CHAPTER 5

Magistrates’ Powers and Duties in Criminal Matters

ARTICLE 1

Search Warrants

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

 Any magistrate residing in any incorporated city or town of this State, on information by oath of any credible witness that any of the criminal laws against gambling is being violated, may grant his warrant, under his hand and seal, to break open and enter any closed door or room within such city, wherever such offense is alleged to prevail.

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

CROSS REFERENCES

Further provisions when breaking open gambling rooms may be authorized, see Section 17‑13‑70.

Search warrants, generally, see Section 17‑13‑140.

Library References

Searches and Seizures 103.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 131, 135.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 2, Jurisdictional Background.

Forms

Am. Jur. Pl. & Pr. Forms Searches and Seizures Section 1 , Introductory Comments.

ARTICLE 3

Arrests

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

 (A) Magistrates shall:

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

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

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

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

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

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

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

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

Effect of Amendment

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

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

The 2011 amendment rewrote the section.

CROSS REFERENCES

Arrest, generally, see Sections 17‑13‑10 et seq.

Magistrates in counties in which a county court has been established, see Section 22‑5‑710.

Library References

Criminal Law 207.

Justices of the Peace 19.

Westlaw Topic Nos. 110, 231.

C.J.S. Criminal Law Sections 324, 335 to 336, 340, 343.

C.J.S. Justices of the Peace Section 25.

Attorney General’s Opinions

Private security guards operating on the property they are licensed to protect may sign an arrest warrant and by doing so, will not invalidate such a warrant. S.C. Op.Atty.Gen. (February 5, 2016) 2016 WL 963703.

Discussion of the power of private security guards with respect to arrest warrants and actions made off the property the security guard is hired to protect. S.C. Op.Atty.Gen. (September 25, 2012) 2012 WL 4711427.

NOTES OF DECISIONS

In general 1

1. In general

If there has been a lawful arrest made in good faith, subsequent unreasonable delay in taking the person before a magistrate will not affect the legality of the arrest. State v. Gee (S.C. 1974) 262 S.C. 373, 204 S.E.2d 727.

The failure to take the person arrested before a magistrate following his arrest to be committed does not warrant a reversal of the appellant’s conviction unless such failure deprived him of a fair trial. State v. Gee (S.C. 1974) 262 S.C. 373, 204 S.E.2d 727. Criminal Law 1166(1)

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

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

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

 (1) an affidavit that establishes probable cause;

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

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

 (4) the name of the issuing officer;

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

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

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

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

HISTORY: 2002 Act No. 348, Section 15.

Attorney General’s Opinions

Discussion of who may properly prosecute a courtesy summons charge issued pursuant to Section 22‑5‑115 in summary court. S.C. Op.Atty.Gen. (July 9, 2013) 2013 WL 3762705.

Discussion of the power of private security guards with respect to arrest warrants and actions made off the property the security guard is hired to protect. S.C. Op.Atty.Gen. (September 25, 2012) 2012 WL 4711427.

Other than correcting a scrivener’s error or a technical mistake, caution is advised when considering an amendment to a charge based upon a sworn statement of an affiant who is not a law enforcement officer investigating the case. S.C. Op.Atty.Gen. (May 25, 2011) 2011 WL 2214068.

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

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

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

Library References

Justices of the Peace 20.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 26.

NOTES OF DECISIONS

In general 1

1. In general

Although an arresting officer is permitted to prosecute a traffic violation case in magistrate’s court, an officer who appeared at the scene of the arrest should not have been permitted to prosecute the case where he was not an arresting officer nor a supervisor of the sheriff’s deputies who arrested the defendants. State v. Sossamon (S.C. 1989) 298 S.C. 72, 378 S.E.2d 259.

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

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

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

Library References

Justices of the Peace 19.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 25.

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

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

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

Library References

Justices of the Peace 19.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 25.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Extortion, Blackmail, and Threats Section 22, Threats to Frighten.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v. Sumner (S.C. 1850).

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

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

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

Library References

Justices of the Peace 19.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 25.

NOTES OF DECISIONS

In general 1

1. In general

A magistrate cannot verbally authorize a person not a constable by legal appointment to convey a prisoner to jail. State v. Clark (S.C. 1898) 51 S.C. 265, 28 S.E. 906.

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

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

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

Library References

Justices of the Peace 19.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 25.

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

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

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

Library References

Arrest 63.2.

Westlaw Topic No. 35.

C.J.S. Arrest Section 15.

Attorney General’s Opinions

The Court would probably hold that an arresting officer would be the law enforcement officer who makes the case to arrest the subject or procures the arrest warrant. This officer is the person who is able to testify regarding the events surrounding the investigation and prosecute the case on behalf of the State. Pursuant to Section 22‑5‑180, the affiant for the arrest warrant should not serve the arrest warrant. By contrast, it is likely the Court would find that an officer who merely serves the arrest warrant on a subject, has no other connection with the investigation of the case, and is not a supervisor, would appear to have no standing to prosecute a case in magistrate’s court made by another officer. S.C. Op.Atty.Gen. (May 18, 2012) 2012 WL 1964398.

NOTES OF DECISIONS

In general 1

1. In general

Stated in State v Culbreath (1922) 121 SC 89, 113 SE 476. State v Prescott (1923) 125 SC 22, 117 SE 637, dis op of Watts, J. State v Williams (1907) 76 SC 135, 56 SE 783.

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

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

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

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

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

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

Library References

Criminal Law 217.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 334 to 335, 337.

