CHAPTER 1

General Provisions

**SECTION 17‑1‑10.** Manner of prosecuting criminal action.

A criminal action is prosecuted by the State, as a party, against a person charged with a public offense, for the punishment thereof.

HISTORY: 1962 Code Section 17‑1; 1952 Code Section 17‑1; 1942 Code Section 5; 1932 Code Section 5; Civ. P. ‘22 Section 5; Civ. P. ‘12 Section 5; Civ. P. ‘02 Section 5; 1870 (14) 423.

CROSS REFERENCES

Constitutional right to a public trial, see SC Const, Art I, Section 9.

Crimes while in flight, see Section 55‑3‑80.

Crimes and offenses, generally, see Section 16‑1‑10 et seq.

Library References

Criminal Law 633.1.

District and Prosecuting Attorneys 8.

Westlaw Topic Nos. 110, 131.

C.J.S. Criminal Law Sections 1542 to 1555, 1607 to 1609.

C.J.S. District and Prosecuting Attorneys Sections 26 to 31, 47 to 55, 62 to 63.

RESEARCH REFERENCES

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 1.7(E), Statutes.

LAW REVIEW AND JOURNAL COMMENTARIES

Judge and Solicitor. 24 S.C. L. Rev. 521.

Attorney General’s Opinions

Discussion of who prosecutes a fraudulent check case when the solicitor will not. S.C. Op.Atty.Gen. (Nov. 28, 2005) 2005 WL 3352851.

Discussion of the propriety of private prosecution of magistrate and city level cases. S.C. Op.Atty.Gen. (Aug. 5, 1997) 1997 WL 569059.

Ministerial magistrates are not authorized to hear civil proceedings pursuant to Sections 20‑4‑10, et seq. nor issue orders of protection pursuant to such provisions. 1984 Op Atty Gen, No 84‑120, p 273 (October 10, 1984) 1984 WL 159927.

A driving under the influence charge may be nolle prossed or dismissed by the proper prosecuting officials, as any other criminal case, where the evidence does not justify the prosecution. The defendant may be charged with another offense on a separate warrant or traffic summons if evidence is available to support the charge; a Judge has no authority to dismiss a criminal prosecution on his own motion prior to trial except at the instance of the prosecuting official, absent an authorizing statute; where the Highway Patrol is the charging agency, the State is a necessary party and a city prosecutor may not dispose of such a case without notification to and approval by the proper State authorities. 1982 Op Atty Gen, No 82‑1, p 5 (January 12, 1982) 1982 WL 154971.

NOTES OF DECISIONS

In general 1

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1. In general

Criminal prosecutions are actions. State v. Reynolds (S.C. 1897) 48 S.C. 384, 26 S.E. 679.

2. Public offense

Test of whether accused is criminally responsible for his actions is whether he had the mental capacity to distinguish moral or legal right from moral or legal wrong, and to recognize the particular act charged as morally or legally wrong. State v. Law (S.C. 1978) 270 S.C. 664, 244 S.E.2d 302. Criminal Law 48

3. Prosecuting authority

Although Code 1962 Section 46‑685 [Code 1976 Section 56‑5‑6150] gives a city recorder authority to hear trials of persons charged with violation of the Uniform Act Regulating Traffic on the Highways, the prosecuting authority is the state and not the city. City of Lake City v. Daniels (S.C. 1977) 268 S.C. 396, 234 S.E.2d 222.

In every criminal prosecution the responsibility for the conduct of the trial is upon the solicitor and he must and does have full control of the State’s case. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

This section [Code 1962 Section 17‑1] does not prohibit private counsel from participating in the trial of a criminal case. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

The court may, in its discretion, permit the prosecuting attorney to have the assistance of counsel employed by the prosecuting witness or other persons interested in securing a conviction; but such appointment can be made only on the request or consent of the prosecuting attorney, which, however, may be presumed from the fact of participation and assistance without objection. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

After he has retired from participation in a civil action founded on the same facts, special counsel may appear for the prosecution in the criminal case. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

When an attorney, with the consent of the solicitor and the approval of the judge, participates in the trial of a case he assumes the same obligations to the court as the solicitor himself. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415. Criminal Law 1704

If a private attorney participates in the trial of a criminal case and does only what a solicitor should do, the defendant has no right to complain. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

**SECTION 17‑1‑20.** Prosecuting officer shall not accept fees or rewards, nor act in a civil case as counsel for either party.

