CHAPTER 15

Bail and Recognizances

**SECTION 17‑15‑10.** Person charged with noncapital offense may be released on his own recognizance; conditions of release; bond hearing for burglary charges.

 (A) A person charged with a noncapital offense triable in either the magistrates, county or circuit court, shall, at his appearance before any of such courts, be ordered released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion that such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community or an individual will result. If such a determination is made by the court, it may impose any one or more of the following conditions of release:

 (1) require the execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court;

 (2) place the person in the custody of a designated person or organization agreeing to supervise him;

 (3) place restrictions on the travel, association, or place of abode of the person during the period of release;

 (4) impose any other conditions deemed reasonably necessary to assure appearance as required, including a condition that the person return to custody after specified hours.

 (B) A person charged with the offense of burglary in the first degree pursuant to Section 16‑11‑311 may have his bond hearing for that charge in summary court unless the solicitor objects.

HISTORY: 1962 Code Section 17‑300; 1969 (56) 383; 2012 Act No. 286, Section 3, eff June 29, 2012; 2015 Act No. 58 (S.3), Pt III, Section 12, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 12, in (A), inserted “or an individual”, and in (B), substituted “A person” for “Any person”.

CROSS REFERENCES

Amount of recognizance of accused in magistrates court, see Section 22‑5‑520.

Bail on appeal, see Sections 18‑1‑80, 18‑1‑90, 18‑3‑50.

Right of bail, excessive bail, cruel or unusual or corporal punishment, detention of witnesses, see SC Const, Art I, Section 15.

Regulation of bail bondsmen and runners, see Section 38‑53‑10 et seq.

Library References

Bail 42, 42.5, 43.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 7 to 8, 11 to 39, 41 to 46.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 21.2, Bail.

Forms

Am. Jur. Pl. & Pr. Forms Bail and Recognizance Section 1 , Introductory Comments.

Attorney General’s Opinions

Predetermined bonds are without authorization and a hearing before a judicial officer is necessary to set bond. S.C. Op.Atty.Gen. (Nov. 7, 1997) 1997 WL 811894.

Discussion of whether magistrates may set bond on an individual who is charged with a violation of Section 16‑11‑311, Burglary‑First Degree. S.C. Op.Atty.Gen. (July 11, 1997) 1997 WL 568844.

Health authorities may require an individual charged with prostitution or solicitation of prostitution to submit to an examination for venereal disease over the objection of a magistrate. Pursuant to Section 44‑29‑100, health authorities may require such examination of an individual held in a county jail or detention center awaiting a bond hearing. There appears to be no statute which would prohibit a magistrate from delaying a bond hearing for a period of twenty‑four hours to allow health authorities time to examine an individual for venereal disease, and the policy of a twenty‑four hour delay in release for examination and treatment of those in custody on charges of prostitution would probably be held to be constitutional by a court. 1986 Op Atty Gen, No 86‑66, p 212 (September 26, 1995) 1995 WL 805766.

Division of Aging would be entitled to its own seat, separate from representative of Governor, on Human Services Coordinating Council. 1993 Op Atty Gen No 93‑73 (November 02, 1993) 1993 WL 524191.

Magistrate is without authority under the “home detention act” to provide home detention as condition of bail or as portion of sentence imposed by magistrate. 1993 Op Atty Gen No 93‑4 (February 11, 1993) 1993 WL 720075.

Procedure of holding defendants ordered released on bond until fixed time of release does not appear to be authorized absent limited circumstances such as where release would pose threat to safety of public or to defendant due to defendant’s physical condition, such as intoxication. 1991 Op Atty Gen, No 91‑59, p 151 (November 27, 1991) 1991 WL 474789.

A magistrate or municipal judge, as a condition of bond in a criminal domestic violence case, can provide that a defendant (1) be restrained or enjoined from entering the domestic dwelling; (2) be restrained from the use of specified bank accounts; or (3) be restrained from leaving the State of South Carolina. 1988 Op Atty Gen, No 88‑74, p 213 (September 29, 1988) 1988 WL 383557.

NOTES OF DECISIONS

In general 1

1. In general

The overriding purpose of requiring a criminal defendant to post bond before his release from custody is to assure his appearance at trial. State v. Policao (S.C.App. 2013) 402 S.C. 547, 741 S.E.2d 774. Bail 39

**SECTION 17‑15‑15.** Deposit of cash percentage in lieu of bond; assignment of deposit; restitution to victim.

 (A) In lieu of requiring actual posting of bond as provided in subsection (A) of Section 17‑15‑10, the court setting bond may permit the defendant to deposit in cash with the clerk of court an amount not to exceed ten percent of the amount of bond set, which amount, when the defendant fulfills the condition of the bond, shall be returned to the defendant by the clerk except as provided in subsection (C).

 (B) The cash deposit provided for in subsection (A) shall be assignable at any time after it is posted with the clerk of court by written assignment executed by the defendant and delivered to the clerk. After assignment and after the defendant fulfills the condition of his bond, the clerk shall return the cash deposit to the assignee thereof.

 (C) In the event the cash deposit is not assigned but the defendant is required by the court to make restitution to the victim of his crime, such deposit may be used for the purpose of such restitution.

HISTORY: 1980 Act No. 393, Section 2A.

CROSS REFERENCES

Cash deposit in lieu of bond in civil proceedings, see Section 15‑1‑250 et seq.

Deposit of sum equal to amount of bond in lieu of posting bond, see Section 17‑15‑190 et seq.

Regulation of bail bondsmen and runners, see Section 38‑53‑10 et seq.

Library References

Bail 73, 96.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 144 to 149, 336 to 338.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 10, Duties.

Attorney General’s Opinions

The provisions of Section 17‑15‑15 which authorize the posting of an amount not to exceed ten percent of a bond set in lieu of requiring the actual posting of a bond by a surety would withstand constitutional scrutiny and would be upheld. S.C. Op Atty Gen (July 27, 2010) 2010 WL 3053847.

Any interest generated on bail bonds pertaining to a pending case in general sessions or magistrates court would appear to belong to the individual making the deposit; bail funds forfeited as fines would be transmitted to the county treasurer in magistrates court cases or to respective state and county officials in courts of general sessions. 1989 Op Atty Gen, No 89‑97, p 262 (September 25, 1989) 1989 WL 406187.

**SECTION 17‑15‑20.** Conditions of appearance recognizance or appearance bond; discharge, validity, relief of surety.

 (A) An appearance recognizance or appearance bond must be conditioned on the person charged personally appearing before the court specified to answer the charge or indictment and to do and receive what is enjoined by the court, and not to leave the State, and be of good behavior toward all the citizens of the State, or especially toward a person or persons specified by the court.

 (B) Unless a bench warrant is issued, an appearance recognizance or an appearance bond is discharged upon adjudication, a finding of guilt, a deferred disposition, or as otherwise provided by law. An appearance bond is valid for a period of three years from the date the bond is executed for a charge triable in circuit court and eighteen months from the date the bond is executed for a charge triable in magistrates or municipal court. In order for the surety to be relieved of liability on the appearance bond when the time period has run, the surety must provide sixty days written notice to the solicitor, when appropriate, and the respective clerk of court, chief magistrate, or municipal court judge with jurisdiction over the offense of the surety’s intent to assert that the person is no longer subject to a valid appearance bond. If the appropriate court determines the person has substantially complied with his court obligations and the solicitor does not object within the required sixty days by demanding a hearing, the court shall order the appearance bond converted to a personal recognizance bond and the surety relieved of liability.

HISTORY: 1962 Code Section 17‑300.1; 1969 (56) 383; 2012 Act No. 115, Section 1, eff February 1, 2012.

Editor’s Note

2012 Act No. 286, Sections 4, 5, provide as follows:

“SECTION 4. The provisions of Section 1 of Act 115 of 2012 which amended Section 17‑15‑20 of the 1976 Code and allow sureties to be relieved of an appearance bond under certain designated circumstances are retroactive and apply to all existing and future appearance bonds.

