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Consult your attorney for advice concerning specific situations.

UPDATE & ATTORNEY APPOINTMENTS

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BOND REFORM – H. 3532

- Went into effect June 20, 2022 (mostly)
- Affects
 - Whether summary court can set bond
 - What kind of bond may be set (i.e., cash only in certain instances)
 - Considerations when setting bond
 - Issuance of bench warrants for bond violations
 - New GS charge for committing violent crime while on bond for violent crime
 - Electronic monitoring (took effect December 20, 2023)

§17-15-270

- Created new GS offense (CDR Code 4089)
- Unlawful to commit a violent offense while on bond or other pretrial release for a violent offense

DETERMINATION OF BOND - § 17-15-30 / § 22-5-510

- Court **must** consider whether a person is currently on bond for another offense
- Law enforcement **must** provide court with information whether person is currently on bond for another offense

CASH-ONLY BONDS - § 17-15-15

- "...if the defendant is charged with a violent offense...or any felony offense involving a firearm while out on bond or other pretrial release"
- Bond, if set, must be full (i.e., no 10%) cash bond to the exclusion of other forms of bond
- Bondsman can post the cash

"FELONY OFFENSE INVOLVING A FIREARM"

- No list provided in the statute (contrast w/ 16-1-60)
- If the offense is violent, don't worry if it's a FIOF
- Some offenses clearly fall into this category (e.g., Discharging Firearm into Dwelling)
- Felony offenses that may or may not have involved a firearm? (e.g., Malicious Injury to Property \$2K-\$10K)
- Felony offense with accompanying misdemeanor firearm charge? (e.g., charged with PWID and poss. firearm by person convicted of DV 3rd)

COMMON FELONY OFFENSES INVOLVING A FIREARM (THAT AREN'T VIOLENT OFFENSES)

- Discharging Firearm into a Dwelling
- Pointing and Presenting
- Discharging Firearm into Vehicle or Aircraft While Occupied
- Poss. of Firearm or Ammunition by Person Convicted of Violent Felony
- Poss. of Firearm or Ammunition by Person Convicted of DV 1st (not 2nd or 3rd)
- Poss. of Firearm or Ammunition by Person Convicted of PWID, Manf., Dist., Trafficking

COMMON MISDEMEANOR OFFENSES INVOLVING A FIREARM

- Unlawful Carrying of a Pistol
- Possession of Firearm or Ammunition by Person Convicted of DV 2nd or 3rd
- Possession of Firearm or Ammunition by Person Subject to Order of Protection





BONDS THAT MUST BE HEARD BY CIRCUIT COURT - § 17-15-55

- *Status quo ante*
 - Defendant on bond for violent offense, charged with subsequent violent offense, must have bond heard in circuit court
- *Now*
 - Defendant on bond for violent offense OR felony offense involving a firearm, charged with subsequent violent offense or felony offense involving a firearm, must have bond heard in circuit court

(Plus capital & life offenses, Burglary 1st if Solicitor Objects)

BOND REVOCATION – § 17-15-55
BENCH WARRANT FOR VIOL. OF BOND - § 38-53-70

- Concurrent jurisdiction with the circuit court for purposes of bond revocation was expanded from 14 days to 30 days - § 17-15-55
- Court shall issue bench warrant if person "violates the conditions of release on bond" - § 38-53-70

MISC. BOND ISSUES

- Requires written motion by the State – 17-15-55
- Bondsmen are required to attach payment plan paperwork to the bond proceeding form – 38-53-170

ELECTRONIC MONITORING § 17-15-35 & -37 (EFFECTIVE DECEMBER 20, 2023)

- In order to make use of 17-15-35, must be “approved electronic monitoring agency” and use “approved active electronic monitoring device” – includes law enforcement agencies
- Determination of which agencies and which devices qualify is solely up to SLED