No prosecuting officer shall receive any fee or reward from or in behalf of a prosecutor for services in any prosecution or business to which it is his official business to attend, nor be concerned as counsel or attorney for either party in a civil action depending upon the same state of facts.

HISTORY: 1962 Code Section 17‑2; 1952 Code Section 17‑2; 1942 Code Section 3123; 1932 Code Section 3123; Civ. C. ‘22 Section 805; Civ. C. ‘12 Section 720; Civ. C. ‘02 Section 648; G. S. 505; R. S. 565; 1868 (14) 88.

Library References

Criminal Law 1691.

District and Prosecuting Attorneys 8.

Westlaw Topic Nos. 110, 131.

C.J.S. District and Prosecuting Attorneys Sections 26 to 31, 47 to 55, 62 to 63.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney and Client Section 52.1, Prosecuting Attorney‑Serving in More Than One Capacity.

S.C. Jur. Attorney General Section 18, Conflicts of Interest.

LAW REVIEW AND JOURNAL COMMENTARIES

Judge and Solicitor. 24 S.C. L. Rev. 521.

NOTES OF DECISIONS

In general 1

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1. In general

Attorney General may represent public officials in civil suits as well as criminal ones; although 1962 Code Section 17‑2 [Section 17‑1‑20 (1976)] is potentially in conflict with 1962 Code Section 1‑234 [Section 1‑7‑50 (1976)] if Attorney General were to be personally involved in active prosecution at same time he is representing criminal defendant in pending civil matter, should conflict materialize, trial judge can release Attorney General and appoint attorneys for either side from attorneys named in Section 1‑234 [Section 1‑7‑50]. Langford v. McLeod (S.C. 1977) 269 S.C. 466, 238 S.E.2d 161.

The office of the solicitor is a quasi judicial one and his duty is to seek justice and not necessarily convictions in every case. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

In every criminal prosecution the responsibility for the conduct of the trial is upon the solicitor and he must and does have full control of the State’s case. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

This section [Code 1962 Section 17‑2] does not prohibit private counsel from participating in the trial of a criminal case. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

The court may, in its discretion, permit the prosecuting attorney to have the assistance of counsel employed by the prosecuting witness or other persons interested in securing a conviction; but such appointment can be made only on the request or consent of the prosecuting attorney, which, however, may be presumed from the fact of participation and assistance without objection. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

After he has retired from participation in a civil action founded on the same facts special counsel may appear for the prosecution in the criminal case. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

When an attorney, with the consent of the solicitor and the approval of the judge, participates in the trial of a case he assumes the same obligations to the court as the solicitor himself. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415. Criminal Law 1704

If a private attorney participates in the trial of a criminal case and does only what a solicitor should do, the defendant has no right to complain. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

2. Purpose

This section [Code 1962 Section 17‑2] is designed to control the activities of the solicitor. State v. Addis (S.C. 1972) 257 S.C. 482, 186 S.E.2d 415.

3. Civil actions

The defendant was not entitled to a change of venue based on the fact that the plaintiff’s counsel was also a part‑time solicitor in the county in which the trial took place; it is generally proper for a part‑time solicitor to represent a party in a civil action, provided the action does not arise out of a criminal prosecution handled by the solicitor’s office. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Venue 82

4. Disqualification of prosecutor

The trial court properly refused to disqualify the prosecutor on the ground that he also provided legal advice to the city police department and represented the city in cases brought as a result of the actions of that police department; the defendant failed to show how the prosecutor’s duty to represent the city violated Rule 3.8 of the Rules of Professional Conduct. State v. Hunter (S.C. 1993) 313 S.C. 53, 437 S.E.2d 41.