“SECTION 5. Except as provided in SECTION 4, the repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.”

CROSS REFERENCES

Regulation of bail bondsmen and runners, see Section 38‑53‑10 et seq.

Library References

Bail 42.5, 59.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 17 to 18, 23, 156 to 159.

Attorney General’s Opinions

Any retroactive application of the amendment made by 2012 Act No. 155, Section 1, to appearance bonds issued before February 1, 2012, might create new obligations or impose new duties on the parties; such an application may violate State and federal constitutional provisions to the effect that contracts may not be impaired. S.C. Op Atty Gen (March 9, 2012) 2012 WL 909919.

Discussion of the correct procedure to be followed if a defendant violates a bond containing special conditions. S.C. Op.Atty.Gen. (Oct. 21, 1996) 1996 WL 679497.

NOTES OF DECISIONS

In general 1

1. In general

Upon breach of a condition of the recognizance appearance bond, the recognizance is forfeited and the liability of the surety to pay the amount of the penalty becomes fixed, unless relieved or exonerated by action of the court. State v. Mitchell (S.C. 2017) 2017 WL 5163463. Bail 75.2(1); Bail 75.3

Conditions of an appearance recognizance, including when a defendant must appear in court to answer the charge or charges, are fixed by law. State v. Firetag Bonding Service (S.C.App. 2001) 345 S.C. 54, 545 S.E.2d 838, rehearing denied. Bail 59

Surety’s stamped notation on back of appearance recognizance requiring court to seek consent from surety before continuing accused’s case was not authorized by statute. State v. Firetag Bonding Service (S.C.App. 2001) 345 S.C. 54, 545 S.E.2d 838, rehearing denied. Bail 54.1

The Circuit Court did not abuse its discretion by ordering the partial estreatment of a bond, even though the defendant’s failure to appear was due to his extradition to another state and thus was not willful, where the defendant clearly breached the condition of good behavior contained in his bond contract, as evidenced by his pleading guilty to criminal domestic violence charges in the state to which he was extradited. State v. Boatwright (S.C. 1992) 310 S.C. 281, 423 S.E.2d 139, rehearing denied. Bail 75.3

**SECTION 17‑15‑30.** Matters to be considered in determining conditions of release; contempt.

 (A) 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 may, on the basis of the following information, 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.

 (B) A court shall 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; and

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

 (C)(1) Prior to or at the time of a hearing, the arresting law enforcement agency shall provide the court with the following information:

 (a) a person’s criminal record;

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

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

 (d) any other information that will assist the court in determining conditions of release.

 (2) The arresting law enforcement agency shall inform the court if any of the information 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 hearing. Notwithstanding the provisions of this item, 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.

 (D) A court hearing these matters has contempt powers to enforce the provisions of this section.

HISTORY: 1962 Code Section 17‑300.2; 1969 (56) 383; 2005 Act No. 106, Section 8, eff January 1, 2006; 2008 Act No. 280, Section 16, eff June 4, 2008; 2010 Act No. 273, Section 9, eff June 2, 2010; 2012 Act No. 286, Section 1, eff June 29, 2012; 2014 Act No. 144 (S.19), Section 2, eff April 7, 2014; 2015 Act No. 58 (S.3), Pt III, Section 10, eff June 4, 2015.

Effect of Amendment

2014 Act No. 144, Section 2, substituted “person” for “accused” throughout; in subsection (A), substituted “the following information” for “available information”; in subsection (B), deleted “, if available” following “shall consider”; added subsection (B)(5), relating to the state gang database; in subsection (C)(1), deleted “, if available” following “following information”; and made other nonsubstantive changes.

2015 Act No. 58, Section 10, in (A), inserted “or an individual”; and in (C)(2), added the last two sentences relating to Chapter 25, Title 16.

CROSS REFERENCES

Law enforcement authorization to determine immigration status, reasonable suspicion, procedures, data collection on motor vehicle stops, see Section 17‑13‑170.

Reconsideration by circuit court of bond set by summary court, see Section 17‑15‑55.

Regulation of bail bondsmen and runners, see Section 38‑53‑10 et seq.

Library References

Bail 42.5, 49(2), 59.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 17 to 18, 23 to 24, 76, 91, 156 to 159.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Aliens and Foreign Representatives Section 82, Custody Pending Exclusion or Deportation.

S.C. Jur. Constitutional Law Section 21.2, Bail.

Attorney General’s Opinions

While magistrates and municipal judges are not specifically limited to the amount of bond which may be set in a case where there is a charge of driving under suspension when the license was suspended pursuant to Section 56‑5‑2990 inasmuch as there is no monetary fine for such offense, the amount must be reasonable. 1987 Op Atty Gen, No 87‑83, p 219 (October 12, 1987) 1987 WL 245491.

A magistrate would not have jurisdiction to entertain any bail proceedings concerning a defendant charged with kidnapping where there was no murder, punishment for which is life imprisonment. 1978 Op Atty Gen, No 78‑202, p 228 (December 06, 1978) 1978 WL 22670.

A bench warrant is not required to be in the form prescribed for arrest warrants. 1978 Op Atty Gen, No 78‑179, p 207 (October 31, 1978) 1978 WL 22647.

It is within the trial court’s discretion to place a defendant on his recognizance after a jury has been drawn and sworn in his case and during trial of said case. 1978 Op Atty Gen, No 78‑167, p 194 (October 09, 1978) 1978 WL 22635.

Inasmuch as a hearing is necessary to set bail, the practice of magistrates setting bail by telephone is not authorized. 1978 Op Atty Gen, No 78‑156, p 188 (September 12, 1978) 1978 WL 22624.

The provisions of the Bail Reform Act of 1969 (section 17‑15‑10 et seq. 1976 Code of Laws of S.C.) apply to the handling of criminal matters by City Recorder’s Courts. 1978 Op Atty Gen, No 78‑31, p 48 (February 16, 1978) 1978 WL22515.

Section 27‑A of Act No. 1648 of 1968 is constitutional and the Supreme Court of South Carolina does have the power to confer and impose county‑wide duties and jurisdiction on each county magistrate, notwithstanding local acts limiting territorial jurisdiction. 1976‑77 Op Atty Gen, No 77‑301, p 228 (September 26, 1977) 1977 WL 24641.

The obligation of two sureties who were not approved by a Court, although a third surety was, remains liable as to estreatment on a bond. 1976‑77 Op Atty Gen, No 77‑125, p 106 (April 28, 1977) 1977 WL 24467.

In noncapital cases, defendant should be released on own recognizance unless there is an affirmative showing of a legal reason why such release should not be granted. 1969‑70 Op Atty Gen, No 2963, p 225 (August 28, 1970) 1970 WL 12240.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Conditions set by family court indicated guidelines for bail were considered before juvenile, convicted for criminal sexual contact (CSC) with a minor, was released on bail pending appeal, where family court set numerous restrictive conditions on juvenile’s bond, including prohibiting juvenile from having unsupervised contact with children younger than 12 and requiring him to take his prescribed medications, attend school, be under the supervision of his mother, school officials, or other responsible adult at all times, and to abide by a 6 p.m. curfew. In re Michael H. (S.C. 2004) 360 S.C. 540, 602 S.E.2d 729, rehearing denied, certiorari denied 125 S.Ct. 1644, 544 U.S. 943, 161 L.Ed.2d 511. Infants 2526

1962 Code Section 17‑300(a) [1976 Code Section 17‑15‑10(a)] does not sustain the authority of court to order that surety on recognizance bond shall not act as a surety in any other case in the county until a particular judgment against such surety resulting from breach of a recognizance bond is either satisfied or set aside, where the sole question at issue was whether judgments should be confirmed against the surety, and there was no issue before the court which involved the question whether the surety should be allowed to act as surety in other cases; however, Supreme Court will not intimate that lower court could not consider surety’s failure to satisfy judgments in determining her qualification to act as surety in future cases, when the question is presented. Pride v. Anders (S.C. 1976) 266 S.C. 338, 223 S.E.2d 184.