Attorney General’s Opinions

Upon an arrest being made outside the county where a warrant is issued following a NCIC hit confirmation, the arresting agency should transport the arrestee to their jail or detention facility and the agency where the warrant was issued should make the necessary arrangements to have the arrestee transported to that agency’s detention facility or jail. S.C. Op.Atty.Gen. (April 15, 2010) 2010 WL 1808725.

There appears to be no authority which would absolutely prohibit countersigning of faxed copy of arrest warrant; such would remain matter for individual magisterial discretion. Although one disadvantage to endorsement of certified or faxed copy is that original warrant remains in circulation, giving potential for erroneous utilization at later time, in absence of any absolute prohibition against use of copies, it remains matter for individual discretion. 1991 Op. Atty Gen, No 91‑2, p 19.

When a warrant has been issued by a magistrate in one county and forwarded to a magistrate in another county, the latter endorsing magistrate would be the one with jurisdiction and thus should set the bail for the defendant. 1976‑77 Op. Atty Gen, No. 77‑231, p 174.

Magistrates are empowered to endorse municipal warrants charging offenses for which the maximum penalty does not exceed ten dollars or when the offense charged is the illegal parking of a motor vehicle, but whether or not such warrants shall be endorsed is entirely within the discretion of the magistrate, and he may not be required to do so. 1966‑67 Op. Atty Gen, No. 2339, p 170.

A city warrant for a county resident may properly be countersigned by a magistrate having jurisdiction of the person and be served by the magistrate’s constable or sheriff. 1965‑66 Op. Atty Gen, No. 2037, p 113.

NOTES OF DECISIONS

In general 1

1. In general

Where a warrant, issued in one county, is endorsed by a magistrate in another, in which the accused resides, and the accused is arrested thereunder, such magistrate may legally take a recognizance binding accused to appear before the magistrate issuing the warrant. State v. Rabens (S.C. 1908) 79 S.C. 542, 60 S.E. 442, rehearing denied 79 S.C. 542, 60 S.E. 1110. Bail 47

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

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

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

Library References

Arrest 70.

Westlaw Topic No. 35.

C.J.S. Arrest Sections 58 to 61.

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

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

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

Library References

Arrest 68(5).

Westlaw Topic No. 35.

C.J.S. Arrest Sections 48 to 49, 52 to 53.

ARTICLE 5

Preliminary Examinations

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

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

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

CROSS REFERENCES

Magistrates in counties in which a county court has been established, see Section 22‑5‑710.

Library References

Justices of the Peace 20.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 26.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gaming Section 24, Preliminary Hearing.

LAW REVIEW AND JOURNAL COMMENTARIES

Preliminary Hearing. 25 S.C. L. Rev. 351.

Attorney General’s Opinions

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.

Magistrate may release on bond in any noncapital case. 1969‑70 Op. Atty Gen, No. 2963, p 225.

A magistrate has no jurisdiction to grant a preliminary hearing to an accused who has been committed to jail on a murder warrant issued by the coroner following the inquest. 1965‑66 Op. Atty Gen, No. 1962, p 7.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

Section 22‑5‑320 is unconstitutional, under Art V Section 7, since the statute acts to deprive the Court of General Sessions of its original concurrent jurisdiction over criminal cases without also granting exclusive jurisdiction of the same cases to the magistrates’ courts in that the statute authorizes a magistrate to hold a preliminary hearing only when the crime charged is “beyond his jurisdiction,” and the magistrate cannot possess the “exclusive jurisdiction” required by Art V Section 7 in a matter that is “beyond his jurisdiction.” The striking of Section 22‑5‑320 renders meaningless and void the remainder of the statutes which set out procedures incident to the holding of a preliminary hearing (Sections 22‑5‑310 through 22‑5‑360) and, in addition, Section 17‑23‑160, which provides for notification of the right to request a preliminary hearing. State v. Keenan (S.C. 1982) 278 S.C. 361, 296 S.E.2d 676.

2. In general

The jurisdiction conferred on recorders includes concurrent jurisdiction with magistrates to issue warrants for arrests within the city limits, for offenses beyond their jurisdiction to try, and to sit as examining courts in such cases, where the offenses are committed within the corporate limits of the city. State v. Blue (S.C. 1975) 264 S.C. 468, 215 S.E.2d 905.

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

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

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

CROSS REFERENCES

Notice of right to preliminary hearing and issuance of form for requesting such hearing, see Section 17‑23‑160.

Provision that attorney appearing at preliminary hearing is not obligated to continue representation, see Section 17‑23‑165.

Library References

Criminal Law 222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 339 to 344.

Attorney General’s Opinions

Hearsay evidence may be used at preliminary examinations to establish the existence of probable cause. 1976‑77 Op. Atty Gen, No. 77‑53, p 55.

The State is under no obligation to produce all of its evidence at a preliminary hearing, and it is proper to use hearsay to support a finding of probable cause at a preliminary hearing. 1976‑77 Op. Atty Gen, No. 77‑271, p 208.

The principles stated in In Re Brittian regarding dismissal for lack of prosecution are applicable to the magistrates’ courts and generally prohibit such a dismissal without the consent of the prosecutor. 1976‑77 Op. Atty Gen, No. 77‑276, p 212.

A Municipal Judge who issues an arrest warrant in a matter beyond his jurisdiction has duty to hold a preliminary hearing when such is properly demanded. 1974‑75 Op. Atty Gen, No. 4129, p 197.

At preliminary hearings in South Carolina, the State is not required to produce all its evidence, but only enough to constitute probable cause of guilt. 1969‑70 Op. Atty Gen, No. 2869, p 106.