5. Sanctions against prosecutor

Solicitor was publicly reprimanded for participating for fee in representation of plaintiffs in civil action against defendant upon same set of facts that were basis of defendant’s indictment for reckless homicide, even though, when criminal case subsequently came to trial, assistant solicitor presented case, and solicitor himself did not participate. Matter of Jolly (S.C. 1977) 269 S.C. 668, 239 S.E.2d 490.

**SECTION 17‑1‑30.** Rule of strict construction is inapplicable to this title.

The rule of the common law that statutes in derogation of that law are to be strictly construed has no application to this title.

HISTORY: 1962 Code Section 17‑3; 1960 (51) 1744.

Library References

Criminal Law 12.7(2).

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 31.

C.J.S. Statutes Sections 525 to 530.

**SECTION 17‑1‑40.** Expungement; retention of certain information by law enforcement or prosecution agencies.

(A) For purposes of this section, “under seal” means not subject to disclosure other than to a law enforcement or prosecution agency, and attorneys representing a law enforcement or prosecution agency, unless disclosure is allowed by court order.

(B)(1) If a person’s record is expunged pursuant to Article 9, Title 17, Chapter 22, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22‑3‑330 or another provision of law, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge or associated bench warrants may be retained by any municipal, county, or state agency. Provided, however, that:

(a) Law enforcement and prosecution agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, administrative hearings, and to defend the agency and the agency’s employees during litigation proceedings. The information must remain under seal. The information is not a public document and is exempt from disclosure, except by court order.

(b) Detention and correctional facilities shall retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years and one hundred twenty days from the date of the expungement order to manage the facilities’ statistical and professional information needs, and to defend the facilities and the facilities’ employees during litigation proceedings, except that when an action, complaint, or inquiry has been initiated, the records, documentation and materials, and other reports and files may be retained as needed to address the action, complaint, or inquiry. The information is not a public document and is exempt from disclosure, except by court order. At the end of the three years and one hundred twenty days from the date of the expungement order, the records must be destroyed unless they are being retained to address an action, complaint, or inquiry that has been initiated.

(2) A municipal, county, or state agency, or an employee of a municipal, county, or state agency that intentionally violates this subsection is guilty of contempt of court.

(3) Nothing in this subsection requires the South Carolina Department of Probation, Parole and Pardon Services to expunge the probation records of persons whose charges were dismissed by conditional discharge pursuant to Section 44‑53‑450.

(4) If a person pleads guilty to a lesser included offense and the solicitor deems it appropriate, the solicitor shall notify the State Law Enforcement Division (SLED) and SLED shall request that the person’s record contained in the National Crime Information Center (NCIC) database or other similar database reflects the lesser included offense rather than the offense originally charged.

(C)(1) If a person’s record is expunged pursuant to Article 9, Title 17, Chapter 22, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22‑3‑330 or another provision of law, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then law enforcement and prosecution agencies shall retain the unredacted incident and supplemental reports, and investigative files under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations, other law enforcement or prosecution purposes, administrative hearings, and to defend the agency and the agency’s employees during litigation proceedings. The information must remain under seal. The information is not a public document, is exempt from disclosure, except by court order, and is not subject to an order for destruction of arrest records.

(2) If a request is made to inspect or obtain the incident reports pursuant to the South Carolina Freedom of Information Act, the law enforcement agency shall redact the name of the person whose record is expunged and other information which specifically identifies the person from copies of the reports provided to the person or entity making the request.

(3) If a person other than the person whose record is expunged is charged with the offense, a prosecution agency may provide the attorney representing the other person with unredacted incident and supplemental reports. The attorney shall not provide copies of the reports to a person or entity nor share the contents of the reports with a person or entity, except during judicial proceedings or as allowed by court order.