2. Review

Court of Appeals retained jurisdiction over juvenile’s case and acted within its authority when it granted juvenile’s petition for bond pending appeal, where state had filed petition for rehearing, three days later juvenile filed petition for appeal bond pending outcome of state’s appeal from Court of Appeals’ decision, Court of Appeals denied state’s petition for rehearing and granted juvenile’s petition for appeal bond on the same day, Court of Appeals had not returned remittitur when it granted juvenile’s petition for appeal bond, and Supreme Court had not yet granted certiorari over the case. In re Michael H. (S.C. 2004) 360 S.C. 540, 602 S.E.2d 729, rehearing denied, certiorari denied 125 S.Ct. 1644, 544 U.S. 943, 161 L.Ed.2d 511. Infants 2526

**SECTION 17‑15‑40.** Order of court shall state conditions imposed and other matters; acknowledgment by person released.

 On releasing the person on any of the foregoing conditions, the court shall issue a brief order containing a statement of the conditions imposed, informing the person of the penalties for violation of the conditions of release and stating that a warrant for the person’s arrest will be issued immediately upon any such violation. The person released shall acknowledge his understanding of the terms and conditions of his release and the penalties and forfeitures applicable in the event of violation thereof on a form to be prescribed by the Attorney General.

HISTORY: 1962 Code Section 17‑300.3; 1969 (56) 383.

CROSS REFERENCES

Regulation of bail bondsmen and runners, see Section 38‑53‑10 et seq.

Library References

Bail 49(5).

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 76, 78 to 80, 82 to 86, 94 to 98, 100 to 102.

Attorney General’s Opinions

With respect to a case beyond the jurisdiction of the magistrate to try, the bonding magistrate retains jurisdiction to alter or amend its order setting bond or enforce the conditions thereof up until the time of indictment by the grand jury. S.C. Op.Atty.Gen. (July 5, 1995) 1995 WL 803708.

Prior to a case being transferred to the General Sessions Court, a municipal judge would be authorized to issue a warrant for the arrest of a defendant who violated a condition of his bond. A circuit court judge would be authorized to amend the amount of bond set by a municipal court judge even where no notice is given to the municipal court judge who set the bond or where no notice is given to such judge that an appeal to the circuit court will be made. 1986 Op Atty Gen, No 86‑37, p 117 (March 17, 1986) 1986 WL 191999.

(1) A Clerk of Court cannot admit to bail persons charged with felonies; (2) When a warrant has been issued in one county and sent to another county to be served, the magistrate in the county where the subject has been arrested may set bail; however, should the endorsing magistrate decline, the accused should be presented to the issuing magistrate, who would then consider bail; (3) The bond form approved by the Attorney General’s Office pursuant to Section 17‑15‑40, should be used by both magistrates and Clerks of Court when admitting persons to bail. 1976‑77 Op Atty Gen, No 77‑299, p 226 (September 22, 1977) 1977 WL 24639.

**SECTION 17‑15‑50.** Amendment of order.

 The court with jurisdiction of the offense, at any time after notice and hearing, may amend the order to impose additional or different conditions of release.

HISTORY: 1962 Code Section 17‑300.4; 1969 (56) 383; 2015 Act No. 58 (S.3), Pt III, Section 14, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 14, substituted “with jurisdiction of the offense” for “may”, and inserted “may” before “amend the order”.

CROSS REFERENCES

Regulation of bail bondsmen and runners, see Section 38‑53‑10 et seq.

Library References

Bail 49(5), 59.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 76, 78 to 80, 82 to 86, 94 to 98, 100 to 102, 156 to 159.

Attorney General’s Opinions

Prior to indictment, the bond may be amended by either the magistrate or the circuit court judge, and after indictment, only a circuit court judge possesses jurisdiction to alter or amend a defendant’s bond. S.C. Op.Atty.Gen. (Sept. 17, 2001) 2001 WL 1215456.

Absent “compelling circumstances,” a judge is not authorized to amend an order setting bail originally imposed by another judge of the same jurisdictional level; inasmuch as a ministerial recorder is without authority to set bail, a municipal recorder should consider all bond proceedings as to a defendant arrested pursuant to a warrant issued by the municipal court. The municipal recorder would also consider any motions to amend such bond; any motion to amend the bond originally set by a ministerial magistrate should, if at all possible, be considered by such ministerial magistrate. However if he is not available, a magistrate could consider such motion; a judge of a lower court may consider a motion to amend bond if such motion is made prior to a defendant’s preliminary hearing or the expiration of the period in which a request for a preliminary hearing may be made. Amendment necessary due to Act No. 393 of 1980 [Section 17‑23‑160]; such a motion, as that referenced above in paragraph three, should be heard by the judge of the lower court who originally set the bond. 1980 Op Atty Gen, No 80‑39, p 78 (April 10, 1980) 1980 WL 81923.

Magistrates may not amend orders of release for crimes which are beyond their trial jurisdiction after the pertinent papers have been transmitted to the Court of General Sessions. 1976‑77 Op Atty Gen, No 77‑155, p 129 (May 13, 1977) 1977 WL 24497.

NOTES OF DECISIONS

In general 1

1. In general

The state was not entitled to have a bail bond estreated after the criminal defendant absconded where, when the bond surety company contracted for the bond, the conditions of bail stipulated that the defendant was required to be placed under an electronic surveillance system, but the next day the judge’s clerk eliminated the condition due to the unavailability of such a system; since there was no hearing prior to the amendment of the condition of the defendant’s release, the bond surety was not bound by the amendment. State v. McIntyre (S.C. 1992) 307 S.C. 363, 415 S.E.2d 399.

**SECTION 17‑15‑55.** Reconsideration by circuit court of bond set by summary court; subsequent violent offenders.

 (A)(1) The circuit courts, at their discretion, may review and reconsider bond for general sessions offenses set by summary court judges. Also, the circuit courts may consider motions regarding reconsideration of bond for general sessions offenses set by summary court judges upon motions filed with the clerks of court. Hearings on these motions must be scheduled. The rules of evidence do not apply to bond hearings.

 (2) After a circuit court judge has heard and ruled upon a defendant’s motion to reconsider a bond set by a summary court judge, further defense motions to reconsider may be heard by the circuit court only upon the defendant’s prima facie showing of a material change in circumstances which relate to the factors provided in Section 17‑15‑30, and which have arisen since the prior motion to reconsider. In addition, the circuit court may hear further defense motions to reconsider based on the length of time the defendant has been held for trial after six months. The chief judge shall schedule a hearing or if such showing is not set forth in the written motion, deny the motion for failure to make a prima facie showing of a material change in circumstances. Information regarding the defendant’s guilt or innocence does not qualify as a change in circumstances for purposes of reconsidering bond absent the solicitor’s consent.

 (B)(1) Motions by the State to revoke or modify a bond must be made in writing, state with particularity the grounds for revocation or modification, and set forth the relief or order sought. The motions must be filed with the clerks of court, and a copy must be served on the chief judge, defense counsel of record, and bond surety, if any.

 (2) After a circuit court judge has heard and ruled upon the state’s motion to reconsider a bond set by a summary court judge, further state motions to reconsider may be heard by the circuit court only upon the state’s prima facie showing of a material change in circumstances which have arisen since the prior motion to reconsider. The chief judge shall schedule a hearing or if such showing is not set forth in the written motion, deny the motion for failure to make a prima facie showing of a material change in circumstances.