ELECTRONIC MONITORING

- May order for person charged with GS offense, or for any offense where sufficient evidence of concern for safety of victim or public
- “Either in lieu of setting or requiring the posting of bond or as an additional condition”

ELECTRONIC MONITORING – REQUIREMENTS FOR DEFENDANT

- If not a "body worn" device, defendant must stay within hearing distance of device's notifications but in any event no further than 30 feet
- Where lack of cellular coverage requires "alternate device," court must approve use of "alternate device"
- Must report damage, destruction, etc. of device within two hours to monitoring agency, law enforcement, or any other party specified in order

ELECTRONIC MONITORING – REQUIREMENTS FOR DEFENDANT

- Abide by terms and conditions of monitoring agency
- Turn self into custody upon order of monitoring agency or law enforcement
- Pay for monitoring, unless court finds "exceptional circumstances" causing hardship exist
- Failure to pay is violation of bond condition

Arrest #1	Arrest #2	Summary Ct.	Type of bond
Viol. or FIFA	Viol. or FIFA		Circuit Ct.
Any crime (not Viol./not FIFA)	Viol.	May set or deny	full cash bond (no 10%)
Any crime (not Viol./not FIFA)	FIFA	Must set	full cash bond (no 10%)
Any crime (not VF/not FIFA)	Any crime (not VF/not FIFA)	Must set	Cash; Surety; 10%; PR

SCENARIO #1

- On Bond for DUI
- Charged w/ Discharging Firearm into Dwelling

Arrest #1	Arrest #2	Summary Ct.	Type of bond
Viol. or FIFA	Viol. or FIFA		Circuit Ct.
Any crime (not Viol./not FIFA)	Viol.	May set or deny	full cash bond (no 10%)
Any crime (not Viol./not FIFA)	FIFA	Must set	full cash bond (no 10%)
Any crime (not VF/not FIFA)	Any crime (not VF/not FIFA)	Must set	Cash; Surety; 10%; PR

SCENARIO #2

- Not Currently on Bond
- Charged w/ Pointing and Presenting

Arrest #1	Arrest #2	Summary Ct.	Type of bond
Viol. or FIFA	Viol. or FIFA		Circuit Ct.
Any crime (not Viol./not FIFA)	Viol.	May set or deny	full cash bond (no 10%)
Any crime (not Viol./not FIFA)	FIFA	Must set	full cash bond (no 10%)
Any crime (not VF/not FIFA)	Any crime (not VF/not FIFA)	Must set	Cash; Surety; 10%; PR

CONSTITUTIONAL CARRY
(EFFECTIVE MARCH 7, 2024)

- Anyone 18 or older may, without CWR, carry handgun openly or concealed
- Changed convictions that prohibit possession of firearms or ammunition
- Firearms still prohibited in "any publicly owned building" 16-23-420

UNLAWFUL CARRYING OF A PISTOL
§ 16-23-20

- Certain enumerated places (e.g., detention facility), including "courthouse, courtroom, or other publicly owned building, whether owned by the State, a county, a municipality, or other political subdivision, where court is held and during the time that court is in session;" - now has 1st, 2nd, 3rd offense
- Places that have posted "no concealable weapons" sign in accordance w/ law – may only be charged with trespassing

UNLAWFUL POSSESSION OF FIREARM BY CERTAIN PERSONS - § 16-23-500

- Formerly – persons convicted of a violent (16-1-60) felony
- Now: any conviction (from SC or other state) for which person could have received > 1 year
 - Exceptions:
 - Antitrust violations, Unfair Trade Practices, Restraints of Trade, similar offenses
 - Misdemeanors carrying 5 years or less

JUDGES & CLERKS § 23-31-240

- Certain persons "who possess a valid permit...may carry a concealable weapon anywhere in this State"
- "Active Magistrates"
- "Active Municipal Court Judges"
- "Active County Clerks of Court" (i.e., not magistrate or municipal clerks)

