor which is not within the jurisdiction of the magistrates court or, notwithstanding any other provision of law, when any defendant is arrested upon a warrant charging a felony, he may apply to the clerk of court of the county having jurisdiction of such case for an immediate disposition of the case and thereupon the clerk of court shall forward the arrest warrant to the solicitor of the judicial circuit.

HISTORY: 1962 Code Section 17‑510; 1952 Code Section 17‑510; 1942 Code Section 1022‑1; 1939 (41) 215; 1977 Act No. 206 Section 1.

**SECTION 17‑23‑130.** Immediate disposition of certain misdemeanors or felonies; waiver of presentment by grand jury and plea of guilty.

Upon receipt by the solicitor of the warrant forwarded to him pursuant to the provisions of Section 17‑23‑120, he may forthwith prepare a formal indictment as now provided by law in such cases and shall return it to the clerk of court. The clerk of court shall then notify the sheriff or one of his duly authorized deputies to bring the defendant before the clerk at a time and place to be stated in the notice at which time the clerk shall have the defendant sign a waiver of the presentment by the grand jury and his plea of guilty; provided, that no plea shall be entered or made under this section except by and with the consent of the solicitor of the circuit after investigation by such solicitor.

HISTORY: 1962 Code Section 17‑511; 1952 Code Section 17‑511; 1942 Code Section 1022‑1; 1939 (41) 215; 1977 Act No. 206 Section 2.

**SECTION 17‑23‑140.** Immediate disposition of certain misdemeanors or felonies; appearance before judge and sentence.

Upon the defendant’s signing the waiver of presentment and the plea of guilty the clerk of court shall deliver the indictment to the sheriff or one of his duly authorized deputies whose duty it shall be to appear before the resident judge of the circuit or presiding judge therein at some convenient time and place, having with him the defendant. And upon the defendant’s acknowledging his plea before the judge the judge shall sentence the defendant as though the indictment had been presented by the grand jury and the plea of the defendant taken at the regular term of the court of general sessions of the county in which the case arose. Provided, however, that in the event the defendant is charged with a felony, the acknowledgement by the defendant of his plea and the sentencing by the judge shall take place only in open court and shall not take place in chambers.

HISTORY: 1962 Code Section 17‑512; 1952 Code Section 17‑512; 1942 Code Section 1022‑1; 1939 (41) 215; 1977 Act No. 206 Section 3.

**SECTION 17‑23‑150.** Immediate disposition of certain misdemeanors or felonies; powers of circuit judges.

Except as otherwise provided in Section 17‑23‑140, as to such cases as are herein referred to in Sections 17‑23‑120 to 17‑23‑140 the circuit judges shall have the same powers at chambers as they have in open court.

HISTORY: 1962 Code Section 17‑513; 1952 Code Section 17‑513; 1942 Code Section 1022‑1; 1939 (41) 215; 1977 Act No. 206 Section 4.

**SECTION 17‑23‑160.** Notice of right to preliminary hearing; form for request.

When any person charged with a crime who is entitled to a preliminary hearing on such charges appears in person or by counsel in a hearing to set bond, he shall be notified by a magistrate orally and in writing of his right to such preliminary hearing. When a person is notified of his right to a preliminary hearing, he shall be furnished a simple form providing him an opportunity to request a preliminary hearing by signing and returning this form to the advising magistrate then and there or thereafter. Any person so notified who fails to timely request a preliminary hearing shall lose his right to such hearing.

HISTORY: 1980 Act No. 393, Section 2.

**SECTION 17‑23‑162.** Presence of affiant or arresting officer to testify at preliminary hearing.

The affiant listed on an arrest warrant or the chief investigating officer for the case must be present to testify at the preliminary hearing of the person arrested pursuant to the warrant.

HISTORY: 2000 Act No. 394, Section 6.

**SECTION 17‑23‑165.** Attorney appearing at preliminary hearing not obligated to continue representation.

The appearance by an attorney on behalf of a defendant in a preliminary hearing shall not in and of itself obligate that attorney to continue the representation of that defendant beyond the preliminary hearing.