 (3) If the state’s motion to revoke or modify bond includes a prima facie showing of imminent danger to the community, imminent danger to the defendant, or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency bond hearing to be conducted by the circuit court judge within forty‑eight hours of receiving service of the state’s motion or as soon as practical. The chief judge shall order the solicitor to notify the defense counsel of record and bond surety of the time and date of the hearing, and the solicitor shall provide proof reasonable efforts were made to affect the notice. Upon notice by the State, the defense counsel of record and bond surety shall make reasonable efforts to notify the defendant of the emergency hearing. The court may proceed with the hearing despite the absence of the defendant or bond surety. The court may not proceed with the hearing if the defense counsel of record is not present. If an emergency bond hearing is held without the presence of the defendant and bond is revoked, the judge having heard the matter may conduct the hearing on the defendant’s motion to reconsider the revocation. Defense motions to reconsider revocation must be filed with the clerk of court and served on the solicitor and bond surety.

 (C) If a person commits a violent crime, as defined in Section 16‑1‑60, which was committed when the person was already out on bond for a previous violent crime and the subsequent violent crime did not arise out of the same series of events as the previous violent crime, then the bond hearing for the subsequent violent crime must be held in the circuit court within thirty days. If the court finds that certain conditions of release on bond will ensure that the person is unlikely to flee or pose a danger to any other person or the community and the person will abide by the terms of release on bond, the judge shall consider bond in accordance with the provisions of this chapter and set or amend bond accordingly. If the court finds no such conditions will ensure that the person is unlikely to flee or not pose a danger to the community, the court shall not set a bond for the instant offense and must revoke all previously set bonds.

 (D) If a person commits a violent crime, as defined in Section 16‑1‑60, which was committed when the person was already out on bond for a previous violent crime, and the subsequent violent crime did not arise out of the same series of events as the previous violent crime, then the arresting law enforcement agency must transmit notice of the second arrest, implicating subsection (C), to the solicitor of the circuit in which the crime was committed and the administrative chief judge of the circuit in which the crime was committed. The prosecuting agency must notify any victims of the initial or subsequent crimes pursuant to Chapter 3, Title 16 of any bond hearings.

 (E) For the purpose of bond revocation only, a summary court has concurrent jurisdiction with the circuit court for ten days from the date bond is first set on a charge by the summary court to determine if bond should be revoked.

HISTORY: 2012 Act No. 286, Section 2, eff June 29, 2012; 2014 Act No. 144 (S.19), Section 1, eff April 7, 2014; 2015 Act No. 58 (S.3), Pt III, Section 15, eff June 4, 2015.

Effect of Amendment

2014 Act No. 144, Section 1, added subsections (C) and (D), relating to violent offenders.

2015 Act No. 58, Section 15, added (E), related to concurrent jurisdiction for bond revocation.

Library References

Bail 49(5).

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 76, 78 to 80, 82 to 86, 94 to 98, 100 to 102.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 21.2, Bail.

**SECTION 17‑15‑60.** Rules of evidence are inapplicable.

 Information of probative value offered in connection with any judicial determination or order pursuant to Sections 17‑15‑10 through 17‑15‑60 need not conform to the rules of evidence as in a court of law.

HISTORY: 1962 Code Section 17‑300.5; 1969 (56) 383.

Library References

Bail 49(3.1).

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 28, 87 to 90.

**SECTION 17‑15‑90.** Wilful failure to appear; penalties.

 A person released pursuant to the provisions of Chapter 15, Title 17 who wilfully fails to appear before the court as required must:

 (1) if he was released in connection with a charge for a felony or while awaiting sentencing after conviction, be fined not more than five thousand dollars or imprisoned for not more than five years, or both; or

 (2) if he was released in connection with a charge for a misdemeanor for which the maximum possible sentence was at least one year, be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

HISTORY: 2008 Act No. 346, Section 2, eff June 25, 2008.

Library References

Bail 97.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 124 to 135.

Attorney General’s Opinions

A conviction for “failure to appear” would preclude expungement of a subsequent offense. S.C. Op.Atty.Gen. (Oct. 29, 2013) 2013 WL 6009577.

Discussion of who brings charges for failure to appear and how that process takes place. S.C. Op.Atty.Gen. (April 21, 1995) 1995 WL 803377.

**SECTION 17‑15‑100.** Power to punish for contempt not affected.

 Nothing contained in Sections 17‑15‑10 through 17‑15‑60 shall affect the power of any court of the State to punish for contempt.

HISTORY: 1962 Code Section 17‑300.9; 1969 (56) 383.

Library References

Bail 75.3.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 253 to 257.

NOTES OF DECISIONS

In general 1

1. In general

Code 1962 Section 17‑300.8 [Code 1976 Section 17‑15‑90] creates a substantive crime independent of contempt, and therefore, in prosecutions under it, all constitutional guaranties must be observed; summary imposition of fine and imprisonment, in addition to forfeiture of bond, was improper where defendants were never given their due process rights. State v. Parker (S.C. 1976) 267 S.C. 317, 227 S.E.2d 677. Bail 97(1)

**SECTION 17‑15‑140.** Discharge of prosecutor or witness on own recognizance in cases not capital; costs.

 When any prosecutor or witness in criminal cases less than capital is committed to jail for inability to give surety on his recognizance to prosecute or testify, the clerk of court of general sessions in which the case is pending may, in his discretion, discharge such prosecutor or witness on his own recognizance. Clerk’s costs, not to exceed one dollar, may be charged for each such recognizance taken.

HISTORY: 1962 Code Section 17‑306; 1952 Code Sections 17‑306 to 17‑308; 1942 Code Sections 916, 917, 919; 1932 Code Sections 916, 917, 919; Cr. P. ‘22 Sections 9, 10, 12; Cr. C. ‘12 Sections 9, 10, 12; Cr. C. ‘02 Sections 7, 8, 10; G. S. 2625, 2626, 2628; R. S. 6, 7, 9; 1857 (12) 636; 1961 (52) 39.

Library References

District and Prosecuting Attorneys 12.

Witnesses 19.

Westlaw Topic Nos. 131, 410.

C.J.S. District and Prosecuting Attorneys Section 56.

C.J.S. Witnesses Sections 67 to 68.

**SECTION 17‑15‑160.** Recognizances shall be in name of State; signing.

 In all recognizances by any person for keeping the peace, good behavior or appearing as a party, surety or witness at any court of criminal jurisdiction within the State the sum of money in which any such person shall be bound shall be made payable to the State and every such recognizance shall be good and effectual in law provided it be signed by every party thereto in the presence of a judge, clerk of a court of common pleas, magistrate or notary public who shall sign the recognizance as a witness.

HISTORY: 1962 Code Section 17‑310; 1952 Code Section 17‑310; 1942 Code Section 1040; 1932 Code Section 1040; Cr. P. ‘22 Section 129; Cr. C. ‘12 Section 111; Cr. C. ‘02 Section 84; G. S. 2659; R. S. 84; 1787 (5) 13; 1883 (18) 450.

Library References

Bail 55.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 150, 152 to 153, 164.

NOTES OF DECISIONS

In general 1

1. In general

An appearance recognizance in the court of general sessions is binding on surety without signature of the principal. State v Quattlebaum (1903) 67 SC 203, 45 SE 162. State v Cornell (1905) 70 SC 409, 50 SE 22. State v Harrelson (1947) 211 SC 11, 43 SE2d 593.

Cited in State v Satterwhite (1884) 20 SC 536. State v Cornell (1905) 70 SC 409, 50 SE 22. State v Williams (1909) 84 SC 21, 65 SE 982. State v Cook (1944) 204 SC 381, 29 SE2d 537.

Applied in State v. Bailey (S.C. 1966) 248 S.C. 438, 151 S.E.2d 87.

A check posted as bond for appearance of defendant in criminal courts of this State is valid as a common‑law bond, and good as a statutory bond even though not in the language of this section [Code 1962 Section 17‑310], since the language of this section [Code 1962 Section 17‑310] will be read into it. State v. Harrelson (S.C. 1947) 211 S.C. 11, 43 S.E.2d 593. Bail 55

A recognizance cannot be executed by an attorney. State v. Ahrens (S.C. 1860) 12 Rich. 493.

A recognizance is not invalid for mere irregularity. State v. Rowe (S.C. 1854) 8 Rich. 17.