NOTES OF DECISIONS

In general 2

Discharge after hearing and effect thereof 5

Effect of demand for hearing on jurisdiction 3

Purpose and scope of hearing 4

Right to aid of counsel 7

Validity 1

Waiver of right to hearing 6

1. Validity

Section 22‑5‑320 is unconstitutional, under Art V Section 11, since the statute acts to deprive the Court of General Sessions of its original concurrent jurisdiction over criminal cases without also granting exclusive jurisdiction of the same cases to the magistrates’ courts in that the statute authorizes a magistrate to hold a preliminary hearing only when the crime charged is “beyond his jurisdiction,” and the magistrate cannot possess the “exclusive jurisdiction” required by Art V Section 11 in a matter that is “beyond his jurisdiction.” The striking of Section 22‑5‑320 renders meaningless and void the remainder of the statutes which set out procedures incident to the holding of a preliminary hearing (Sections 22‑5‑310 through 22‑5‑360) and, in addition, Section 17‑23‑160, which provides for notification of the right to request a preliminary hearing. State v. Keenan (S.C. 1982) 278 S.C. 361, 296 S.E.2d 676.

This section does not contravene SC Const, Art 5, Section 18 (now Art 5, Section 11), which sets out the jurisdiction of the court of general sessions. State v. Flintroy (S.C. 1935) 178 S.C. 89, 182 S.E. 311.

2. In general

Cited in Clemmons v Nicholson (1938) 188 SC 124, 198 SE 180. Ex parte Orr (1952, DC SC) 110 F Supp 153, app dismd (CA4 SC) 201 F2d 669.

One accused of murder cannot plead before a magistrate. Bostick v State (1965) 247 SC 22, 145 SE2d 439, revd on other grounds 386 US 479, 18 L Ed 2d 223, 87 S Ct 1088. Coleman v Alabama (1970) 399 US 1, 26 L Ed 2d 387, 90 S Ct 1999. State v Taylor (1970) 255 SC 268, 178 SE2d 244.

A crime may be charged initially by indictment, in which case there is no right to a preliminary hearing. Williams v. State of S. C. (D.C.S.C. 1965) 237 F.Supp. 360, vacated 356 F.2d 432.

Section 22‑5‑320 did not deprive General Sessions Court of jurisdiction where nolle prosequi was entered subsequent to demand for preliminary hearing and charge was later reinstated through indictment by grand jury. State v. Scott (S.C. 1977) 269 S.C. 438, 237 S.E.2d 886.

Where defendant voluntarily sold allegedly obscene material to police, preliminary hearing provisions of former Code 1962 Section 43‑232 [Code 1976 Section 22‑5‑320] were sufficient and defendant need not be afforded a hearing former under Code 1962 Section 16‑414.7(d) [Code 1976 Section 16‑15‑210(d)]. State v. Oxendine (S.C. 1977) 268 S.C. 328, 233 S.E.2d 118.

Fact that preliminary hearing was given after the indictment does not deprive the General Sessions Court of jurisdiction where written demand for preliminary hearing was not timely made. State v. Fortner (S.C. 1976) 266 S.C. 223, 222 S.E.2d 508. Criminal Law 102

The jurisdiction of a grand jury is coextensive with the criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry. State v. Funderburk (S.C. 1972) 259 S.C. 256, 191 S.E.2d 520. Grand Jury 25

It is not required that a preliminary hearing be held in every case. State v. Taylor (S.C. 1970) 255 S.C. 268, 178 S.E.2d 244.

A magistrate has no power to arraign one accused of murder. Bostick v. State (S.C. 1965) 247 S.C. 22, 145 S.E.2d 439, certiorari granted 87 S.Ct. 102, 385 U.S. 813, 17 L.Ed.2d 53, reversed 87 S.Ct. 1088, 386 U.S. 479, 18 L.Ed.2d 223.

Applied in Shelton v. State (S.C. 1962) 239 S.C. 535, 123 S.E.2d 867.

It does not apply when the charge is initially made in the indictment by the grand jury. State v. Nesmith (S.C. 1948) 213 S.C. 60, 48 S.E.2d 595. Criminal Law 223

This section safeguards the right of the accused, who is presumed to be innocent until he is proved to be guilty, and does not impose any hardship on the State in the administration of the law. State v. Flintroy (S.C. 1935) 178 S.C. 89, 182 S.E. 311.

No formal indictment is required in a magistrate’s court. State v. Brown (S.C. 1881) 14 S.C. 380. Indictment And Information 3

Magistrates have no authority in cases of felony, except to so examine the prisoner and commit or bind him over for trial in the general sessions. Cherry v. McCants (S.C. 1875) 7 S.C. 224.

3. Effect of demand for hearing on jurisdiction

Fact that defendant was not given preliminary hearing until after indictment had been returned against him did not deprive state trial court of jurisdiction. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563. Criminal Law 228

Acquisition of jurisdiction by the Court of General Sessions is precluded by this section until after a preliminary hearing is held if the request is made in writing at least 10 days before convening of the next term of court; but where written demand for preliminary hearing was not made until 7 days before next convening term of court of general sessions, demand was not timely made, and grand jury and Court of General Sessions were not precluded from jurisdiction until after a preliminary hearing. State v. Fortner (S.C. 1976) 266 S.C. 223, 222 S.E.2d 508. Indictment And Information 10.1(2)

The provisions of this section, which preclude the acquisition of jurisdiction by the court of general sessions until after a preliminary hearing is held is conditioned upon the demand for such hearing in writing at least ten days before the convening of the next court of general sessions. It is only where timely demand has been made for a preliminary hearing that acquisition of jurisdiction by the court of general sessions is delayed. State v. Wheeler (S.C. 1972) 259 S.C. 571, 193 S.E.2d 515.