HISTORY: 1980 Act No. 393, Section 1A.

**SECTION 17‑23‑170.** Admissibility of evidence concerning battered spouse syndrome; foundation; notice; lay testimony.

(A) Evidence that the actor was suffering from the battered spouse syndrome is admissible in a criminal action on the issue of whether the actor lawfully acted in self‑defense, defense of another, defense of necessity, or defense of duress. This section does not preclude the admission of testimony on battered spouse syndrome in other criminal actions. This testimony is not admissible when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.

(B) Expert opinion testimony on the battered spouse syndrome shall not be considered a new scientific technique the reliability of which is unproven.

(C) Lay testimony as to the actions of the batterer and how those actions contributed to the facts underlying the basis of the criminal charge shall not be precluded as irrelevant or immaterial if it is used to establish the foundation for evidence on the battered spouse syndrome.

(D) The foundation shall be sufficient for the admission of testimony on the battered spouse syndrome if the proponent of the evidence establishes its relevancy and the proper qualifications of the witness.

(E) A defendant who proposes to offer evidence of the battered spouse syndrome shall file written notice with the court before trial.

HISTORY: 1995 Act No. 7, Part I Section 15.

**SECTION 17‑23‑175.** Admissibility of out‑of‑court statement of child under twelve; determination of trustworthiness; notice to adverse party.

(A) In a general sessions court proceeding or a delinquency proceeding in family court, an out‑of‑court statement of a child is admissible if:

(1) the statement was given in response to questioning conducted during an investigative interview of the child;

(2) an audio and visual recording of the statement is preserved on film, videotape, or other electronic means, except as provided in subsection (F);

(3) the child testifies at the proceeding and is subject to cross‑ examination on the elements of the offense and the making of the out‑of‑court statement; and

(4) the court finds, in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness.

(B) In determining whether a statement possesses particularized guarantees of trustworthiness, the court may consider, but is not limited to, the following factors:

(1) whether the statement was elicited by leading questions;

(2) whether the interviewer has been trained in conducting investigative interviews of children;

(3) whether the statement represents a detailed account of the alleged offense;

(4) whether the statement has internal coherence; and

(5) sworn testimony of any participant which may be determined as necessary by the court.

(C) For purposes of this section, a child is:

(1) a person who is under the age of twelve years at the time of the making of the statement or who functions cognitively, adaptively, or developmentally under the age of twelve at the time of making the statement; and

(2) a person who is the alleged victim of, or witness to, a criminal act for which the defendant, upon conviction, would be required to register pursuant to the provisions of Article 7, Chapter 3, Title 23.

(D) For purposes of this section an investigative interview is the questioning of a child by a law enforcement officer, a Department of Social Services case worker, or other professional interviewing the child on behalf of one of these agencies, or in response to a suspected case of child abuse.

(E)(1) The contents of a statement offered pursuant to this section are subject to discovery pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.

(2) If the child is twelve years of age or older, an adverse party may challenge the finding that the child functions cognitively, adaptively, or developmentally under the age of twelve.

(F) Out‑of‑court statements made by a child in response to questioning during an investigative interview that is visually and auditorily recorded will always be given preference. If, however, an electronically unrecorded statement is made to a professional in his professional capacity by a child victim or witness regarding an act of sexual assault or physical abuse, the court may consider the statement in a hearing outside the presence of the jury to determine:

(1) the necessary visual and audio recording equipment was unavailable;

(2) the circumstances surrounding the making of the statement;

(3) the relationship of the professional and the child; and

(4) if the statement possesses particularized guarantees of trustworthiness.

After considering these factors and additional factors the court deems important, the court will make a determination as to whether the statement is admissible pursuant to the provisions of this section.

HISTORY: 2006 Act No. 342, Section 8, eff July 1, 2006 and 2006 Act No. 346, Section 2, eff July 1, 2006.

Editor’s Note

2006 Act No. 342, Section 1, provides as follows:

“This act may be cited as the ‘Sex Offender Accountability and Protection of Minors Act of 2006’.”