**SECTION 17‑15‑170.** Proceedings in case of forfeiture of recognizances.

 Whenever the recognizance is forfeited by noncompliance with its condition, the Attorney General, solicitor, magistrate, or other person acting for him immediately shall issue a notice to summon every party bound in the forfeited recognizance to appear at the next ensuing court to show cause, if he has any, why judgment should not be confirmed against him. If any person so bound fails to appear or, upon appearing, does not give a reason for not performing the condition of the recognizance as the court considers sufficient, then the judgment on the recognizance is confirmed. A magistrate may confirm judgments of not more than the maximum fine allowable under Section 22‑3‑550 in addition to assessments.

HISTORY: 1962 Code Section 17‑311; 1952 Code Section 17‑311; 1942 Code Section 1041; 1932 Code Section 1041; Cr. P. ‘22 Section 130; Cr. C. ‘12 Section 112; Cr. C. ‘02 Section 85; G. S. 2660; R. S. 85; 1787 (5) 13; 1988 Act No. 508; 1998 Act No. 376, Section 1.

Library References

Bail 77.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 253 to 254, 262 to 283.

Attorney General’s Opinions

Generally, recognizance bond may be estreated only by court of general sessions, except magistrates may confirm judgments of $218 or less. 1990 Op Atty Gen No 90‑68 (November 30, 1990) 1990 WL 482455.

While cash bond may be forfeited in magistrates court upon defendant’s failure to appeal for trial at specified time, magistrate may, instead of authorizing forfeiture, try defendant in absentia, or issue bench warrant and have defendant brought before him for trial. 1990 Op Atty Gen No 90‑68 (November 30, 1990) 1990 WL 482455.

It is the responsibility of the agency or entity which is the beneficiary of a bail bond judgment to collect on the judgment. 1988 Op Atty Gen, No 88‑6, p 34 (January 19, 1988) 1988 WL 383490.

The court of general sessions Has exclusive jurisdiction to estreat a bond upon conviction after the trial in absence of a defendant charged with driving under suspension when the license was suspended following a conviction for driving under the influence and a cash bond was set. 1987 Op Atty Gen, No 87‑83, p 219 (October 12, 1987) 1987 WL 245491.

Bond estreatments should be divided between the county and State as provided by Act No. 690 of 1976 as bond estreatments are included within the phrase “all cost, fines, fees, penalties, forfeitures and other revenues generated by the circuit courts and family courts.” 1978 Op Atty Gen, No 78‑7, p 15 (January 06, 1978) 1978 WL 27412.

NOTES OF DECISIONS

In general 1

Constitutional issues 3

Construction and application 2

Estoppel 9

Hearing 7

Jurisdiction 5

Limitation of actions 8

Notice 6

Review 10

Sufficiency of allegations and proof 4

1. In general

Quoted in State v Dingle (1911) 87 SC 518, 70 SE 163. State v Edens (1911) 88 SC 302, 70 SE 609.

A recognizance may be estreated for failure to personally appear even before trial or conviction. State v Minton (1883) 19 SC 280. State v Williams (1909) 84 SC 21, 65 SE 982.

Bond surety’s procurement of defendant’s appearance in court did not relieve surety from estreatment of $150,000 bond due to defendant’s daily, willful violations of conditions of bond subjecting him to house arrest and electronic monitoring. State v. Mitchell (S.C. 2017) 2017 WL 5163463. Bail 80

When a bond is violated by the defendant’s failure to appear, the state has a right to full estreatment. State v. Cochran (S.C. 2004) 358 S.C. 24, 594 S.E.2d 844. Bail 75.3

Upon breach of condition of recognizances by failure of the defendants to appear, recognizances were forfeited and the liability of surety to pay the amount of the penalty then became fixed, unless relieved or exonerated by action of the court. Pride v. Anders (S.C. 1976) 266 S.C. 338, 223 S.E.2d 184. Bail 75.2(1)

The procedure for estreatment of bonds in criminal cases is controlled by this section [Code 1962 Section 17‑311]. State v. Holloway (S.C. 1974) 262 S.C. 552, 206 S.E.2d 822.

In accord with original. State v. Bailey (S.C. 1966) 248 S.C. 438, 151 S.E.2d 87.

The procedure to estreat a bond or recognizance is not regulated by the Code of Civil Procedure but by this section [Code 1962 Section 17‑311]. State v. Bailey (S.C. 1966) 248 S.C. 438, 151 S.E.2d 87.

A recognizance is an obligation of record in the case. State v. Bailey (S.C. 1966) 248 S.C. 438, 151 S.E.2d 87.

Where a defendant is under recognizance to appear before a magistrate for preliminary examination, the recognizance may be forfeited by his failure to appear in person. State v. Simring (S.C. 1956) 230 S.C. 49, 94 S.E.2d 9.

The right of the State for a rule to estreat a recognizance arises from contract. State v. Simring (S.C. 1956) 230 S.C. 49, 94 S.E.2d 9. Estoppel 62.2(2)

Cited in State v. Cook (S.C. 1944) 204 S.C. 381, 29 S.E.2d 537.

The character of the prosecution, and whether it was instituted in good faith and is meritorious and well founded, cannot be considered on a motion to estreat the recognizance of the defendant. State v. Williams (S.C. 1909) 84 S.C. 21, 65 S.E. 982. Bail 77(1)

A recognizance binds the principal not only to appear but to abide the judgment of the court and not to depart thence without its leave; and if the principal be ordered to execute a new bond, either to keep the peace for a specified period, or for his appearance at a subsequent term, or before another court, and he depart without complying with the order, it is a breach of the recognizance. State v. Williams (S.C. 1909) 84 S.C. 21, 65 S.E. 982.

Recognizance is an obligation of record. State v. Johnson (S.C. 1907) 77 S.C. 252, 57 S.E. 846.

The provision that a forfeited recognizance should be estreated without delay is directory merely. State v. Cornell (S.C. 1905) 70 S.C. 409, 50 S.E. 22.

A proceeding in 1903 to estreat a recognizance forfeited in 1897 is not barred by laches. State v. Cornell (S.C. 1905) 70 S.C. 409, 50 S.E. 22.

Objection that paper, on its face, is not a recognizance can be made ore tenus. State v. Ahrens (S.C. 1860) 12 Rich. 493. Scire Facias 10

The court of general sessions may estreat by scire facias. State v. Wilder (S.C. 1880) 13 S.C. 344.

2. Construction and application

A statute of a specific nature, such as this section [Code 1962 Section 17‑311], is not to be considered as repealed in whole or part by a later general statute, such as Code 1962 Section 15‑233, unless there is direct reference to the former statute or legislative intent to do so is explicitly implied therein. State v. Harrelson (S.C. 1947) 211 S.C. 11, 43 S.E.2d 593. Statutes 1501(2)

3. Constitutional issues

Code 1962 Section 17‑300.8 [Code 1976 Section 17‑15‑90] creates a substantive crime independent of contempt, and therefore, in prosecutions under it, all constitutional guaranties must be observed; summary imposition of fine and imprisonment, in addition to forfeiture of bond, was improper where defendants were never given their due process rights. State v. Parker (S.C. 1976) 267 S.C. 317, 227 S.E.2d 677. Bail 97(1)

4. Sufficiency of allegations and proof

Order remitting $75,000 of $150,000 surety bond that had been estreated due to defendant’s multiple, willful violations of conditions of bond that he be subject to house arrest and electronic monitoring was not abuse of discretion, where bondsperson was well aware of defendant’s violations and willfully refused to fulfill her obligations as bondsperson to ensure defendant’s compliance with bond conditions. State v. Mitchell (S.C. 2017) 2017 WL 5163463. Bail 79(1)

Cash bonds were properly forfeited where each defendant knew that he or she should appear before judge at time specified although counsel argued that his appearance was substitute for personal appearance of defendants, since counsel had no authority to excuse defendants from appearance. State v. Abbott (S.C. 1979) 273 S.C. 170, 255 S.E.2d 673. Bail 75.2(1)

A recital of an order of court showing that defendant was under recognizance to appear and plead to an indictment, and that he was called but failed to appear, is conclusive, there being no proof of the contrary. State v. Edens (S.C. 1911) 88 S.C. 302, 70 S.E. 609.