(4) A person who intentionally violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

(5) Nothing in this subsection prohibits evidence gathered or information contained in incident reports or investigation and prosecution files from being used for the investigation and prosecution of a criminal case or for the defense of a law enforcement or prosecution agency or agency employee.

(D) A municipal, county, or state agency may not collect a fee for the destruction of records pursuant to this section.

(E) The State Law Enforcement Division is authorized to promulgate regulations that allow for the electronic transmission of information pursuant to this section.

(F) Unless there is an act of gross negligence or intentional misconduct, nothing in this section gives rise to a claim for damages against the State, a state employee, a political subdivision of the State, an employee of a political subdivision of the State, a public officer, or other persons.

HISTORY: 1962 Code Section 17‑4; 1973 (58) 637; 2007 Act No. 82, Section 8, eff June 12, 2007; 2009 Act No. 36, Section 3, eff June 2, 2009; 2010 Act No. 167, Section 1, eff May 12, 2010; 2013 Act No. 75, Section 2, eff June 13, 2013; 2014 Act No. 276 (H.4560), Section 1, eff June 9, 2014; 2016 Act No. 132 (S.255), Section 1, eff May 16, 2016.

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 2013 amendment, in subsection (A), inserted designator (1), and added subsection (A)(2) and the following undesignated paragraph; added subsection (D); and redesignated former subsection (D) as (E).

2014 Act No. 276, Section 1, rewrote the section.

2016 Act No. 132, Section 1, in (B)(1)(a), inserted “administrative hearings,” in the second sentence; in (B)(1)(b), inserted “that” following “except” in the first sentence, inserted the text following “initiated,” at the end of the first sentence, and added the last sentence; added (B)(4); in (C)(1), deleted “evidence gathered,” following “shall retain the” in the first sentence, and inserted “administrative hearings,” in the second sentence; deleted former (E), relating to violations of Titles 50 and 56; and redesignated former (F) and (G) as (E) and (F).

CROSS REFERENCES

Inapplicability of this provision to certain records of the pretrial intervention program, see Section 17‑22‑130.

Petition for expungement of official records, see Section 63‑19‑2050.

Summary court expungement orders, removal of Internet‑based public records, objections, forms, see Section 17‑22‑950.

Library References

Criminal Law 1226(3.1).

Records 22.

Westlaw Topic Nos. 110, 326.

C.J.S. Criminal Law Sections 2414 to 2419, 2421 to 2423.

C.J.S. Records Sections 37, 39, 69 to 73.

RESEARCH REFERENCES

ALR Library

69 ALR 6th 1 , Judicial Expunction of Criminal Record of Convicted Adult Under Statute‑General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses.

Encyclopedias

S.C. Jur. Governor Section 37, Expungement.

S.C. Jur. Probation, Parole, and Pardon Section 30, The Order of Pardon and Its Effect.

Attorney General’s Opinions

The amendment of this section by 2014 Act No 276, relating to post‑expungement retention of information by law enforcement and prosecution agencies, applies to alternative to prosecution programs. S.C. Op.Atty.Gen. (February 19, 2015) 2015 WL 992704.

Expungement of criminal records of an individual arrested for driving under the influence. S.C. Op.Atty.Gen. (February 4, 2015) 2015 WL 731709.

The fact that a person obtains an expungement for one charge does not require the destruction of records indicating that person was also accused of and investigated for allegedly committing another crime. S.C. Op.Atty.Gen. (April 10, 2014) 2014 WL 1511517.

Video evidence of a traffic stop obtained by law enforcement is not subject to destruction or erasure if the ensuing charge for a traffic violation is dismissed or the defendant is found not guilty. S.C. Op.Atty.Gen. (April 10, 2014) 2014 WL 1511517.

Discussion of the release of “dual arrest” incident reports under the Freedom of Information Act where one arrestee has had the records pertaining to his or her charge expunged but the other has not. S.C. Op.Atty.Gen. (Oct. 24, 2013) 2013 WL 5955672.