The acts of a court in a matter over which it has no jurisdiction are void. State v. Funderburk (S.C. 1972) 259 S.C. 256, 191 S.E.2d 520. Courts 40

Where the demand for a preliminary hearing is timely made, the court of general sessions has no jurisdiction of the case until after the preliminary hearing. State v. Funderburk (S.C. 1972) 259 S.C. 256, 191 S.E.2d 520.

Where the court is without jurisdiction because a demand for a preliminary hearing has been timely made, an indictment returned before the preliminary hearing is a nullity. State v. Funderburk (S.C. 1972) 259 S.C. 256, 191 S.E.2d 520.

It is only where timely demand has been made for a preliminary hearing that acquisition of jurisdiction by the court of general sessions is delayed. State v. Sanders (S.C. 1968) 251 S.C. 431, 163 S.E.2d 220.

When defendant had demanded a preliminary hearing which had not been held, it was error for the magistrate to transmit the warrants to the higher court and, although indictments had been given out and true bills found on them, the court had no jurisdiction until the preliminary hearing had been held. State v. Adcock (S.C. 1940) 194 S.C. 234, 9 S.E.2d 730. Criminal Law 223

4. Purpose and scope of hearing

Ignorance of defenses available to him cannot prejudice a defendant in a preliminary hearing in South Carolina. Williams v. State of S. C. (D.C.S.C. 1965) 237 F.Supp. 360, vacated 356 F.2d 432.

The only right for discovery in a criminal case is given in the preliminary hearing statutes. State v. Hill (S.C. 1977) 268 S.C. 390, 234 S.E.2d 219, certiorari denied 98 S.Ct. 211, 434 U.S. 870, 54 L.Ed.2d 147.

An accused person is entitled to a preliminary hearing in order to be apprised of the nature of the State’s evidence. State v. Flood (S.C. 1971) 257 S.C. 141, 184 S.E.2d 549.

The defendant in a criminal case has no right to pretrial discovery or inspection, and the courts are powerless to compel disclosure of items of prosecution evidence to the accused. State v. Flood (S.C. 1971) 257 S.C. 141, 184 S.E.2d 549.

In the absence of statutes or rules of practice providing otherwise, the accused is not entitled to inspection of evidence in the possession of the prosecution. State v. Flood (S.C. 1971) 257 S.C. 141, 184 S.E.2d 549.

Pretrial discovery in favor of defendants in criminal cases is not required by due process. State v. Flood (S.C. 1971) 257 S.C. 141, 184 S.E.2d 549.

The due process clause of the Fourteenth Amendment does not give an accused the right to take pretrial depositions for discovery purposes. State v. Flood (S.C. 1971) 257 S.C. 141, 184 S.E.2d 549.

The preliminary hearing is a critical stage in the criminal process. State v. Taylor (S.C. 1970) 255 S.C. 268, 178 S.E.2d 244.

The preliminary hearing serves the purpose of determining whether the State can show probable cause. State v. White (S.C. 1963) 243 S.C. 238, 133 S.E.2d 320.

A preliminary hearing can only be requested by one charged with crime. State v. White (S.C. 1963) 243 S.C. 238, 133 S.E.2d 320.

One charged with a crime is not entitled to plead or even make a sworn statement at the preliminary hearing. State v. White (S.C. 1963) 243 S.C. 238, 133 S.E.2d 320.

The burden in a preliminary hearing being upon the State to show probable cause, the defendant is not permitted to offer any evidence. State v. White (S.C. 1963) 243 S.C. 238, 133 S.E.2d 320. Criminal Law 234; Criminal Law 539(1)

If one charged with crime chooses to make an unsworn statement at the preliminary hearing, he may do so, but it can nowise be used against him thereafter. State v. White (S.C. 1963) 243 S.C. 238, 133 S.E.2d 320.

One charged with a crime may cross‑examine the State’s witnesses fully at the preliminary hearing. State v. White (S.C. 1963) 243 S.C. 238, 133 S.E.2d 320.

The argument that defendant’s interrogation of one of the witnesses at the preliminary hearing enabled a witness to identify defendant by his voice is without merit. Any cross‑examination of witnesses by defendant at a preliminary hearing is voluntarily made; and if such forms the basis of testimony tending to establish defendant’s identity it would be competent. State v. White (S.C. 1963) 243 S.C. 238, 133 S.E.2d 320.

The written statements taken by magistrates at the preliminary hearing are the best evidence of what the accused there said. State v. Winter (S.C. 1909) 83 S.C. 153, 65 S.E. 209.

A magistrate cannot supplement the testimony of a witness as taken, after it is signed by the witness, by appending a statement as to the testimony. State v. Freeman (S.C. 1895) 43 S.C. 105, 20 S.E. 974. Criminal Law 258

It is not the duty of the magistrate, under this section, to examine accused persons or take their statements in writing unless they are sworn as witnesses on behalf of the State by their own consent; and if he does so, it is not an official act; but he is not prohibited from doing so. State v. Branham (S.C. 1880) 13 S.C. 389.

5. Discharge after hearing and effect thereof

If a defendant is discharged by a magistrate at a preliminary hearing, such is not a final determination of the charge and does not bar subsequent prosecution by the State. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563.

A magistrate does not have jurisdiction to acquit a defendant. Williams v. State of S. C. (D.C.S.C. 1965) 237 F.Supp. 360, vacated 356 F.2d 432.

A magistrate may discharge a defendant under this section, which obviously means discharge from custody. Williams v. State of S. C. (D.C.S.C. 1965) 237 F.Supp. 360, vacated 356 F.2d 432.