The recognizance is regarded as a conditional judgment, which on the breach of the condition is to be confirmed or made absolute, unless the parties show sufficient cause to the contrary. State v. Edens (S.C. 1911) 88 S.C. 302, 70 S.E. 609.

In the case of State v Rowe (1854) 42 SCL 17, it was held that a variance between the warrant and the recognizance was not fatal to the validity of the recognizance. In that case the warrant charged the defendant with forgery. The recognizance stated the charge to be fraud or forgery. The recognizance was held good. State v. Williams (S.C. 1909) 84 S.C. 21, 65 S.E. 982.

In a proceeding to estreat a recognizance, it should be alleged that defendant was called at the door of the courthouse and failed to answer. State v. Cornell (S.C. 1905) 70 S.C. 409, 50 S.E. 22. Bail 77(1)

The fact that the defendant was called at the courthouse door and failed to answer should be shown by record, but may be shown by evidence of the solicitor. State v. Cornell (S.C. 1905) 70 S.C. 409, 50 S.E. 22. Bail 77(1)

In a proceeding to estreat a recognizance, an allegation that the defendant, pursuant to a preliminary examination before a magistrate, was bound over to appear on a bond signed by two sureties sufficiently alleges that the signing was in the presence of the magistrate. State v. Cornell (S.C. 1905) 70 S.C. 409, 50 S.E. 22. Bail 77(1)

5. Jurisdiction

The court of general sessions has exclusive jurisdiction of proceedings to forfeit recognizances. State v Quattlebaum (1903) 67 SC 203, 45 SE 162. State v Cornell (1905) 70 SC 409, 50 SE 22. State v Johnson (1907) 77 SC 252, 57 SE 846.

The court of common pleas has subject matter jurisdiction over actions to enforce judgements which arise from proceedings to forfeit a recognizance for failure to appear, although the court of general sessions has exclusive jurisdiction over the proceedings to estreat a bond. Anderson County v. Indiana Lumbermens Mut. Ins. Co. (S.C.App. 1991) 304 S.C. 363, 404 S.E.2d 718, certiorari denied.

Failure to hold preliminary hearing prior to indictment in drug possession case was not fatal to jurisdiction of court in estreatment proceedings where defendants voluntarily submitted to jurisdiction by virtue of recognizance contract. State v. Parker (S.C. 1976) 267 S.C. 317, 227 S.E.2d 677.

The court of general sessions has exclusive jurisdiction of proceedings to forfeit a recognizance for appearance to answer a charge in that court. State v. Bailey (S.C. 1966) 248 S.C. 438, 151 S.E.2d 87. Bail 77(1)

Court of general sessions can estreat a recognizance for appearance in a magistrate’s court. State v. Williams (S.C. 1909) 84 S.C. 21, 65 S.E. 982.

Recognizors voluntarily submit themselves to the jurisdiction of the court as parties with respect to proceedings for estreat. State v. Johnson (S.C. 1907) 77 S.C. 252, 57 S.E. 846.

6. Notice

Notice given pursuant to the requirements of Section 17‑15‑170 to the holder of a power of attorney was insufficient to bind the grantor of the power to a judgement entered in the estreatment proceedings for which the notice was being given where the power of attorney only gave the holder the power to “execute, seal and deliver” bail bonds, but did not give the authority to accept notice of estreatment proceedings. Anderson County v. Indiana Lumbermens Mut. Ins. Co. (S.C.App. 1991) 304 S.C. 363, 404 S.E.2d 718, certiorari denied. Bail 77(2)

Notice to surety of the date set for the appearance of defendants in court was not required to establish liability of surety under recognizance, no such notice having been expressly required by the terms of the bond contract nor from the nature of the obligation assumed by the surety thereunder. Pride v. Anders (S.C. 1976) 266 S.C. 338, 223 S.E.2d 184. Bail 77(1)

While this section [Code 1962 Section 17‑311] requires issuance of notice, it does not prescribe the place, manner, or proof of service as is provided when the procedure is in the civil court. If, therefore, the notice is issued as required, and it appears to the satisfaction of the court that a copy of the same has been delivered to the party, this section [Code 1962 Section 17‑311] is complied with, and all the ends to be subserved by a notice are achieved. State v. Johnson (S.C. 1907) 77 S.C. 252, 57 S.E. 846.

Required notice is not original process to obtain jurisdiction, but is a continuation of proceedings in which the court has already acquired jurisdiction. State v. Johnson (S.C. 1907) 77 S.C. 252, 57 S.E. 846.

It is of no consequence that the notice was delivered to appellant in another state. State v. Johnson (S.C. 1907) 77 S.C. 252, 57 S.E. 846.

7. Hearing

Following a hearing to show cause why judgment of forfeiture of a recognizance bond should not be confirmed, a second hearing may be held to determine the amount, if any, to be remitted. State v. Mitchell (S.C. 2017) 2017 WL 5163463. Bail 77(1)

In estreatment proceedings, it was not error to conduct show cause hearing at the same term of general sessions in which the rule to show cause was issued where defendants neither demonstrated prejudice from the conduct of the hearing at the time specified in the rule, nor interposed a timely objection upon which to base an argument in the supreme court. State v. Parker (S.C. 1976) 267 S.C. 317, 227 S.E.2d 677.

8. Limitation of actions

A general statutory directive that the state move immediately for forfeiture of a bail bond upon noncompliance with its condition was merely directory, and thus, three‑year statute of limitations for contract actions applied to actions by the state for forfeiture of bail bonds by four criminal defendants. State v. Policao (S.C.App. 2013) 402 S.C. 547, 741 S.E.2d 774. Bail 77(1)

9. Estoppel

Where a bond has accomplished the purpose for which it was given, or the principal has derived benefit from it, both the principal and surety are estopped to deny liability on the bond. State v. Bailey (S.C. 1966) 248 S.C. 438, 151 S.E.2d 87. Bail 75.3

The right of the State to estreatment of an appearance recognizance is subject to the doctrine of estoppel. State v. Bailey (S.C. 1966) 248 S.C. 438, 151 S.E.2d 87. Estoppel 62.2(1)

Where the State in defendant’s absence permitted his counsel to consent to a verdict of guilty, and defendant accepted that verdict and complied with the terms of the sentence imposed as the result thereof, the State was estopped to contend that his appearance by counsel was not sufficient compliance with the condition of the recognizance. State v. Simring (S.C. 1956) 230 S.C. 49, 94 S.E.2d 9. Estoppel 62.2(2)

Surety is not estopped from disputing validity of obligation because another party has made payment thereon. State v. Bright (S.C. 1880) 14 S.C. 7.

10. Review

That portion of lower court’s order of confirmation of judgment against surety on recognizance bond which provided that the surety shall not act as a surety in any other case in the county until the judgment is either satisfied or set aside will be reversed by the Supreme Court because there was no issue before the lower court which involved the exercise of such power if the court possessed it. Pride v. Anders (S.C. 1976) 266 S.C. 338, 223 S.E.2d 184. Bail 60

The court of general sessions being one of general jurisdiction, its action in declaring the forfeiture of a recognizance will be presumed on appeal to have been regular, and, a recognizance being a matter of record, every reasonable presumption will be indulged in to support it, and the burden of proving defects is on the recognizors. State v. Edens (S.C. 1911) 88 S.C. 302, 70 S.E. 609. Criminal Law 1142

**SECTION 17‑15‑180.** Court may remit forfeiture in certain cases.

 If any person shall forfeit a recognizance from ignorance or unavoidable impediment and not from wilful default, the court of sessions may, on affidavit stating the excuse or cause thereof, remit the whole or any part of the forfeiture as may be deemed reasonable.