The records pertaining to a charge issued against a person pursuant to a courtesy summons should be destroyed upon the dismissal of the charge or a verdict of not guilty. S.C. Op.Atty.Gen. (May 21, 2013) 2013 WL 2367500.

Discussion of the Freedom of Information Act and financial records relating to a city’s Drug Fund. S.C. Op.Atty.Gen. (November 28, 2012) 2012 WL 6218332.

Sections 17‑22‑950(A) and 17‑1‑40 require summary court judges to expunge criminal records that arise out of cases involving Title 56 dealing with motor vehicle violations and Title 50 dealing with Natural Resources or wildlife violations of the Code of Laws. S.C. Op.Atty.Gen. (Aug. 12, 2009) 2009 WL 2844882, 2009 WL 2844883.

A newspaper article that appeared on the website of a police department would not be included in materials subject to being expunged. S.C. Op.Atty.Gen. (Sept. 27, 2007) 2007 WL 4284646.

When the complete investigatory file relating to a law enforcement officer’s prior arrest for criminal sexual misconduct‑first degree are contained in an individual’s certification file as maintained by the Criminal Justice Academy, such would not be subject to destruction pursuant to Section 17‑1‑40 and a 2004 expungement order. S.C. Op.Atty.Gen. (Sept. 10, 2007) 2007 WL 4284639.

A solicitor’s office may continue to collect the $150 fee authorized by the Order of the Chief Justice in association with that office’s duties in the expungement process authorized by Section 17‑1‑40. S.C. Op.Atty.Gen. (Aug. 3, 2007) 2007 WL 3244886.

Discussion of expungement of records and police department compliance with orders of expungement. S.C. Op.Atty.Gen. (July 8, 1996) 1996 WL 494722.

The bookkeeping entries for recording an arrest and ensuing charge, as described in S. C. Code, Sections 17‑1‑40 and 44‑53‑450 (1976), may be expunged once the conditions of the said statutes have been fulfilled. The work product of law enforcement agencies pertaining to investigation of criminal activity, and the evidence of criminal activity, do not constitute bookkeeping entries for recording of an arrest and the ensuing charge under the above‑mentioned statutes; a person seeking expungement of applicable records of the South Carolina Law Enforcement Division must apply to the Circuit Court of jurisdiction, with proper notice to the Circuit Solicitor, for an Order of Expungement, which must then be served upon SLED; a copy of the Order, under the Circuit Judge’s original signature or certified by the Clerk of Court, may serve as a non‑public record under Section 44‑53‑450(a) (1976); a Magistrate’s Court or Municipal Court may not order the South Carolina Law Enforcement Division to expunge criminal record information. 1979 Op Atty Gen, No 79‑33, p 49 (July 08, 1996) 1996 WL 494722.

Any expungements ordered pursuant to Section 17‑1‑40 are inapplicable to records maintained by either magistrate’s court or municipal court. 1985 Op Atty Gen, No 85‑122, p 332 (October 25, 1985) 1985 WL 166090.

Municipal police officers working undercover in drug operations outside their jurisdiction are not required by statute to notify or have consent of law enforcement agency in that jurisdiction. 1985 Op Atty Gen, No 85‑9, p 43 (January 28, 1985) 1985 WL 165980

An arrest warrant becomes a matter of public record upon its being signed and served on the person charged under the warrant, unless or until the charge under the warrant is expunged. 1983 Op Atty Gen, No 83‑41, p 62 (July 12, 1983) 1983 WL 142712.

References to “contingent docket”, or “strike/with leave to restore” on disposition report forms submitted to the South Carolina Law Enforcement Division merely referred to methods by which a solicitor would handle his trial roster of criminal cases, and they do not represent a dismissal of criminal charges against a defendant under S.C. Code, Section 17‑1‑40 (1976); a pardon is an act of executive clemency which relieves a convicted person from the remaining punishment for his offense, and restores to him certain rights of citizenship. It does not establish the innocence of the person pardoned, nor does it serve to obliterate the conviction record of the pardoned offense. 1980 Op Atty Gen, No 80‑68, p 110 (June 12, 1980) 1980 WL 81950.