The only thing to be gained by a defendant in a preliminary hearing in South Carolina is release from custody until he is indicted. Williams v. State of S. C. (D.C.S.C. 1965) 237 F.Supp. 360, vacated 356 F.2d 432.

The defendant may be indicted and tried without regard to the finding of the hearing magistrate at a preliminary hearing. Williams v. State of S. C. (D.C.S.C. 1965) 237 F.Supp. 360, vacated 356 F.2d 432.

The magistrate may discharge absolutely on the preliminary examination. State v. Jones (S.C. 1890) 32 S.C. 583, 10 S.E. 577.

6. Waiver of right to hearing

It is not necessary that there shall be a preliminary hearing before a grand jury can indict a person charged with a crime. One may waive the right to such hearing by simply failing to ask for it. State v Sanders (1968) 251 SC 431, 163 SE2d 220 (superseded by statute as stated in State v Dozier, 263 SC 267, 210 SE2d 225). Sanders v South Carolina (1969, DC SC) 296 F Supp 563.

The holding of a preliminary examination is not a necessary prerequisite to indictment. State v Bowman (1895) 43 SC 108, 20 SE 1010. State v Bullock (1899) 54 SC 300, 32 SE 424. State v Brown (1902) 62 SC 374, 40 SE 776. State v Rabens (1908) 79 SC 542, 60 SE 442, reh dismd 79 SC 551, 60 SE 1110.

Failure of the defendant to interpose a timely request for a preliminary hearing constituted a waiver of his right to such a hearing. State v. McClure (S.C. 1982) 277 S.C. 432, 289 S.E.2d 158.

Where a defendant had initially requested a preliminary hearing but subsequently entered into plea negotiations which resulted in his plea of guilty without any further request for a hearing, such conduct constituted a waiver of the right to the hearing. O’Neil v. State (S.C. 1981) 277 S.C. 230, 285 S.E.2d 352.

A defendant who was convicted of breaking into a motor vehicle and larceny waived his right to a preliminary hearing where, at the time he entered his guilty plea, he did not inform the trial court that he had previously requested and still desired a preliminary hearing. Bonnette v. State (S.C. 1981) 277 S.C. 17, 282 S.E.2d 597.

Failure to comply with this section results in waiver of right of preliminary hearing. State v. Hill (S.C. 1977) 268 S.C. 390, 234 S.E.2d 219, certiorari denied 98 S.Ct. 211, 434 U.S. 870, 54 L.Ed.2d 147.

One may waive the right to a preliminary hearing by simply failing to ask for it in the manner required by this section. State v. Wheeler (S.C. 1972) 259 S.C. 571, 193 S.E.2d 515. Criminal Law 225

Where the procedure set out in this section is not followed at a time when the defendant has counsel, the right to a preliminary hearing is therefore waived. McCall v. State (S.C. 1971) 257 S.C. 93, 184 S.E.2d 341.

The right to a preliminary hearing was waived because the statutory procedure for request was not followed at a time when the accused had counsel. State v. Taylor (S.C. 1970) 255 S.C. 268, 178 S.E.2d 244.

The right to a preliminary hearing may be waived by failure to request the same in writing ten days before court. Blandshaw v. State (S.C. 1965) 245 S.C. 385, 140 S.E.2d 784. Criminal Law 225

A preliminary hearing under South Carolina criminal procedure is not a “critical” stage of the proceedings and may be waived by failure to request same in writing ten days before court. State v. White (S.C. 1963) 243 S.C. 238, 133 S.E.2d 320. Criminal Law 225

Where defendant waived preliminary hearing when warrant issued by the magistrate charged breaking and entering a dwelling in the nighttime, “intentions unknown,” this put him on notice that a definite charge of felony would be preferred against him, and when he was indicted for breaking and entering with intent to commit rape, by foregoing the right to demand a preliminary hearing, such right was waived. State v. Nesmith (S.C. 1948) 213 S.C. 60, 48 S.E.2d 595.

Preliminary hearing is not condition precedent to indictment by grand jury, but may be waived by failure to ask for it. State v. Irby (S.C. 1932) 166 S.C. 430, 164 S.E. 912. Criminal Law 225

If accused fails to appear in person at the time and place set for the preliminary examination, he waives his right to the hearing. State v. Rabens (S.C. 1908) 79 S.C. 542, 60 S.E. 442, rehearing denied 79 S.C. 542, 60 S.E. 1110. Bail 75.2(1)

7. Right to aid of counsel

If counsel had been appointed for defendant in time to have demanded a preliminary hearing ten days before the next court, as allowed under this section, and the magistrate had discharged the defendant from custody, it would not have ended the prosecution. The defendant could have still been prosecuted. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563.

There is no denial of due process for the State to fail to provide an indigent, illiterate defendant an attorney far enough in advance of trial to enable him to demand a preliminary hearing. Williams v. State of S. C. (D.C.S.C. 1965) 237 F.Supp. 360, vacated 356 F.2d 432. Constitutional Law 4809

When there is a preliminary hearing, accused is entitled to aid of counsel. State v. Taylor (S.C. 1970) 255 S.C. 268, 178 S.E.2d 244.