HISTORY: 1962 Code Section 17‑312; 1952 Code Section 17‑312; 1942 Code Section 1044; 1932 Code Section 1044; Cr. P. ‘22 Section 133; Cr. C. ‘12 Section 115; Cr. C. ‘02 Section 88; G. S. 2663; R. S. 89; 1787 (5) 13.

Library References

Bail 78.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 284 to 322.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Affidavits Section 34, Motions.

Attorney General’s Opinions

It is the responsibility of the agency or entity which is the beneficiary of a bail bond judgment to collect on the judgment. 1988 Op Atty Gen, No 88‑6, p 34 (January 19, 1988) 1988 WL 383490.

NOTES OF DECISIONS

In general 1

Discretion of court 2

Hearing 2.5

Review 3

1. In general

Cited in State v Quattlebaum (1903) 67 SC 203, 45 SE 162. State v Dingle (1911) 87 SC 518, 70 SE 163. State v Edens (1911) 88 SC 302, 70 SE 609.

In determining whether any remission of the judgment of forfeiture of a recognizance bond is warranted, the trial court is not limited to considering only the actual cost to the State; rather, the following factors, at the least, should be considered in determining whether, and to what extent, the bond should be remitted: (1) the purpose of the bond; (2) the nature and wilfulness of the default; and (3) any prejudice or additional expense resulting to the State. State v. Mitchell (S.C. 2017) 2017 WL 5163463. Bail 79(1)

Order remitting $75,000 of $150,000 surety bond that had been estreated due to defendant’s multiple, willful violations of conditions of bond that he be subject to house arrest and electronic monitoring was not abuse of discretion, where bondsperson was well aware of defendant’s violations and willfully refused to fulfill her obligations as bondsperson to ensure defendant’s compliance with bond conditions. State v. Mitchell (S.C. 2017) 2017 WL 5163463. Bail 79(1)

When estreatment is ordered for non‑appearance after a defendant, released on bond, has been extradited, the surety should be released from liability since when extradition is accomplished, the surety is no longer able to perform its contractual obligation to deliver the defendant to court. State v. Boatwright (S.C. 1992) 310 S.C. 281, 423 S.E.2d 139, rehearing denied. Bail 79(1)

Revocation of $10,000 of $25,000 appeal bond was excessive where offense was possession of illegal drugs, bond was revoked for unrelated offenses that did not prejudice the State, and surety was principal’s aunt rather than more experienced commercial bondsman. State v. Workman (S.C. 1980) 274 S.C. 341, 263 S.E.2d 865.

Where the accused was not surrendered to the court until after he had failed to appear as required by the bond, his surrender after default did not entitle the surety to a remission of the forfeiture, as a matter of right. State v. Holloway (S.C. 1974) 262 S.C. 552, 206 S.E.2d 822.

The fact that the surety received no notice, each time, of the failure of the accused to appear at the several terms of court in question did not require the remission of the bond forfeiture. State v. Holloway (S.C. 1974) 262 S.C. 552, 206 S.E.2d 822. Bail 79(1)

Where the bond signed by the accused and appellant as surety required the accused to appear at the next term of the court of general sessions, the accused was under a legal duty to appear in accordance with the condition of the bond, without further notice to him or appellant, his surety. State v. Holloway (S.C. 1974) 262 S.C. 552, 206 S.E.2d 822.

Lack of prejudice to the State was not sufficient ground for remission of bond forfeited by accused’s failure to appear at trial date when accused offered no explanation for his absence and the surety failed to overcome his burden to prove lack of prejudice to the State resulting from the absence of accused, which obstructed and delayed the orderly administration of justice. State v. Holloway (S.C. 1974) 262 S.C. 552, 206 S.E.2d 822.

Relief from bond forfeiture required by statute is permitted where it is made to appear by affidavit that the forfeiture resulted “from ignorance or unavoidable impediment and not from wilful default”, and the burden of establishing justification for remission of such forfeiture rests upon the applicant. State v. Holloway (S.C. 1974) 262 S.C. 552, 206 S.E.2d 822.

2. Discretion of court

The circuit court is vested with discretionary power to determine whether a bond forfeiture should be remitted, and if so, to what extent. State v. Mitchell (S.C. 2017) 2017 WL 5163463. Bail 79(1)

The Circuit Court did not abuse its discretion by ordering the partial estreatment of a bond, even though the defendant’s failure to appear was due to his extradition to another state and thus was not willful, where the defendant clearly breached the condition of good behavior contained in his bond contract, as evidenced by his pleading guilty to criminal domestic violence charges in the state to which he was extradited. State v. Boatwright (S.C. 1992) 310 S.C. 281, 423 S.E.2d 139, rehearing denied. Bail 75.3

Although bail bondsman is surety, it does not necessarily follow that insurance relationship, as contemplated by Section 38‑5‑20, is created and bail bonding business does not meet definition of insurance under Section 38‑1‑30 because purpose of bond is not to indemnify government but to secure appearance of principal to answer court and, moreover, court in its discretion may grant relief from forfeiture pursuant to Section 17‑15‑180 and, therefore, Title 38 is inapplicable to criminal bail bond business. Wilson v. McLeod (S.C. 1980) 274 S.C. 525, 265 S.E.2d 677.

Exercise of the power to grant relief from bond forfeitures is within the discretion of the court. State v. Holloway (S.C. 1974) 262 S.C. 552, 206 S.E.2d 822.

The extent of the remission, if any, to be allowed by virtue of the surrender of the defendant after default was within the discretion of the court, to be determined in the light of all of the facts and circumstances. State v. Holloway (S.C. 1974) 262 S.C. 552, 206 S.E.2d 822. Bail 80

Where accused was released after signing bond but failed to appear for trial, and surety presented him to the court at bond forfeiture hearing, his surrender after default did not entitle surety to a remission of the forfeiture, as a matter of right, since the extent of the remission, if any, was within the discretion of the court, citing Am Jur 2d. State v. Holloway (S.C. 1974) 262 S.C. 552, 206 S.E.2d 822.

2.5. Hearing

Following a hearing to show cause why judgment of forfeiture of a recognizance bond should not be confirmed, a second hearing may be held to determine the amount, if any, to be remitted. State v. Mitchell (S.C. 2017) 2017 WL 5163463. Bail 77(1)

3. Review

Judgment against surety on recognizance bonds will be affirmed where, although 1962 Code Section 17‑312 [1976 Code Section 17‑15‑180] authorizes the court to remit bond forfeitures under certain conditions, no such request was made by surety, nor was any attempt made to comply with the terms of that section. Pride v. Anders (S.C. 1976) 266 S.C. 338, 223 S.E.2d 184.

The exercise of discretion by the trial judge will not be set aside unless it is made to appear that it was abused. State v. Holloway (S.C. 1974) 262 S.C. 552, 206 S.E.2d 822. Bail 79(1); Criminal Law 1148

**SECTION 17‑15‑190.** Money may be deposited with officer of court in lieu of bond, recognizance, or undertaking.

 Whenever in any criminal proceeding in any of the courts of this State a bond, recognizance or undertaking is authorized or required to be given, the party authorized or required to give it may deposit in lieu thereof a sum of lawful money of the United States of America equal in amount to the bond, recognizance or undertaking so required or authorized to be given. Such sum of money, when deposited as in this section provided, shall be held and taken as equivalent in all respects to the giving of such bond, recognizance or undertaking.

HISTORY: 1962 Code Section 17‑313; 1952 Code Section 17‑313; 1942 Code Section 347; 1932 Code Section 347; Civ. P. ‘22 Section 303; Civ. C. ‘12 Section 3936; Civ. C. ‘02 Section 2833; 1897 (22) 424.

CROSS REFERENCES

Deposit of cash percentage in lieu of bond, see Section 17‑15‑15.

Regulation of bail bondsmen and runners, see Section 38‑53‑10 et seq.