A magistrate is without authority to order the expungement of criminal records after a case has been nolle prossed by the State, a defendant is found innocent after trial in a magistrate’s court, or the defendant is discharged upon a finding of insufficient probable cause at a preliminary hearing; a person seeking expungement of such criminal record information permitted to be expunged by Section 17‑1‑40 must apply to the Circuit Court with proper notice to the solicitor for an order of expungement which is then served upon all authorities maintaining such records. 1979 Op Atty Gen, No 79‑42, p 57 (March 08, 1979) 1979 WL 29048.

S. C. Code, Section 17‑1‑40 (1976) requires that, when a charge has received an entry of nolle prosequi, all municipal, county and state law enforcement agencies must expunge the criminal record and cease the dissemination of information concerning such charge; federal regulations concerning dissemination of non‑conviction data allow municipal, county or state law enforcement agencies to cease dissemination of information concerning criminal records which have been expunged pursuant to Section 17‑1‑140 as a result of an entry of nolle prosequi. 1978 Op Atty Gen, No 78‑206, p 239 (December 12, 1978) 1978 WL 218428.

Upon nonconviction disposition, Section 17‑1‑40 requires that the law enforcement copy of uniform traffic tickets be destroyed; all other copies are retained by non‑law enforcement agencies and, therefore, are not affected by Section 17‑1‑40; arrest and jail log entries relating to nonconviction dispositions should be obscured; the entry of a nolle prosequi is a dismissal within the meaning of Section 17‑1‑40. 1978 Op Atty Gen, No 78‑96, p 125 (May 18, 1978) 1978 WL 22575.

The Bureau of Narcotic and Drug Control of the South Carolina Department of Health and Environmental Control is a law enforcement agency under 1962 Code Section 17‑4 [1976 Code Section 17‑1‑40], as amended, and is thus subject to the provisions of 1962 Code Section 17‑4 [1976 Code Section 17‑1‑40] relating to the destruction of certain records concerning criminal charges. 1975‑76 Op Atty Gen, No 4504, p 361 (October 26, 1976) 1976 WL 23121.

A state college requesting an applicant to make full disclosure of his arrest record should require disclosure only where the arrest resulted in a conviction or the substantial equivalent to a conviction. 1975‑76 Op Atty Gen, No 4288, p 101 (March 09, 1976) 1976 WL 22908.

NOTES OF DECISIONS

In general 1

Injunctions 2

Malicious prosecution claims 3

1. In general

A verdict of “not guilty by reason of insanity” does not satisfy the conditions of Sections 17‑1‑40 for expungement of a criminal record. State v. Salmon (S.C. 1983) 279 S.C. 344, 306 S.E.2d 620. Criminal Law 1226(3.1)

2. Injunctions

Preliminary injunction, enjoining Department of Corrections from forwarding information regarding inmate’s previous escape charges to the Department of Probation, Parole, and Pardon Services (DPPPS), prohibited dissemination of records pertaining to criminal charges, which had been dismissed, rather than historical facts or events. Compton v. South Carolina Dept. of Corrections (S.C. 2011) 392 S.C. 361, 709 S.E.2d 639. Injunction 1201

Inmate’s complaint stated prima facie case that Department of Corrections violated provision of statute prohibiting retention of evidence pertaining to charge once it has been dismissed and that inmate would be immediately and irreparably harmed, as would entitle inmate to preliminary injunctive relief enjoining Department from forwarding information regarding inmate’s previous escapes charges to Department of Probation, Parole, and Pardon Services (DPPPS); inmate alleged records pertaining to criminal charges were not destroyed even though proceedings against him had been dismissed, and that DPPPS would continue to deny him parole based on his escape history. Compton v. South Carolina Dept. of Corrections (S.C. 2011) 392 S.C. 361, 709 S.E.2d 639. Injunction 1547