The fact that defendant was not represented by counsel in time to request a preliminary hearing “at least ten days before the convening of the next court,” so as to prevent the court of general sessions from obtaining jurisdiction as provided in this section, in no way prejudiced defendant. State v. Sanders (S.C. 1968) 251 S.C. 431, 163 S.E.2d 220. Criminal Law 1166(1.10)

If a defendant is discharged by a magistrate at a preliminary hearing, such is not a final determination of the charge and does not bar subsequent prosecution by the State. Therefore, if counsel had been appointed for defendant in time to have demanded a preliminary hearing ten days before the next court, as allowed under this section, and the magistrate had discharged the defendant from custody, it would not have ended the prosecution. The defendant could have still been prosecuted. State v. Sanders (S.C. 1968) 251 S.C. 431, 163 S.E.2d 220. Double Jeopardy 90

There is no error in refusing to grant a new trial on the ground defendant was not represented by counsel at the preliminary hearing. State v. White (S.C. 1963) 243 S.C. 238, 133 S.E.2d 320.

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

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

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

Library References

Criminal Law 222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 339 to 344.

NOTES OF DECISIONS

Validity 1

1. Validity

Section 22‑5‑320 is unconstitutional, under Art V Section 11, since the statute acts to deprive the Court of General Sessions of its original concurrent jurisdiction over criminal cases without also granting exclusive jurisdiction of the same cases to the magistrates’ courts in that the statute authorizes a magistrate to hold a preliminary hearing only when the crime charged is “beyond his jurisdiction,” and the magistrate cannot possess the “exclusive jurisdiction” required by Art V Section 11 in a matter that is “beyond his jurisdiction.” The striking of Section 22‑5‑320 renders meaningless and void the remainder of the statutes which set out procedures incident to the holding of a preliminary hearing (Sections 22‑5‑310 through 22‑5‑360) and, in addition, Section 17‑23‑160, which provides for notification of the right to request a preliminary hearing. State v. Keenan (S.C. 1982) 278 S.C. 361, 296 S.E.2d 676.

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

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

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

Library References

Criminal Law 226.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 340, 343.

NOTES OF DECISIONS

Validity 1

1. Validity

Section 22‑5‑320 is unconstitutional, under Art V Section 11, since the statute acts to deprive the Court of General Sessions of its original concurrent jurisdiction over criminal cases without also granting exclusive jurisdiction of the same cases to the magistrates’ courts in that the statute authorizes a magistrate to hold a preliminary hearing only when the crime charged is “beyond his jurisdiction,” and the magistrate cannot possess the “exclusive jurisdiction” required by Art V Section 11 in a matter that is “beyond his jurisdiction.” The striking of Section 22‑5‑320 renders meaningless and void the remainder of the statutes which set out procedures incident to the holding of a preliminary hearing (Sections 22‑5‑310 through 22‑5‑360) and, in addition, Section 17‑23‑160, which provides for notification of the right to request a preliminary hearing. State v. Keenan (S.C. 1982) 278 S.C. 361, 296 S.E.2d 676.

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

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

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

NOTES OF DECISIONS

Validity 1

1. Validity

Section 22‑5‑320 is unconstitutional, under Art V Section 11, since the statute acts to deprive the Court of General Sessions of its original concurrent jurisdiction over criminal cases without also granting exclusive jurisdiction of the same cases to the magistrates’ courts in that the statute authorizes a magistrate to hold a preliminary hearing only when the crime charged is “beyond his jurisdiction,” and the magistrate cannot possess the “exclusive jurisdiction” required by Art V Section 11 in a matter that is “beyond his jurisdiction.” The striking of Section 22‑5‑320 renders meaningless and void the remainder of the statutes which set out procedures incident to the holding of a preliminary hearing (Sections 22‑5‑310 through 22‑5‑360) and, in addition, Section 17‑23‑160, which provides for notification of the right to request a preliminary hearing. State v. Keenan (S.C. 1982) 278 S.C. 361, 296 S.E.2d 676.

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

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

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

Library References

Justices of the Peace 23.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 32 to 37, 40.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gaming Section 24, Preliminary Hearing.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

Section 22‑5‑320 is unconstitutional, under Art V Section 11, since the statute acts to deprive the Court of General Sessions of its original concurrent jurisdiction over criminal cases without also granting exclusive jurisdiction of the same cases to the magistrates’ courts in that the statute authorizes a magistrate to hold a preliminary hearing only when the crime charged is “beyond his jurisdiction,” and the magistrate cannot possess the “exclusive jurisdiction” required by Art V Section 11 in a matter that is “beyond his jurisdiction.” The striking of Section 22‑5‑320 renders meaningless and void the remainder of the statutes which set out procedures incident to the holding of a preliminary hearing (Sections 22‑5‑310 through 22‑5‑360) and, in addition, Section 17‑23‑160, which provides for notification of the right to request a preliminary hearing. State v. Keenan (S.C. 1982) 278 S.C. 361, 296 S.E.2d 676.

2. In general

Refusal of new trial after conviction of crime for failure to hold preliminary examination was not error, where defendants made no written demand therefor and never called trial court’s attention to such failure, thereby waiving right to such examination. State v. Jones (S.C. 1934) 172 S.C. 129, 173 S.E. 77. Criminal Law 912.5

ARTICLE 7

Bail and Recognizance; Arrest and Committal of Witnesses

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

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

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

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

 (1) family ties;

 (2) employment;

 (3) financial resources;

 (4) character and mental condition;

 (5) length of residence in the community;

 (6) record of convictions; and

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

 (D) A court 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.

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

 (1) the person’s criminal record;

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

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

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

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

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

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

Effect of Amendment

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

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

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

CROSS REFERENCES

Bail and recognizances, generally, see Section 17‑15‑10 et seq.

Holding a preliminary investigation by a magistrate who issues a warrant charging a crime without his jurisdiction, upon demand of defendant, see Section 22‑5‑320.

Library References

Bail 40.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Section 8.