Library References

Bail 73.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 144 to 149.

Attorney General’s Opinions

In the absence of a court rule or legislation expressly authorizing the use of credit cards to post bond or pay fines, this Office is unable to conclude that credit cards can be utilized for such purposes in a municipal court. 1989 Op Atty Gen, No 89‑74, p 197 (July 25, 1989) 1989 WL 406164.

**SECTION 17‑15‑200.** Persons to whom a deposit in lieu of bond, recognizance, or undertaking must be paid.

 Whenever such bond, recognizance or undertaking is required or authorized to be given in any criminal proceeding:

 (1) In the courts of general sessions of this State the sum of money deposited in lieu thereof shall be paid to the clerk of the court of general sessions in which the proceeding is pending;

 (2) In the Supreme Court or the court of appeals the sum of money shall be paid to the clerk of the Supreme Court or the court of appeals; and

 (3) In a magistrates court or other court of inferior jurisdiction such sum of money shall be paid to the clerk of the court of common pleas and general sessions for the county in which such magistrates court or other court of inferior jurisdiction shall be.

HISTORY: 1962 Code Section 17‑314; 1952 Code Section 17‑314; 1942 Code Section 348; 1932 Code Section 348; Civ. P. ‘22 Section 304; Civ. C. ‘12 Section 3937; Civ. C. ‘02 Section 2834; 1897 (22) 424; 1999 Act No. 55, Section 23.

Library References

Bail 73.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 144 to 149.

**SECTION 17‑15‑210.** Receipt for deposit given in lieu of bond, recognizance, or undertaking.

 Whenever any sum of money is so deposited in lieu of a bond, recognizance or undertaking the party depositing it shall be entitled to a receipt therefor, stating that the sum of money has been deposited and is held for the same purpose as would have been specified and conditioned in the bond, recognizance or undertaking in lieu whereof the sum of money is so deposited.

HISTORY: 1962 Code Section 17‑315; 1952 Code Section 17‑315; 1942 Code Section 349; 1932 Code Section 349; Civ. P. ‘22 Section 305; Civ. C. ‘12 Section 3938; Civ. C. ‘02 Section 2835; 1897 (22) 424.

Library References

Bail 73.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 144 to 149.

**SECTION 17‑15‑220.** Return of deposit given in lieu of bond, recognizance, or undertaking.

 The person so depositing a sum of money in lieu of a bond, recognizance or undertaking shall be entitled upon application to the court wherein such deposit has been made, and subject to the order under which such fund is held, to receive back such sum of money whenever the purposes for which it has been received and deposited have been accomplished and the person would have been entitled to be released without payment or further payment of any sum from all liability on the required bond, recognizance or undertaking had it been given in lieu of such deposit of money.

HISTORY: 1962 Code Section 17‑316; 1952 Code Section 17‑316; 1942 Code Section 349; 1932 Code Section 349; Civ. P. ‘22 Section 305; Civ. C. ‘12 Section 3938; Civ. C. ‘02 Section 2835; 1897 (22) 424.

Library References

Bail 73, 96.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 144 to 149, 336 to 338.

NOTES OF DECISIONS

In general 1

1. In general

A person who posted a $10,000 cashier’s check in lieu of a bond to secure his brother’s release from custody pending trial was entitled under Section 17‑15‑220 to the return of his money upon disposition of the only charge specified in the bail order. State v. White (S.C. 1985) 284 S.C. 69, 325 S.E.2d 64.

**SECTION 17‑15‑230.** Requirement that surety company file undertaking with respect to guaranteed arrest bond certificates issued by automobile clubs; acceptance, forfeiture, and enforcement of certificates.

 (A)(1) A domestic or foreign surety company qualified to transact business in this State may become a surety by filing with the Department of Insurance an undertaking to become surety of not more than one thousand five hundred dollars with respect to each guaranteed arrest bond certificate issued by an automobile club or association.

 (2) The undertaking must be in a form to be prescribed by the department and must state the:

 (a) name and address of the automobile club or automobile association with respect to which the surety company undertakes to guarantee the arrest bond certificates;

 (b) unqualified obligation of the surety company to pay the fine or forfeiture of not more than one thousand five hundred dollars of a person who, after posting a guaranteed arrest bond certificate which the surety has undertaken to guarantee, fails to make the appearance for which the guaranteed arrest bond certificate was posted.

 (B)(1) A guaranteed arrest bond certificate guaranteed by a surety company pursuant to this section must be accepted in lieu of cash bail or other bond of not more than one thousand five hundred dollars as a bail bond, when signed by the person whose signature appears on the certificate, to guarantee the appearance of that person in a court in this State at the time set by the court when the person is arrested for the violation of a motor vehicle law of the State or a motor vehicle ordinance of a municipality of this State. The guaranteed arrest bond certificate does not apply to and must not be accepted in lieu of cash bail or bond when the person has been arrested for an offense of driving under the influence of intoxicating liquors or drugs or for a felony.

 (2) A guaranteed arrest bond certificate that is posted as a bail bond in a court is subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases provided in this chapter.

HISTORY: 1986 Act No. 413; 1992 Act No. 311, Section 1.

Library References

Bail 60.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 2 to 5, 160.

NOTES OF DECISIONS

In general 1

1. In general

Bail bonding company was surety, rather than mere agent of insurance company, and, therefore, was liable to state for estreatment after defendants’ failure to appear and forfeiture of bonds; even though the insurer had appointed the company as its agent, the company had signed each bond on the line for the name of the surety, and the power of attorney form attached to the bonds demonstrated that the insurance company agreed only to underwrite the bonds. State v. Cochran (S.C. 2004) 358 S.C. 24, 594 S.E.2d 844. Bail 75.3

**SECTION 17‑15‑240.** Interest on bail bond money.

 Court officers authorized by law to receive bail bond money may deposit that money in interest‑bearing accounts in a financial institution in which deposits are insured by an agency of the United States government. The interest earned on the accounts is considered public funds and must be distributed as follows:

 (1) Interest on bail bond money received for offenses triable in municipal court or held for transmittal to the county clerk of court must be credited to the general fund of the municipality.

 (2) Interest on bail bond money received for offenses triable in magistrates court or held for transmittal to the county clerk of court must be credited to the general fund of the county.

 (3) Interest on bail bond money received by the county clerk of court for offenses triable in family and circuit court must be credited to the general fund of the county.

 South Carolina Court Administration shall prescribe appropriate procedures for handling and accounting for bail bond interest.

HISTORY: 1990 Act No. 549, Section 1.

Library References

Bail 96.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 336 to 338.

**SECTION 17‑15‑260.** Disposition of funds collected pursuant to chapter.

 The funds collected pursuant to this chapter must be remitted in the following manner: twenty‑five percent to the general fund of the State, twenty‑five percent to the solicitor’s office in the county in which the forfeiture is ordered, and fifty percent to the county general fund of the county in which the forfeiture is ordered.

 However, if the case in which forfeiture is ordered is originated by a municipality, the funds collected pursuant to this chapter must be remitted in the following manner: twenty‑five percent to the general fund of the State, twenty‑five percent to the solicitor’s office in the county in which the forfeiture is ordered, and twenty‑five percent to the county general fund of the county in which the forfeiture is ordered and twenty‑five percent to the municipality.

 All funds to be deposited in the state general fund shall be transmitted to the State Treasurer.

HISTORY: 1993 Act No. 164, Part II, Section 80A; 1996 Act No. 292, Section 4.

CROSS REFERENCES

This section provides exception to percentage formula for allocating monies generated by courts from fines and assessments, see Section 14‑1‑205.

Library References

Bail 96.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 336 to 338.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 21.2, Bail.

Attorney General’s Opinions

Discussion of whether this section includes the Attorney General’s Office where a case has been initiated and is being prosecuted by the Attorney General as a State Grand Jury case. S.C. Op.Atty.Gen. (July 8, 1997) 1997 WL 568821.