3. Malicious prosecution claims

Under South Carolina law, as predicted by Court of Appeals, plaintiff asserting malicious prosecution claim bore affirmative burden of proving that nolle prosequi entered in underlying criminal proceedings against her was entered under circumstances that implied or were consistent with her innocence. Nicholas v. Wal‑Mart Stores, Inc. (C.A.4 (S.C.) 2002) 33 Fed.Appx. 61, 2002 WL 506424, Unreported. Malicious Prosecution 35(1); Malicious Prosecution 37

**SECTION 17‑1‑45.** Expungement notice requirement.

South Carolina Court Administration shall include on all bond paperwork and courtesy summons the following notice: “If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.”

HISTORY: 2009 Act No. 36, Section 4, eff June 2, 2009.

Attorney General’s Opinions

The records pertaining to a charge issued against a person pursuant to a courtesy summons should be destroyed upon the dismissal of the charge or a verdict of not guilty. S.C. Op.Atty.Gen. (May 21, 2013) 2013 WL 2367500.

**SECTION 17‑1‑50.** Interpreters in criminal proceedings.

(A) As used in this section:

(1) “Certified interpreter” means an interpreter who meets the standards contained in subitem (A)(4) and is certified by the administrative office of the United States courts, by the office of the administrator for the state courts, or by a nationally recognized professional organization.

(2) “Legal proceeding” means a proceeding in which a nonEnglish speaking person is a party or a witness.

(3) “NonEnglish speaking person” means a party or a witness participating in a legal proceeding who has limited ability to speak or understand the English language.

(4) “Qualified interpreter” means a person who:

(a) is eighteen years of age or older;

(b) is not a family member of a party or a witness;

(c) is not a person confined to an institution; and

(d) has education, training, or experience that enables him to speak English and a foreign language fluently, and is readily able to interpret simultaneously and consecutively and to sight‑translate documents from English into the language of a nonEnglish speaking person, or from the language of that person into spoken English.

(5) “Victim” means a victim as defined in Section 16‑3‑1110.

(6) “Witness” means a person who testifies in a legal proceeding.

(B)(1) Notwithstanding any other provision of law, whenever a party, witness, or victim in a criminal legal proceeding does not sufficiently understand or speak the English language to comprehend the proceeding or to testify, the court must appoint a certified or otherwise qualified interpreter to interpret the proceedings to the party or victim or to interpret the testimony of the witness.

(2) However, the court may waive the use of a certified or otherwise qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a certified or otherwise qualified interpreter is requested by a nonEnglish speaking party, witness, or victim in a legal proceeding; that the waiver has been made knowingly, voluntarily, and intelligently; and that granting the waiver is in the best interest of justice.

(C) The selection, use, and reimbursement of interpreters must be determined under such guidelines as may be established by the Chief Justice of the Supreme Court. All fees for interpreting services must be paid out of the general fund of the State from funds appropriated to the Judicial Department for this purpose by the General Assembly.

(D) The Division of Court Administration must maintain a centralized list of certified or otherwise qualified interpreters to interpret the proceedings to a party and testimony of a witness. A party or a witness is not precluded from using a qualified interpreter who is not on the centralized list as long as the interpreter meets the requirements of subitem (A)(4) and submits a sworn affidavit to the court specifying his qualifications or submits to a voir dire by the court.

HISTORY: 1998 Act No. 390, Section 1; 2001 Act No. 103, Section 3.

CROSS REFERENCES

Rules of Professional Conduct for Court Interpreters, see Rule 511, SCACR, Rules of Prof.Conduct Ct Interpreters, Rule 1 et seq.

Library References

Criminal Law 642.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 1563 to 1564.

**SECTION 17‑1‑60.** Publication of arrest and booking records, unlawful under certain circumstances, procedures for removal of such information; penalties; civil cause of action.