Attorney General’s Opinions

A magistrate may not refuse to release a defendant charged with a noncapital offense on bond if he makes the determination that the defendant constitutes an unreasonable danger to the community. However, if such a determination is made, conditions of release may be imposed; a determination that a defendant is an unreasonable danger to the community does not permit a magistrate to refuse to release a defendant changed with an offense triable in the magistrate’s court who pursuant to Section 22‑5‑530 is entitled to deposit money with the magistrate in lieu of entering into a recognizance. 1979 Op. Atty Gen, No 79‑123, p 177.

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.

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.

A magistrate has authority to refuse to accept bonds submitted by a bondsman or surety company who present either a financial or moral risk. 1974‑75 Op. Atty Gen, No. 4172, p 230.

In the absence of special provisions of law, a magistrate has authority to admit to bail or release upon his own recognizance anyone charged with a noncapital offense and in such instances, the magistrate is charged by law with the duty of determining the sufficiency of the surety or sureties accepted. 1970‑71 Op. Atty Gen, No. 3097, p 43.

A magistrate may admit to bail one charged with reckless homicide. 1965‑66 Op. Atty Gen, No. 2196, p 339.

Before the 1973 revision of SC Const, Art 5, Section 21 [now Section 26] empowered magistrates to recognize persons charged with a crime “except in capital cases.” 1970‑71 Op. Atty Gen, No. 3204, p 185.

NOTES OF DECISIONS

In general 1

1. In general

A recognizance is valid without the signature of the principal. State v Quattlebaum (1903) 67 SC 203, 45 SE 162. State v Cornell (1905) 70 SC 409, 50 SE 22.

Sureties in State proceedings are not liable when case is removed to Federal court, since it is not a breach of the bail bond for the accused not to appear in the State court after such removal. Davis v. State of South Carolina (U.S.S.C. 1883) 2 S.Ct. 636, 107 U.S. 597, 17 Otto 597, 27 L.Ed. 574.

A magistrate has jurisdiction to bind over to circuit court one charged with and shown to be probably guilty of bastardy where he denies the paternity of the child and refuses to enter into recognizance to maintain the child. State v. Edens (S.C. 1911) 88 S.C. 302, 70 S.E. 609.

In felony, the personal appearance of the principal is required. State v. Rowe (S.C. 1854) 8 Rich. 17.

It is no objection that there is a variance between the recognizance and the warrant. State v. Rowe (S.C. 1854) 8 Rich. 17. Bail 58

Failure to appear and plead will estreat the recognizance. State v. Minton (S.C. 1883) 19 S.C. 280.

A surety is not estopped from denying the validity of the recognizance because another has made payments thereon. State v. Bright (S.C. 1880) 14 S.C. 7.

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

The legal obligation of the surety is that the principal shall appear and abide by the judgment of the court. Reynolds v Harral (1847) 2 33 SCL 87.

A recognizance is valid without a seal. State v Foot (1818) 9 SCL 122.

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

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

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

Library References

Bail 50.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 66 to 70.

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

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

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

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

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

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

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

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

Effect of Amendment

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

Library References

Bail 54.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 3, 93 to 106.

RESEARCH REFERENCES

Encyclopedias

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

Attorney General’s Opinions

A magistrate may not refuse to release a defendant charged with a noncapital offense on bond if he makes the determination that the defendant constitutes an unreasonable danger to the community. However, if such a determination is made, conditions of release may be imposed; a determination that a defendant is an unreasonable danger to the community does not permit a magistrate to refuse to release a defendant charged with an offense triable in the magistrate’s court who pursuant to Section 22‑5‑530 is entitled to deposit money with the magistrate in lieu of entering into a recognizance. 1979 Op. Atty Gen, No. 79‑123, p 177.

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.

While cash bond may be forfeited in magistrate’s 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.

An accused may deposit with the court a sum not to exceed the maximum fine for any offense in lieu of entering into a formal bail bond; however, requiring this procedure only of those who request jury trials might impose an unconstitutional “chilling effect” on the right to jury trial. 1989 Op. Atty Gen, No. 89‑56, p 142.

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.

NOTES OF DECISIONS

In general 1

1. In general

This section is applicable to charges preferred in municipal courts. State v. Langford (S.C. 1953) 223 S.C. 20, 73 S.E.2d 854.

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

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

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

Library References

Bail 49.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 11, 18, 24, 54 to 64.

Attorney General’s Opinions

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.

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

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

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

CROSS REFERENCES

Magistrates in counties in which a county court has been established, see Section 22‑5‑710.

Library References

Witnesses 20.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 2, 69.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v. Murphy (S.C. 1896) 48 S.C. 1, 25 S.E. 43.

This section is not restricted to capital felonies. Eustace v. Greenville County (S.C. 1894) 42 S.C. 190, 20 S.E. 88.

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

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

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

Library References

Witnesses 20.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 2, 69.

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

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

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

Library References

Witnesses 19.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 2, 67 to 68.

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

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

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

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

Code Commissioner’s Note

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

Library References

Bail 42.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 6, 9 to 15, 17 to 18, 24 to 25, 31 to 32.

ARTICLE 9

Provisions Applicable in Counties Where County Courts Exist

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

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

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

Library References

Criminal Law 222 to 237.

Justices of the Peace 20.

Westlaw Topic Nos. 110, 231.

C.J.S. Criminal Law Sections 282, 339 to 345.

C.J.S. Justices of the Peace Section 26.

LAW REVIEW AND JOURNAL COMMENTARIES

Preliminary Hearing. 25 S.C. L. Rev. 351.