CONDITIONAL DISCHARGES

- Two new charges eligible for conditional discharge:
 - 61-4-50 – sale to underage person of beer, ale, porter, wine, or similar
 - 61-6-4080 – sale to underage person of liquor
- Still must complete merchant education program, otherwise "probation" upon terms as court sees fit
- At discretion of court and with approval of solicitor or prosecuting officer

CONDITIONAL DISCHARGES

- If charge handled in summary court, defendant will apply to the summary court for expungement
- Still must complete merchant education program, otherwise "probation" upon terms as court sees fit
- \$150 fee paid to court (may be waived only upon finding of indigency); fee is transmitted to the State Treasurer

ANIMAL CRUELTY

- 47-1-140 – provision was removed that gave law enforcement an automatic lien on the animal for cost of care
- 47-1-145 – Now, law enforcement **may** petition magistrate or circuit court (was magistrate or municipal court) for order requiring owner to deposit funds at specified intervals to cover cost of care

ANIMAL CRUELTY – 47-1-145

- Now, law enforcement **may** petition magistrate or circuit court (was magistrate or municipal court) for order requiring owner to deposit funds every 30 days while charges are pending to cover cost of care
- If defendant is found guilty, **custodian of the animal** is responsible for finding placement or euthanizing
- Defendant at any time may forfeit right to animal and pay only care costs accrued

ANIMAL CRUELTY – 47-I-145

- Once petition is served, hearing is set no less than 10 days and no more than 15 business days later
- Defendant is entitled to appointed counsel if indigent unless intelligently and knowingly waived
- Court may reduce amount indigent defendant is ordered to pay

ANIMAL CRUELTY – 47-I-145

- Scope of hearing is limited to whether probable cause existed to seize animal, and amount that defendant will be ordered to pay every 30 days
- Defendant then has 5 days to pay amount or animal is forfeited (and must pay each month thereafter or animal is forfeited)
- Fact that order was entered against defendant, or any statements made by defendant at hearing cannot be used against defendant in criminal proceeding

ANIMAL CRUELTY – 47-I-145

- Is appointed counsel on criminal case required to represent defendant on the civil petition? Probably not

JUDICIAL PERSONAL PRIVACY PROTECTION ACT

- Allows judges and law enforcement to have **personal** cell phone number, and home address, removed from public records
- Implementation delayed until July 1, 2025

UPDATED ACCESSIBILITY REQUIREMENTS

- Web content and mobile applications must meet a certain level of accessibility by April 24, 2026
- All court forms used by the public in the courts must be revised to meet these new guidelines

APPOINTMENT OF COUNSEL

- No person may be imprisoned for any offense unless represented by counsel at trial, or knowingly and intelligently waived right to such counsel *Argersinger v. Hamlin*, 407 U.S. 25 (1972)
- This includes suspended and probated sentences *Alabama v. Shelton*, 535 U.S. 654 (2002).
- Knowing, voluntary waiver of counsel may be done in accordance with *Faretta v. California*, 422 U.S. 806 (1975) – SCCA 684 (English, Spanish, and Portuguese versions).
- If RTC waived, record must reflect the knowing and voluntary waiver *State v. Dial* 429 S.C. 128

APPOINTMENT OF COUNSEL

- Defendant has right to an attorney at any "critical stage" of the criminal process – this includes preliminary hearings; but has not been found to include bond hearings
- Contempt
 - Direct contempt – no right to counsel
 - Constructive ("indirect") criminal contempt – right to counsel *Ex Parte Mannie Jackson*, 381 S.C. 254

BUDGET PRIVISO 61.11

- 61.11. (INDEF: Optional Courts and Indigent Representation) If a municipality has or elects to have an optional municipal court system, it must provide adequate funds for representation of indigents. No public defender shall be appointed in any such court unless the municipality and the office of the circuit public defender have reached an agreement for indigent representation and no funds allocated to the commission shall be used to provide compensation for appointed counsel in municipal courts.