(A) For purposes of this section, a person or entity who publishes on the person’s or entity’s website or any other publication the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina is deemed to be transacting business in South Carolina.

(B) It is unlawful for a person or entity to obtain, or attempt to obtain, the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina knowing:

(1) the arrest and booking records will be published on a website or any other publication; and

(2) removal or revision of the arrest or booking records requires the payment of a fee or other consideration.

(C) It is unlawful for a person or entity to require the payment of a fee or other consideration to remove, revise, or refrain from posting to a website or any other publication the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina.

(D)(1) A person or entity who publishes on the person or entity’s website or any other publication the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina shall remove the arrest and booking records from the person or entity’s website or any other publication without requiring the payment of a fee or other consideration within thirty days of the receipt of a request to remove the arrest and booking records, if the request:

(a) is made in writing via certified mail, return receipt requested, to the registered agent, principal place of business, or primary residence of the person or entity who publishes the website or any other publication;

(b) includes the person’s name, date of arrest, and the name of the arresting law enforcement agency;

(c) contains certified documentation that the original charges stemming from the arrest were discharged, dismissed, expunged, or the person was found not guilty; and

(d) includes a complete and accurate description of where the arrest and booking records are located, including, but not limited to, the uniform resource locator (URL) and e‑edition, if applicable.

(2) If the original charges stemming from the arrest were discharged or dismissed as a result of the person pleading to a lesser included offense, or a different offense, the person or entity who publishes the website or any other publication is not required to remove the arrest and booking records from the person or entity’s website or any other publication; however, the person or entity shall revise the arrest and booking records published on the person or entity’s website or any other publication to reflect the lesser included offense, or different offense, instead of the original charges, without requiring the payment of a fee or other consideration within thirty days of the receipt of a request to remove the arrest and booking records pursuant to item (1).

(3) This subsection does not apply to the following:

(a) motion picture producers and distributors, and their products as released in theaters, to DVD, pay‑per‑view, broadcast, cable and satellite television, as well as Internet services;

(b) acts done by the publisher, owner, agent, employee, or retailer of a newspaper, periodical, books, radio station, radio network, television station, television broadcast network, or cable television network in the publication or dissemination in print or electronically of:

(i) news, history, entertainment, or commentary; or

(ii) an advertisement of or for another person, when the publisher, owner, agent, or employee did not have actual knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, or did not have a direct financial interest in the sale or distribution of the advertised product or service.

(4) A person or entity who violates this subsection is not subject to the criminal penalty provided in subsection (F); however, the person or entity is subject to a civil cause of action as provided in subsection (G).

(E)(1) This section does not apply to a state or local government agency.

(2) Except as otherwise provided by state law, it is unlawful for an employee of a state or local government agency to provide the arrest or booking records, including booking photographs, of a person who is arrested and booked in South Carolina knowing:

(a) the arrest and booking records will be published on a nongovernmental website or any other publication; and

(b) removal or revision of the arrest or booking records requires the payment of a fee or other consideration.

(F)(1) A person or entity who violates this section, except for subsection (D), is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or be imprisoned not more than sixty days, or both.

(2) Each arrest and booking record obtained, attempted to obtain, or provided, and each payment solicited or accepted in violation of this section constitutes a separate violation.

(G)(1) Except as provided in item (2), a person who suffers a loss or harm as a result of a violation of this section may file a civil cause of action against a person or entity who violates this section for damages suffered, along with costs, attorney’s fees, and any other legal or equitable relief.

(2) A person who suffers a loss or harm as a result of a violation of this section may not file a civil cause of action against a state or local government agency pursuant to this section; however, the person may file a civil cause of action against an employee of a state or local government agency who violates subsection (E)(2) pursuant to the South Carolina Tort Claims Act. A state or local government agency may not be substituted for an employee of the state or local government agency in a civil cause of action against the employee.

HISTORY: 2016 Act No. 132 (S.255), Section 2, eff May 16, 2016.

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.”