NOTES OF DECISIONS

In general 1

1. In general

A private citizen has no judicially recognized right to prevent state officials from presenting information, through intervention of the state solicitor, that will assist a magistrate in determining whether to issue an arrest warrant. Leeke v. Timmerman (U.S.S.C. 1981) 102 S.Ct. 69, 454 U.S. 83, 70 L.Ed.2d 65, rehearing denied 102 S.Ct. 1041, 454 U.S. 1165, 71 L.Ed.2d 322.

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

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

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

Library References

Witnesses 19.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 2, 67 to 68.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 2, Jurisdictional Background.

ARTICLE 11

Expungement of Criminal Records

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

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

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

 (C) If the defendant has had no other conviction during the three‑year period as provided in subsection (A), or during the five‑year period as provided in subsection (B), the circuit court may issue an order expunging the records including any associated bench warrant. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred prior to June 1, 1992.

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

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

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

Editor’s Note

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

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

Effect of Amendment

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

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

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

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

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

Library References

Criminal Law 1226.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 1734.

RESEARCH REFERENCES

ALR Library

70 ALR 6th 1 , Judicial Expunction of Criminal Record of Convicted Adult Under Statute‑Expunction Under Statutes Addressing “First Offenders” and “Innocent Persons,” Where Conviction was for Minor Drug or Other Offense, Where...

Encyclopedias

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

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.

A defendant could not receive an expungement under Section 22‑5‑910 and then subsequently obtain an expungement for a second conviction under Section 34‑1 l‑90(e). S.C. Op.Atty.Gen. (Oct. 29, 2013) 2013 WL 6009577.

A defendant is not entitled to the expungement of more than one fraudulent check conviction. S.C. Op.Atty.Gen. (Oct. 29, 2013) 2013 WL 6009577.

SLED should consider out‑of‑state convictions when determining eligibility for expungement. S.C. Op.Atty.Gen. (Oct. 29, 2013) 2013 WL 6009577.

NOTES OF DECISIONS

In general 1

1. In general

Statute limiting expungement of first offense convictions to persons who have no other conviction during subsequent three‑year period was not jurisdictional, and thus, circuit court’s alleged violation of statute did not render its expungement order void, and South Carolina Law Enforcement Division (SLED) was required to take direct appeal from order to challenge it. Fryer v. South Carolina Law Enforcement Div. (S.C.App. 2006) 369 S.C. 395, 631 S.E.2d 918. Criminal Law 1226(3.1)

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

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

 (B)(1) Following a first offense conviction as a youthful offender for which a defendant is sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the defendant, after five years from the date of completion of the defendant’s sentence, including probation and parole, may apply, or cause someone acting on the defendant’s behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction.

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

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

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

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

 (3) If the defendant has had no other conviction during the five‑year period following completion of the defendant’s sentence, including probation and parole, for a first offense conviction as a youthful offender for which the defendant was sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the circuit court may issue an order expunging the records. No person may have the person’s records expunged under this section more than once. A person may have the person’s record expunged even though the conviction occurred before the effective date of this section. A person eligible for a sentence pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, and who is not sentenced pursuant to those provisions, is not eligible to have the person’s record expunged pursuant to the provisions of this section.

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

HISTORY: 2003 Act No. 1, Section 1; 2009 Act No. 36, Section 6, eff June 2, 2009; 2010 Act No. 273, Section 32, eff June 2, 2010; 2016 Act No. 132 (S.255), Section 5, eff May 16, 2016.

Editor’s Note

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

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

Effect of Amendment

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

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

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

Library References

Criminal Law 1226.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 1734.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 113, Parole and Aftercare.

Attorney General’s Opinions

Discussion of whether a defendant is eligible for an expungement under Section 22‑5‑920(B) where he received a Youthful Offender Act sentence for some, but not all, convictions at a single court appearance, and whether a defendant can receive expungements for multiple convictions if the Youthful Offender Act sentencing occurs at a single court appearance. S.C. Op.Atty.Gen. (Oct. 29, 2013) 2013 WL 6009577.

Discussion of whether a defendant who meets the definition of a “youthful offender” at time of his conviction is eligible for an expungement under section 22‑5‑920(B) even though the defendant was not sentenced as a youthful offender pursuant to the provisions of the Youthful Offender Act. S.C. Op.Atty.Gen. (Oct. 29, 2013) 2013 WL 6009577.

An expungement order would not require the Department of Probation, Parole, and Pardon Services to destroy records in the offender file representing information related to a particular charge compiled for purposes other than recording an arrest and the ensuing criminal charges, but would require the destruction of records of the actual criminal charge, such as the underlying arrest and booking record, indictment, sentencing sheet, or other bookkeeping entries for recording the arrest and the ensuing charge. S.C. Op.Atty.Gen. (August 8, 2011) 2011 WL 3918182.

NOTES OF DECISIONS

Expungement 1

1. Expungement

Statutory provision governing expungement of the record of a conviction as a youthful offender requires only that a person be convicted as a youthful offender; sentencing as an adult does not render the person ineligible. Gay v. Ariail (S.C. 2009) 381 S.C. 341, 673 S.E.2d 418. Infants 3187

Defendant who pleaded guilty to assault and battery of a high and aggravated nature (ABHAN) when he was 22 years old was convicted as a youthful offender and, therefore, was eligible to apply for expungement of the record of his conviction, even though defendant was sentenced as an adult, given that defendant had no other convictions; defendant was 17 but less than 25 years of age at the time of the conviction, and the conviction was for a misdemeanor offense that was not a violent crime. Gay v. Ariail (S.C. 2009) 381 S.C. 341, 673 S.E.2d 418. Infants 3187